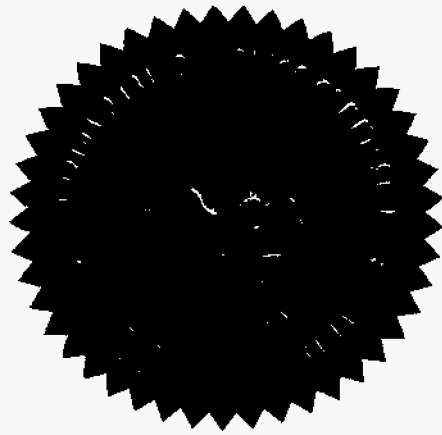


BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

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In the Matter of :  
Consideration of BellSouth :  
Telecommunications, Inc.'s :  
entry into InterLATA :  
services pursuant to Section: :  
271 of the Federal :  
Telecommunications Act of :  
1996. :  
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DOCKET NO. 960786-TL



**PROCEEDINGS:           STATUS CONFERENCE**

**BEFORE:**               Commission Julia L. Johnson  
                              (Conducted telephonically)

**DATE:**                 **Wednesday, August 7, 1996**

**TIME:**                 Commenced at 8:00 a.m.  
                              Concluded at 10:00 a.m.

**PLACE:**                Commission Suite  
                              2540 Shumard Oak Boulevard  
                              Tallahassee, Florida

**REPORTED BY:**         JOY KELLY, CSR, RPR  
                              Chief, Bureau of Reporting  
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**08306 AUG-8 8<sup>PM</sup>**  
FPSC-RECORDS/REPORTING

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1           **MR. FINCHER:** Benjamin Fincher on behalf of  
2 Sprint Communications Company, Limited Partnership.

3           **MS. McMILLIN:** Martha McMillin representing  
4 MCI Telecommunications Corporation, 780 Johnson Ferry  
5 Road, Suite 700, Atlanta.

6           **MS. DUNSON:** Robin Dunson on behalf of AT&T  
7 1200 Peachtree Street, Room 4038, Atlanta, Georgia  
8 30309.

9           **COMMISSIONER JOHNSON:** We have Intermedia,  
10 don't we?

11           **MR. WIGGINS:** This is Pat Wiggins on behalf  
12 of Intermedia here in Tallahassee.

13           **MS. GREEN:** Good morning. Angela Green on  
14 behalf of Florida Public Telecommunications, 125 South  
15 Gadsden Street, Suite 200, Tallahassee 32301. Any  
16 other parties or interested persons? Hearing none,  
17 are there any preliminary matters? (No response)  
18 Okay. We'll go right to the agenda then.

19           BellSouth, you have filed several  
20 objections. I'm assuming Mr. Ellenberg will present  
21 those.

22           **MR. ELLENBERG:** That's correct.

23           **COMMISSIONER JOHNSON:** Okay. You can go  
24 ahead and begin.

25           **MR. ELLENBERG:** I guess I was a little

1 unclear on the procedure for this morning. We've  
2 filed our objections to FIXCA's three sets of  
3 interrogatories in this case and their first set of  
4 request for production of documents.

5 As far as I know, FIXCA has not responded  
6 and moved to compel our response. And it would seem  
7 that perhaps after reading our objections they have  
8 seen the light and now agree that they have gone too  
9 far in their discovery and may want to drop some of  
10 the questions, so perhaps we may want to hear from  
11 them first.

12 **COMMISSIONER JOHNSON:** Okay. Mr.  
13 McGlothlin.

14 **MR. MCGLOTHLIN:** Of course, we received the  
15 objections yesterday, Commissioner. And as a starting  
16 point, I'd like to point out that while the requests  
17 produced promulgated through FIXCA, in a effort to  
18 streamline and simplify some of the discovery  
19 requirements, my office has been something of a  
20 clearinghouse and we had received contributions from  
21 MCI, AT&T and LDDS in addition to our own discovery.

22 So I point that out to make this request of  
23 you, Commissioner. We want to adhere to the  
24 admonition that each side has one speaker to the  
25 extent feasible, but because of the short time frame

1 within which we have had -- within which we reviewed  
2 the objections, despite the attempt to assimilate the  
3 various parties' views on that, I would be the point  
4 person, but I'd like to ask enough latitude so that if  
5 the party sponsoring the particular request feels I've  
6 omitted something, they would have the opportunity to  
7 supplement my response -- we don't intend to play tag  
8 team -- so that the parties who made the effort to  
9 streamline discovery are not prejudiced by that effort  
10 in form of limitation on their ability to support  
11 their request. I hope we will have that opportunity.

12           And we are prepared to, I suppose, present  
13 what would amount to an oral Motion to Compel this  
14 morning. I don't know if you intend to rule on the  
15 objections in our motion today. And if you decide to  
16 take it under advisement, we would also offer if you  
17 think it is helpful to follow up today's conversation  
18 with a short written memorandum in support of all of  
19 our arguments. And we could turn that in on an  
20 expedited time frame.

21           **COMMISSIONER JOHNSON:** Mr. McGlothlin, as it  
22 relates to your first issue, and that is other  
23 individuals' ability to comment, it is my  
24 understanding that in order to expedite the process as  
25 you all did, in your filings -- they really serve as a

1 joint filing -- I will endeavor to give you the  
2 latitude that you need in order to address all of the  
3 issues that have been raised by all of the parties  
4 that participated in actually drafting those  
5 interrogatories.

6           To the extent that I feel that it is  
7 becoming somewhat of a double or triple teaming, then  
8 at that point I will handle the issue on a  
9 case-by-case basis. But we have been trying to  
10 expedite the process and streamline it, and I want to  
11 compliment the parties on their attempts to do that  
12 and will try to accommodate that endeavor.

13           As it relates to the written motion, I  
14 intend to take this under advisement, but I'd like to  
15 make a ruling tomorrow. To the extent that you think  
16 that it is helpful for you to file something, I'd like  
17 to hear more discussion on that. I don't think at  
18 this point in time it will be necessary, but I may  
19 need to listen to the arguments and then determine  
20 whether or not we'll actually need more time.

21           **MR. MCGLOTHLIN:** Very good, Commissioner.  
22 As I said, I will make the initial presentation and  
23 then invite my co-counsel, those who in particular  
24 have a response to, indicate whether they want to  
25 supplement or add anything to what I said.



1           **COMMISSIONER JOHNSON:** All that I ask is  
2 that before you speak, if you could state who you  
3 represent and who you are, that would be helpful for  
4 me and the court reporter.

5           **MR. McGLOTHLIN:** Initially, I'd like to  
6 point out that all of the BellSouth objections carry  
7 with them a thick cladding of boilerplate form of what  
8 are called "general objections." At the outset of  
9 each of these pleadings there's an indication that  
10 BellSouth intends to apply, to the extent applicable,  
11 attorney-client privilege objections, product  
12 privilege objections, the objection that an  
13 interrogatory is vague, ambiguous, overbroad or that  
14 it's unduly burdensome, or that it may contain trade  
15 secrets.

16           And I want to make the first point which is  
17 that under Florida law those generalized or blanket  
18 parts of objections are insufficient to carry the  
19 burden of the party to whom discovery has been  
20 directed. I would cite the case of Carson versus City  
21 of Fort Lauderdale, 173 So.2d 43, Second DCA case in  
22 1965 in support of that.

23           The burden is on BellSouth to prove the  
24 validity of the objection, and it cannot do that by  
25 generalized blanket objection. It has to show with

1 respect to an individual interrogatory specific  
2 reasons why that request is objectionable.

3           And so my first point is that you should  
4 regard only those areas of his pleadings where a  
5 particular interrogatory is identified and where  
6 BellSouth indicates with specificity that it has an  
7 objection to it. And it's with respect to those  
8 several that I want to focus this morning.

9           Beginning with FIXCA's first set of  
10 interrogatories, and I'm going to present the argument  
11 in a way that corresponds to the manner in which  
12 BellSouth organized their objections. They took up  
13 Interrogatories 6, 7 and 8 together.

14           Interrogatory 6 asks BellSouth to state the  
15 total number of loops provided by BellSouth within  
16 Florida, and also broken down on the LATA-by-LATA  
17 basis.

18           No. 7 asks BellSouth to state the total  
19 number of business loops provided by BellSouth within  
20 Florida and on a LATA-by-LATA basis.

21           No. 8 asks BellSouth to state the total  
22 number of residential loops provided by BellSouth  
23 within the state of Florida and on a LATA-by-LATA  
24 basis.

25           Objection -- essentially there is a claim

1 that the information sought isn't relevant nor  
2 calculated to lead to discovery of admissible evidence  
3 related to the issue. That BellSouth has met or will  
4 be able to meet the requirements of 271.

5 And in addition, they object on the basis  
6 that the information sought is available in the public  
7 record.

8 First of all, with respect to the claim that  
9 the question is objectionable because information is  
10 public record, that is an insufficient objection. An  
11 interrogatory is not objectionable merely because it  
12 seeks information which is a public record. Florida  
13 courts frequently cite federal courts; construe the  
14 analogous federal rules of federal procedure as  
15 persuasive, and two cases support this proposition:  
16 Anderson vs United Airlines, 49 Federal Rules decision  
17 case, 144. That's the Southern District of New York  
18 case in 1969. To the same effect, Erone, E-R-O-N-E  
19 Corporation versus Skoures Theater, S-K-O-U-R-E-S,  
20 Federal Rules Decision Case, 22 FRD 494, a 1958 case.

21 With respect to the contention that the  
22 information is not relevant, the objections to these  
23 interrogatories suffer from the same flaws that  
24 afflict many of these objections, which is BellSouth  
25 has taken an unduly narrow view of the scope of

1 discovery as well as an unwantedly narrow view of the  
2 scope of this docket.

3           No. 6 asks for the total number of loops  
4 provided by BellSouth. Then the checklist, the --  
5 that is, BellSouth is required to demonstrate that it  
6 is providing interconnection and access to network  
7 elements, including such matters as loops and  
8 switches. And that is not an abstract idea. And if  
9 nothing else, these initial interrogatories put the  
10 flesh on the concept of the system that is subject to  
11 the requirements.

