

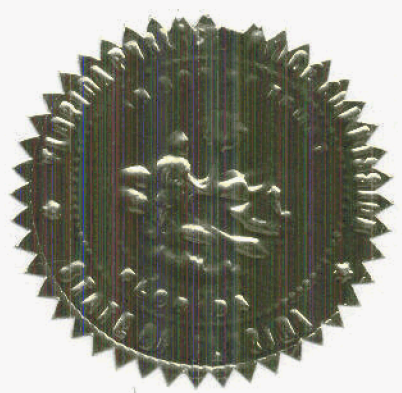
BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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.

:
: DOCKET NO. 960786-TL
:
:
:
:
:
:
:
:
:
:



PROCEEDINGS: **STATUS CONFERENCE**

BEFORE: CHAIRMAN JULIA L. JOHNSON
 Prehearing Officer

DATE: **Wednesday, June 25, 1997**

TIME: Commenced at 8:00 a.m.
 Concluded at 8:55 a.m.

CONDUCTED FROM: Chairman Johnson's Office
 Gerald L. Gunter Building
 2540 Shumard Oak Boulevard
 Tallahassee, Florida

REPORTED BY: JOY KELLY, CSR, RPR
 Chief, Bureau of Reporting
 Official Commission Reporter

DOCUMENT NUMBER-DATE
06519 JUN 30 97
FPSC-RECORDS/REPORTING

1 **APPEARANCES:**

2 **NANCY WHITE** and **NANCY SIMS**, 150 South Monroe
3 Street, Suite 400, Tallahassee, Florida 32301-1556,
4 appearing on behalf of **BellSouth Telecommunications,**
5 **Inc.**

6 **JOSEPH A. McGLOTHLIN** and **VICKI KAUFMAN**,
7 McWhirter, Reeves, McGlothlin, Davidson, Rief and
8 Bakas, 117 South Gadsden Street, Tallahassee, Florida
9 32301, appearing telephonically on behalf of **Florida**
10 **Competitive Carriers Association** and
11 **Telecommunications Resellers Association.**

12 **MONICA BARONE**, Florida Public Service
13 Commission, Division of Legal Services, 2540 Shumard
14 Oak Boulevard, Tallahassee, Florida 32399-0870,
15 appearing on behalf of the **Commission Staff.**

16 **PATRICK K. WIGGINS**, Wiggins and Villacorta,
17 P. O. Office Drawer 1657, Tallahassee, Florida 32302,
18 and **ERICK SORIANO**, appearing telephonically on behalf
19 of **Intermedia.**

20 **MARSHA RULE**, **TRACY HATCH**, and **RHONDA**
21 **MERRITT**, AT&T Communications of the Southern States,
22 Inc., 106 East College Avenue, Suite 1410,
23 Tallahassee, Florida 32301, appearing telephonically
24 on behalf of **AT&T of the Southern States.**

25

1 **APPEARANCES CONTINUED:**

2 **RICHARD D. MELSON**, Hopping Boyd Green Sams
3 and Smith, 123 South Calhoun Street, Tallahassee,
4 Florida 32314, appearing telephonically on behalf of
5 **MCI**.

6 **NORMAN H. HORTON, JR.**, Messer, Vickers,
7 Caparello, Madsen, Goldman & Metz, P. O. Box 1876,
8 Tallahassee, Florida 32302-1876, appearing
9 telephonically on behalf of **LDDS**.

10 **ROBERT S. COHEN**, Pennington, Culpepper,
11 Moore, Wilkinson, Dunbar & Dunlap, P.A., 215 South
12 Monroe Street, Tallahassee, Florida 32302, and **CAROLYN**
13 **MERRICK** in Nashville, Tennessee, appearing
14 telephonically on behalf of **Time Warner**.

15 **BEN FINCHER**, Sprint, 3100 Cumberland Circle,
16 Atlanta, Georgia 30339, appearing telephonically on
17 behalf of Sprint.

18 **BILL WILLINGHAM**, Rutledge, Ecenia,
19 Underwood, Purnell and Hoffman, P. O. Box 551,
20 Tallahassee, Florida 32302-0551, appearing
21 telephonically on behalf of **TCG**.

22

23

24

25

P R O C E E D I N G S

(Hearing convened at 8:00 a.m.)

CHAIRMAN JOHNSON: I'm going to go ahead on the record. We're here for the status conference in Docket No. 960786-TL.

I'm going to go ahead and take appearances, and if you could speak slowly because we do have a court reporter here and state your name and address for the record. Starting with AT&T.

MS. RULE: This is Marsha Rule with AT&T.

MR. HATCH: Tracy Hatch for AT&T is also on.

MS. MERRITT: And Rhonda Merritt with AT&T.

CHAIRMAN JOHNSON: Okay. FIXCA?

MR. MCGLOTHLIN: This is Joe McGlothlin for the Florida Competitive Carriers Association, also making an appearance for the Telecommunications Resellers Association. Vicki Kaufman of the firm is here with me.

CHAIRMAN JOHNSON: LDDS?

MR. HORTON: This is Doc Horton with the Messer, Caparello law firm.

CHAIRMAN JOHNSON: MCI?

MR. MELSON: Richard Melson of the Hopping Green Sams and Smith law firm.

CHAIRMAN JOHNSON: MFS?

1 Sprint?

2 MR. FINCHER: Ben Fincher in Atlanta,
3 Georgia.

4 CHAIRMAN JOHNSON: PCS?
5 Time Warner?

6 MR. COHEN: Bob Cohen with the Pennington
7 law firm in Tallahassee, and also Carolyn Merrick from
8 Time Warner in Nashville.

9 CHAIRMAN JOHNSON: Okay. TRA?
10 BellSouth?

11 MS. WHITE: Nancy White and Nancy Sims.

12 CHAIRMAN JOHNSON: Intermedia?

13 MR. WIGGINS: Patrick Wiggins, of the law
14 firm Wiggins & Villacorta. And, Erick, do you want to
15 make an appearance?

