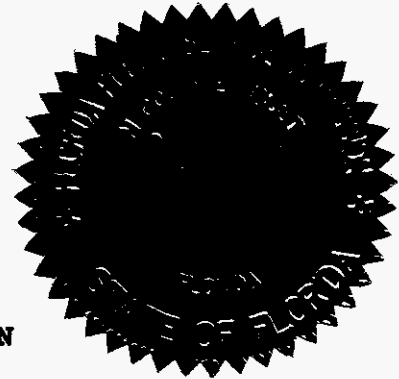


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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



FIRST DAY - MORNING SESSION

VOLUME 1

Pages 1 through 95

PROCEEDINGS: HEARING

BEFORE: CHAIRMAN JULIA L. JOHNSON
 COMMISSIONER J. TERRY DEASON
 COMMISSIONER SUSAN F. CLARK
 COMMISSIONER DIANE K. KIESLING
 COMMISSIONER JOE GARCIA

DATE: Tuesday, September 2, 1997

TIME: Commenced at 9:00 a.m.

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

REPORTED BY: JOY KELLY CSR, RPR
 Chief, Bureau of Reporting
 H. RUTHE POTAMI, CSR, RPR
 Official Commission Reporters

DOCUMENT NUMBER-DATE

FLORIDA PUBLIC SERVICE COMMISSION 08841 SEP-25

FPSC-RECORDS/REPORTING

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7 Randolph, P.A, 528 East Park Avenue, Tallahassee,
8 Florida 32301, appearing on behalf of **BellSouth**
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10 **JOSEPH A. MCGLOTHLIN** and **VICKI GORDON**
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23 **appearing on behalf of Florida Cable**
24 **Telecommunications Association, Inc.**

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1 **APPEARANCES CONTINUED:**

2 **MONICA BARONE, BETH CULPEPPER and**
3 **CHARLES J. PELLEGRINI, Florida Public Service**
4 **Commission, Division of Legal Services, 2540 Shumard**
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6 **appearing on behalf of the Commission Staff.**

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I N D E X

MISCELLANEOUS

ITEM	PAGE NO.
AT&T's Motion to Compel	27
Reconsideration of Order Granting FCCA's Motion to Compel	34
Joint Motion to Strike SGAT	43
OPENING STATEMENT BY MR. MARKS	56
OPENING STATEMENT BY MR. WIGGINS	69
OPENING STATEMENT BY MR. HATCH	72
OPENING STATEMENT BY MR. MCGLOTHLIN	75
OPENING STATEMENT BY MR. MELSON	79
OPENING STATEMENT BY MR. WILLINGHAM	88
OPENING STATEMENT BY MS. WILSON	92
OPENING STATEMENT BY MR. COHEN	93
CONTINUED OPENING STATEMENT BY MS. WHITE	94

EXHIBITS

NUMBER	ID.	ADMTD.
1 Staff Official Recognition List	25	
2 Confidential Subpoenaed Information Related to BellSouth Responses to Staff Interrogatories	25	

P R O C E E D I N G S

(Hearing commenced at 9:05 a.m.)

CHAIRMAN JOHNSON: We're going to go ahead and begin. Counsel, could you please read the notice.

MS. BARONE: Pursuant to notice issued on August 1st, 1997, this time and place have been set for hearing in Docket 960786-TL, consideration of BellSouth Telecommunications, Inc.'s entry into interLATA services pursuant to Section 271 of the Federal Telecommunications Act of 1996.

CHAIRMAN JOHNSON: Okay. We'll take appearances.

MS. WHITE: Nancy White for BellSouth Telecommunications, 150 West Flagler Street, Suite 1910, Miami, Florida 33130. Also appearing to BellSouth is John Marks of Knowles, Marks and Randolph, 528 East Park Avenue, Tallahassee, Florida 32301. Also assisting in the case today will be William Ellenberg, Phil Carver, and Ed Rankin, representing BellSouth Telecommunications, 675 West Peachtree Street, Suite 4300, Atlanta, Georgia 30375.

CHAIRMAN JOHNSON: You said Ellenberg, Carver -- and you said one more.

MS. WHITE: Rankin. R-A-N-K-I-N.

MR. MCGLOTHLIN: Joe McGlothlin and Vicki

1 Gordon Kaufman, 117 South Gadsden Street, Tallahassee,
2 for the Florida Competitive Carriers Association.

3 **MS. WILSON:** Laura Wilson and Charles Dudley
4 appearing on behalf of the Florida Cable
5 Telecommunications Association, 310 North Monroe
6 Street, Tallahassee, Florida 32301.

7 **MR. WILLINGHAM:** William B. Willingham and
8 Kenneth A. Hoffman, the law firm of Rutledge, Ecenia,
9 Underwood, Purnell & Hoffman, 215 South Monroe Street.
10 Suite 420, here on behalf of Teleport. Also appearing
11 with us will be Michael McRae, in-house counsel for
12 Teleport.

13 **MR. MELSON:** Richard Melson of the law firm
14 Hopping Green Sams & Smith, P.A., P. O. Box 6526,
15 Tallahassee, appearing on behalf of MCI
16 Telecommunications Corp. With me is Tom Bond, 780
17 Johnson Ferry Road, Atlanta, Georgia, also on behalf
18 of MCI.

19 **MS. RULE:** Marsha Rule, 101 North Monroe
20 Street, Tallahassee, on behalf of AT&T. Also
21 appearing will be Tracy Hatch and Mike Tye.

22 **MR. SELF:** Floyd Self and Norman H. Horton
23 of the law firm Messer, Caparello & Self, P. O. Box
24 1876, Tallahassee, Florida. We're appearing on behalf
25 of American Communications Services of Jacksonville,

1 Inc., as well as Metropolitan Fiber Systems of Florida
2 and WorldCom, Inc. I'd also like to enter an
3 appearance for Mr. Richard Rindler and Morton Posner
4 of the law firm of Swidler and Berlin in
5 Washington D.C. They will be appearing on behalf of
6 MFS and WorldCom. And to keep things straight,
7 Mr. Norman Horton will be addressing matters related
8 to ACSI, and I'll be addressing matters relating to
9 WorldCom.

10 **MR. WIGGINS:** Patrick K. Wiggins and
11 Donna L. Canzano, law firm of Wiggins & Villacorta,
12 501 East Tennessee Street, Suite B, Tallahassee,
13 32302, and Jonathan E. Canis of the law firm of Kelley
14 Drye & Warren, 1200 19th Street Northwest, Suite 500,
15 Washington D.C. on behalf of Intermedia
16 Communications, Inc.

17 Madam Chairman, I believe this is Mr. Canis'
18 first time before the Commission as an attorney, and
19 I'd like to sponsor him as a Class A Practitioner. He
20 is admitted to the D.C. bar and other bars as well.

21 **CHAIRMAN JOHNSON:** Alright.

22 **MR. BOYD:** Everett Boyd of the Ervin Varn
23 Jacobs and Ervin law firm, 305 South Gadsden Street,
24 Tallahassee, Florida, appearing on behalf of Sprint
25 Communications Limited Partnership and Sprint

1 Metropolitan Networks, Inc. Also appearing is
2 Benjamin Fincher, 3100 Cumberland Circle, Atlanta,
3 Georgia.

4 **MR. COHEN:** Bob Cohen, P. O. Box 10095,
5 Tallahassee 32301, representing Time Warner AxS of
6 Florida LP, and Digital Media Partners.

7 **MS. BARONE:** Monica M. Barone, Beth
8 Culpepper, Charles Pellegrini appearing on behalf of
9 Commission Staff, 2540 Shumard Oak Boulevard,
10 Tallahassee, Florida 32399.

11 **CHAIRMAN JOHNSON:** There are several
12 preliminary matters. Ms. Barone.

13 **MS. BARONE:** Yes, Madam Chairman. We have
14 several preliminary matters. And the first category
15 would be addressing the pending motions before you.
16 The second category would be miscellaneous
17 administrative matters. Staff recommends that the
18 Commission take up the motions first.

19 The three motions are reconsideration of
20 your order granting FCCA's Motion to Compel, issued
21 August 29th, 1997; AT&T's oral Motion to Compel
22 Answers to its First Set of Interrogatories and First
23 Request for Production of Documents to BellSouth, and
24 finally the Joint Motion to Strike SGAT filed by AT&T,
25 ACSI, FCCA, Intermedia, MCI and WorldCom.

1 Staff would recommend as Prehearing Officer
2 that the Chairman take up the second first since you
3 may rule on that and you can find out the status of
4 the oral Motion to Compel from the parties at this
5 time.

6 CHAIRMAN JOHNSON: Okay. One of the things
7 I'd like to do, Commissioner Clark had a slight
8 scheduling problem this morning and I'd like for her
9 to be able to participate in the motions. Could we go
10 ahead and take some of the miscellaneous
11 administrative matters, because those won't require a
12 vote. I think she'll be here around 9:30. Let's try
13 to go through those and use that time efficiently, but
14 allow her the time to get here so she can participate
15 in some of the motions. We will, when we go back to
16 Category 1 motion's issues, we'll start with the
17 motion B, which is the one for me as Prehearing
18 Officer. But let's go to Section 2 in the
19 miscellaneous administrative matters.

20 MS. BARONE: Yes, ma'am. The Staff would
21 recommend that the parties have an opportunity to
22 bring up their preliminary matters at this time.

23 CHAIRMAN JOHNSON: Okay.

24 MS. WHITE: Yes. Nancy White for BellSouth
25 Telecommunications. I have a couple of preliminary

1 matters.

2 First, I would like to ask the Commission to
3 take official recognition of Part V, the General
4 Service Provisions of the Florida Public Service
5 Commission rules; that's 25-4, with the exception of
6 the ones that have been repealed, and the rule
7 20-4.076 relating to pay telephone service. And I
8 have copies of those if anybody wants them.

9 **CHAIRMAN JOHNSON:** Is there any objection to
10 that? Seeing none, then we will take official
11 recognition of the documents. Any others, Ms. White?

12 **MS. WHITE:** Yes. The second one is that I'd
13 like the Commission to take official recognition of
14 order number PSC-96-0082-AS-TP issued January 17th,
15 1996, approving the agreement between BellSouth and
16 the FCTA, Continental and Time Warner, as well as
17 order number PSC-96-0959-FOF-TP issued on July 24th,
18 1996, which was an order requiring filing of
19 agreements between competitive carriers in the same
20 geographic markets.