12           So that it is an appropriate manner for  
13 discovery simply to elicit the information that will  
14 define and shape the animal we're talking about, which  
15 is the BellSouth system.

16           I'd like to turn next to the next set of  
17 interrogatories that are taken together, because while  
18 they are grouped together also relate to these first  
19 objections to 6, 7 and 8.

20           BellSouth objects to 9, 10, 11, 12 and 13  
21 together. Interrogatory No. 9 says state the total  
22 number of unbundle loops that are connected to  
23 switches owned by unaffiliated competitors within  
24 Florida and on LATA-by-LATA basis within Florida.

25           No. 10 says state the total number of

1 unbundled BellSouth loops that are connected to  
2 switches by unaffiliated competitors; again within  
3 Florida and LATA-by-LATA basis.

4           11 says state the total number of unbundled  
5 BellSouth residential loops that are connected to  
6 switches owned by unaffiliated competitors within  
7 Florida, and on a LATA-by-LATA basis within Florida.

8           No. 12 says state the total number of  
9 BellSouth switches and lineside ports within Florida  
10 and on a LATA-by-LATA basis within Florida.

11           Filing 13 says state the total number of  
12 BellSouth switches and lineside switch ports connected  
13 to loops provide by unaffiliated competitors in  
14 Florida and on a LATA-by-LATA basis in Florida.

15           Again, the objection is that the information  
16 sought is irrelevant, is outside the scope of  
17 discovery. With respect to these several, I'd like to  
18 point out that one of the criteria of the Act is  
19 whether BellSouth has fully implemented the checklist.  
20 And we think one measure of whether BellSouth has met  
21 that obligation is to identify the extent to which  
22 BellSouth has connected loops and switches to these  
23 competitors. And for that reason it's clearly within  
24 the scope of discovery available to FIXCA in this  
25 case.

1           In addition, we don't think it's possible to  
2 divorce the consideration of the public interest test  
3 that the FCC is going to ultimately apply to an  
4 application by BellSouth. And we think it's germane  
5 to that criterion to elicit the type of information  
6 that would quantify and demonstrate relative market  
7 shares held by BellSouth on one hand, and competitors  
8 of the other; it is also relevant and within the scope  
9 of discovery for that reason.

10           **COMMISSIONER JOHNSON:** I want you to explain  
11 that issue in more detail. Why do you believe that  
12 the two issues can't be divorced; can't be separated?  
13 And how are they interrelated?

14           **MR. McGLOTHLIN:** Our view is that the  
15 Commission's role is not necessarily confined to the  
16 fact-finding type of review associated with ticking  
17 off items on a checklist.

18           The FCC is going to review an application by  
19 BellSouth and apply it to that request for approval;  
20 not only the decision as to whether the checklist has  
21 been satisfied, but also even if that hurdle has been  
22 cleared, they will consider whether approving the  
23 application meets the test of public interest and  
24 necessity, as I think the term is used in the Act.

25           The FCC is going to consult with the

1 Department of Justice, and is going to consult with  
2 the state commissions with respect to the application.

3           We don't think that the role of the  
4 Commission is necessarily confined to the checklist in  
5 view of representations by the Chairman of the FCC and  
6 officials from the Department of Justice, that the  
7 state commissions are going to have a very significant  
8 role in the ultimate determination of whether the  
9 applications by the Bell operating companies will be  
10 approved or not.

11           So we think it's appropriate, at least for  
12 purposes of discovery in this early phase of the case,  
13 to allow parties to elicit the type of information  
14 that would be germane to a consideration not only of  
15 the straightforward checklist items, but also in a  
16 larger sense, whether approval of the BellSouth  
17 application meets the interest standards.

18           And to that end, we think it's an  
19 appropriate consideration to -- the extent of  
20 competition Bell faces in the local market vis-a-vis  
21 the ability of BellSouth to compete in the interLATA  
22 market on what we expected will be an expedited basis.

23           **COMMISSIONER JOHNSON:** Do you believe it's  
24 necessary for the Commission to set out a specific  
25 issue as to the public interest test, or do you

1 believe that it's somehow subsumed within the 14-point  
2 checklist.

3           **MR. McGLOTHLIN:** I don't think it would be  
4 subsumed. I think at this point, at least speaking  
5 for FIXCA, we would submit that the parties still have  
6 the opportunity to identify an issue in that area, if  
7 we elect to do so, and the response in discovery on  
8 questions like this will help determine whether we  
9 decide to do that or not.

10           **COMMISSIONER JOHNSON:** I see. Very good.

11           **MR. McGLOTHLIN:** But basically, with respect  
12 to the public interest issue, the thrust of the Act is  
13 essentially a very fundamental quid pro quo. If  
14 BellSouth indicates, or demonstrates, that its local  
15 markets have been opened, at that point it will then  
16 be -- its application for permission to engage in the  
17 interLATA market will be considered. And we think  
18 it's appropriate to review and consider the relative  
19 degrees of the development of competition in those two  
20 markets as that relates to the public interest, needs,  
21 necessity; a criterion that the FCC will apply  
22 ultimately.

23           **COMMISSIONER JOHNSON:** Okay. Please  
24 continue.

25           **MR. McGLOTHLIN:** All right. Let me just add



1 one more point in support of the proposition that the  
2 information in these interrogatories is germane,  
3 because the information relates to the statutory issue  
4 of whether BellSouth has completely implemented its  
5 checklist.

6 I would like to read briefly from the Joint  
7 Explanatory Statement of the Committee of Conference  
8 that was submitted -- the bill that was ultimately  
9 passed. And the Joint Committee of Conference stated  
10 (reading) For purposes of new section 271(c)(1)(a) the  
11 Bell operating company must have entered into one or  
12 more binding agreements under which it is planning  
13 access and interconnection to one or more competitors  
14 providing telephone exchange service to residential  
15 and business subscribers.

16 The requirement of the DOC is providing  
17 access and interconnection, means that the competitor  
18 has implemented the agreement and the competitor is  
19 operational. This requirement is important because it  
20 will assist the appropriate state commission in  
21 providing its consultation, and in the explicit facts  
22 determination by the Commission under new section  
23 271(d)(2)(b) that the requesting BOC has fully  
24 implemented the interconnection agreement elements set  
25 out in the checklist under new section 271(c)(2). And

1 the information concerning the number of loops  
2 connected to competitors and similar questions we  
3 think will present one measure of whether BellSouth  
4 has fully implemented the checklist.

5           Perhaps now would be a good time for me to  
6 pause and ask my co-counsel whether they want to add  
7 anything to what I said before we move on to the next  
8 series of interrogatories. (No response)

9           Interrogatories 17, 18, 19, 20 and 21 are  
10 treated as a group by BellSouth in their objections.

11           Interrogatory 17 says describe in detail the  
12 procedures BellSouth currently has in place at, or  
13 will put in place, for ordering and provisioning  
14 requests received from its long distance affiliate.

15           No. 18 says describe in detail the business  
16 office practices BellSouth will use in transacting  
17 business with its long distance affiliate.

18           No. 19 says does the BellSouth long distance  
19 affiliate plan to offer local service? If so,  
20 describe in detail the ordering and processing  
21 procedures BellSouth has in place, or will put in  
22 place, to process requests from its affiliate.

23           No. 20 states describe in detail the  
24 structural separation of BellSouth's long distance  
25 split. In particular, describe how a separate

1 affiliate will comply with the requirements of section  
2 272(d), (c) and (e) of the Act.

3           And finally 21 says as to the BellSouth long  
4 distance affiliate provide names, addresses and  
5 telephone numbers of the members of the Board of  
6 Directors; and names, addresses and telephone numbers  
7 and office held for each officer.

8           The objections presented by BellSouth claim  
9 that the interrogatories are not relevant nor are they  
10 reasonably calculated to lead to the discovery of  
11 admissible evidence related to the issue of whether  
12 BellSouth has met, or will be able to meet, the  
13 requirements of section 271 of the Telecommunications  
14 Act of 1996.

15           And specifically, BellSouth says information  
16 regarding any long distance affiliate of BellSouth is  
17 irrelevant to this Commission's inquiry as to whether  
18 BellSouth has met, or will be able to meet, the  
19 requirements of 271 of the Act.

20           With respect to 17, 18 and 19, we believe  
21 those interrogatories relate to the requirement by  
22 BellSouth that it provides nondiscriminatory access  
23 requirements because it's one measure, one comparison  
24 of how BellSouth would implement some of the  
25 requirements of the Act with respect to their own

1 affiliate; vis-a-vis how they would propose to  
2 implement the requirements of the checklist with  
3 respect to unaffiliated competitors.

4           20 and 21, I'd like to point out that under  
5 section 272 of the Act, structural separation, the  
6 condition precedent to BellSouth's ability to enter  
7 the interLATA market, in that respect this question is  
8 similar to certain questions we posed with respect to  
9 dialing parity, another condition precedent.  
10 BellSouth did not object to those questions.

11           We think this is as legitimate and germane  
12 as were those questions. Because this potential  
13 application will not be considered in a vacuum, if  
14 there are -- this checklist subject is attended and  
15 surrounded by a host of other considerations,  
16 including the requirement that BellSouth establish a  
17 separate subsidiary for getting into the interLATA  
18 market. And we think it's within the scope of  
19 discovery to inquire how they are going to do that.

20           With respect to Interrogatory 22, that  
21 interrogatory asks BellSouth to describe in detail the  
22 procedures BellSouth has in place. To ensure that a  
23 competitor's order for local or long distance service  
24 elements will be processed on a nondiscriminatory  
25 basis.

1           The objection by BellSouth -- BellSouth says  
2 it objects to the long distance element of the  
3 interrogatory on the grounds that it seeks information  
4 that is neither relevant or reasonably calculated to  
5 lead to the discovery of admissible evidence. Goes to  
6 the issue of whether BellSouth has met, or will be  
7 able to meet, the requirements of section 271.

8           Again, BellSouth says the information  
9 regarding any long distance affiliate of BellSouth is  
10 irrelevant to the Commission's inquiry.