16 MR. SORIANO: It's Erick Soriano from Kelly,
17 Drye and Warren in Washington.

18 CHAIRMAN JOHNSON: Okay. Would you say that
19 again and spell the last name?

20 MR. SORIANO: Erick, E-R-I-C-K. The last
21 name is Soriano, S, as is in Sam, O-R-I-A-N-O.

22 CHAIRMAN JOHNSON: Thank you.

23 TCG? Anyone here from TCG?

24 MR. WILLINGHAM: Bill Willingham of the law
25 firm of Rutledge, Ecenia, Underwood, Purnell and

1 Hoffman.

2 CHAIRMAN JOHNSON: Could you say that again?

3 MR. WILLINGHAM: Bill Willingham of the law
4 firm of Rutledge, Ecenia, Underwood, Purnell and
5 Hoffman.

6 CHAIRMAN JOHNSON: Okay. Is there anyone
7 else that I did not call? No other parties
8 represented on the call? Okay.

9 MS. BARONE: This is Monica M. Barone, 2540
10 Shumard Oak Boulevard, Tallahassee, Florida 32399
11 appearing on behalf of Commission Staff.

12 CHAIRMAN JOHNSON: Ms. Barone, are there any
13 preliminary matters?

14 MS. BARONE: Other than the itinerary,
15 Chairman Johnson, I'd just like to bring up the fact
16 that at our last issue identification meeting the
17 intervenors asked that direct testimony be filed on
18 July 17, 1997, rather than July 14th. And I believe
19 BellSouth did not object to that and Staff does not
20 object to that.

21 CHAIRMAN JOHNSON: Okay. Those dates again?

22 MS. BARONE: Would be changed from July 14th
23 to July 17th.

24 CHAIRMAN JOHNSON: Is there any objection to
25 changing the date for the intervenors filing their

1 testimony?

2 **MS. BARONE:** I would also note that if Staff
3 has any they would also file on the 17th as well.

4 **CHAIRMAN JOHNSON:** Okay. Staff and the
5 intervenors filing on the 17th. Seeing no objection,
6 I'll go ahead and allow that change. And when we
7 issue our revised order those dates will be reflected.

8 **MS. BARONE:** Thank you.

9 **CHAIRMAN JOHNSON:** The issues to be
10 presented before me today, it looks like the
11 intervenors made a request for some subissues. Who is
12 going to speak on behalf of the intervenors?

13 **MR. MCGLOTHLIN:** This is Joe McGlothlin.
14 I'd be glad to lead off, Chairman Johnson.

15 **CHAIRMAN JOHNSON:** Okay.

16 **MR. MCGLOTHLIN:** Comment as well.

17 With respect to the proposed subissues to
18 what is now Issue 1, my understanding of the way this
19 is treated during the workshop on the 17th is that
20 through an agreement, I and others had proffered the
21 subissues to Issue 1. BellSouth said if those went
22 in, it wanted the opportunity to submit language that
23 would similarly break down the Track B issue or
24 subissue into its component parts, and we had no
25 objection to that. And afterwards Staff apprised me

1 that they thought that because you had looked at these
2 matters earlier in the case, that it would be
3 necessary for you to address this before they were
4 added to the issue list.

5 **CHAIRMAN JOHNSON:** Okay. I just wanted to
6 better understand. BellSouth is not objecting to the
7 subissues in Issue 1 if they are allowed to add the
8 issues in Issue 2?

9 **MS. WHITE:** Chairman Johnson, our first
10 preference would be that those issues are not
11 required, the subissues are not required in either
12 Issues 1 or 2.

13 **CHAIRMAN JOHNSON:** Uh-huh.

14 **MS. WHITE:** Because the issue -- both issues
15 are, essentially, has BellSouth met the requirement of
16 either Track A or Track B and, therefore, those
17 subissues are really implicit in the main issue. I
18 don't think we need subissues. It was only if those
19 subissues are allowed to go in, then we had some
20 changes in the language and we had some to add for
21 Issue 2.

22 **CHAIRMAN JOHNSON:** I see.

23 Mr. McGlothlin, could you explain to me why
24 you think we need to break out the subissues?

25 **MR. MCGLOTHLIN:** Yes, Commissioner.

1 First of all, my starting point is this
2 proposition: Our objective in this prehearing process
3 is not to arrive at the minimum number of issues
4 possible. Certainly I agree that the existing Issue
5 No. 1 subsumes the additional items that we are
6 proposing to break out. But I think the more
7 pertinent question is does the existing issue serve
8 the parties' ability to present their positions and
9 does it best serve the Commission's ability to
10 deliberate and make the correct decision?

11 I think the danger with framing one broad
12 issue covering important subparts is the possibility
13 that one or more considerations that are important,
14 and perhaps even essential in and of themselves, may
15 become obscured in the process.

16 You and the other Commissioners are going to
17 be inundated again with tons of information,
18 testimony, briefs, proposed findings and lengthy
19 recommendations and there's a need to organize all of
20 that information in a way that facilitates a
21 presentation and also facilitates your
22 decision-making. There's a due process aspect to all
23 of this because I think the parties are entitled to a
24 process that assures them that the matters that they
25 deem important and the matters that they work hard to

1 present are fully considered and ruled on by the
2 Commissioners.

3 Now, with respect to our proposed subissues
4 to this now Issue 1, Track A -- the language of Track
5 A in the statute contains three requirements to which
6 is essential to a determination that BellSouth has
7 complied. Before the Commission can recommend to the
8 FCC that BellSouth meets Track A, there has to be a
9 determination that BellSouth has entered into one or
10 more binding agreements with unaffiliated, competing
11 providers of telephone exchange services. There must
12 also be a separate determination that BellSouth is
13 providing access and interconnection to its network
14 facilities, the network facilities of the competing
15 providers. There is a third separate stand-alone
16 requirement that those competing providers be
17 providing telephone exchange service to residential
18 and business customers, either exclusively over their
19 exchange service facilities or predominately over
20 their own telephone exchange service facilities. Each
21 of those has failed, and we think it's reasonable to
22 ask the Commission to focus on and vote on each of
23 those on a separate basis.