21 **MS. KAUFMAN:** Chairman Johnson, I'm sorry, I
22 would have an objection to that second order because I
23 believe that has been protested so I don't believe
24 it's of any force and effect anymore.

25 **MS. WHITE:** I would disagree. It has been

1 protested but the part that was protested -- it was
2 merely protested what the Commission didn't do, not
3 what they decided.

4 They decided that interconnection agreements
5 between competitive carriers in the same geographic
6 markets should be filed with this Commission. What
7 was protested was the fact that the Commission did not
8 order all interconnection agreements between incumbent
9 local exchange companies to be filed.

10 **CHAIRMAN JOHNSON:** Before we go into
11 argument, let's go ahead and get your list and then
12 we'll go through them and see which ones there are no
13 objections to.

14 **MS. WHITE:** That's it.

15 **CHAIRMAN JOHNSON:** Then as it relates to the
16 first order that you referred, is there any objections
17 to that being -- us taking official recognition?

18 **MS. RULE:** I have no objection -- this is
19 Marsha Rule for AT&T -- but I would like to clarify
20 that was dated 1-17-96?

21 **MS. WHITE:** Yes.

22 **MS. RULE:** So that was before the passage of
23 the Telecommunications Act of '96?

24 **MS. WHITE:** That's correct.

25 **MS. RULE:** Thank you. No objection.

1 **CHAIRMAN JOHNSON:** Then let's go ahead and
2 address the second -- Ms. Kaufman, you have stated an
3 objection because that particular order was appealed
4 or there was a petition or a protest filed and it was
5 issued PAA.

6 **MS. KAUFMAN:** Yes. Chairman Johnson, it's
7 my understanding that that was issued PAA; that that
8 order was protested and it's my understanding that
9 when an order is protested, it no longer has any force
10 and effect. So we would object to the Commission
11 taking official recognition of it.

12 **CHAIRMAN JOHNSON:** And BellSouth's --

13 **MS. WHITE:** I would argue that the part that
14 was protested -- that the order itself -- the
15 substance of the order was not protested. What was
16 protested was that they felt the Commission had not
17 gone far enough. So they weren't objecting to what
18 the Commission ordered. They were objecting to the
19 fact that it did not cover a broader ground.

20 **CHAIRMAN JOHNSON:** Okay. But responding to
21 Ms. Kaufman's argument that the entire order has no
22 force and effect, and that the entire order has
23 disappeared, how would you respond?

24 **MS. WHITE:** I'd argue that that's not the
25 case. That the part concerning the filing of

1 competitive agreements in the same geographic area is
2 still -- remains in effect.

3 **MS. KAUFMAN:** Chairman Johnson, the
4 Association was not the party that protested that
5 order. However, I believe the protest that was filed,
6 it protested the entire order and the entire order is
7 no longer of any legal effect.

8 **CHAIRMAN JOHNSON:** Staff.

9 **MS. BARONE:** We're checking the status of
10 the state statute and looking at the timing to see if
11 the new law that is in effect applies to that order.
12 If we could have one moment to check we will get back
13 with you.

14 **CHAIRMAN JOHNSON:** Okay. (Pause)

15 **CHAIRMAN JOHNSON:** Then while they're
16 checking that, let's continue with other preliminary
17 matters, particularly as it relates to taking official
18 notice, and we'll come back, hear the Staff
19 presentation on the legal effect, and make a ruling if
20 necessary. Any other preliminary matters?

21 **MS. WILSON:** Yes, Madam Chairman. FCTA's
22 rebuttal witness, due to a prior conflict, will not be
23 available to testify on Monday, September 8th, so I'd
24 just request some leeway for her to testify on the
25 other day.

1 **CHAIRMAN JOHNSON:** I'm sorry, the witness?

2 **MS. WILSON:** Witness Pacey. She's a
3 rebuttal witness.

4 **CHAIRMAN JOHNSON:** Okay. You say she cannot
5 testify.

6 **MS. WILSON:** On Monday the 8th.

7 **CHAIRMAN JOHNSON:** Is that the date we set
8 for her? Specific?

9 **MS. WILSON:** No, we did not set a specific
10 date for her.

11 **CHAIRMAN JOHNSON:** So you just want us to
12 know she's not available on that day.

13 **MS. WILSON:** On the 8th, correct.

14 **CHAIRMAN JOHNSON:** But she's available on
15 the other dates.

16 **MS. WILSON:** Any other day.

17 **CHAIRMAN JOHNSON:** Okay. We'll note that
18 and accommodate that as we have with the other
19 witnesses.

20 **MS. WILSON:** Thank you.

21 **CHAIRMAN JOHNSON:** Any other preliminary
22 matters? Mr. Wiggins.

23 **MR. WIGGINS:** Yes, I have a procedural
24 matter on the treatment of confidential evidence in
25 this proceeding.

1 We have a Late-filed Deposition Exhibit 17
2 for Mr. Scheye that we will wish to cross Mr. Scheye
3 on. It's an audit report for which BellSouth claims a
4 proprietary -- claims to be proprietary and
5 confidential. We have no desire to oppose that
6 classification. It is in that interim phase right now
7 before they provide line-by-line justification, and it
8 is covered by your order with respect to not violating
9 the confidentiality of the report that binds and
10 applies to counsel.

11 We do not know of any way to cross on this
12 document by merely referring to a line or a page or a
13 number; it's just not going to be effective. So when
14 it comes time to cross, it seems unavoidable that we
15 will need to request that all those not bound by that
16 order, or by the confidentiality agreements, be
17 sequestered from the room.

18 **CHAIRMAN JOHNSON:** Any response to that?
19 Staff, is that the process we generally -- when we're
20 in this kind of a predicament where you can't go line,
21 page and --

22 **MS. BARONE:** I'm sorry. I didn't hear the
23 full discussion. But Mr. Wiggins did approach me
24 earlier and told me about the late-filed deposition
25 exhibit. And if it's -- it was my understanding that

1 he believed the entire exhibit to be confidential. At
2 this time that exhibit is protected by the order,
3 protective order that was issued, and Staff will be
4 bringing a recommendation to you. Therefore, under
5 the statute, that information is protected at this
6 time, also because of the notice of intent -- or the
7 intent to treat it confidential that Mr. Wiggins has
8 stated today.

9 **CHAIRMAN JOHNSON:** Okay. So then the
10 process for handling that, would we sequester those
11 that are not bound by the confidentiality agreement?

12 **MS. BARONE:** Yes, ma'am.

13 **MR. WIGGINS:** Chairman Johnson, this is not
14 something that is done frequently, obviously, and it's
15 something that no one enjoys doing given the Public
16 Records Law. However, there is precedent for that in
17 Commission history; it is done from time to time. And
18 candidly, I --

19 **COMMISSIONER DEASON:** Mr. Wiggins, when was
20 the last time that occurred?

21 **MR. WIGGINS:** I think it was when
22 Commissioner Gunter was still sitting on the
23 Commission.

24 **COMMISSIONER DEASON:** It's been a long, long
25 time, hasn't it?

1 **MR. WIGGINS:** Yes, sir, it has.

2 **COMMISSIONER DEASON:** You think there's no
3 way you can conduct cross examination, have the
4 witness read to himself a paragraph, sentence, or
5 whatever and ask policy questions in relation to that
6 without divulging any of the information contained
7 therein?

8 **MR. WIGGINS:** No, sir. But I'm happy to
9 provide the confidential exhibit to you or to the
10 Commission or anyone else and have you review it, and
11 if you have a different take on it, we'd be happy to
12 explore alternative approaches.

13 **CHAIRMAN JOHNSON:** I'll get together with
14 Staff and we'll review that information. But we're on
15 notice as to your request and we'll try to handle that
16 in the best manner possible.

17 **MR. WIGGINS:** Thank you.

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

19 **MR. SELF:** Thank you, Madam Chairman. I
20 have just a couple of matters.

21 First, we advised parties last week that
22 WorldCom's witness, Robert McCausland, has left the
23 company and so, therefore, will not be available for
24 the hearing. Instead, at the appropriate time, the
25 company will be proposing to substitute Mr. Gary Ball.

1 If you look on Page 7 of the Prehearing Order that's
2 where Mr. McCausland currently appears, so we will be
3 at that time asking Mr. Gary Ball be substituted for
4 Mr. McCausland. Mr. Ball will adopt the direct, the
5 rebuttal, all of the exhibits, the deposition of
6 Mr. McCausland, the deposition exhibits, as well as
7 the discovery responses. Mr. Ball is familiar with
8 the subject matter having testified in the Georgia 271
9 proceeding. So he'll be prepared to address all of
10 the matters that have previously been addressed by
11 Mr. McCausland.

12 **CHAIRMAN JOHNSON:** Okay.

13 **MR. SELF:** In addition, if it's possible, I
14 notice that he appears fairly late in the proceeding.
15 We would ask, if possible, that Mr. Ball not appear
16 until the last three days of the hearing, which would
17 be the 10th, 11th, and 12th. If possible, we'd like
18 to get him a date certain since we're having to drag
19 him into this at the last minute, but maybe it will be
20 better to see how things progress this week and Monday
21 of next week before we specifically request to pin him
22 down to a particular date.

23 **CHAIRMAN JOHNSON:** Your request has been
24 noted. We'll try to accommodate that. You're right,
25 I think once we see how fast or slowly we're

1 proceeding we'll be able to -- if you coordinate with
2 Ms. Barone, she can get back to me and we'll try to
3 come up with a time certain.

4 **MR. SELF:** Thank you. One last matter that
5 I have, at the prehearing conference when we discussed
6 the subject of opening statements, it was suggested
7 that some of the parties might be able to get together
8 and present a consolidated statement.

9 Since then, there are seven parties, ACSI,
10 AT&T, FCCA, Intermedia, MCI, Sprint and WorldCom have,
11 in fact, agreed to pool the time that's available for
12 the opening statement for them, and we'll be having
13 four persons who will be making the consolidated
14 statement on behalf of those parties. So at the
15 appropriate time I believe that Mr. Wiggins will be
16 the first speaker for that group.

17 **CHAIRMAN JOHNSON:** Okay. That will be fine.

18 **MR. SELF:** Thank you.

19 **CHAIRMAN JOHNSON:** Sir?