11           That sentence tells us that BellSouth has  
12 misread 22. BellSouth was apparently under the  
13 impression that 22 sought information about BellSouth  
14 long distance affiliate. That's not the case. We add  
15 they describe in detail the procedures that will  
16 ensure that a competitor's order for local or long  
17 distance service elements will be processed on a  
18 nondiscriminatory basis. We think with that  
19 clarification, or with removal of that error on  
20 BellSouth's part, perhaps they will agree we're  
21 entitled to an answer.

22           BellSouth takes Interrogatories 24, 25, 26,  
23 27 and 28 together. Interrogatory 24 asks what is the  
24 percentage change for the past two years and  
25 BellSouth's retail prices for business local service

1 and residential local service in the state of Florida.

2           No. 25 asks BellSouth to identify  
3 out-of-region local exchange services being offered by  
4 BellSouth in competition with the incumbent LEC.  
5 Offerings are being made and in competition with whom.  
6 And also asks BellSouth to provide copies of all  
7 interconnection agreements.

8           No. 26 asks BellSouth to provide the average  
9 retail rate per minute of BellSouth's intraLATA toll  
10 offerings and the average price per minute of the  
11 access line offering.

12           No. 27 asks BellSouth to identify in detail  
13 arrangements with other local exchange companies in  
14 connection with out-of-region long distance offering.

15           And 28 asks BellSouth to identify and detail  
16 any customer offerings that link out-of-region long  
17 distance offerings with in-region telecommunications  
18 offerings.

19           With respect to BellSouth's objections to  
20 these interrogatories, I'd like to point out that I'm  
21 sure you're aware that the Department of Justice has  
22 circulated a draft working paper which it opines that  
23 in the review of the application filed by the Bell  
24 operating companies it is important for the FCC,  
25 Department of Justice and the state commissions to

1 obtain information that would describe the competitive  
2 environment in which these applications are going to  
3 be considered. We believe that these particular  
4 interrogatories are germane for that purpose.

5 In addition, with respect to 24, which asks  
6 what are the percentage change for the past two years  
7 in the retail prices for --

8 **COMMISSIONER JOHNSON:** Mr. McGlothlin.

9 **MR. MCGLOTHLIN:** -- business local services  
10 and residential local services, we think that is  
11 pertinent to a consideration of whether BellSouth will  
12 provide nondiscriminatory access to network elements.

13 **COMMISSIONER JOHNSON:** Joe, your argument  
14 before you cited to some document, and I have been  
15 trying to -- the phone system is somewhat of a delayed  
16 reaction so I don't think you could hear me trying to  
17 stop you.

18 Your last argument on -- I'm not sure which  
19 item -- you referred to a document that had been  
20 filed, you said, with the Department of Justice.

21 **MR. MCGLOTHLIN:** Yes, Commissioner. I'm  
22 sorry. I did not hear you ask me to stop.

23 The document to which I refer was described  
24 in a issue of Telecommunications Report. In the short  
25 time available to me after I got the objections

1 yesterday, I did not have a chance to round up and  
2 have in front of me for the purpose of this call the  
3 actual document from the Department of Justice. But  
4 it would describe an issue which the Department  
5 of Justice stated it would be useful to have  
6 information on the competitive environment in the  
7 statement if a company is to offer interLATA service.

8           And in this particular issue paper,  
9 apparently the one that was addressing issues to be  
10 considered not only by the Department of Justice but  
11 by the state commissions and FCC. We think that's an  
12 indication that the Department of Justice agrees with  
13 us that this is a pertinent -- this is pertinent  
14 information to request for discovery.

15           **COMMISSIONER JOHNSON:** Okay. I understand.  
16 And I am familiar with that document.

17           My question, I guess, goes more to not  
18 whether or not the FCC would like to hear from the  
19 states on the public interest, or whether the  
20 Department of Justice thinks the information might be  
21 helpful for them, but our legal authority to address  
22 the issue.

23           Could you address that point? Certainly the  
24 statute doesn't directly require us to do this. But  
25 you could point out where the statute allows us to, if



1 we so deemed it necessary, to address the public  
2 interest question?

3           **MR. MCGLOTHLIN:** The one thing that occurs  
4 to me immediately is that the statute, I think you'll  
5 agree, does not directly preclude that type of input.  
6 It does state that the one area in which the  
7 consultation will take place explicitly is with  
8 respect to the checklist or the compliance of section  
9 271.

10           However, as I read the things that have come  
11 out from the FCC and from the Department of Justice,  
12 it appears to me that they view the state as having an  
13 essential and critical role in the overall review of  
14 the application. And I think it is appropriate for  
15 the Commission to prepare to be involved not only in  
16 the fact-finding type of role that corresponds to the  
17 proof of the checklist, but also the considerations  
18 that are ultimately going to be brought to bear.

19           So I would simply say that there's a  
20 question of statutory interpretation. And we think  
21 there's room to take the position that the Commission  
22 has that ability and will have that opportunity. And  
23 until the point where that has been ruled upon, I  
24 think it is appropriate for us to engage in the  
25 initial discovery that would further prepare us to be

1 heard on that question.

2           **COMMISSIONER JOHNSON:** Thank you much. You  
3 may continue.

4           **MR. McGLOTHLIN:** All right. At this point  
5 I'll ask whether anyone else wants to supplement my  
6 argument on Interrogatories 24 through 28. (No  
7 response)

8           BellSouth treats Interrogatories 29 and 30  
9 together. Interrogatory 29 asks BellSouth to describe  
10 in detail how BellSouth will provide competitors with  
11 realtime or interactive access gateway to systems  
12 BellSouth uses to perform the following functions for  
13 its customers: Ordering, ordering and provisioning  
14 and maintenance and repair.

15           The interrogatory asks BellSouth to  
16 distinguish between the measures that are currently in  
17 place and any that are not currently available.

18           No. 30 is related; asks BellSouth to  
19 describe in detail how BellSouth will provide  
20 competitors with electronic interfaces for customer  
21 usage data transfer and local account maintenance.  
22 Again BellSouth has to distinguish clearly between  
23 those measures that are currently in place and any  
24 that are not currently available.

25           Bell's objection is based upon the claim

1 that the information sought is not relevant or  
2 reasonably calculated to lead to the discovery of  
3 admissible evidence. The objection states in  
4 addition, there's no basis for the premise that  
5 realtime or interactive access to electronic gateways  
6 are required under the Act.

7           That last sentence is subject to debate and  
8 subject to a different interpretation. We regard  
9 these two interrogatories as very critical portions of  
10 our discovery needs. And I'd like to point out that  
11 section (b)(2) under 271 requires nondiscriminatory  
12 access to network elements. We contend that the  
13 features in 29 and 30 are examples of network  
14 elements. I'm referring to the electronic gateway;  
15 interactive access through electronic gateway and  
16 electronic interfaces for customers using this data  
17 transfer and local account maintenance.

18           We contend those are examples of network  
19 elements. I have -- I received information yesterday  
20 that indicates that we have support for that  
21 proposition in the FCC's order, promulgating rule.  
22 Again, because of the shortage of time, I don't have  
23 that document. I'm not sure it's even available yet.  
24 But I don't have that document to cite.

25           But regardless of whether the FCC indicates

1 in this order and rules, we think there's certainly  
2 room for the interpretation that these features  
3 constitute network elements, which BellSouth must  
4 provide nondiscriminatory access in order to prove it  
5 has complied with the checklist.

6 In addition (b)(1) requires BellSouth to  
7 provide interconnection in accordance with 251(c)(2)  
8 and 252(d)(1). 251(c)(2) is the duty to interconnect  
9 with the quality at least equal in quality to that  
10 provided by the local exchange company to itself or  
11 anyone else. The (d)(2) says will provide  
12 interconnection on rates, terms and conditions that  
13 are just, reasonable and nondiscriminatory. We  
14 contend the conditions are neither just nor reasonable  
15 if they don't provide the type of interface --  
16 (beeping sound) -- I heard some noise on my phone.  
17 Was there something happened there?

18 **COMMISSIONER JOHNSON:** I think we're okay.  
19 You're still coming through clearly.

20 **MR. MCGLOTHLIN:** All right. We would  
21 contend that BellSouth can't meet the requirements of  
22 251(c)(2) unless it provides the type of electronic  
23 interface that provides competitors with the ability  
24 to serve their customers with quality that would  
25 enable them to compete on fair and equal terms.

1           So for all those reasons we think that  
2 squarely falls within the allowable scope of  
3 discovery.

4           **COMMISSIONER JOHNSON:** Could you say that  
5 sentence again? Didn't quite come through.

6           **MR. McGLOTHLIN:** Yes. Just to sum it up,  
7 because these interrogatories relate to (b)(2), the  
8 requirement that BellSouth provide nondiscriminatory  
9 access to network elements, as well as (b)(1), the  
10 requirement that they provide interconnection in  
11 accordance with the requirements of (1)(c)(2), which  
12 in turn speaks in terms of a threshold level of  
13 quality, and these terms and conditions are just and  
14 reasonable is within the allowable scope of discovery.

15           Finally, on an overall basis, again on this  
16 point I'd like to point out this section 271(c)(1)(a)  
17 is based upon a consideration whether facilities-based  
18 competition existed in BellSouth's exchange area. And  
19 very simply, we contend that there's no meaningful  
20 facilities-based competition if the competitors are  
21 not provided the quality of service associated with  
22 the features identified in Interrogatories 29 and 30.

23           That finishes the objections to  
24 interrogatories and FIXCA's first set, and I'll pause  
25 and see if anyone wants to add anything to what I have

1 said so far. (No response)

2 Commissioner, I'll ask you whether you want  
3 to hear from BellSouth or whether you want me to go  
4 through all three sets.

5 **COMMISSIONER JOHNSON:** I think I'll  
6 entertain BellSouth's reponse to the First Set of  
7 Interrogatories at this time.

8 **MR. ELLENBERG:** Commissioner, this is  
9 William Ellenberg. Just looking at my watch it seems  
10 like we're going to have a time problem here unless  
11 the call can be extended. Is that a possibility or  
12 how would we proceed once we hit the 9 o'clock magic  
13 moment?