24 **CHAIRMAN JOHNSON:** Does anyone else want to
25 provide any comments?

1 **MS. WHITE:** Yes. This is Nancy White with
2 BellSouth.

3 I guess my feeling is that the issue reads,
4 has BellSouth met the requirements of 271-A or B, as
5 the case may be. The answer, what the Staff and what
6 the Commission will vote on will go something like the
7 requirements of Track A are X, Y and Z. BellSouth has
8 met or not meet them, and that's why we don't believe
9 that there's need for a subissue.

10 **MR. MCGLOTHLIN:** Well, that's one possible
11 way that the issue could be treated under the existing
12 work, but it's also possible that because of the lack
13 of specificity as to the concept that presentation
14 could take a different form. And I don't think -- you
15 know, this is too important for us to assume that the
16 profits will work that way, absent some guidance in
17 the form of a Prehearing Order that gives the
18 Commission a road map to their deliberation.

19 **CHAIRMAN JOHNSON:** Okay. Any final
20 comments?

21 **MR. MCGLOTHLIN:** One final comment. I made
22 this point at the workshop, and I'll make it again.
23 If we were in a rate case situation, under some docket
24 of that nature, and we were faced with a task of
25 managing 150 issues or 120 issues, I would perhaps

1 participate in an effort to cull those that were
2 dispensable.

3 This case is nothing like that. We're not
4 asking anything with respect to these subissues or the
5 ones that are going to be talked about later today
6 that would render this case unwieldy in any way, and I
7 think what we're proposing would serve the parties'
8 interest and the Commissioner's interest.

9 **CHAIRMAN JOHNSON:** Thank you.

10 I have had an opportunity to look at the
11 issues as framed. In addition to the language that
12 BellSouth suggested that we add if we allowed the
13 issues and the corollary issues that they would add
14 under Subsection B.

15 Although I don't believe that not allowing
16 this would serve to violate anyone's due process
17 rights, I do believe that it would facilitate the
18 organization of this process.

19 At the beginning when we were framing
20 issues, I was concerned that we would come up with 100
21 or 200 issues and nitpick this thing to death. But
22 given the fact these have been pretty narrowly framed,
23 although not necessarily required, they probably will
24 facilitate the process and keep us organized and keep
25 the issues succinctly stated, and I think that will

1 benefit the parties, and more importantly, the
2 Commissioners to keep us focused in on these issues.

3 I will allow the issues -- subissues raised
4 by the intervenors and by BellSouth as it relates --
5 do they have copies of this?

6 MS. BARONE: Yes, they all have copies of
7 this.

8 CHAIRMAN JOHNSON: As it relates to that
9 second issue raised by BellSouth, I would substitute
10 in the language proposed by MCI.

11 MS. WHITE: This is Nancy White with
12 BellSouth. May I ask, is the proposed subissue under
13 Issue 1, would that be --

14 CHAIRMAN JOHNSON: Yes, ma'am, with your
15 revisions?

16 MS. WHITE: Yes.

17 CHAIRMAN JOHNSON: Yes, ma'am.

18 MS. WHITE: Okay. Thank you.

19 CHAIRMAN JOHNSON: So I think that takes
20 care of 271-A and 271-B issues. But we have some
21 additional proposed issues.

22 Could you go through those, Mr. McGlothlin?

23 MR. MELSON: Chairman Johnson?

24 CHAIRMAN JOHNSON: Uh-huh.

25 MR. MELSON: This is Rick Melson. MCI is

1 prepared to address the first of the two proposed
2 additional issue, and I believe Mr. McGlothlin would
3 address the second one, if that's all right?

4 **CHAIRMAN JOHNSON:** That will be fine.

5 **MR. MELSON:** Commissioner Johnson, the first
6 issue that we believe ought to be added is what is
7 required for BellSouth to provide a checklist item in
8 the meaning of Section 271-C(2)(b) and applicable FCC
9 rules. The purpose of this issue, again, is to try to
10 provide a focused Commissioners and a framework to
11 work through the requirements of the Act.

12 Under the checklist section, BellSouth meets
13 the 14 point checklist if it provides for -- provides
14 pursuant to interconnection agreement or generally
15 offers to an SGAP, if that track were available to.
16 it 14 different items. We believe there's going to
17 be a significant issue about what the word "provided"
18 means and what it takes to provide interconnection,
19 what it takes to provide nondiscriminatory access to
20 network elements, what it takes to provide
21 nondiscriminatory access to ducts and conduits and the
22 like. And the way in which the term "provide" is used
23 is common to all 14 of those checklist items. Rather
24 than address that 14 times in the briefing process, we
25 thought it would be more efficient to take that issue

1 out, focus on it separately and to ask what is
2 required for Bell to provide a checklist item.

3 CHAIRMAN JOHNSON: Mr. Melson, that's a
4 legal issue then? How will it be handled?

5 MR. MELSON: I believe, Commissioner, it
6 probably is ultimately a legal issue.

7 CHAIRMAN JOHNSON: Uh-huh.

8 MR. MELSON: And I believe BellSouth's view
9 and the intervenors's view is apt to differ
10 significantly. I think implicit in that issue is, for
11 example, does service to one residential customer and
12 one business customer constitute -- excuse me -- does
13 providing UNEs that in turn are used to provide
14 service to one business customer and one residential
15 customers constitute providing? To what extent do
16 operational systems have to be in place and capable of
17 serving commercially significant quantities of
18 transactions? To what extent do some quality of
19 quality considerations come into play? And those are
20 things, if you -- when we look at the experience in
21 other states, those are issues that tend to get
22 briefed and quite a bit of discussion as to what it
23 takes to provide an item. And it's MCI's point of
24 view that breaking that out and going with it as a
25 separate issue again will simply facilitate the

1 Commission's understanding and maybe establish a
2 standard early in the process so that as you step
3 through the succeeding 14 issues on specific checklist
4 items you have got a common framework in which to
5 evaluate them.

6 **CHAIRMAN JOHNSON:** You raised one point, I
7 think, I'm not sure if I heard you clearly. You said
8 this issue, this legal issue or this particular issue
9 has been raised in some of the other 271 proceedings?