20 **MR. HORTON:** ACSI's witness has a schedule
21 conflict next week. There's a hearing in another
22 state and I wanted to request possibly we set a date
23 certain for Mr. Falvey for next Monday the 8th, if at
24 all possible. That would enable him to -- also be
25 participating in the other jurisdiction. I had sent a

1 letter -- as soon as I learned that I sent a letter to
2 Ms. Barone and other parties last week.

3 **CHAIRMAN JOHNSON:** Okay. We'll try to
4 accommodate the Monday the 8th. Let's see how things
5 are going and get back with Ms. Barone and we'll see
6 what we can do.

7 **MR. HORTON:** Thank you.

8 **CHAIRMAN JOHNSON:** Any other preliminary
9 matters? Ms. Barone.

10 **MS. BARONE:** Madam Chairman, if the parties
11 to do not have any preliminary matters, there are two
12 things that I'd like to bring to your attention.

13 First, with respect to the request for
14 official recognition of the order dealing with
15 agreements, we've reviewed that order. It appears the
16 order only encompasses one issue. That order was
17 protested, therefore -- and has no effect, therefore,
18 I do not believe the Commission can take official
19 recognition of an order that doesn't exist anymore.
20 So I would recommend that you not take official
21 recognition of that order.

22 Secondly, with respect to Mr. Wiggins'
23 late-filed deposition exhibit, I'd like to take a look
24 at the precedent on that before making a final
25 recommendation on how to handle questioning. I do

1 believe we should look to see if there's any way
2 possible to ask questions without sequestering people
3 from the room. So we would like to take a break to
4 look at the precedent and be able to give you a
5 decision on that as well.

6 If the parties don't have any other
7 preliminary matters, Staff has a few we'd like to take
8 up at this time.

9 **CHAIRMAN JOHNSON:** Okay. We'll go back then
10 to the recommendation on the Commission taking
11 official recognition of Order 96-0959. Ms. White.

12 **MS. WHITE:** Yes. I believe that the --
13 Staff is correct, it encompassed one issue but it was
14 a broader issue, and that the other parties did not
15 protest what the Commission had done but rather what
16 the Commission had not done.

17 In the alternative I would ask for official
18 recognition of an August 2, 1996, letter filed by
19 BellSouth's Director of Regulatory Affairs with this
20 Commission in Docket 960290 concerning BellSouth's
21 compliance with Order No. 96-0959. And that order was
22 filed with Ms. Bayo and is in the record of that
23 docket.

24 **CHAIRMAN JOHNSON:** Ms. Kaufman.

25 **MS. KAUFMAN:** Chairman Johnson, as to taking

1 official recognition of the order that has been
2 protested I think Ms. Barone is correct. There was
3 one issue that was protested, the order no longer has
4 any effect so we would object to official recognition.

5 As to the letter, I do not believe that a
6 letter to the Commission Clerk is the type of
7 information that's appropriate for official
8 recognition, and we would object to that.

9 **CHAIRMAN JOHNSON:** Any other comments?
10 Seeing none, we will not be taking official
11 recognition of the order that was protested, and,
12 therefore, is not in existence; that is 96-0959. And
13 with respect to the letter, I agree, I don't believe
14 that a letter being filed with the Clerk is the kind
15 of document -- unless you can cite to me by rule or
16 statute -- that the Commission would ordinarily take
17 official recognition of. So I'm going to deny the
18 official recognition of both those particular
19 documents. Any other -- Ms. Barone, did you have a
20 comment?

21 **MS. BARONE:** No, ma'am. I just have some
22 other things if you're ready for me to proceed.

23 **CHAIRMAN JOHNSON:** Yes. Go ahead.

24 **MS. BARONE:** First of all, Staff has passed
25 out an official recognition list to all of the parties

1 and to all of the Commissioners. Staff would like to
2 have that marked as an exhibit at this time.

3 **CHAIRMAN JOHNSON:** Which one? Okay.

4 **MS. BARONE:** Official recognition list.
5 Consists of nine pages.

6 **CHAIRMAN JOHNSON:** We will mark that as
7 Exhibit 1 and short title it "Staff Official
8 Recognition List."

9 (Exhibit 1 marked for identification.)

10 **MS. BARONE:** Thank you. Second, Staff would
11 also like -- you have a cover sheet before you, Madam
12 Chairman, and Commissioners, identified as SUB-CON,
13 BellSouth provided information to a subpoena that has
14 been deemed confidential. We would like to have that
15 marked as an exhibit at this time so that we can ask
16 questions throughout the proceeding. The description
17 of the exhibit is "Confidential, Subpoenaed
18 Information Related to BellSouth's Responses to
19 Staff's Interrogatories."

20 **CHAIRMAN JOHNSON:** Okay. We will mark that
21 as Exhibit 2 and short title it "Confidential
22 Subpoenaed Information Related to BellSouth Responses
23 to Staff Interrogatories."

24 (Exhibit 2 marked for identification.)

25 **MS. BARONE:** Thank you. And finally with

1 respect to the exhibits, Madam Chairman, the parties
2 have agreed to move in Staff's exhibits relating to
3 deposition, deposition exhibits and responses to
4 Staff's interrogatories into the record by
5 stipulation. Those are indicated in the Prehearing
6 Order.

7 Staff would like to -- before witnesses are
8 tendered for cross examination, Staff would like to
9 have those exhibits marked at that time so that the
10 exhibits will be properly marked and parties will be
11 able to ask questions based on the proper
12 identification. So before the witnesses are asked
13 questions, we would like to mark those exhibits at
14 that time.

15 **CHAIRMAN JOHNSON:** Okay. So this master
16 list is just for us to be able to follow?

17 **MS. BARONE:** Actually, Madam Chairman, I
18 don't think you need that master list.

19 **MS. WHITE:** Just as a matter of
20 clarification, Ms. Barone, are all of the late-filed
21 deposition exhibits being entered into the record?

22 **MS. BARONE:** Yes, ma'am. Yes.

23 **CHAIRMAN JOHNSON:** Are there any other
24 preliminary matters?

25 **MS. BARONE:** No other administrative matters

1 that I'm aware of.

2 I do believe you could address the status of
3 AT&T's Motion to Compel.

4 **CHAIRMAN JOHNSON:** Okay. AT&T, I understand
5 there was some discussion between AT&T and BellSouth
6 on the Motion to Compel. Has there been any agreement
7 reached?

8 **MS. RULE:** Yes and no. Marsha Rule for
9 AT&T.

10 Ms. White and I have had an opportunity to
11 discuss some of the information that might be provided
12 given your indication on Friday that you consider the
13 information that we sought to be relevant but
14 voluminous. Ms. White offered to provide a list of
15 items. However, AT&T is not willing to agree to, in
16 essence, settle for those items given the scope of our
17 discovery until we find what information BellSouth
18 keeps in the normal course of its business, what
19 reports it has and what it could produce. And I
20 believe Ms. White has agreed, I'm sure she'll correct
21 me if I've got this wrong, to respond to the
22 interrogatories and document requests by informing
23 AT&T what information BellSouth keeps. For example,
24 what types of data, what types of records or reports
25 are available. If the information can be generated,

1 how it would be generated? Have I got that right?

2 **MS. WHITE:** Pretty much so. I think we
3 limited that offer to the interrogatories and POD
4 items that we had protested, we had objected to. So
5 it wouldn't cover all of the interrogatories, the POD
6 items, but the ones that we objected to. That was
7 also made as an offer to try to compromise along with
8 the list that we had given, and now I'm understanding
9 that it will not compromise it so I feel kind of up in
10 the air about this. I mean we'll be glad -- if we're
11 going to do this we have to start people working on
12 that. So I wanted it, hopefully, to be compromised
13 before we did that. If that's not going to be able to
14 happen then we'll do what we can.

15 **MS. RULE:** Our basic position is that we're
16 entitled to know what records BellSouth has before we
17 agree to accept less than a full response to our
18 discovery. Ms. White's position, I believe, on Friday
19 was they don't keep a lot of this information. And if
20 that's correct, we're entitled to know that without
21 getting into arguing the merits of our motion again.
22 This case is about information and it's about
23 BellSouth's ability to meet its burden of proof. If
24 they don't have information that we're seeking and
25 they are willing to state that in a response to an

1 interrogatory, that's helpful information to us. If
2 they do have it, I'm not certain that I'm willing to
3 compromise and say I don't need it in my case.

4 So before I can agree to accept the
5 information Ms. White has proposed, I would like to
6 know what information they have.

7 **CHAIRMAN JOHNSON:** Okay. Ms. White, what
8 was your --

9 **MS. WHITE:** I guess what we agreed to is
10 that we will go through each interrogatory item, and
11 POD item that we objected to and didn't provide
12 anything, we will look at that item and say whether
13 some type of report -- and I'm using "report" in a
14 very broad sense -- exists. If it doesn't exist, then
15 we will state whether the information can be obtained.
16 And if the information can be obtained, we will state
17 what it would take to obtain it. Because it might be
18 a question of the raw data is there but the amount of
19 manpower and time you have to throw at it in order to
20 get the answer to their question might be very
21 voluminous.

22 So we are willing to do that, and if we
23 start now we can probably get that put together in a
24 couple of days. So I mean, I guess, I'd be willing to
25 say that we'll do that more right now.

1 **MS. RULE:** My understanding is that
2 BellSouth would continue to produce the information
3 that they did not object to. And we've received some
4 of it and my understanding is that there should be
5 more.

6 In addition, we would also like the regional
7 information corresponding to the questions to which
8 BellSouth did not object. As you remember, some of
9 the objections were as to the non-Florida-specific
10 information, but BellSouth agreed to provide
11 Florida-specific information.

12 If that information -- first of all we would
13 like to know what is available. We'd like the
14 regional analog to the Florida information they've
15 agreed to provide.

16 **CHAIRMAN JOHNSON:** I will allow BellSouth
17 and AT&T, to the extent that there was something that
18 Bell did not object to, I would expect for them to
19 start providing that information. If there's more
20 specificity that you need, then you all need to work
21 that out.

22 As it relates to Ms. White's suggestion that
23 you're going to have your folks go through, and it may
24 take a couple of days to determine what you have, what
25 you don't and what it will take, that would be helpful

1 for me, too, because I stated to you before the filing
2 was made on the 18th. It is a voluminous request, and
3 I'm very sympathetic to the manpower needs that it
4 would take and, therefore, I'll balance that in making
5 my particular ruling. So that information not only
6 would be helpful for AT&T, it would be helpful to me
7 to assist in making a ruling on some of those issues.