14 **COMMISSIONER JOHNSON:** We're prepared to  
15 deal with that issue. If you would just continue on.  
16 We will be able to extend it beyond 9 o'clock.

17 **MR. ELLENBERG:** I hope not to be the cause  
18 of that.

19 In any event, we've heard a lot about  
20 FIXCA's First Set of Interrogatories. I'll try to  
21 address the arguments in the same order they were  
22 presented.

23 I don't think it's necessary, and I don't  
24 intend to go interrogatory by interrogatory. They  
25 obviously fall into several categories and I will

1 attempt to categorize them for the Commissioner's  
2 benefit, and trust that based on what we included in  
3 our written objections and what we hear today, you can  
4 make the appropriate ruling.

5 I want to talk just a moment about the  
6 general -- they were described as vague and unrelated  
7 to any of the interrogatories and invalid for that  
8 reason but that is not the case.

9 The general objections go in large part to  
10 the very general instructions that preceded FIXCA's  
11 First Set of Interrogatories and each of the other two  
12 sets, for that matter. And the general objections go  
13 in large part to those instructions.

14 The general objections indicate that  
15 BellSouth Telecommunications will only be answering  
16 for itself and not for affiliates. That it will only  
17 be answering with respect to Florida operations; will  
18 make a good faith diligent search as required by the  
19 law to identify documents and materials responsive to  
20 the request but cannot, because of the size of the  
21 corporation, the various places that documents might  
22 reside or information might reside, I can't guarantee  
23 that each and every tidbit of information might be  
24 uncovered and, therefore, disclosed.

25 And, finally, the general objections go to

1 the attempt by FIXCA to extend the obligation that  
2 BellSouth has under Florida law to update these  
3 interrogatory responses.

4           FIXCA attempts to impose an obligation on  
5 BellSouth to periodically provide new and additional  
6 information as it becomes known to BellSouth. That is  
7 not a requirement imposed by Florida law. We think  
8 it's inappropriate, as are these other requirements.  
9 And that is the nature of the general objections in  
10 large part.

11           Where they go to one of the specific  
12 interrogatories, we have made every effort to indicate  
13 that. I believe the general objections are valid and  
14 should be sustained.

15           Turning to the specific objections and to  
16 the interrogatories, I think it's important to recall  
17 that BellSouth has not filed a petition with the FCC  
18 asking for 271 authority at this point, as required by  
19 the order; has not filed anything with the Florida  
20 Commission either.

21           Even so, discovery was allowed to begin. We  
22 had a concern with that. Certainly our understanding  
23 was that the Commission would endeavor to keep  
24 discovery narrow; to keep it focused on the issues in  
25 this docket, the issues that have been identified in



1 the issues list -- (beeping noises) -- I hope that  
2 wasn't a response to something I said -- (Laughter) --  
3 to focus on what the Commission's responsibilities,  
4 duties are under section 271. And FIXCA has gone well  
5 beyond the duties and responsibilities of the  
6 Commission; well beyond any issue identified on the  
7 issues list, and in many ways is simply trying to get  
8 information through this discovery process that would  
9 benefit it in its own competitive endeavors.  
10 Information relating to how quickly BellSouth might be  
11 able to get into the interLATA business. Information  
12 about its strategic plans or efforts outside the  
13 region, which could have nothing to do with the  
14 competitive situation in Florida. Information about  
15 margin within toll rates, which have nothing to do  
16 with any issue in this docket but might be something  
17 FIXCA's members might want to know.

18           So it's pretty clear once you get into the  
19 individual interrogatories that FIXCA is just trying  
20 to get information that would benefit it and don't go  
21 to the issues in this docket. Having said that, the  
22 objections can be summed up in several categories.

23           A number of the interrogatories that  
24 Mr. McGlothlin confirmed this morning go to a  
25 quantification of the numbers of customers being

1 served by competitive new entrants. That is companies  
2 other than BellSouth. A market share test for whether  
3 or not BellSouth should be allowed into the interLATA  
4 business. That is not an issue on the issues list,  
5 and it specifically is not an issue in the federal  
6 law.

7           The federal law talks about whether there is  
8 the presence of a facilities-based carrier. Certainly  
9 there was a lot of lively debate before the bill was  
10 passed about whether a market share test should be  
11 included; one wasn't and one is not in the law, and  
12 one should not be read into this proceeding.

13           I'd like to remind the Commissioner that the  
14 obligation of the Commission under the federal law,  
15 when the FCC looks back and consults with the  
16 Commission, is to verify that BellSouth has met the  
17 competitive checklist. Items in section 271 -- and  
18 again there is no market share test or quantification  
19 of the numbers of customers being served by new  
20 entrants that is a part of that inquiry.

21           There's a second set of questions that go to  
22 the nature, the structure, the subsidiary -- excuse  
23 me, the affiliate, that would be providing interLATA  
24 services. And, again, that's not an item that's  
25 within 271 and the Commission's obligations and

1 responsibilities are confined to section 271.

2           Again, that is information that FIXCA's  
3 members might want to know "How will BellSouth set up  
4 its business? What plans does BellSouth have to offer  
5 services here or there? How long would it take this  
6 affiliate to get into business once it had the  
7 necessary approvals? What technical changes have to  
8 occur?" Those things might be very interesting for  
9 FIXCA to know to plan their own operations, to plan  
10 their own marketing response. But it's not something  
11 that is covered by section 271 and should not be an  
12 inquiry in this docket.

13           There was a discussion about the gateways,  
14 the databases. That obviously has been raised by AT&T  
15 in its recent arbitration filing but that's a  
16 threshold legal question about whether federal law  
17 actually requires that. And that has to be resolved  
18 elsewhere. It is not an issue of whether the  
19 competitive checklist has been met.

20           There was discussion about what might  
21 constitute a public interest test and how a number of  
22 these inquiries, including those going to market  
23 share, might relate to a public interest test.  
24 Whether there's a public interest issue in this docket  
25 or not, it should not relate to market share. If the

1 FCC or the DOJ are attempting to create a part of  
2 their public interest inquiry a market share test,  
3 that would be inappropriate as well. And I don't  
4 think that the Florida Commission should be confused  
5 about its responsibilities under the Act by what the  
6 FCC may take as an overly expansive view of its role  
7 in this proceeding.

8 I believe that that addresses the categories  
9 of issues that were addressed in FIXCA's First Set of  
10 Interrogatories. We believe that our objections are  
11 necessary to keep this docket focused on the issues  
12 identified on the issues list and not have it turn  
13 into a free-for-all, where competitive information is  
14 garnered for the benefit of FIXCA or anyone else.

15 I will leave that, the discussion of the  
16 First Set of Interrogatories.

17 **COMMISSIONER JOHNSON:** Let me ask you one  
18 question regarding the last point that you raised. To  
19 the extent that we do have a issue that identifies the  
20 public interest question, it is your position then  
21 that the market share kind of information and test is  
22 irrelevant to the public interest question?

23 **MR. ELLENBERG:** That is correct.

24 **COMMISSIONER JOHNSON:** Could you elaborate  
25 on that a little bit more?

1           **MR. ELLENBERG:** The federal law section  
2 271(c)(1)(a) talks about the presence of a  
3 facilities-based carrier. It doesn't state beyond the  
4 presence there has to be any particular share or  
5 number of customers served.

6           We believe that once a binding agreement has  
7 been entered into, that company has begun its  
8 operations, that company is serving a residential  
9 customer, a business customer over its own facilities,  
10 or predominantly over its own facilities. That test  
11 has been satisfied.

12           **COMMISSIONER JOHNSON:** And what was that  
13 provision that you cited to again?

14           **MR. ELLENBERG:** 271(c)(1)(a).

15           **COMMISSIONER JOHNSON:** (c)(1)(a)?

16           **MR. ELLENBERG:** That's correct.

17           **COMMISSIONER JOHNSON:** Where it speaks of a  
18 facilities-based competitor you were saying  
19 facilities-based carrier.

20           **MR. ELLENBERG:** That's correct. I stand  
21 corrected on that one.

22           **COMMISSIONER JOHNSON:** Is there any  
23 distinction to be made between a carrier and a  
24 competitor? Is there any relevance to them using the  
25 term "competitor"?

1           **MR. ELLENBERG:** No. Just my inartfulness.

2           **COMMISSIONER JOHNSON:** Okay. Thank you very  
3 much.

4           **MR. MCGLOTHLIN:** Commissioner, if I may,  
5 since it's my motion, I have a brief response to that.

6           With respect to the idea that the  
7 Commission's job is to keep discovery narrow, that's  
8 completely at odds with the law.

9           **COMMISSIONER JOHNSON:** Joe.

10          **MR. MCGLOTHLIN:** The Commission has adopted  
11 this sort of civil procedure. As you know those rules  
12 provide a liberal standard for the scope of discovery.

13          The argument was made that some of the  
14 matters subject to discovery are beyond the issue  
15 list. But at this point in the proceeding we don't  
16 have an exhaustive issue list. We have a preliminary  
17 issue list and parties have the ability to add issues  
18 if warranted by the facts and gained through  
19 discovery.

20          With respect to the quantification of  
21 competition, I was struck by the argument that  
22 BellSouth could satisfy section 271 by showing a  
23 competitor with a residential customer and a business  
24 customer. We are certainly polls apart with respect  
25 to our respective understanding of the requirements of

1 the law. That is something that is at issue with  
2 respect to whether BellSouth has -- can demonstrate  
3 that it satisfied section 271(c)(a), and to the extent  
4 that that is at issue, we're certainly free to engage  
5 in discovery and to elicit facts that will support our  
6 view of -- our interpretation of the law.

7 I was also struck by one sentence in the  
8 objections that says the quantifiable amount of  
9 competition is irrelevant under the Act because, for  
10 example, section 271(c) contemplates interLATA relief  
11 on a single competitor. That has to be a reference to  
12 271(c)(b), the mechanism that's available to BellSouth  
13 if, after a prescribed time frame, BellSouth has not  
14 received a request for interconnection and access. I  
15 don't think anyone, including BellSouth, contends that  
16 is the case, and that that is the mechanism that's  
17 going to be utilized.