10 **MR. NELSON:** When I look at the DOJ comments
11 that were filed in the Oklahoma proceeding, you know,
12 there's an analysis of what it takes to be providing
13 service. I don't know if it's framed exactly in the
14 terms of provide, but what it means to be serving both
15 business and residential customers, what it means to
16 have systems that are capable of supporting
17 commercially significant quantities of transactions.
18 It's those concepts that we're trying to isolate and
19 get into a single issue.

20 **CHAIRMAN JOHNSON:** Yeah, and I do understand
21 the concepts, and I agree with you that it's probably
22 important enough to highlight. Maybe it's the wording
23 that I'm being caught up on right now, but I'll allow
24 you to finish and any other parties to comment on this
25 particular issue.

1 **MR. MELSON:** Actually, that was all I had,
2 Commissioner.

3 **CHAIRMAN JOHNSON:** Oh, okay. Anyone want to
4 respond?

5 **MS. WHITE:** Yes, BellSouth. First of all,
6 most of the checklist items and most of the issues we
7 already have on the issue list is has BellSouth
8 provided the particular item we're looking at?

9 I think that the definition of "provide" is
10 inherent in each checklist issue. I think I disagree
11 with MCI that it may have a common meaning for each
12 one. It may have a different meaning for each one.
13 So, therefore, I think it would be very difficult to
14 say this is the definition of "provide," and this is
15 what it means in each and every one of these items. I
16 think that's part of the argument that whether or not
17 BellSouth has provided one of these items or not and,
18 therefore, I don't think it's appropriate for an
19 issue.

20 I also have severe problems with the
21 wording.

22 **CHAIRMAN JOHNSON:** Any other comments?

23 **MR. MCGLOTHLIN:** Joe McGlothlin. I concur
24 with Mr. Melson. I'd be willing to work on the
25 wording if BellSouth has an objection to that, but I

1 agree that is needed.

2 **MS. RULE:** This is Marsha Rule with AT&T. I
3 think it's important to understand that the Commission
4 has to make a determination as to whether or not
5 BellSouth is providing something. Given there's been
6 an issue in the FCC case, given that it's been an
7 issue between the parties and given that it's part of
8 the Commission's determination, I think it is
9 important to have this as an issue.

10 **CHAIRMAN JOHNSON:** Okay. I'm not going to
11 allow that issue as it's framed. If the intervenors
12 want to get together and try to come up with some
13 other language -- to me the way it's framed is just
14 confusing. I agree with BellSouth that, first of all,
15 it's generally stated in each of the different items,
16 and "provide" could mean different things. I don't
17 think we're going to get a generic definition of
18 "provide," and the way it's framed here that's how it
19 seems -- that's the focus. And as one Commissioner, I
20 think I'd be confused by that, and it would be very
21 hard to get a concrete recommendation and/or generic
22 definition of "provide."

23 Again, Mr. Melson, as you explained what you
24 were trying to get at, I agree with you that those
25 issues need to be explored, but it's more the way that

1 this issue is framed. If you go back and perhaps work
2 on the issue we can maybe address it at a later date.

3 MR. MELSON: All right. Thank you very
4 much.

5 CHAIRMAN JOHNSON: And there's another one
6 for the intervenors. Mr. Melson, did you say
7 Mr. McGlothlin would handle the second issue?

8 MR. MELSON: Yes, ma'am.

9 CHAIRMAN JOHNSON: Okay.

10 MR. MCGLOTHLIN: Commissioner, the
11 additional proposed issue has been modified slightly
12 from the way it appears on the itinerary that Staff
13 distributed. It reads "Has BellSouth identified
14 appropriate performance standards and measurements to
15 ensure that it can provide nondiscriminatory access to
16 unbundled network elements, including OSS, and
17 availability of telecommunications services for sale
18 in the manner required by the Act and the FCC's rules
19 and is it meeting such standards?"

20 The resistance to the proposed issue as I
21 understand, it is, again, the idea that this subject
22 is subsumed in other issues and in the original
23 tentative list and could be developed there.

24 I agree it is subsumed and covered by other
25 issues. I disagree that an opportunity to treat it

1 under existing issues is adequate or desirable from
2 either our perspective or the Commissioners'
3 perspective.

4 Commissioner, this is another instance in
5 which one of the tentative issues should be unbundled,
6 if you'll allow me to use that word, to disclose a
7 critical consideration which would otherwise be
8 obscure and perhaps not given the serious attention it
9 deserves. And I would like to -- are you still with
10 me?

11 **CHAIRMAN JOHNSON:** Yes.

12 **MR. McGLOTHLIN:** I heard a ring there.

13 I'd like to develop that with some care.

14 Commissioner, Rule 51.603 of the FCC rules
15 says "A local exchange company must provide services
16 to requesting telecommunications carriers for resale
17 that are equal in quality, subject to the same
18 conditions, and provided within the same provisioning
19 time intervals that the local exchange company
20 provides services to others, including end users of
21 its own customers.

22 Section 51.311(b) says "To the extent
23 technically feasible, the quality of an unbundled
24 network element, as well as the quality of the access
25 of the unbundled network element, that an incumbent

1 local exchange company providing to a requesting
2 telecommunications carrier shall be at least equal in
3 quality to that which the incumbent local exchange
4 company provides itself."

5 Section 51.319(f) defines operation support
6 systems function of reordering, ordering,
7 provisioning, maintenance and repair and building
8 functions afforded by incumbent local exchange
9 companies, databases and information, and the FCC has
10 defined the operation support systems as a separate
11 unbundled network element. And as you can glean by
12 the categories, the ordering, provisioning,
13 maintenance repair and billing of the OSS systems
14 constitute the delivery system with which other
15 elements and purposes for resale are made available
16 and provided.

17 I think before the case is over you and the
18 other Commissioners are going to hear much about the
19 OSS aspect of unbundled network elements.