8 **MS. WHITE:** We will get started on that with
9 the hope we'd have it by Thursday morning.

10 **CHAIRMAN JOHNSON:** I think that's fair.

11 **MS. WHITE:** And the information that we did
12 not object to, we are providing AT&T, and I believe
13 some of that still may be coming in, but again because
14 of the timing of it, it just didn't get in as fast --
15 get to them as fast as we would have liked.

16 **MS. RULE:** I think there's a missing
17 category here. There's a category of information to
18 which BellSouth objected completely to providing.
19 There are other categories of information that
20 BellSouth agreed to provide Florida-specific
21 information but objected to non-Florida information.
22 So I don't think we've addressed the non-Florida
23 information. The category was not objected to, but
24 the response -- they objected to providing responsive
25 information. And I believe Ms. White and I are

1 talking past each other just a little bit. She's
2 saying -- and correct me if I'm wrong -- that they'll
3 provide the Florida information. But what I'm asking
4 for today is also the regional information that
5 corresponds to those categories.

6 **CHAIRMAN JOHNSON:** What I was hearing, to
7 the extent -- these were confusing discovery
8 requests -- but to the extent that there were issues
9 where BellSouth -- I guess she asked for Florida and
10 regional, and if you objected to the regional
11 information, what would be helpful for me, I'm
12 assuming you object -- if the basis of your objection
13 was that it was voluminous or that, you know, it would
14 require a lot of manpower and the same responses to
15 the other, if you could just provide that by Thursday,
16 weighing that, too, and letting us know what it would
17 take for you to pull that information together and
18 then I'll look at that request.

19 **MS. WHITE:** That's the section
20 Florida-specific and --

21 **THE REPORTER:** Could you turn your mike on?

22 **CHAIRMAN JOHNSON:** That was for the
23 information where they had requested -- where they
24 said they would provide the Florida information but
25 not regional information. Okay. Is that clear?

1 **MS. RULE:** I think so.

2 **CHAIRMAN JOHNSON:** Thank you. I think we
3 are on --

4 **MS. BARONE:** Madam Chairman, may I bring one
5 issue up, too? I do believe BellSouth was going to
6 make a presentation and I'm not sure that the
7 Commission is aware of that.

8 **MS. WHITE:** Yes, and I apologize. That
9 really should have been brought up as a housekeeping
10 matter.

11 In Ms. Calhoun's summary, our witness,
12 Gloria Calhoun, she will be putting on a demonstration
13 of BellSouth's operational support systems:
14 specifically LENS, EDI and TAFI. That will be done
15 during her summary of her testimony and before cross
16 examination.

17 **CHAIRMAN JOHNSON:** Okay.

18 **MS. WHITE:** So when that time comes, you'll
19 probably see lots of screens. The way I understand
20 it's set up is the audience will see the screen behind
21 the Commissioners and the Commissioners will be able
22 to view it on their monitors.

23 **CHAIRMAN JOHNSON:** Okay. That will be very
24 helpful. Thank you.

25 Any other preliminary matters or can we go

1 back to the motions?

2 **MS. BARONE:** Madam Chairman, would you like
3 us to take a break and look into the confidential
4 information now, or would you prefer to move on with
5 the motions at this point?

6 **CHAIRMAN JOHNSON:** I think we can go on
7 through the motions.

8 Motion A is the reconsideration of order
9 granting FCCA's Motion to Compel. That motion was
10 argued and ruled -- it was all ruled upon on August
11 29th and argued on the 28th. I think Bell filed a
12 Motion for Reconsideration for the full Commission.

13 **MS. WHITE:** Yes, orally.

14 Yes. FCCA has filed a Motion to Compel
15 copies of and information relating to interconnection
16 agreements between BellSouth and incumbent local
17 exchange companies. We objected to that and we asked
18 the full Commission for reconsideration of that.
19 Section 271 (c) (2) (b) (i) of the Act,
20 Telecommunications Act, requires that interconnection
21 be provided in accordance with Section 251(c) (2).
22 251(c) (2) states that interconnection must be equal in
23 quality to that provided by the LEC to itself or to
24 other parties. It also requires that
25 nondiscriminatory interconnection must be provided in

1 accordance with the requirements of Section 251 and
2 Section 252.

3 Essentially the FCCA is arguing that
4 Sections 251 and 252 refer to two different groups of
5 interconnectors. 252 (A)(1) states that "When a
6 request for interconnection is received under Section
7 251 an incumbent local exchange company may negotiate
8 and enter into an agreement. BellSouth contends that
9 it is these agreements that are to be filed and these
10 agreements that are relevant to 271. It is obvious
11 that the agreements referred to in the two sections
12 are the same ones. It's obvious that the
13 interconnecting companies are the same ones.

14 The incumbent local exchange companies must
15 request negotiation of interconnection agreements.
16 That's the way it has to be done. BellSouth's
17 agreements with incumbent local exchange companies
18 operating in different territories were not negotiated
19 subject to Section 251 of the Act. These agreements
20 were entered into at a time when the world was a
21 different place. Incumbent local exchange companies
22 operated in totally separate geographical areas, they
23 did not compete with each other, they were all
24 rate-of-return regulated.

25 Often agreements were entered into for

1 purposes of implementing Public Service Commission
2 orders such as EAS. In short, the environment in that
3 time was wholly different than it is today. The
4 competing local exchange companies of today are not
5 similarly situated to the incumbent local exchange
6 companies of yesterday.

7 When the FCC ordered that Class A incumbent
8 local exchange company agreements be filed it
9 recognized this fact and allowed for a period of
10 renegotiation for the incumbents. When this
11 Commission ordered that a list of non-Class A
12 incumbent local exchange company agreements be filed
13 it appeared that it, too, recognized that a period of
14 renegotiation should be allowed in order to allow
15 negotiation under the Federal Act.

16 We believe these agreements are irrelevant
17 to this case and irrelevant to whether BellSouth has
18 met the requirements of Section 271. Thank you.

19 **CHAIRMAN JOHNSON:** Ms. Kaufman.

20 **MS. KAUFMAN:** Thank you, Chairman. The
21 discovery that the Association seeks in this matter
22 relates to the arrangements which BellSouth has with
23 incumbents, as Ms. White mentioned. It relates to the
24 arrangements BellSouth has for originating and
25 terminating traffic, for call completion and all kinds

1 of other services that they provide to and receive
2 from other incumbent LECs.

3 And you didn't hear Ms. White say that they
4 don't deal with incumbent LECs; that they don't
5 originate and terminate traffic because they do. What
6 she said is the information is irrelevant.

7 Now, I want to point out to the other
8 Commissioners that we had extensive argument on this
9 matter last Thursday, and Chairman Johnson did find
10 that this information was relevant, and we, of course,
11 think you should uphold her decision.

12 Now Bell's claim of irrelevance is based
13 entirely to a prior order of this Commission, which
14 we're already discussed a little bit, and which you
15 have all recognized now is a legal nullity and is of
16 no force and effect, just as Chairman Johnson
17 recognized when she granted our Motion to Compel.

18 But to move to the substance, the protested
19 order deals with an entirely different section than
20 the one under which we are seeking discovery. It
21 deals with Section 252(a)(1) which has to deal with
22 what interconnection agreements have to be submitted
23 and filed for your approval.

24 That has nothing to do with what we're
25 discussing today. What we're discussing today is

1 whether BellSouth has complied with the 14-point
2 competitive checklist. And the very first requirement
3 of that checklist is that they provide
4 nondiscriminatory interconnection. And that first
5 point of the checklist refers to Section 251(c)(2).
6 And if we take a look at subsection capital "C" of
7 that section it says that the incumbent has to provide
8 interconnection that is at least equal in quality to
9 that provided by the local exchange carrier to itself
10 or to any subsidiary affiliate or any other party.
11 That's what the language of the law says.

12 This language in 251(c)(2)(C) has been
13 discussed by the FCC in their local competition order,
14 it's been discussed in the recent Ameritech order, and
15 there's no limitation put on that language such as
16 BellSouth is asking you to do here today.

17 Subsection D of 251(c)(2) says that
18 interconnection has to be provided on rates, terms and
19 conditions that are just, reasonable and
20 nondiscriminatory.

21 Now the only way that the Association and
22 the other parties can determine if BellSouth has
23 complied with that first checklist point is if they
24 have information about BellSouth's arrangement with
25 with other incumbents.

1 Commissioners, BellSouth is in a competitive
2 market today with all local providers and its
3 treatment of incumbent-to-incumbent traffic may be one
4 of the most definitive tests of whether or not it is
5 meeting the nondiscriminatory interconnection standard
6 of the checklist.

7 Now, Bell has told you they are in the
8 process of renegotiating these agreements. That's
9 fine. That's well and good. However, BellSouth chose
10 the timing of filing its interLATA application here.
11 It has the burden of proving compliance with all
12 checklist items, including of the nondiscriminatory
13 interconnection item. If BellSouth can't prove that
14 then obviously it's application before you today is
15 premature.

16 Now, in closing, I want to suggest to you
17 the same thing I suggested to Chairman Johnson, and
18 that is, if you agree with BellSouth that they need
19 not provide this information about their arrangements
20 with other incumbent LECs, essentially what you're
21 saying is that it is permissible for them to
22 discriminate in regard to incumbents; that they can
23 provide incumbents better terms, better quality,
24 better rates than they provide to new entrants who are
25 seeking interconnection. And we would suggest to you

1 that that turns the Telecommunications Act on its
2 head.

3 We believe that Chairman Johnson was correct
4 in finding this information relevant, and we think you
5 should uphold her decision and require Bell to provide
6 that information immediately to the Association and to
7 the other parties. Thank you.

8 **CHAIRMAN JOHNSON:** Thank you. And --

9 **MS. WHITE:** Yes, just very quickly. I
10 strongly reject Ms. Kaufman's assertion that to reject
11 FCCA's Motion to Compel would be discriminatory. The
12 bottom line is that these ALECs today are not
13 similarly situated to the ILECs of yesterday, and the
14 fact there are different options available; the fact
15 that these agreements are being renegotiated and don't
16 have anything to do with our 271 suit, or whether
17 we've meet the 14-point checklist.