18 I could say apples and oranges. Since the  
19 Olympics are still on everybody's mind, I thought I  
20 would turn to track and field to make a homely  
21 analogy.

22 Consider an athlete who has entered the 400  
23 hurdle, 400 meter hurdle event. At the starting line  
24 he's looking down this long line of hurdles and he  
25 turns to the official and he says, "It doesn't matter

1 if I clear them or not because the 100 meter dash  
2 contemplates I don't have to jump over anything." Two  
3 different events and two differnt sets of  
4 requirements. Under the law there are two different  
5 doors to interLATA market and each one has its own set  
6 of requirements. And with respect to the door to the  
7 interLATA market that is premised upon a showing of  
8 competition, certainly more is required than what  
9 BellSouth has presented in its argument.

10 Finally, with respect to the threshold legal  
11 question of whether there is a public interest issue  
12 involved, apparently BellSouth's argument is that even  
13 if there is a legal question related to public  
14 interest, the Commission is somehow foreclosed from  
15 considering a market share test. Again that a matter  
16 of statutory interpretation. Certainly that is an  
17 issue. We contend otherwise. And until that matter  
18 has been ruled upon and determined, we're free to  
19 engage in discovery facts with which to support our  
20 position.

21 And I was taken by the idea that this  
22 threshold legal question has to be resolved elsewhere.  
23 The issue in this case can be resolved here by  
24 presentation of the parties and decision by the  
25 Commissioner. With that I'll end.



1           **COMMISSIONER JOHNSON:** Thank you. Could you  
2 continue with the second set of interrogatories.

3           **MR. McGLOTHLIN:** BellSouth's objections to  
4 interrogatories and FIXCA's second set take many  
5 together; 34(a), 34(b) and 39, 40, 41, 42, 42 and 44  
6 are all taken together.

7           Very briefly, 34(a) asks with respect to all  
8 entities BellSouth unaffiliated competitor providers  
9 presently competing with BellSouth please provide the  
10 following information: the name, the number of  
11 unbundled loops provided by BellSouth and each of its  
12 competitors. State the number of BellSouth access  
13 lines to be sold by each such competitor.

14           37, if and when BellSouth is authorized to  
15 provide in-region interLATA service, at what point  
16 thereafter BellSouth begins offering that service to  
17 its local exchange customers?

18           38, when does BellSouth expect to have the  
19 technical ability to offer interLATA intrastate  
20 Florida, and interLATA in-region service to its local  
21 exchange customers?

22           39, aside from the requirement to obtain FCC  
23 authorization to provide in-region interLATA service,  
24 describe in detail the actions that BellSouth must  
25 undertake before it will be able to offer interLATA

1 service.

2           40, if and when it obtains requisite  
3 authority, to what extent does BellSouth plan to use  
4 its own network to provide interLATA toll service? If  
5 this network is in place today, describe the  
6 components of the network and additional requests for  
7 details about the BellSouth network.

8           No. 41, to what extent does BellSouth plan  
9 to use its own billing system for the interLATA toll  
10 service?

11           No. 42, to what extent does BellSouth plan  
12 to use its own support and ordering system to provide  
13 interLATA toll service? Are those ordering systems in  
14 place today? If not, where?

15           No. 43, what percentage of its network will  
16 be owned by BellSouth and what percentage will be  
17 leased by other carriers?

18           No. 44, does BellSouth plan to offer  
19 interLATA toll service to local exchange customers  
20 that are not within the existing BellSouth local  
21 exchange service area?

22           Bell's objection to this interrogatory,  
23 again, is that it's a claim they are not relevant or  
24 otherwise within the allowable scope of discovery.

25           With respect to the first of those

1 interrogatories, another example of information that  
2 would first help determine whether BellSouth has  
3 completely implemented the checklist. It asks for the  
4 number of unbundled loops provided by BellSouth to  
5 each of its competitors and the number of access lines  
6 resold to each such competitor. Each of those  
7 subjects is treated as an item in the checklist, and  
8 one measure of whether BellSouth has met the  
9 requirement that it completely implements the  
10 checklist is to determine to what extent those  
11 provisions are being -- that those features and  
12 services are being actually provided.

13           With respect to the sections on the  
14 provision by BellSouth of interLATA service, this  
15 again goes to the public interest issue. If as we  
16 expect the information gained through discovery  
17 indicates that BellSouth has an existing network that  
18 it can turn into an interLATA basis for service almost  
19 overnight, when by the same token those entities  
20 attempting to establish competition on a local  
21 exchange service have a far more difficult and  
22 time-consuming road ahead of them; that would be one  
23 consideration bearing on whether the granting of  
24 application for interLATA authority should be granted.

25           So we think that it is germane for that

1 reason to inquire of BellSouth whether it intends to  
2 convert a corporate network to interLATA service.  
3 Whether it has the present ability to provide billing  
4 service, and other questions designed to examine to  
5 what extent BellSouth is presently prepared to quickly  
6 provide interLATA service.

7           **COMMISSIONER JOHNSON:** Mr. McGlothlin, as  
8 you state your argument that certain of your questions  
9 are relevant to the checklist items, could you please,  
10 if possible, specifically point to those checklist  
11 items that you believe the issue or questions are  
12 relevant to?

13           **MR. MCGLOTHLIN:** Yes. It may take me a  
14 moment while I shuffle papers.

15           **COMMISSIONER JOHNSON:** To the extent you  
16 have the information readily available, but if you  
17 don't, that's fine.

18           **MR. MCGLOTHLIN:** All right. With respect to  
19 the most recent argument I have reference to the  
20 requirements that BellSouth, under (b)(2), BellSouth  
21 provide nondiscriminatory access to network elements  
22 in accordance with the requirements of section  
23 251(c)(3) and 252(d)(1), as well as interconnection in  
24 accordance with the standards of 251(c)(2).

25           Inasmuch as these arguments duplicate other

1 ones offered on the interrogatories in the first set,  
2 Commissioner, I'll stop at that.

3 I would like to ask if anyone cares to  
4 supplement what I have said so far? (No response)

5 **COMMISSIONER JOHNSON:** Hearing none, Bell,  
6 any responses? BellSouth?

7 **MR. ELLENBERG:** I'm sorry, I had the mute  
8 button pushed.

9 **COMMISSIONER JOHNSON:** Any responses?

10 **MR. ELLENBERG:** Commissioner Johnson, I  
11 agree there is some overlap in the area of the  
12 interrogatories and hence the area of the objections,  
13 so I'll try to be brief on this point.

14 Again, a number of the interrogatories go to  
15 the number of loops being served by new competitors.  
16 Again, we're getting to a quantification, a market  
17 share test that simply isn't present in the federal  
18 act.

19 We talked a bit earlier about section  
20 271(c)(1)(a) and what its requirements would be. And  
21 I think they have to be read in the context of  
22 271(c)(1)(b).

23 The federal act clearly contemplates in the  
24 absence of any competition, in the absence of a single  
25 customer being served by a new entrant, BellSouth

1 could seek and obtain interLATA authority. It's  
2 illogical then to assume if there is a competitor,  
3 that competitor has to be serving some particular  
4 market share. There simply is no market share  
5 quantification test written into the law. An attempt  
6 to write one in, via the public interest  
7 determination, is inappropriate. Questions going to  
8 market share of quantification are, therefore,  
9 irrelevant to this inquiry and the objection should be  
10 sustained.

11 I just refer the Commissioner again to the  
12 consultation provision in the Act, section  
13 271(d)(2)(b), Commission's responsibilities in its  
14 consultation process are to verify compliance with the  
15 requirements of 271(c). These interrogatories go to  
16 matters that are well outside of those requirements.

17 Again, there are questions related to the  
18 interLATA affiliate, and I may have actually addressed  
19 a couple of these already relating to how quickly the  
20 interLATA business could be entered, what technical  
21 issues have to be addressed, those types of things.  
22 Again something that might be very interesting for  
23 FIXCA members to know; inappropriate though to use  
24 discovery in this proceeding with its focused inquiry  
25 into compliance with section 271 to give them access

1 to that kind of information. It's not relevant,  
2 competitively sensitive and it's inappropriate.  
3 That's what I would have to say about set two.

4 **MR. MCGLOTHLIN:** If I could respond very  
5 briefly.

6 **COMMISSIONER JOHNSON:** Yes. But let me ask  
7 one question of Mr. Ellenberg.

8 You stated it as we reviewed the last set of  
9 interrogatories and the objections there, but is it  
10 BellSouth's position that the law does not provide or  
11 allow state commissions to address the public interest  
12 question, and to the extent that that is your formal  
13 position, could you cite to the provision of the  
14 federal act that so states?

15 **MR. ELLENBERG:** Commissioner Johnson, I  
16 believe the section that would support that would be  
17 section 271(d)(2)(b) describes what is to occur in the  
18 consultation process between the state Commission and  
19 the FCC.

20 And, again, that is verification of  
21 compliance with requirements of subsection 271(c).  
22 And that does not include the public interest  
23 determination.

24 The FCC may well address the public  
25 interest, but, again, even if the FCC were to attempt

1 to write some type of market share test into the  
2 public interest determination, BellSouth believes that  
3 would be inappropriate.

4           **COMMISSIONER JOHNSON:** Okay. So it's your  
5 position that the states can only do what was clearly  
6 delineated as a part of its consultative role.

7           **MR. ELLENBERG:** That's correct.

8           **COMMISSIONER JOHNSON:** Okay. I understand  
9 your position. Mr. McGlothlin.

10           **MR. MCGLOTHLIN:** BellSouth again tries to  
11 prove up (c)(1)(a) by reference to (c)(1)(b). You  
12 can't do it. (c)(1)(b) is a fault mechanism that is  
13 premised upon the absence of a request of connection  
14 or access. The underlying assumption is that there is  
15 no attempt to provide competition. (d)(1)(a) caption  
16 is "presence of a facilities-based competitor." And  
17 if BellSouth intends to submit approval for an  
18 application to enter interLATA market on (c)(1)(a), it  
19 better hope there's competition there because that's  
20 what underlies (c)(1)(a).