20 And, finally, this is the last citation. I
21 want to read from Paragraph 518 of the FCC's first
22 order on the subject of OSS. "Much of the information
23 maintained by these systems is critical to the ability
24 of other carriers to compete with incumbent local
25 exchange companies using unbundled network elements or

1 resold. Without access to review available telephone
2 numbers, service interval information and maintenance
3 history, competing carriers would operate at a
4 significant disadvantage with respect to the
5 incumbent. Finally, if competing carriers are unable
6 to perform the functions of preordering, ordering,
7 provisioning, maintenance and repairs and billing for
8 network elements and resale services in substantially
9 the same time and manner that an incumbent can for
10 itself, competing carriers will be severely
11 disadvantaged, if not precluded altogether, from
12 fairly competing.

13 Now, the theme of all of these provisions
14 can relate to unbundled network elements, including
15 OSS and versus resale is the requirement of parity.
16 Parity defined in terms of treatment that is the same
17 as the local exchange company provides itself
18 internally or provides to its own customers. And the
19 beginning point of that examination, that is, whether
20 parity is being provided is an examination of what the
21 local exchange company provides to itself. And that
22 can't even begin unless there is a standard, a
23 performance standard and a measurement of the local
24 exchange company's own service. We regard that as a
25 threshold consideration, as almost a condition

1 precedent. It's like a decision tree, if this isn't
2 satisfied, go no further. That being the case, we
3 think it deserves -- the question of performance
4 standards deserves to be set up in a separate issue,
5 so that the parties can develop the issue and so that
6 it can be framed and presented to the Commissioners
7 for a separate evaluation and decision in the way it
8 dovetails into the considerations that follow if it is
9 satisfied.

10 This is another instance, Commissioner,
11 which the Commissioners and parties can perhaps profit
12 from the work and experience of others that have
13 already dealt with these issues. I'm looking at a
14 document which is the consultation of the Michigan
15 Public Service Commission with respect to Ameritech's
16 application.

17 At Page 37 of the Michigan commission's
18 consultation document, the conclusion section, it
19 states, "To determine whether Ameritech complies with
20 the OSS and nondiscrimination requirements of this
21 checklist item, the commission believes Ameritech must
22 satisfy a two-pronged test. First, Ameritech must
23 permit the technical or physical ability to access if
24 necessary order services and elements required by
25 competitors. Second, Ameritech must show that the

1 access to services or elements it provides to
2 competitors 'must be the same for all
3 telecommunications carriers requesting access,' end
4 quote, at least equal in quality to that which the
5 incumbent local exchange company provides to itself.

6 "The Commission believes Ameritech has met
7 the first test, which is access to the processes,
8 however, complete and appropriate performance
9 standards have not as yet been developed which would
10 permit determination."

11 And in conjunction with that finding, in the
12 same document, the Michigan commission said with
13 respect to Ameritech's situation "The primary problem
14 in assessing Ameritech's compliance with the
15 nondiscrimination provisions of the Act and
16 specifically the OSS functions. Therefore, for the
17 most part sufficient performance standards do not
18 exist by which Ameritech's performance can be judged."

19 And similarly, on Page 29 of the document,
20 "Third, measures utilized by Ameritech do not in many
21 cases provide measures of Ameritech's own operations
22 on which a parity judgment can be made."

23 So we can glean from the experience of
24 another commission the importance of a performance
25 standard and performance measurements in the overall

1 scheme of things. And I think it is critical that the
2 Commission do a good job of holding BellSouth to the
3 standard at this point because once -- if and when
4 BellSouth is permitted to enter the interLATA market,
5 it will have little incentive to work and provide
6 these performance measurements and standards at that
7 point.

8 It is also critical because as we can
9 understand very easily what matters most to customers
10 is a comparison of the type of service they received
11 from a competitor vis-a-vis that of BellSouth. And
12 if, for instance, the competitor provides you service
13 in three days while the customer can get similar
14 service from BellSouth in a single day, or if it takes
15 six days for the competitor to get maintenance repair
16 attention and only two days for BellSouth, then that
17 disadvantage is going to make competition impossible.

18 So for all of those reasons, we believe it's
19 essential to build into the Prehearing Order in the
20 form of an additional issue the type of separate
21 treatment that will reflect what the Michigan
22 Commission described as a two-pronged test. Just
23 simply is designed to convert what is now an overall
24 general issue into one which two prongs are evident
25 and can be addressed individually.

1 **CHAIRMAN JOHNSON:** Okay. Thank you.

2 BellSouth?

3 **MS. WHITE:** I think the FCCA statement has
4 just proven BellSouth's point, that this is not a
5 proper issue for inclusion. What we've heard the last
6 few minutes is argument as to FCCA's contention that
7 BellSouth has not met the checklist item which is our
8 Issue No. 3, "Has BellSouth provided nondiscriminatory
9 access to network elements," and what is our Issue No.
10 15, "Has BellSouth provided services available for
11 resale?"

12 We have heard argument that they would use
13 in answering those two issues. We have not heard
14 anything that requires this as a new issue. There's
15 nothing in the Act in 271, Section 271, that talks
16 about performance standards or measurements. If
17 that's what they want to argue in regard to Issues 3
18 and 15, they have that right, but it does not mean
19 that it has to be a separate issue, and we would
20 oppose that.

21 **CHAIRMAN JOHNSON:** Thank you.

22 **MR. McGLOTHLIN:** May I respond briefly?

23 **CHAIRMAN JOHNSON:** Sure.

24 **MR. McGLOTHLIN:** I was not arguing anything
25 about BellSouth's meeting or not meeting the

1 standards. What I was trying to illustrate was that
2 the experience of others indicates the desirability,
3 and we contend the necessity, of framing the analysis
4 in a way that will lend itself to consideration of the
5 -- consideration as a separate subpart of what is now
6 a general issue.

7 MS. WHITE: I would disagree. I believe
8 that the FCCA was essentially presenting its case.

9 CHAIRMAN JOHNSON: Okay. Staff, anything to
10 add?

11 MS. BARONE: Yes. First of all, I think one
12 concern I have is the organization of the
13 recommendation. I think that if you include this
14 additional issue it covers a broad -- it covers all
15 UNE's and it's a very broad issue, and I think it
16 would be better for the Commissioners and for Staff to
17 have that argument within each of the issues
18 specifically. It can be argued if you don't have
19 ordering processes in place for UNEs in resale, then
20 you can't meet a checklist item.