18 **MS. KAUFMAN:** Chairman Johnson, could I just
19 respond to that?

20 **CHAIRMAN JOHNSON:** Quickly.

21 **MS. KAUFMAN:** I think that if BellSouth
22 chooses to renegotiate those agreements that is fine,
23 but the Act says it has to provide nondiscriminatory
24 interconnection and it doesn't make any distinction
25 between them providing interconnection to other LECs

1 or new entrants.

2 **CHAIRMAN JOHNSON:** Okay. Thank you. And
3 questions, Commissioners?

4 **COMMISSIONER DEASON:** I move reconsideration
5 be denied.

6 **COMMISSIONER CLARK:** Second.

7 **CHAIRMAN JOHNSON:** There's a motion and
8 second. Any further discussion? Seeing none, all
9 those in favor signify by saying "aye."

10 **COMMISSIONER DEASON:** Aye.

11 **COMMISSIONER KIESLING:** Aye.

12 **COMMISSIONER CLARK:** Aye.

13 **COMMISSIONER GARCIA:** Aye.

14 **CHAIRMAN JOHNSON:** Aye. Show it approved
15 and the motion denied unanimously.

16 **MS. KAUFMAN:** Chairman Johnson, I just want
17 to bring up one point and that is we haven't received
18 information yet, and in light of your ruling we would
19 hope to receive it shortly. But we would reserve the
20 right to recall some of BellSouth's witnesses when we
21 receive the information if we determine that that is
22 necessary. I don't know how quickly we'll be able to
23 get it.

24 **CHAIRMAN JOHNSON:** We had a brief discussion
25 on that on either Thursday or Friday and I believe

1 that BellSouth stated that if they had to provide the
2 information you could get it to us within 24 hours.

3 **MS. WHITE:** Yes. Because the full
4 Commission has ruled that we must provide the
5 information we'll do it as quickly as possible.
6 Preferrably this morning.

7 I don't want to get into an argument now
8 about whether any of BellSouth's witnesses will have
9 to be recalled. That might be the subject of an
10 argument, but I think we can deal with that when the
11 time comes.

12 **CHAIRMAN JOHNSON:** Let's try to expedite
13 getting the information. It's not that many
14 agreements, I understand.

15 **MS. WHITE:** It's agreements with the smaller
16 local exchange companies. I believe it's a box full.
17 Plus there are some answers to interrogatories.

18 **MS. KAUFMAN:** Chairman Johnson, I just want
19 to be clear that we not only asked for the agreements
20 but there are some data questions that we have asked
21 to be answered.

22 **MS. WHITE:** And BellSouth will be providing
23 answers to the interrogatories as well as the
24 agreements.

25 **CHAIRMAN JOHNSON:** To the extent that we

1 need to handle the issue of recalling witnesses, we'll
2 decide that at the appropriate time. But it looks as
3 if BellSouth is doing everything they can to get it to
4 us as quickly as possible.

5 **MS. BARONE:** Madam Chairman, the next motion
6 deals with the Joint Motion to Strike the SGAT. And
7 before we would go on to the merits of that, I believe
8 BellSouth would like to express some procedural
9 concerns.

10 **MR. CARVER:** Yes, Madam Chairman, Phil
11 Carver for BellSouth.

12 Typically I would agree that this would be
13 the appropriate time to argue a motion of this nature,
14 but in this particular instance we have a problem.
15 And the problem is that this motion was served on
16 BellSouth sometime between 4 and 5 o'clock last
17 Friday.

18 On the face of the motion it doesn't state
19 any reason for why it was served literally the last
20 moment before the business day on which the hearing
21 began, and it doesn't state why it wasn't served
22 sooner.

23 I believe that the better procedure would
24 have been for the motion to have been served seven or
25 eight days in advance. That way BellSouth could have

1 filed a written memorandum in opposition and the
2 Commission would have before it the ten-page motion
3 that's been filed by the intervenors as well as
4 BellSouth's response.

5 Because it was filed late Friday, we haven't
6 had an opportunity to file anything in writing, so you
7 have their side of the story; you don't have ours.
8 This is not a routine motion. This is a motion to, in
9 effect, get rid of Track B. And it focuses on the
10 SGAT but it's, in effect, a motion to dismiss Track B
11 which is one of our two routes to 271 relief. And I
12 believe it's extremely important.

13 For that reason I believe it's appropriate
14 to give BellSouth adequate time to put together a
15 memorandum in opposition, which we'll do as quickly as
16 we can. And after we've submitted that, then it would
17 be appropriate to argue the motion.

18 **CHAIRMAN JOHNSON:** What is adequate time?

19 **MR. CARVER:** We can have one to you, I
20 believe, by Thursday morning. That would give us two
21 day to work on it.

22 **CHAIRMAN JOHNSON:** Any comments?

23 **MS. RULE:** I'd like to respond on behalf of
24 the joint movants.

25 First of all, certainly advance notice is a

1 good thing, but I would like to point out that
2 BellSouth filed its revised SGAT substantially
3 changing some of the terms it purports to offer on
4 August 25th.

5 One of the objections we had to BellSouth's
6 SGAT, among others, is that it has revised the terms
7 and conditions that BellSouth wishes the Commission to
8 approve. Had we filed our motion seven or eight days
9 before we did, we would have predated the revised SGAT
10 which in part prompted our filing.

11 Also I'd like to point out to the Commission
12 that BellSouth still has not filed a SGAT. What you
13 have before you is a draft Statement of Generally
14 Available Terms and Conditions. Apparently BellSouth
15 plans on filing its real SGAT sometime during the
16 course of this proceeding. Given that that is
17 apparently BellSouth's procedural posture, I don't
18 think BellSouth has been prejudiced in the least by a
19 motion filed on Friday afternoon, the 29th,
20 addressing, in part, a revision filed on the 25th, and
21 an SGAT that has not yet been filed. I would like to
22 proceed with the motion.

23 **MR. CARVER:** May I respond briefly? It's
24 true that there were changes that were filed to the
25 SGAT and they were necessitated by the Eighth

1 Circuit's ruling. We obtained a copy of that and
2 analyzed it and filed the changes as quickly as we
3 could. What counsel didn't say, but I suppose is
4 being implied, is that they couldn't have filed their
5 motion earlier. And I disagree with that. Because of
6 the ten pages of their motion about half a page is
7 devoted to the changes to the SGAT.

8 At this point we're sort of sliding into the
9 merits of the issue which I had hoped to avoid until
10 we had an opportunity to brief it. But if you look at
11 the remainder of it you can see that most of what
12 they've raised are things they have known about a long
13 time.

14 We filed the original draft SGAT several
15 months ago. They argue that the issues are not broad
16 enough to encompass a review of the SGAT and the
17 issues have been as they have been for a year. They
18 take issue with the fact that we haven't had two
19 separate proceedings: one for SGAT approval and one
20 for 271. The case has been in the procedural posture
21 that it has been in for a year. I mean, these issues
22 have been on the table for a long, long time. And if
23 they wanted to address them procedurally, the
24 appropriate way to have done so would have been to, as
25 soon as the issues came up, to bring them before the

1 Commission. Instead of doing that, they waited until
2 literally the day before the hearing began and they
3 are asking you in effect to toss out the evidence
4 because of procedural infirmities that they claim
5 exist and that they are aware of, and that they
6 neglected to raise before.

7 I just believe that under the circumstances
8 that the minimum that fairness requires is that we
9 should be able to file a written response and the
10 Commission can see both sides before it rules.

11 **MS. RULE:** Commissioners, a brief response.
12 The Eighth Circuit's order has been out since July
13 18th. BellSouth found the opportunity to file
14 testimony regarding the effect of the Eighth Circuit
15 order, yet says it didn't have time to file a revised
16 SGAT until last week. The FCC's Ameritech order,
17 however, has been out since August 19th. We filed our
18 motion, which was based on the FCC's order, ten days
19 thereafter. I don't think that's untimely under the
20 circumstances. And I'd point out that I think I've
21 made a lot of my arguments and Mr. Carver has made a
22 lot of his, so there's probably not that much more
23 time to go ahead and hear the whole thing at this
24 point.

25 **COMMISSIONER CLARK:** Chairman Johnson, I had

1 understood from Mr. Varner's testimony that the draft
2 was as close as they could get at the time, and it was
3 as a matter of trying to get it before us so that we
4 would have time to look at it to meet the time frames
5 of the FCC requirements. I think it's appropriate to
6 give them more time to respond.

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

8 **COMMISSIONER CLARK:** And I had understood
9 there was not going to be that much of a change. I
10 think Mr. Varner, in fact, said that what their change
11 is going to consist of is mostly taking the word
12 "draft" off it, if I recall his testimony correctly.

13 **MR. CARVER:** We anticipate that the final
14 will be precisely like the draft. And it's true, the
15 draft was filed in advance, because under the Act
16 there's 60 days to approve the SGAT, and by filing the
17 draft, that was one way to allow the Commission a
18 longer review period. But it is exactly as it will be
19 when filed in final form.

20 **COMMISSIONER CLARK:** And I also understood
21 that while the testimony did address the changes by
22 the Eighth Circuit, it was with the caveat that there
23 had not been sufficient time to review the whole thing
24 in depth.

25 **MS. RULE:** I would suggest that BellSouth

1 has changed its SGAT at a convenient time. It was
2 able to proceed in Kentucky under circumstances
3 similar to this where the Commission basically struck
4 the Track B part of its proceeding, thereby removing
5 its SGAT. So the shortness of time I don't think is
6 an issue. It was able to put on a whole case in
7 Kentucky after the Eighth Circuit's order.

8 It appears to me however that the real issue
9 is that we have a moving target here again. BellSouth
10 had every opportunity under federal law to waive the
11 60-day time limit and give this Commission as much
12 time as it needed to look at the SGAT. It could have
13 filed something firm. It did not. It instead revised
14 its SGAT last week -- I'm sorry, I may be wrong on
15 that -- August 22nd. It revised its SGAT shortly
16 before this hearing and well after the discovery
17 cutoff in this period. It has revised terms and
18 conditions, some of them substantially revised, in
19 spite of testimony of BellSouth's witnesses that there
20 would be no such revisions. I think at a minimum --
21 okay, it was filed with the Commission on August 25th,
22 and we filed our motion four days after that.