21           Again, there are two different standards and  
22 one can't prove (c)(1)(a) by reference to -- absence  
23 of competition to (c)(1)(b). And in support of that I  
24 referred earlier to the explanatory statement of the  
25 Committee of Conference.



1           There's another passage that I think further  
2 supports the view that a market standard or  
3 quantification of competition is one indication of  
4 whether BellSouth has complied with the checklist. It  
5 says this conference agreement recognizes that it is  
6 unlikely that the competitors will have a fully  
7 redundant network in place when they initially offer  
8 local service because the investment necessary is so  
9 insignificant. Some facilities and capabilities will  
10 likely need to be obtained from the incumbent local  
11 exchange carrier as a network element pursuant to the  
12 new section 251. Nonetheless, conference agreement  
13 includes the, quote, predominantly over their own  
14 telephone exchange service facilities, end quote,  
15 requirement ensure the competitor offering the service  
16 exclusively through the resale of the BOCs telephone  
17 exchange service does not qualify, and that an  
18 unaffiliated competing provider is present in the  
19 market. All of the references to the necessity of the  
20 competitor being in the market and that it be -- that  
21 its network be in place and operational, I think are  
22 intended to make a point that this is not an  
23 application that is done on paper. This is not  
24 competition that is theoretical. The requirement of  
25 the law is that competition be present in the market.

1 And we think that the questions that we've asked  
2 through discovery, to the extent they measure the  
3 competition being provided by the alternative  
4 providers, is germane to the question of whether  
5 BellSouth has completely implemented the checklist  
6 within the meaning of section 271.

7 I've already made my argument about the  
8 public interest test and I won't repeat myself on that  
9 point.

10 **COMMISSIONER JOHNSON:** Thank you very much.

11 Let me just make an announcement at this  
12 time. Our call on this particular line will end at  
13 9:30, but we have scheduled another line for the  
14 continuation of our hearing here today. The number  
15 will be 414-1711. Let me repeat that: 414-1711.  
16 That line will open, or that port will open at 9:30.  
17 It is now about 9:20. I'd like to try to go at least  
18 for another five minutes or so, to get as much in as  
19 we can, and then we will break and go to the next  
20 port. So Joe, did everyone get that number?

21 **MR. MCGLOTHLIN:** Yes.

22 **COMMISSIONER JOHNSON:** Joe, if you could  
23 continue your arguments on the third set of  
24 interrogatories, we'll try to get through some of that  
25 anyway before we break.

1           MR. McGLOTHLIN: Within the third set  
2 BellSouth treats 46 and 47 together.

3           Interrogatory 46 asks how many offices does  
4 BellSouth have in Florida? Please provide the total  
5 number and show how many are located within each LATA.

6           47, asks what are the total number of  
7 BellSouth offices in which a competitor's equipment is  
8 collocated within Florida and also on a LATA-by-LATA  
9 basis.

10           The objections again are to acclaim that the  
11 information is not relevant, and specifically  
12 BellSouth says the quantifiable amount of competition  
13 is irrelevant under the Act because, for example,  
14 section 271(c) contemplates relief without a single  
15 competitor. I've already responded to that particular  
16 item.

17           With respect to 46 and 47, again the number  
18 of offices that BellSouth has in Florida says provides  
19 one measure of the market share, market dominance by  
20 BellSouth vis-a-vis the extent of competition measured  
21 by other questions. And in total they go to the  
22 public interest considerations that I've alluded to  
23 earlier.

24           But in addition to that, 47 asks what are  
25 the total number of BellSouth offices in which a

1 competitor's equipment is collocated? The obligation  
2 to provide collocation is one of the items on the  
3 checklist. And to the extent that the interrogatory  
4 asks the total number of offices that have switched  
5 competitive equipment has been collocated, that's a  
6 measure of the extent to which, and whether BellSouth  
7 has completely implemented the checklist within the  
8 meaning of section 271, I think is the crux of the  
9 entire section. 47 is germane for that separate  
10 reason as well.

11 **COMMISSIONER JOHNSON:** Joe, can I ask you a  
12 question? You stated that the collocation issue was  
13 one of the items in the checklist. Which particular  
14 item does that relate to?

15 **MR. McGLOTHLIN:** I may have to correct  
16 myself. I think it's indirectly related.  
17 Interconnection in accordance with the requirements of  
18 251(c)(2) under (e)(1) is one of the standards of the  
19 checklist. And within section 251 is as corollary of  
20 the obligation to interconnect. There's also the  
21 requirement in 251 that collocation be made available.

22 I'm glad you pointed that out to me,  
23 Commissioner. I didn't want to misspeak. It is  
24 explicit in the checklist but I think it is there  
25 indirectly.

1                   **COMMISSIONER JOHNSON:** I understand the  
2 relationship. Thank you.

3                   **MR. MCGLOTHLIN:** In 48 the interrogatory  
4 asks BellSouth to make the average provisioning  
5 intervals between the request and implementation for  
6 each of the following: Unbundled interoffice  
7 transportation, unbundled switching, collocation and  
8 access to poles, conduits, rights-of-way and other  
9 pathways.

10                   And with respect to this interrogatory, the  
11 objection is not based upon fact of relevancy, but  
12 instead the objection is overly broad, not time  
13 specific and not sufficiently specific to answer.  
14 Therefore, burdensome and oppressive.

15                   Reading the answer we now think that  
16 BellSouth must be referring to the fact that we do not  
17 indicate the relationship that we wanted to have with  
18 them. We'll offer to go back at this point and  
19 perhaps that will satisfy the objection.

20                   We intended that the question relate to the  
21 average provisioning intervals between requests and  
22 implementation with respect to alternative providers  
23 of telephone exchange and exchange access. To the  
24 extent that was not explicitly stated in the question,  
25 we'll amend the question in that manner now.

1           **COMMISSIONER JOHNSON:** There was a little  
2 interruption in the transmittal. I didn't hear what  
3 you said with respect to what you all intended to  
4 amend?

5           **MR. McGLOTHLIN:** The question was intended  
6 to pertain to this information as it relates to  
7 alternative providers of telephone exchange, exchange  
8 access. And to the extent that was not explicitly  
9 stated in the question in its original form, we will  
10 amend it that way now by way of clarification.

11           **COMMISSIONER JOHNSON:** Okay. Thank you.

12           **MR. McGLOTHLIN:** No. 50, the interrogatory  
13 asks BellSouth to identify and provide copies of all  
14 existing access interconnection agreements, the  
15 state-approved statements of terms and conditions of  
16 access interconnection, including those with incumbent  
17 local exchange carriers.

18           In its objection, BellSouth says the  
19 Commission has issued Order No. PSC-960959-OF-TP --  
20 and I would like to know who in the world came up with  
21 this format for numbering, but that's a subject for  
22 another day -- which deals with the subject of  
23 request. BellSouth will comply with the terms of that  
24 order. FIXCA is merely attempting to get another bite  
25 at the apple. In addition, they claim that the

1 information is neither relevant -- is not discoverable  
2 because it's not relevant. Finally, it says that all  
3 of the approved agreements in Florida are a matter of  
4 public record.

5 I've reviewed the order to which they refer  
6 and I think the objection is misplaced because that  
7 order dealt with an issue arising under section 252 of  
8 the Act. The Commission ruled on a request by AT&T  
9 and a proposed agency order that I don't think has  
10 taken final effect yet. And BellSouth is pointing to  
11 that ruling in support of its objection to  
12 interrogatory in the section 271 case.

13 My short answer is that this is a different  
14 case, a different provision of the law being  
15 considered, and a different issue. The fact that  
16 Commission might issue a PAA which it proposes to rule  
17 that not all agreements have to be submitted to the  
18 Commission, fulfill the requirements of 252, it says  
19 nothing with respect to whether the same information  
20 is subject to discovery in conjunction with the  
21 Commission's exercise under section 271. We think  
22 that the information is germane, and that it should be  
23 provided for that reason.

24 No. 51, identify any challenges pending  
25 before courts and regulatory bodies concerning

1 BellSouth's provision of access and interconnection,  
2 claims of antitrust violation, business torts or bad  
3 faith, and describe any findings adverse to BellSouth.

4           Very quickly, that's another question that's  
5 geared to a consideration of the public interest test.  
6 To the extent that the information will bear on  
7 whether it is in the public interest, needs, necessity  
8 to allow BellSouth to enter into -- take part in the  
9 interLATA market, we think this information would be  
10 useful.

11           BellSouth argues again that much of the  
12 information is a matter of public record and simply an  
13 insufficient objection.

14           No. 52 asks BellSouth to identify the number  
15 and location of out-of-reach in LATAs which BellSouth  
16 has entered as a local exchange competitor. The  
17 incumbent LEC commercial mobile services, excluding as  
18 a commercial mobile services provider.

19           Within that question we've asked they  
20 provide the number of competitive loops provided by  
21 BellSouth in each such LATA; the number of local  
22 switches deployed by BellSouth in such LATA, and the  
23 objection that it is irrelevant.

24           We think it is within the scope of discovery  
25 because it helps describe the competitive environment



1 which the application is being considered and also  
2 goes to the public interest test.

3 That completes my argument on the first set.

4 **COMMISSIONER JOHNSON:** Thank you. We will  
5 take take short recess at this point in time and if  
6 you could, call into the other port at 414-1711 in the  
7 next several minutes that port opens at 9:30 at which  
8 point in time we will reconvene with appearances being  
9 taken once again.

10 **MR. WIGGINS:** Commissioner Johnson, this is  
11 Pat Wiggins. I have a scheduling conflict and I'm  
12 going to need to request permission to buy out at this  
13 moment.

14 **COMMISSIONER JOHNSON:** Permission granted.

15 **MR. WIGGINS:** Thank you.

16 **COMMISSIONER JOHNSON:** Take care. We will  
17 reconvene in the next several minutes on the other  
18 line. Thank you much.

19 (Brief recess taken.)

20 - - - - -

21 **COMMISSIONER JOHNSON:** We're going to go  
22 back on the record in Docket 960786-TL. Begin by  
23 taking appearances. Joe, on the call? Anybody on the  
24 call?