21 If, Chairman Johnson, you think that this
22 issue should be added, then I do agree that
23 performance standards will be a big part of this
24 proceeding and part of the arguments made. But I
25 think that if anything, if you wanted to include this,

1 it would be best to include it within each of the
2 issues because it would be difficult or when you're
3 reading through the recommendation to have to refer
4 back to the specific checklist item and then also look
5 at this additional issue which refers back to that
6 checklist item. So I think Staff would prefer that
7 No. 1 be addressed like, for example, in Issue 15 has
8 --

9 **MR. MCGLOTHLIN:** Let me make sure I
10 understand. Are you suggesting that if it's included
11 that it would be included as a subpart to the existing
12 issues?

13 **MS. BARONE:** Yes. And I don't think it's
14 necessary because I think that is argument. However,
15 if the Chairman decided to go that way, I think it
16 would be best included a subissue, yes.

17 **MR. MCGLOTHLIN:** I don't think I would have
18 any objection to doing that, Commissioner.

19 **CHAIRMAN JOHNSON:** Ms. Barone, explain to me
20 again how that would work? For each of the
21 substantive issues this would be a subissue that would
22 be addressed?

23 **MS. BARONE:** Yes, ma'am. Like Subissue A.

24 **CHAIRMAN JOHNSON:** And that's implicitly
25 what is going to happen anyway.

1 **MS. BARONE:** Exactly.

2 **MS. WHITE:** That's BellSouth's point.

3 **COMMISSIONER JOHNSON:** I'm sorry, BellSouth?

4 **MS. WHITE:** That's our point exactly. That
5 it's implicit in Issues 3 and 15.

6 **MR. McGLOTHLIN:** Well, you could say the
7 same about Issue 1, but there's been agreement that it
8 helps the process to focus on subparts.

9 **MS. WHITE:** Well, BellSouth doesn't agree to
10 that.

11 **MR. McGLOTHLIN:** I didn't mean to imply that
12 you had, Ma'am.

13 **CHAIRMAN JOHNSON:** Let me think about this
14 one. I'm going to have to go back through the issues
15 list and read through this. I don't think I like it
16 as a generic issue. Again, I think it might end up
17 being a little confusing to the process. But let me
18 think about that one, and we'll get back with you by
19 the end of the day. I just need to go back through my
20 issues. And I agree with you that performance
21 standards will be a big issue in this particular case.
22 I'm just not so sure that we need to bifurcate this
23 out into subissues. But if we do bifurcate it out, it
24 needs to be as Staff suggested, so let me think about
25 that one a little while, and Monica will get back with

1 you on my answer on that particular subissue.

2 **MR. McGLOTHLIN:** All right, Commissioner.

3 **CHAIRMAN JOHNSON:** The next issue.

4 **MS. WHITE:** Yes, that's an issue that
5 BellSouth has proposed to include, "Is it in the
6 public interest for BellSouth to enter the interLATA
7 market in Florida?"

8 **Essentially, while we're suggesting that**
9 **this is an issue that the state commission needs to**
10 **look at is that there have been some best practices**
11 **developed by the NARUC, the DOJ and the FCC. And**
12 **NARUC wrote a letter to all of the RBOCs essentially**
13 **asking them to file a thorough record, including**
14 **evidence of the public interest to ensure a complete**
15 **record. Chairman Hunt of the FCC said in a speech**
16 **that the FCC would ask each state for their opinion as**
17 **to whether the application met the public interest.**
18 **Oklahoma recently made a public interest determination**
19 **in the Southwestern Bell case. And we think that's**
20 **essentially something that while it isn't going to be**
21 **determinative in front of the FCC, the FCC is going to**
22 **want to know what the state's opinion is. So that's**
23 **why we believe that issue is appropriate.**

24 **CHAIRMAN JOHNSON:** Okay. I understand that
25 the intervenors object?

1 **MR. McGLOTHLIN:** I'll begin, Commissioner.

2 One of my objections goes to fundamental
3 fairness. Early in this process, on behalf of the
4 FCCA, we attempted to obtain some data through
5 discovery and a Motion to Compel suggested that it
6 would help complete a record that went to public
7 interest aspects. I might point out that at no time
8 did we ever try to offer or articulate an issue
9 calling for the Commission to answer a question
10 related to the public interest.

11 We did ask for discovery designed to
12 position us to record on what we need to be public
13 interest-related data. You denied our Motion to
14 Compel, and said that you found our public interest
15 argument persuasive and so effectively foreclosed our
16 attempt to develop a record that we felt would include
17 public interest-related information. I think it would
18 be unfair at this point, this late in the game, to
19 open this door for BellSouth to make the case in the
20 way it wants to.

21 **MR. WIGGINS:** Commissioner.

22 **CHAIRMAN JOHNSON:** Yes.

23 **MR. WIGGINS:** Pat Wiggins for Intermedia.

24 We also object to the inclusion of the issue,
25 basically for two reasons:

1 One, with respect to what the charge under
2 the Act is for the commissions to undertake. The
3 second to do with administrative economy.

4 With respect to this Commission's charge
5 under the Act, 271 -- I guess it is (d)(3) talks about
6 determination -- I mean, (d)(2), entitled
7 "Consultation." And there are two places -- I mean,
8 everyone knows this, but let me try to go back over
9 this. There are two folks that the FCC consults: One
10 is the Attorney General, the second is the state
11 commission.

12 If you look at the Attorney General's
13 consultation it's fairly generic. It says consult
14 with the Attorney General. It's going to be very
15 important, but it won't be conclusive. If we go to
16 consultation with state commissions its very specific.
17 It says that "Before making any determination of this
18 section, the commission shall consult with the state
19 commission of any state that is subject to the
20 application in order to verify the compliance of the
21 Bell Operating Company with requirements of Subsection
22 (c)."

23 Now, the public interest question comes
24 under the determination, and that is 3(c), and that is
25 not, obviously, within the requirements of Section

1 (c).