23 I think at the very least the Commission
24 should decline to consider the revised SGAT. The
25 parties have had no opportunity to conduct discovery

1 on it; there was no agreement by the parties that
2 BellSouth could do this; and BellSouth's own witnesses
3 testified under oath that they were not going to do
4 it. I would suggest that it's unreasonable to allow
5 consideration of the revised draft. And I would like
6 to argue the entire motion with regard to their draft
7 SGAT.

8 **MR. CARVER:** Suffice it to say, we don't
9 agree with any of those characterizations but I think
10 counsel now is arguing the merits. And since the
11 request is not to take up the merits at that time, I'd
12 like to wait until we have had an adequate opportunity
13 to file something and then I can respond fully to the
14 motion at that point.

15 **CHAIRMAN JOHNSON:** Commissioners, BellSouth
16 has requested time to provide a written response to
17 the motion, joint motion that was filed on Friday.
18 They requested until Thursday morning?

19 **MR. CARVER:** Yes, ma'am.

20 **CHAIRMAN JOHNSON:** Thursday morning. Is
21 there any discussion or is there a motion on it?

22 **COMMISSIONER CLARK:** I move we allow them
23 time to respond and the date would be Thursday
24 morning.

25 **COMMISSIONER DEASON:** Second.

1 **CHAIRMAN JOHNSON:** There's a motion and a
2 second. Any further discussion? All those in favor
3 significant by say "aye."

4 **COMMISSIONER DEASON:** Aye.

5 **COMMISSIONER CLARK:** Aye.

6 **COMMISSIONER KIESLING:** Aye.

7 **COMMISSIONER GARCIA:** Aye.

8 **CHAIRMAN JOHNSON:** Aye. Show it approved
9 unanimately. Ms. Rule.

10 **MS. RULE:** Two questions: Was that Thursday
11 morning to serve the response or Thursday morning for
12 you to hear it?

13 **CHAIRMAN JOHNSON:** Thursday morning to serve
14 the response.

15 **MS. RULE:** Are you going to set a time
16 certain to hear the motion?

17 **COMMISSIONER CLARK:** I think we can decide
18 at that time when we're ready to hear it.

19 **MS. RULE:** Pardon me?

20 **CHAIRMAN JOHNSON:** After we've received it
21 on Thursday morning, we'll let the parties know when
22 we will rule and take argument on the substantive
23 motion.

24 **MS. RULE:** We'd like some time to review the
25 response.

1 **CHAIRMAN JOHNSON:** So would we, so it won't
2 be Thursday morning when we get it, but it may be
3 Thursday afternoon.

4 **MS. RULE:** We'd also like to reserve the
5 right to recall any witnesses that may have completed
6 their testimony before that time if your ruling
7 changes the posture of the case.

8 **CHAIRMAN JOHNSON:** We'll consider that at
9 the appropriate time, but thank you for putting us on
10 notice. Any other preliminary matters? Ms. Barone?

11 **MS. BARONE:** No, ma'am. If you would like,
12 we could go ahead and take that break and review the
13 law on the late-filed confidential information.

14 **CHAIRMAN JOHNSON:** Okay. How long do you
15 think that will take? Ten minutes.

16 **COMMISSIONER DEASON:** I'm sorry, wasn't that
17 Witness Scheye? The first witness is Mr. Varner.

18 **MS. CANZANO:** That's correct.

19 **CHAIRMAN JOHNSON:** Why can't he proceed?
20 I'm not against taking a break, but. It's the same
21 Staff that's going to be crossing Mr. Varner that is
22 going to be working on --

23 **MS. BARONE:** Yes, sir.

24 **MS. WHITE:** I would add one thing, only that
25 there's an a lot of what BellSouth considers to be

1 customer proprietary information in this docket. By
2 that I mean information regarding ALECs, what they are
3 doing, how they are doing it, where they are doing it.
4 It may be that this situation that Mr. Wiggins has
5 described may not be the only one to come up in this
6 case, so it probably wouldn't hurt to have a procedure
7 in place before we start, in case it comes up before
8 Mr. Scheye's testimony.

9 **CHAIRMAN JOHNSON:** Okay. Then we will take
10 a --

11 **COMMISSIONER CLARK:** Ask I ask a question
12 first? I would like to know if there's someone here
13 that has a copy of transcript from the July 15th
14 agenda conference that is referred to in Mr. Varner's
15 testimony? Does BellSouth have a copy of it?

16 **MS. WHITE:** We have one.

17 **MS. BARONE:** Madam Chairman, may I bring up
18 one other issue? I believe Ms. Rule just stated a
19 concern about recalling witnesses based on your ruling
20 on the Motion to Strike the SGAT.

21 One alternative, or one avenue the parties
22 could take is to go ahead and ask the questions
23 regarding the SGAT, that they would, and should the
24 Commission make a ruling in favor of AT&, T that
25 testimony could be stricken at a later date or not be

1 used in the analysis, so parties are not foreclosed
2 from asking questions at this point.

3 **CHAIRMAN JOHNSON:** Is there any response to
4 that?

5 **MS. WHITE:** I have no objection to that. I
6 think it would be a good idea.

7 **MS. RULE:** That appears reasonable.

8 **CHAIRMAN JOHNSON:** Commissioners? Okay.
9 Thank you for bringing that up. I think that will be
10 the best way to handle that then.

11 **MS. WILSON:** Madam Chairman, one additional
12 thing. I think the last time the Commission took such
13 action with respect to confidential information in a
14 hearing was in the BellSouth cost allocation manual
15 docket. I think that Docket 890190, for your
16 information.

17 **CHAIRMAN JOHNSON:** Thank you. Then we'll
18 take the ten-minute break and we'll begin with the
19 Staff recommendation on that issue, after which we
20 will begin the opening statements.

21 **MS. BARONE:** Thank you, Madam Chairman.

22 (Brief recess taken.)

23 - - - - -

24 **CHAIRMAN JOHNSON:** If everyone could settle
25 down we're going to go back on the record.

1 Ms. Barone.

2 MS. BARONE: Yes, Madam Chairman. I'm
3 pleased to announce that that was a productive break.

4 BellSouth has agreed to waive
5 confidentiality on that document, so we do not have
6 the issue on how to handle it during the proceeding.

7 MR. WIGGINS: Intermedia would like to thank
8 BellSouth for that courtesy.

9 MS. WHITE: BellSouth says you're welcome to
10 Intermedia.

11 MR. WIGGINS: And that's it for
12 friendliness.

13 CHAIRMAN JOHNSON: It's over. (Laughter)

14 MS. WHITE: One thing before we get started,
15 before we do the opening arguments, would it be
16 appropriate to swear the witnesses in?

17 CHAIRMAN JOHNSON: That would be fine. That
18 would be fine. If they are here -- a lot of them
19 stepped outside.

20 MR. MARKS: Commissioners, while they are
21 coming in, we have just passed out the agenda
22 transcript that Commissioner Clark requested. We
23 don't have copies for every party so we would request
24 that they share it. And if that's inconvenient for
25 some parties, of course, we'll attempt to get some

1 additional copies.

2 **CHAIRMAN JOHNSON:** Okay. On the oral
3 arguments, Bell, have you decided how you're going to
4 allocate your time?

5 **MS. WHITE:** Yes. We will save five minutes
6 for our response.

7 **CHAIRMAN JOHNSON:** Okay. The witnesses are
8 present? If you could stand and raise your right
9 hand.

10 (Witnesses sworn collectively.)

11 **CHAIRMAN JOHNSON:** Thank you. You may be
12 seated. Then we'll proceed to the oral presentation.

13 **MR. MARKS:** Thank you, Commissioners. I'm
14 John Marks and I'm appearing on behalf of BellSouth in
15 this matter. And we appreciate this opportunity to
16 make an opening statement, which we understand is
17 obviously rarely done. And frankly, it's probably
18 rarely done for good reason. The Commission typically
19 doesn't need to have the parties provide an overview
20 of what's important in a particular case. However,
21 BellSouth welcomes the opportunity to outline what it
22 believes is most important in this particular matter,
23 because there has been quite a bit of dispute and
24 controversy among the parties about what is truly
25 determinative in this issue, or in this particular

1 case.

2 I think we have to look at the primary
3 overriding issue, and that is competition, and whether
4 new entrants into the telecommunications markets in
5 Florida can, or will be allowed to compete. In other
6 words, whether BellSouth has opened its markets and
7 whether the IXCs, the interexchange carriers, are
8 prepared to compete with BellSouth in their market.
9 Everything else before this Commission in this case is
10 important only to the extent that it relates to this
11 central question.

12 Now, during the course of the next two weeks
13 you'll hear a lot about Track A and Track B, the two
14 paths that are outlined for BellSouth to accomplish
15 its goal that are outlined in the Act. You'll hear
16 about these as a means to demonstrate that the market
17 is open, either through actual competition or the
18 availability of tools to compete. We will provide
19 some additional information through Nancy White with
20 regards to Track A and Track B when she gives her
21 presentation to you.

22 Obviously BellSouth cannot determine its
23 competitors' business plan. If they chose not to
24 compete, that's their decision. BellSouth, however,
25 should not be punished for that decision. This is

1 especially true if BellSouth has done its part to open
2 the market. BellSouth's primary obligation is to
3 provide them with the capability to enter the market.

4 You'll also hear over the next two weeks
5 something about the 14-point checklist. Now that is
6 nothing more than a means to demonstrate that the
7 market has been opened by providing tools of
8 competition to any company that may wish to enter the
9 market.

10 The information and data will demonstrate
11 very clearly that BellSouth in all instances has
12 complied with the checklist, and in most instances,
13 far exceed what is required.

14 The decisions you make in this proceeding
15 can hasten a time when the Citizens of Florida benefit
16 from increased long distance competition. BellSouth's
17 entry into the long distance arena will have the
18 effect of accelerating the development of competition
19 in the local market. It will spur the interexchange
20 carriers to enter the local market so they, too, can
21 offer a full range of telecommunications services.
22 Again, I want to emphasize that Ms. White will give
23 you some additional information with regards to both
24 Track A and B and the 14-point checklist.

25 But what should this Commission consider

1 during the course of this proceeding? First of all,
2 we must clearly understand the nature of this
3 proceeding. It is not a rate case, it's not a Show
4 Cause proceeding. It is not rulemaking. It's not an
5 investigation of any wrongdoing. And although some
6 parties may like it to be, it's not an inquisition.
7 It is a fact-finding, information and data gathering
8 proceeding to aid this Commission in its consultative
9 role to the Federal Communications Commission. As
10 such, this Commission should not get bogged down in
11 the intricacies and minutia of the rules of evidence.
12 This Commission should get as much data as it possibly
13 needs in order to fulfill its role as it relates to
14 the Act.