25 **MS. McMILLIN:** Martha McMillin. I guess

1 you're the first one in.

2 **MR. FINCHER:** Benjamin Fincher with Sprint.

3 **MS. DUNSON:** Robin Dunson with AT&T.

4 **MR. MCGLOTHLIN:** Joe McGlothlin, Tracy  
5 Hatch, Doc Horton.

6 **MR. ELLENBERG:** William Ellenberg,  
7 BellSouth.

8 **COMMISSIONER JOHNSON:** According to my list  
9 that is everyone. Mr. Wiggins excused himself for  
10 this particular proceeding, and by oversight, I forget  
11 to take the appearance of Staff on the earlier call.  
12 Staff.

13 **MS. BARONE:** Monica Barone, Staff counsel.

14 **COMMISSIONER JOHNSON:** Are there any  
15 preliminary matters before we begin with BellSouth's  
16 response to the third set of interrogatories? Hearing  
17 none, Mr. Ellenberg.

18 **MR. ELLENBERG:** That's the problem being the  
19 new guy on the block.

20 **COMMISSIONER JOHNSON:** I apologize.

21 **MR. ELLENBERG:** FIXCA's Third Set of  
22 Interrogatories, again -- and I don't want to beat  
23 this horse, I think it is dead and buried, on whether  
24 or not there should be a market or is a market share  
25 test for some quantification of competition as

1 prerequisite to interLATA authority to BellSouth.  
2 There clearly is not and one should not be read into  
3 the law.

4           Specifically on the collocation issue, I  
5 believe the standard under the law and the standard  
6 under the statement of generally available terms and  
7 conditions would be whether or not we're providing  
8 collocation, not whether anybody has actually  
9 requested collocation and, therefore, collocated. So  
10 the number of collocators, where they might be  
11 located, is irrelevant to the inquiry in this docket.  
12 I believe the other request, we could talk about that  
13 in the same vein.

14           With respect to the existing agreements  
15 between BellSouth and other local exchange carriers,  
16 that issue has been dealt with by the Commission. The  
17 Commission found that there was not -- that those  
18 agreements should not be filed, and, therefore, those  
19 terms and conditions be available to other carriers.  
20 There is no relevancy to the relationship that  
21 BellSouth has with companies in the contiguous areas  
22 who are not in competition with BellSouth, to the  
23 inquiry in this docket. Again, the focus is whether  
24 or not BellSouth has satisfied the requirements of  
25 section 271(c).

1           With respect to Item 52, what BellSouth is  
2 doing outside its region has nothing to do with the  
3 competitive situation in the state of Florida, which I  
4 believe is the standard. And, again, that's not  
5 relevant. I don't know how to elaborate on that  
6 except to say what is going on elsewhere is not  
7 relevant here.

8           I would like to make one follow-up comment  
9 on the public interest standard. Commissioner  
10 Johnson, I believe you asked whether it was  
11 BellSouth's position that the Florida Commission could  
12 not engage in a determination of whether the public  
13 interest would be served by BellSouth's entry into the  
14 interLATA business.

15           I think there is an issue there separate and  
16 apart from this docket, and what the Commission's  
17 responsibilities and duties are under the federal law  
18 as to what the Commission could do independently.

19           So as opposed to saying "no, the Commission  
20 cannot." I would prefer to say that in this  
21 proceeding the Commission should not do that. Its  
22 role in this process is clearly defined in the  
23 statute, and it should not allow FIXCA, or the members  
24 of FIXCA, to try to expand that role or allow  
25 inquiries from the FCC or DOJ to expand that role. It

1 should remain focused on what its role is, and that is  
2 a determination of whether or not BellSouth has met  
3 the requirements of section 271(c).

4           Finally, I believe there have been  
5 clarifications or attempted clarifications on two  
6 interrogatories, and according to my notes 22 and 48.  
7 My reaction sitting here today is that that doesn't  
8 help the problem at all, but I would be more than  
9 willing to follow up with the client on that and see  
10 if that cures our objection.

11           **COMMISSIONER JOHNSON:** Thank you very much.  
12 Mr. McGlothlin.

13           **MR. MCGLOTHLIN:** In the interest of time,  
14 Commissioner, since we are somewhat plowing ground  
15 that's been heard before I'll just move on to the  
16 request to produce.

17           **COMMISSIONER JOHNSON:** I have one question  
18 just because I don't have it in my notes. How did you  
19 respond to Bell's objection based on the out-of-region  
20 activities?

21           **MR. MCGLOTHLIN:** Again, we think that is  
22 germane and useful in that it helps -- it depicts the  
23 competitive environment in which the application would  
24 be considered, and to that extent it goes to the  
25 public interest question.

1           **COMMISSIONER JOHNSON:** Okay. Thank you. If  
2 you can continue.

3           **MR. McGLOTHLIN:** All right. I'll turn to  
4 the first request to produce. BellSouth's items 1 and  
5 2 together.

6           The first request is to produce all  
7 documents, notes and memoranda describing or  
8 discussing or documenting the structural separation of  
9 BellSouth's long distance objective.

10           The second one says produce all documents,  
11 notes and memoranda evidencing the financial  
12 wherewithall of the BellSouth long distance affiliate  
13 who provides service. BellSouth objects on the basis  
14 of relevancy. And the specific statement in the  
15 document concerning any long distance affiliate of  
16 BellSouth is irrelevant to this Commission's inquiry  
17 as to whether BellSouth has met, or will be able to  
18 meet those requirements.

19           Again, just to summarize earlier arguments,  
20 we think it's pertinent and within the scope of  
21 discovery for two reasons. First of all, because the  
22 requirements that the separate subsidiary be  
23 established as a condition precedent to the entry of  
24 the interLATA market. We think it's germane for the  
25 purpose of providing context in terms of BellSouth's

1 ability to get into the market.

2           Secondly, with respect to the public  
3 interest test, to the extent that the information  
4 describes an ability of BellSouth to move immediately  
5 in a big way into the interLATA market. Relative to  
6 the corresponding time requirements and efforts  
7 required of those who want to compete with Bell in its  
8 own backyard, we think it goes to the public interest  
9 test.

10           With respect to the third item, I want to  
11 concentrate on this one because FIXCA regards this as  
12 a critical component of its legitimate discovery  
13 requirement. Item 3 says produce all costs -- or  
14 performed on its behalf, together with underlying work  
15 papers and analysis performed in the last five years  
16 that relate to the features, structures, elements or  
17 services associated with each of the duties imposed by  
18 section 251, which BellSouth contends it has  
19 satisfied.

20           In its objection BellSouth says the request  
21 is vague, ambiguous and has an inappropriate time  
22 limit. And section 251 of the Act is not law until  
23 February 8th, 1996. BellSouth has no such cost study  
24 going back five years. Moreover, section 251 of the  
25 Act speaks of, quote, network features, functions or

1 capabilities, end quote, not services, the term used  
2 in this request. FIXCA can clarify its request and  
3 limit the time frame. BellSouth will attempt to  
4 comply.

5           The first point I want to make,  
6 Commissioner, is that with respect to this request  
7 BellSouth does not object on the grounds of relevancy,  
8 and so we need to focus on the aspects of the  
9 objection that go to the time frame and the contention  
10 that if the request is vague.

11           Well, as to that point, BellSouth is  
12 mistaken. We think the request is neither vague nor  
13 ambiguous because it is geared to those studies  
14 related to the duties imposed by section 251. And all  
15 you have to do is turn to section 251 and see the  
16 litany or the long list of the duties and obligations  
17 imposed on BellSouth.

18           As, for instance, 251(c) imposes a duty to  
19 provide interconnection. 251(c) also imposes a duty  
20 to provide access to unbundled network elements, and  
21 so we expect a response to our request that provides  
22 all cost studies related to the duty to provide  
23 interconnection and access to unbundled network  
24 elements. 251(c)(6) imposes a duty to provide  
25 collocation of equipment. We would expect to receive



1 any cost studies related to that obligation.

2 251(b)(2) requires number portability. To  
3 the extent there are cost studies bearing on that  
4 obligation or related to that obligation, we would  
5 expect to see those in the response.

6 251(b)(3) imposes an obligation to provide  
7 dialing parity. We would expect to receive cost  
8 studies performed in conjunction with that subject  
9 matter.

10 Section 251(b)(4) imposes a duty to provide  
11 access to polls, ducts, conduits and rights-of-way.  
12 We would expect to receive cost studies that relate to  
13 those subject matters.

14 251(c)(4) imposes a duty to offer for resale  
15 at wholesale rates any service that the carrier  
16 provides at retail. So we would expect to see the  
17 related cost studies.

18 Let me point out there that 251(c)(4) does  
19 use the word "service" notwithstanding Bell's  
20 objection and contention the word "service" does  
21 appear in 251. So the way we framed the request is  
22 appropriate from that standpoint as well.

23 Also with respect to the time frame  
24 BellSouth misses the point. The selection of a time  
25 frame that goes back earlier than the passage of the

1 Act was purposeful. Because we're entitled to  
2 explore, among other things, whether the cost studies  
3 performed by BellSouth were consistent or inconsistent  
4 after the passage of the Act. And so the five-year  
5 time frame is very appropriate for that reason.

6           Again, this perhaps is one of the most  
7 fundamental and basic of the discovery requests, in  
8 that the duties and obligations of 251 to which these  
9 relate are the source of many of the items of the 271  
10 checklist.

11           For instance, the obligation under 251(c) to  
12 provide interconnection appears in 1 of the checklist.  
13 The duty to provide access to unbundled network  
14 elements for which we seek cost studies appears in  
15 Item 2. The duty to provide number portability is in  
16 11. Dialing parity, Item 12 of the checklist. Access  
17 to poles, ducts, conduits and rights-of-way, Item 3 of  
18 the checklist. The obligation to offer for resale at  
19 wholesale rates any service that the carrier provides  
20 at retail, Item 14 of the checklist.

21           These requested cost studies constitute the  
22 fundamental discovery needs underlying the subject  
23 matter contained in section 271, and specifically the  
24 checklist.