2 So if you look at what your charge is under
3 the Act and the purpose of this proceeding being
4 triggered to comply with the federal act, it is, in
5 fact, to ensure compliance of the Bell Operating
6 Company with the requirements of Subsection (c).

7 And that's it, period. That doesn't mean, of course,
8 that you're precluded from going to somewhere else,
9 but I just want to focus on that's what your charge
10 is.

11 The second part has to do with the
12 administrative economy. A theme throughout today's
13 argument, and I think over the course of the last year
14 in terms of prehearing conferences is let's not make
15 this anymore complicated than we have to. This is
16 going to be very tough sledding to begin with, and you
17 need to focus our litigation in order to give the
18 Commission the best framework within which to
19 discharge its obligations under this Act. To me that
20 means following what is charged, not adding other more
21 generic issues such as is this in the public interest.
22 It may be that the FCC would like your input of that
23 at some point. I'm not really addressing that. What
24 I'm saying is under this proceeding I think it's
25 important to keep the Commission's attention on the

1 ball. That ball is whether the Bell Operating
2 Companies complied with requirements of Section (c).

3 CHAIRMAN JOHNSON: Thank you. Staff, any
4 comments.

5 MS. BARONE: Nancy, I just have a couple of
6 questions.

7 So, basically, your intent to include this
8 checklist item or this item as an issue is to put
9 evidence in the record for the Department of Justice?
10 It's not intended to --

11 MS. WHITE: No. What we have gotten was
12 there was a letter written to, I believe, all of the
13 RBOCs by NARUC.

14 MS. BARONE: Yes, I'm familiar with that. I
15 guess my question is, then, is you're not wanting to
16 add this issue to meet a particular checklist item or
17 any other 271 requirement, are you, a specific
18 checklist?

19 MS. WHITE: Well, kind of in a way. I mean,
20 the bottom line is that the FCC has to make a decision
21 that includes whether we've met the checklist item,
22 whether we've met Track A or B and whether it is in
23 the public interest.

24 Although the public interest is a FCC
25 determination and not a Florida determination, I think

1 it's disingenuous for us not to file a complete record
2 with the Commission and for the Commission to have an
3 opinion for the FCC.

4 **MS. BARONE:** I have another question then.
5 I'm trying to understand then what would be the focus
6 of this issue? What type of evidence would BellSouth
7 be submitting to support this issue, because there's
8 been talk of market share analysis and other aspects
9 of a public interest inquiry and I'm trying to
10 understand --

11 **MS. WHITE:** I don't believe -- this is not a
12 market share analysis evidentiary question. I think
13 it's is it in the public interest of the state of
14 Florida, and for the FCC of the country, for BellSouth
15 to be in the intraLATA competition.

16 **MS. BARONE:** And I guess my question to you,
17 then, is what would you be trying to put in the record
18 to support a public interest analysis?

19 **MS. WHITE:** Well, I think we would be
20 putting in evidence that -- of what BellSouth's entry
21 -- how BellSouth's entry would help the state of
22 Florida and would help, you know, the economy of
23 Florida, state of Florida, and as well as outside the
24 State of Florida.

25 **CHAIRMAN JOHNSON:** I, too, am aware of the

1 NARUC letter and the Chairman's statements on the
2 issue. Certainly when we began this process the
3 Chairman of the FCC's position was different; that it
4 was their duty and obligation, but if the states
5 wanted to gratuitously provide that additional
6 information, that he certainly was willing to accept
7 it. But the concern, again -- I think Monica raised
8 some good issues as to what would be the criteria that
9 we would apply? And even if we were doing something
10 for the FCC, will they have 50 different states with
11 50 different criteria as to public interest, and how
12 useful would that be to them, anyway? So that causes
13 me some concern.

14 And I think that Mr. McGlothlin raised some
15 legitimate issues as to fairness when we started this
16 process, and they, indeed, wanted to explore this
17 issue but because of our time constraints and our
18 primary responsibility, that is to provide the
19 information on the checklist, we determined that it
20 would not be appropriate because that in and of itself
21 could be another full-blown hearing.

22 With that in mind, I'm not going to allow
23 the public interest issue to come in at this late
24 date. If there is an issue for BellSouth when they
25 file with the FCC, then this Commission will be -- as

1 to why the state of Florida did not file, then this
2 Commission will take the responsibility for explaining
3 to the FCC our thoughts as it related to that issue
4 and why that was not included.

5 I don't think it will be an issue given the
6 public dialogue that has occurred with NARUC and the
7 FCC. I believe one of the reasons why the Chairman
8 supported it was because a lot of states did want to
9 provide that gratuitous information, so it was kind of
10 just a federal/state partnership effort to go ahead
11 and allow states to do that if they wanted but not
12 anything that was mandatory.

13 Again, if I'm wrong and they really needed
14 that information, I wouldn't want BellSouth to suffer,
15 so we will take the responsibility to explaining why
16 we decided that in terms of our resources and our
17 responsibilities we stuck with the main issues as
18 framed in the Act and addressed those, and did not
19 provide the gratuitous comments on public interest.

20 So with that, I will not include the public
21 interest issue.

22 And I think the one outstanding issue is the
23 issue raised by the intervenors, and I'll look over my
24 issue list and make a ruling on that one sometime
25 later today.

1 **MR. MCGLOTHLIN:** If I could just make one
2 quick comment on that.

3 **CHAIRMAN JOHNSON:** Yes, sir.

4 **MR. MCGLOTHLIN:** If that is to be heard in
5 terms of subissues, I think it would be necessary only
6 to do that twice: One with respect to the existing
7 issue on unbundled network elements and the other with
8 respect to the existing issue on resale.

9 **CHAIRMAN JOHNSON:** Yeah, I think that's what
10 we were thinking. But we'll look over that and get
11 back with you all a little later today on that.

12 **MR. MCGLOTHLIN:** All right.

13 **CHAIRMAN JOHNSON:** Any other --

14 **MS. WHITE:** Chairman Johnson, just to make
15 BellSouth's position clear.