15 Now, during the course of this hearing you
16 will hear a wide range of arrangements and positions by
17 parties that oppose BellSouth's entry into long
18 distance. I want to discuss briefly why you should be
19 extremely cautious and not follow some of the
20 approaches that some of them will advocate.

21 First, a number of parties, I'm sure, will
22 quote to you extensively from FCC orders. Relying on
23 these orders in this proceeding would be
24 inappropriate. When Congress enacted the
25 Telecommunications Act it clearly had in mind a

1 process that would involve both the various state
2 commissions and the Federal Communications Commission,
3 each playing a crucial role in the process.

4 Judging by recent decisions, the FCC may not
5 see it this way. But the Act clearly sets out rules
6 for both regulatory bodies. And the Eighth Circuit,
7 based on your challenge and independent initiative to
8 protect the interest of the people of Florida, has
9 recently endorsed this interpretation of the Act.

10 I mention this because you will be asked by
11 some supporters to rigorously and religiously follow
12 the FCC's recent ruling in the Ameritech order. I
13 suggest to you that if you do this, the result will
14 simply be to limit your role in this process to little
15 more than attempting to predict and mirror the FCC's
16 views.

17 This is not what Congress had in mind.
18 Instead, Congress intended a process in which this
19 Commission would act independently to make
20 recommendations based on what you believe is happening
21 in the state of Florida and what you believe is in the
22 best interest of the Citizens of the state of Florida.

23 This Commission has consistently shown that
24 notwithstanding what other Commissions, including the
25 FCC, may believe or actions they may take, you will

1 use resources at your disposal to address those issues
2 that impact Florida's citizens.

3 If you give into the request of certain
4 parties that you follow the FCC's decision, then you
5 will effectively abdicate this important opportunity
6 and responsibility.

7 Obviously BellSouth does not believe that
8 you should follow these parties to convince you to do
9 this. Especially at a time when the FCC's recent
10 Ameritech order is not even final and the inevitable
11 legal challenges to this order have not even begun.

12 In the mid '80s I think many of us recall
13 the Louisiana decision; in the mid '90s we now have the
14 Ameritech order, and as some would finally say, it
15 seems like deja vu all over again.

16 Secondly, a number of parties are going to
17 ask you to make your decision not on real world or
18 actual experiences, but rather on their opinions of
19 what their experiences might be when they decide they
20 want to begin actually competing in Florida.

21 This is somewhat ironic because the parties
22 that take the position that Track A is BellSouth's
23 only entry vehicle, also are ignoring the sort of real
24 and actual experience that is central to using Track A
25 to demonstrate that the market is open.

1 Now, as you listen to the testimony over the
2 next few days and the next two weeks or so, certain
3 patterns will begin to emerge. Those who complain the
4 most about BellSouth -- what BellSouth has offered,
5 have the least experience using these offerings to
6 serve actual customers. Those who complain the most
7 about BellSouth's systems have manifest the least
8 commitment, so far at least, to entering the market
9 and to competing.

10 The parties who complain the most are also
11 the parties who have the most to lose if BellSouth is
12 allowed to enter long distance and compete in their
13 markets.

14 By now it is obvious that the parties I'm
15 referring to are MCI, AT&T and an organization that
16 represents them both, FCCA. Collectively they will
17 spend a great deal of time during the next two weeks
18 with a great deal of detail raising ostensible
19 problems.

20 The question the Commission should ask is
21 this: Is there anything that BellSouth could do that
22 would cause the AT&T and MCI witnesses to take the
23 stand and tell you that BellSouth has met the
24 checklist, and that BellSouth should be allowed to
25 enter the long distance markets that they currently

1 dominate? Don't be swayed by the biased conclusions
2 of parties without any real world experience.

3 Instead, rely on the facts and the data presented.

4 BellSouth will present five witnesses.

5 Collectively they will address all of the issues in
6 this matter. Specifically, Mr. Varner will address
7 the framework through which BellSouth will apply for
8 authority to provide interLATA services and how the
9 process works.

10 Mr. Scheye and Mr. Milner will talk about
11 BellSouth's Statement of Generally Available Terms and
12 Conditions, and will describe specific elements of the
13 statement. Ms. Calhoun and Mr. Stacy will address the
14 status of operational support systems and performance
15 measures.

16 BellSouth must satisfy the checklist
17 requirements in order to qualify for interLATA
18 authority. These witnesses will explain how BellSouth
19 has done just that.

20 Now, I've mentioned some real world
21 experiences, and so let me also mention this as well:
22 BellSouth will admit that there are some complaints
23 from some parties with real world experience. And
24 although BellSouth obviously disagrees -- obviously
25 doesn't agree, rather, with all of their conclusions,

1 we do agree that their comments need to be listened to
2 and addressed because they are at least making the
3 effort to try to compete and to bring the benefits of
4 competition to consumers in Florida.

5 However, as you listen to them talk about
6 things that in some instances are fairly negative, I
7 believe there are two things you should focus on as
8 well, because they are very important and should not
9 be overlooked along the way. Listen to what these
10 parties don't complain about.

11 In the prefiled testimony, you can see that
12 the matters who complain about absolutely everything
13 BellSouth offers are those who have chosen so far not
14 to compete. The parties who have entered the market
15 or are trying to enter the market may have some
16 complaints, but they will also tell the you in many
17 instances they haven't experienced problems, or
18 problems have been alleviated with a great many of the
19 items that BellSouth has offered.

20 What they tell you is right about our
21 offerings is just as important as anything they may
22 say as to what they think is wrong about BellSouth's
23 offerings, and this should also be considered.

24 Finally, you will hear from parties who have
25 had some actual negative experiences, but in many

1 instances they relate to older situations that no
2 longer apply. I won't sit here this morning and tell
3 you that every checklist item that BellSouth is
4 currently offering was perfect from the first
5 instance.

6 I will tell you, however, that a lot of the
7 problems have been worked out, and BellSouth continues
8 to work them out on an almost daily basis, and many of
9 the complaints of parties about things that they have
10 experienced six months or even three months ago simply
11 no longer apply.

12 So as you listen to their testimony, it is
13 important also to consider whether they are telling
14 you about recent experiences that reflect the current
15 situation or about historical problems that no longer
16 exist. And with this, I'm going to ask my colleague,
17 Ms. White, to provide you with some additional
18 comments.

19 **MS. WHITE:** Thank you, John. Mr. Marks has
20 given you the overall framework of BellSouth's case.
21 Now I'd like to talk about some of the specifics. The
22 first item to talk about is the Track A versus Track B
23 dichotomy.

24 You've heard a lot at about. You've seen
25 several motions based on it, including one that will

1 probably be argued later this week. BellSouth's goal
2 is to provide long distance service to customers in
3 Florida. BellSouth's way of meeting this goal is
4 through Track A.

5 Track A requires that BellSouth have
6 interconnection agreements with ALECs. BellSouth does
7 that. Track A requires that BellSouth provide local
8 access and interconnection under those agreements.
9 BellSouth does that. Track A requires that this local
10 access and interconnection be provided to ALECs who
11 are unaffiliated with BellSouth. That's the case
12 here.

13 Track A also requires that an ALEC provide
14 service to residential and business customers. That
15 is happening in the state of Florida. Several
16 companies are providing service to business customers.
17 Media One and Teleport are providing service to
18 residential customers.

19 The last prong of Track A is that the ALEC
20 must offer service exclusively over their own
21 facilities or predominantly over their own facilities.
22 In Florida, Media One offers residential service
23 specifically over their own facilities. Teleport is
24 providing service to a reseller who is providing
25 residential service specifically over Teleport's

1 facilities.

2 Under the Act BellSouth must also show that
3 it is providing the 14 checklist items, either actual
4 provision of these items or making the items
5 available. You will hear testimony that BellSouth has
6 met these requirements.

7 For example, you will hear testimony that
8 there are over 7,800 interconnection trunks in service
9 in Florida, specifically 7,828. BellSouth is
10 providing unbundled network elements. For example,
11 there are seven physical collocations in progress in
12 Florida. There are 34 complete virtual collocations
13 in Florida with 24 more in progress.

14 BellSouth has provided access to its
15 operational support systems, both for unbundled
16 network elements and resale, and you will hear
17 Ms. Calhoun talk about that.

18 BellSouth has opened up access to its poles,
19 ducts and conduits to ALECs. Non-ALECs in Florida
20 have executed license agreements to get that access.
21 There are over 1,300 unbundled loops in Florida; some
22 provided with associated transport, some provided with
23 number portability.

24 There are ALECs who have ordered switch
25 ports in Florida. You will hear evidence that

1 BellSouth has provided nondiscriminatory access to
2 911.

3 There are over 88 trunks, 911 trunks in
4 service in Florida, and seven ALECs are using the E911
5 and 911 update capabilities that BellSouth has
6 provided. There are over 156 ALEC trunks between
7 BellSouth and ALECs providing directory assistance,
8 and there are 31 ALEC trunks for other operator
9 services.

10 Thousands of customers of ALECs, whether
11 being provided with resale or facilities-based service
12 have obtained White Page directory listings from
13 BellSouth. BellSouth has assigned over 130 NXX codes
14 in Florida to ALECs. ALECs have placed orders for
15 Signaling System 7, as well as other types of
16 signaling.

17 There are over 2,700 numbers in Florida that
18 are being ported today. Dialing parity is available
19 both in the local sense and the intraLATA sense in
20 Florida. And you will also hear testimony that there
21 are literally thousands of orders, thousands of
22 services being resold by BellSouth to ALECs who are in
23 turn providing them to customers in Florida.

24 Finally, BellSouth has negotiated
25 performance measurements with AT&T that we feel meet

1 the standard of what needs to be done in order to
2 measure our performance to ALECs.

3 In short, BellSouth believes that you will
4 agree that it has met the requirements of the Act, and
5 that the citizens of Florida deserve another choice
6 for long distance service. We also believe that
7 BellSouth's entry into the long distance market will
8 spur competitors to offer residential service.

9 Thank you.

10 **CHAIRMAN JOHNSON:** Thank you. Mr. Wiggins.