25           So, again, there is no issue of relevancy.

1 We think that because the request is clearly related  
2 to the obligations spelled out in section 251, and  
3 because we are entitled to identify a time frame that  
4 accomplishes the purpose of discovery, one purpose of  
5 which is to compare cost studies prior to and after  
6 the passage of the Act, this question is entirely  
7 appropriate.

8           The final item is request No. 5. It says  
9 produce all currently effective interconnection  
10 agreements between BellSouth and other  
11 telecommunications providers in Florida including, but  
12 not limited to, other local exchange  
13 telecommunications companies which were entered into  
14 prior to 1996 and have not previously been submitted  
15 to the Commission for approval under the  
16 Telecommunications Act of 1996.

17           Again, BellSouth raises Order No. 960959.  
18 We contend that is expositive. Again, very quickly,  
19 when that order was issued in a different docket, the  
20 docket involved an issue other than the 271  
21 advocacy, and for that reason we think it is  
22 inapplicable to this discovery request.

23           With that I'll conclude.

24           **COMMISSIONER JOHNSON:** Okay. BellSouth.

25           **MR. ELLENBERG:** Thank you, Commissioner

1 Johnson.

2           On Items 1 and 2 we have talked at length  
3 about the relevancy of information relating to long  
4 distance affiliates in the context of the  
5 interrogatories, and the same arguments go to the  
6 request for the publication of documents. The  
7 structural separation requirements, whatever  
8 requirements there are with respect to the provision  
9 of interLATA services are in section 272 of the Act,  
10 not 271. And, again, the Commission's role in this  
11 case should be confined to inquiry under 271. So I  
12 don't want to belabor that point.

13           There's been an attempt to clarify 3. To  
14 the extent we're talking about specific unbundled  
15 networks that have been requested and BellSouth deemed  
16 technically feasible to provide and therefor has an  
17 underlying cost study, subject to confidentiality  
18 concerns and a protective arrangement, it seemed like  
19 those could be dealt with. Other elements now that we  
20 understand a little bit better what we're talking  
21 about, we would go back and consider.

22           I'm very concerned about the request for  
23 cost studies in the context of a resale obligation,  
24 however. There's very specific standards in the  
25 federal act as to how wholesale rates for services to

1 be offered for resale are to be determined. And  
2 that's working from the retail rate and eliminating  
3 costs that will be avoided when the service is offered  
4 for resale.

5 Cost studies for those services are not  
6 relevant to that inquiry. And it strikes me that --  
7 if I understood the argument -- this would be asking  
8 for any cost study done in the last five years for any  
9 service provided in retail for BellSouth. That's not  
10 relevant, it's burdensome, it's outside the inquiry  
11 under 271. It relates to information that is not  
12 relevant to the determination of the wholesale  
13 discount under the federal act and that should be  
14 rejected for a number of reasons.

15 We've already again talked about the  
16 contracts between other local exchange companies and  
17 contiguous but not competing territories. And I  
18 believe the Commission has addressed that issue and  
19 addressed it appropriately based on the Staff's  
20 recommendation to it and should not readdress that  
21 here.

22 The relationship between BellSouth and  
23 independent telephone companies or other local  
24 exchange providers in Florida is not relevant to the  
25 271 inquiry. I believe that covers it.

1           **COMMISSIONER JOHNSON:** Any final comments?

2           **MR. McGLOTHLIN:** Rather than respond to  
3 those specific points, Commissioner, if I could just  
4 sum up very quickly.

5           I would ask you to consider the extent to  
6 which FIXCA's interrogatories go to what I believe is  
7 a crux of consideration of an application under 271.  
8 And I'll refer to that portion of section 271  
9 captioned "determination" which says that the FCC  
10 shall not approved the authorization requested in  
11 application submitted under paragraph 1 unless it  
12 finds that with respect to access and interconnection  
13 provided pursuant to subsection (c)(1)(a), the Bell  
14 operating company has fully implemented competitive  
15 checklist in subsection (c)(2)(b).

16           Many of the interrogatories we propounded  
17 measure the extent to which the competitor has  
18 actually been provided and is utilizing network  
19 functions, loops, switches, that type of thing, and we  
20 think that is a fundamental measurement of the extent  
21 to which BellSouth has fully implemented the  
22 competitive checklist.

23           I think the fundamental criterion should be  
24 recognition by the Commission that again this  
25 application is not competition on paper, not

1 competition in theory. There are several references  
2 in the report of those who drafted the final  
3 legislation that indicates their intent that the Bell  
4 operating company be required to show actual real  
5 competition.

6           And with respect to the public interest  
7 test, it's been suggested that that's not an area in  
8 which the Commission will have a role. We contend  
9 that that's markedly clear. That everything we see  
10 and read indicates that all of the players expect for  
11 the state commissions to have an active large role,  
12 and consider that to the extent you foreclose  
13 discovery that relates to the public interest test,  
14 you would not simultaneously contain the Commission in  
15 the corner. We think there's no reason to do that at  
16 this early stage when the question of statutory  
17 interpretation is far from being settled and when the  
18 role that the Commission will ultimately take has not  
19 been determined.

20           So for those reasons we ask you to consider  
21 both the liberal standard to be applied to discovery  
22 requests, to the extent which we've identified  
23 criteria 271, including the point of limitation of the  
24 checklist and the extent to which legitimate inquiries  
25 relating to the public interest standard.

1           **COMMISSIONER JOHNSON:** Thank you very much.  
2 Are there any other matters?

3           **MR. ELLENBERG:** Commissioner Johnson, there  
4 have been two of the interrogatories and one of the  
5 requests for production.

6           **COMMISSIONER JOHNSON:** Is this Ellenberg?

7           **MR. ELLENBERG:** Yes, it is. I said there  
8 have been two interrogatories and one of the requests  
9 for production that we have had a clarification of, or  
10 an attempted to clarification. I think it would be in  
11 the best interest of all concerned if there would be  
12 an opportunity for us to talk further on those between  
13 BellSouth and FIXCA and see if we can't come to some  
14 resolution on those items.

15           **COMMISSIONER JOHNSON:** I would agree with  
16 that.

17           **MR. ELLENBERG:** I didn't mean on the call  
18 necessarily.

19           **COMMISSIONER JOHNSON:** I agree.

20           **MR. ELLENBERG:** We would advise the  
21 Commissioner if we were able to come to resolution  
22 and, therefore, handle the objection.

23           **COMMISSIONER JOHNSON:** I would agree. We  
24 were trying to determine when would be the best time  
25 to have you all resubmit questions or at least



1 communicate to us the intent of the particular  
2 questions. And I think Friday afternoon would be  
3 sufficient for our purposes. If you all could then  
4 convene today and tomorrow and determine whether or  
5 not you can reach agreement on those issues and let us  
6 know by late Friday afternoon that would be helpful.

7 **MR. McGLOTHLIN:** I'd be happy to try to do  
8 that.

9 **COMMISSIONER JOHNSON:** On the other issue I  
10 stated I would try to rule on this tomorrow, but it's  
11 my understanding that the court reporter will not have  
12 the transcript until late tomorrow afternoon.

13 Staff will need Friday to review the  
14 transcript to make sure that all of the arguments are  
15 duly considered. Therefore, I will issue an order on  
16 Monday. I will not need any additional information  
17 from the parties in a written form. I think that the  
18 issues have been thoroughly discussed and analyzed on  
19 this telephone conference call, but I will issue a  
20 written order on Monday.

21 **MR. McGLOTHLIN:** Thank you Commissioner.

22 **COMMISSIONER JOHNSON:** Any other  
23 Commissioners.

24 **MR. ELLENBERG:** We just appreciate the  
25 opportunity to be heard on this matter.

1           **MR. McGLOTHLIN:** Thank you for your time.

2           **COMMISSIONER JOHNSON:** I appreciate the  
3 parties willingness to participate in these calls. I  
4 think this is going to help our process and minimize  
5 any confusion and keep the issues framed in the most  
6 appropriate manner. Thank you all. And we look to  
7 hear from you -- at least Monica will hear from you on  
8 Friday as to whether or not you all could resolve the  
9 issues that are outstanding and reframe those issues.  
10 And you will be receiving an order from the  
11 Commission -- or the order will be issued on Monday.

12           We're going to -- and technically I'm not  
13 certain how this works and, quite frankly, I'm not  
14 certain legally how it works, but there was some  
15 discussion on perhaps through my office issuing the  
16 orders via fax so you can get them as quickly as  
17 possible. That's something we're pursuing and Monica  
18 will let you know if we are able to achieve that.

19           Thank you very much for your participation.

20           **MR. McGLOTHLIN:** Thank you.

21           **MS. McMILLIN:** Thank you..

22           **MR. ELLENBERG:** Thank you.

23           **COMMISSIONER JOHNSON:** Hearing is  
24 adjourned.

25           (Telephone Conference concluded at 10:00 a.m.)

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1 STATE OF FLORIDA)  
: CERTIFICATE OF REPORTER  
2 COUNTY OF LEON )

3 I, JOY KELLY, CSR, RPR, Chief, Bureau of  
4 Reporting, Official Commission Reporter,

5 DO HEREBY CERTIFY that the Telephone Status  
6 Conference in Docket No. 960786-TL was heard by the  
7 Prehearing Officer at the time and place herein  
8 stated; it is further

9 CERTIFIED that I stenographically reported  
10 the said proceedings; that the same has been  
11 transcribed under my direct supervision; and that this  
12 transcript, consisting of 74 pages, constitutes a true  
13 transcription of my notes of said proceedings.

14 DATED this 7th day of August, 1996.

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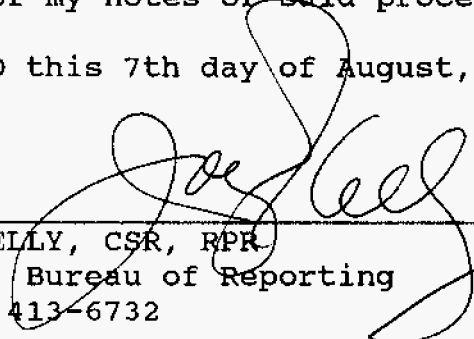
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