16 **CHAIRMAN JOHNSON:** Yes, ma'am.

17 **MS. WHITE:** We are definitely opposed to the
18 performance standards issue, but if it is in subissues
19 of any of the existing issues, then we would like to
20 see some revisions in the language.

21 **CHAIRMAN JOHNSON:** Okay. And if I decided
22 that it is indeed a necessary issue, we will allow the
23 parties the opportunity to frame it in a way that is
24 appropriate to everyone.

25 **MS. WHITE:** Thank you.

1 **MR. MCGLOTHLIN:** Thank you, Commissioner.

2 **CHAIRMAN JOHNSON:** Thank you. Any other
3 matters?

4 **MS. WHITE:** Yes. We do have a matter -- I
5 guess it's really a practical one dealing with our
6 filing on July 7th.

7 **CHAIRMAN JOHNSON:** Uh-huh.

8 **MS. WHITE:** It's going to be quite a filing.

9 **MR. MCGLOTHLIN:** Brag, brag, brag. (Laughter)

10 **MS. WHITE:** I'm not trying to make it big.
11 So the question becomes, I guess -- it may be a stupid
12 question, but first we wanted to find out if there
13 were any intervenors who did not require a copy of the
14 filing?

15 **MS. SIMS:** We're talking about 86 or 87
16 three-ring binders, and we're not talking little
17 binders here. So about the trees, there's no way that
18 we can have it all up there -- it's not all on a disk
19 because there's a lot of technical publications and M
20 and Ps and so forth in the backup documentation.

21 Now, if somebody doesn't want to take
22 possession of 86 three-ring binders, we will make it
23 available in the Tallahassee office for anybody to
24 come look at it and to make -- we'll make copies of
25 whatever is needed.

1 **MR. WIGGINS:** Pat Wiggins. Is any of this
2 material duplicative of what has been filed in
3 Georgia?

4 **MS. SIMS:** It probably will be. I've not
5 looked at it. I mean, I haven't seen it yet, but it
6 probably will be. Now, if you would rather wait and
7 we can, you know, get together and decide what's
8 duplicative.

9 **MR. WIGGINS:** Obviously, we're going to want
10 a full set, but for purposes of ecology, if, in fact,
11 its a verbatim, duplicative of what's been filed in
12 Georgia with respect to some things, then we've
13 already been served with some of that and that would
14 stop copying. It was just a thought.

15 **MS. WHITE:** I guess what we're concerned
16 about. We know that there are some intervenors who
17 are going to participate more than others, and I guess
18 it was the ones who may not be participating all out
19 we were looking to see if they really wanted a copy.

20 **MS. SIMS:** Plus we were trying to find
21 out`-- on the filing with the Commission we usually
22 file an original and 15 copies, and our discussions
23 with the Staff is there a way we can cut that down?
24 Do each of the Commissioners need a copy? We can cut
25 it down to an original and five copies.

1 **CHAIRMAN JOHNSON:** We probably will be able
2 to strike the requirement of 15. But we'll have
3 Ms. Barone get with you later on today to say just how
4 many we'll need.

5 **MS. SIMS:** Okay. I'm out of the office,
6 Monica, why don't I call you later this afternoon?
7 I'll tell you what, Monica, why didn't I check with
8 you first thing in the morning.

9 **MS. BARONE:** Okay. That will work.

10 **MS. SIMS:** Because I'll be in Miami in the
11 morning. I'm in Atlanta today.

12 **MR. WIGGINS:** There's not a "cliff notes" version, is

13 **MS. WHITE:** I wish there was a cliff notes
14 version. But I guess the bottom line is if any of the
15 intervenors are on the phone, if you decide that you
16 do not need a copy, if you would let either Nancy Sims
17 or me, Nancy White, know.

18 **MR. WIGGINS:** Well, Nancy -- this is Pat
19 again. Without having you tip your hand in terms of,
20 you know, litigation strategy and all, could there
21 possibly be an index of what you would be filing, a
22 little bit of time so we could just take a look and
23 see what we do have and don't have?

24 **MS. SIMS:** I'd have to check on that because
25 I think what we're going to have to do is at least

1 index it according to the issues, you know, as to what
2 volume plus what issues. But I'll have to look into
3 that, and I'll know more tomorrow morning.

4 MR. WIGGINS: What I'm thinking about is
5 that you have some manuals that are region-wide, how
6 you collocate and that kind of stuff.

7 MS. SIMS: Right.

8 MR. WIGGINS: I assume that that would be
9 the same as what you filed in Georgia.

10 MS. SIMS: Probably would be, Pat.

11 MR. WIGGINS: In that case we already have
12 some of that and, you know -- we'll not take up any
13 more time.

14 MS. SIMS: I'll talk to you later.

15 CHAIRMAN JOHNSON: Any other issues? Seeing
16 or hearing none, thank you all.

17 (Thereupon, the hearing concluded at
18 8:55 a.m.)

19

20

21

22

23

24

25

1 STATE OF FLORIDA)
2 COUNTY OF LEON)

CERTIFICATE OF REPORTER

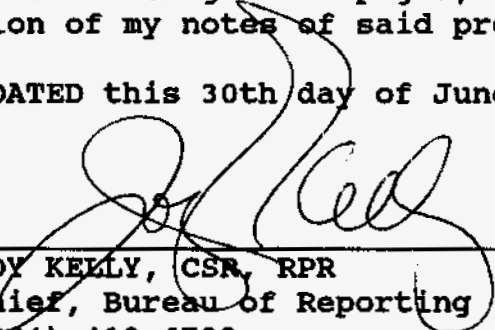
3 I, JOY KELLY, CSR, RPR, Chief, Bureau of
4 Reporting Official Commission Reporter,

5 DO HEREBY CERTIFY that the Status Conference
6 in Docket No. 960786-TL was heard by the Prehearing
7 Officer at the time and place herein stated; it is
8 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 42 pages, constitutes a true
13 transcription of my notes of said proceedings.

14 DATED this 30th day of June, 1997.

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25



JOY KELLY, CSR, RPR
Chief, Bureau of Reporting
(904) 413-6732