11 **MR. WIGGINS:** Good morning. Pat Wiggins for
12 Intermedia. My task this morning in the next four
13 minutes is to provide an overview of what it takes to
14 state a valid claim for relief under Section 271,
15 because that's what Bell is here to do; state a claim
16 for relief under 271 so they can do long distance.

17 And if you understand what it takes to state
18 a valid claim for relief under 271, then you will
19 understand that BellSouth's entire case this next two
20 weeks, all of it can be summed up in one word, and
21 that word is "premature."

22 Now, the FCC will ultimately make the
23 decision whether or not they have relief, and the FCC
24 in the Ameritech order has sent us back to school, as
25 it were, on what it takes to state a valid claim for

1 relief.

2 Now, although that order is over 200 pages
3 long, I have been able, with compression techniques,
4 to boil it down to three basic lessons. Basic lesson
5 Number One: To provide nondiscriminatory access to --
6 excuse me -- to state a valid claim for relief, the
7 BOC must provide nondiscriminatory access to all entry
8 strategies, not just one.

9 The Telecom Act would open the local market,
10 and would open the local market by allowing CLECs any
11 one of three strategies to enter the local market; the
12 use of their own facilities, the use of unbundled
13 network elements, the use of resale services. But the
14 BOC must fully support each one of these; all of them.
15 not just resale, not just UNEs, but also facilities;
16 and not just singularly, but in any combination that
17 the CLEC would like.

18 And while we're at it, for resale, for
19 example, not just simple resale, but also complex, and
20 not just voice, but also data. And while we're at it
21 for UNEs, not just single unbundled network elements,
22 but combinations, including the UNE platform; not just
23 voice, but also data. And with facilities, everything
24 that is necessary to implement, fully implement,
25 approved interconnection agreements.

1 And the key here is this: Any CLEC wishing
2 to enter the market must be able to use a combination
3 of any of these and any of the subcomponents, any of
4 the items that it wishes to use based on its business
5 considerations, not on whether they're available.

6 Basic Lesson No. 2: To provide these
7 requisite support for facilities, UNEs and resale, the
8 BOC must provide the necessary OSS functions for all
9 of them; all of the functions, not just some of the
10 functions. This means that the BOC must provide
11 access to all OSS functions for resale, not just for
12 simple, but for complex, and not just for voice, but
13 also for data; and all OSS functions necessary, not
14 just nor UNEs, not just for singles, but also for
15 combinations, also for voice and also for the data.

16 In Capistrano they say "One swallow does not
17 a spring make." In Tallahassee we should say "One OSS
18 function supporting one retail product under one entry
19 strategy does not an open market make."

20 The third basic lesson is that any BOC that
21 would say that they are providing support for these
22 three entry strategies and nondiscriminatory access to
23 these OSS functions must show it with operational
24 data. No paper claims allowed. It's as if the FCC
25 borrowed a line from the movie "Jerry McGuire," and

1 said "Show me the data."

2 BellSouth will not be able to show you the
3 data in this proceeding. And the reason they will not
4 be able to show you the data is because they don't
5 have it. And the reason they don't have it is because
6 they're not yet there. They're making progress, but
7 they're not yet there in providing nondiscriminatory
8 access to each of these entry strategies, to each of
9 these elements; and because they're not yet there,
10 this whole proceeding is premature.

11 Thank you.

12 **MR. HATCH:** Commissioners, my name is AT&T.
13 I'm speaking for AT&T as part of the collective --

14 **COMMISSIONER DEASON:** When did you change
15 your name, Mr. Hatch?

16 **MR. HATCH:** I'm sorry. Let's start again.
17 Of course my clock is running, so I'm going to have to
18 hurry.

19 271 requires that BellSouth provide
20 nondiscriminatory access to unbundled network elements
21 in accord with Sections 251(c)(3) and 252(d)(1). Now
22 more particularly 251(c)(3) requires that the
23 provision of those unbundled network elements be on
24 rates, terms and conditions that are just, reasonable,
25 and nondiscriminatory.

1 The section further requires that BellSouth
2 provide unbundled network elements in a manner that
3 allows requesting carriers to combine such elements in
4 order to provide telecommunications service.

5 You will hear a lot with regard to the UNE
6 platform. Those are combinations of elements as a
7 critical portion of the entry strategies that
8 Mr. Wiggins previously talked about.

9 The Act defines network elements as
10 facilities or equipment used to provide
11 telecommunications services, including the features,
12 functions and capabilities. Network elements also
13 include subscriber numbers, data bases, signaling
14 systems, information sufficient for billing and
15 collection. That is a critical part of this case. In
16 addition, it also provides that information used in
17 transmission and routing of telecommunication services
18 are also a part of the network elements.

19 Among the UNEs that you will hear talked
20 about and particularly are going to be at issue here
21 are the loops, ports, local switching, common
22 transport, tandem switching, dedicated transport,
23 access to 911 and DA data bases, call completion
24 services, databases and associated signaling necessary
25 for call routing and call completion.

1 You heard BellSouth earlier suggest to you
2 that you should not get bogged down in the details,
3 and I would submit to you that the devil is in
4 BellSouth's details.

5 The question that you have before you is to
6 determine whether BellSouth is providing unbundled
7 network elements. For 271 purposes, "provide" has now
8 been defined by the FCC in its Ameritech order. That
9 is the pole star by which you must assess BellSouth's
10 case and its argument that it is providing unbundled
11 network elements.

12 BellSouth must demonstrate that it is
13 presently ready to furnish each item in quantities
14 that competitors can reasonably demand in acceptable
15 levels of quality.

16 As Mr. Wiggins said to you, paper promises
17 are not acceptable. BellSouth must provide empirical
18 evidence demonstrating that it can provide UNEs both
19 singly and in combination in order to show 271
20 compliance. Absent commercial usage demonstrating the
21 actual provision of these elements, BellSouth must
22 provide, at a minimum, carrier-to-carrier testing
23 leading to genuine operational experience. Without
24 this, you cannot assess whether BellSouth is, in fact,
25 capable of providing what it says it offers.

1 The evidence in this case will show that
2 BellSouth has failed to provide unbundled network
3 elements consistent with the standards in the Act.
4 The evidence will show that there is no commercial
5 usage to for the bulk of the UNES. The evidence will
6 show that BellSouth has failed to adequately provide
7 UNES in combinations. The evidence will show that
8 BellSouth has conducted virtually no
9 carrier-to-carrier testing of UNES.

10 In particular, in AT&T's case, the evidence
11 will show that AT&T's attempt at testing UNES with
12 BellSouth has demonstrated and shown clearly that
13 BellSouth cannot adequately provide and bill for UNES.
14 You heard Ms. White say that they are providing UNES
15 today. You heard her mention ports. You heard her
16 mention loops. What you did not hear her mention was
17 local switching, common transport, tandem switching,
18 dedicated transport. BellSouth has not shown that
19 they can or will or are capable of providing those
20 things today.

21 Absent any such showing, BellSouth's 271
22 application is simply premature.

23 **MR. MCGLOTHLIN:** I'm Joe McGlothlin for the
24 FCCA. Commissioners, you may remember a movie and a
25 TV series entitled "Paper Chase." In this proceeding

1 BellSouth has brought you something very close to
2 that. Call it "Paper Case."

3 BellSouth filed 86 binders in support of its
4 petition. Many times those binders served to paper
5 over the shortcomings of its effort to open its
6 network to competition. On the surface the words on
7 paper say all is ready, but like a layer of wallpaper
8 over damaged plaster, many times the veneer of words
9 doesn't bear close inspection.

10 One place where the problems show through is
11 in BellSouth's inability to support the unbundled
12 network element or UNE platform. The platform
13 consists of a combination of several core unbundled
14 network elements; the network interface device, local
15 transport, local switching, operator services, and
16 signaling.

17 With those elements a new entrant can
18 provide a variety of services in competition with
19 BellSouth. Joe Gillan will testify that ensuring that
20 a competitor has the ability to use that platform is
21 an important part of this Commission's job of
22 verifying that BellSouth has supported all three
23 avenues to competition; resale, facilities and
24 unbundled network elements.

25 He will testify that while all three avenues

1 are important, the platform offers the most potential
2 for competition based on creative services and price
3 in the near term. He will also testify that as
4 BellSouth is required to develop the systems necessary
5 to support the platform, of necessity it will also
6 develop the parallel systems necessary to support
7 resale and interconnection.

8 Accordingly, the status of the platform
9 provides a good litmus test with respect to
10 BellSouth's progress in its efforts to open its
11 network to local competition.

12 Mr. Gillan will testify that the heart of
13 the platform is the unbundled switch. Yet as
14 Mr. Hatch said a minute ago, the evidence in this case
15 will show -- in fact, the evidence in this case will
16 show that BellSouth elsewhere has admitted that
17 BellSouth cannot even render a bill for the switching
18 component of the platform configuration.

19 Specifically, BellSouth's automated billing system
20 cannot generate a bill that reflects the competitor's
21 usage of the unbundled switching function.

22 In short, BellSouth cannot provide the
23 fundamental, critical switching function as an
24 unbundled network element, either by itself or as part
25 of the platform.

1 Mr. Gillan will describe how this cripples
2 the new entrant's ability to offer local service
3 through unbundled network elements.

4 And my time limits don't allow me to do
5 anything more than glance at the reasons why that's
6 the case, but I invite you to talk to Mr. Gillan about
7 that, because it's an important aspect of this
8 proceeding.

9 Based on its prefiled testimony, look for
10 BellSouth to try to escape that predicament in a
11 number of ways. BellSouth may try to suggest that it
12 has no obligation to offer the platform at all.
13 Compare that with Paragraph 160 of the Ameritech order
14 in which the FCC spelled out that obligation in
15 unmistakable terms.

16 BellSouth may say it is hard at work on the
17 problem and will find a way to accomodate this need.
18 Compare that response with, again, the explicit
19 admonition by the FCC in Paragraph 55 of Ameritech
20 that paper promises of future compliance are
21 insufficient.

22 BellSouth may say that its switching is so
23 important the competitors should provide it
24 themselves, and as you hear that or read that,
25 remember it's Congress, not we, that made the

1 unbundled switching a mandatory part of the
2 Section 271 checklist.

3 Finally, BellSouth may offer -- and this is
4 one of my personal favorites -- may offer to prepare
5 bills that include this usage data by hand. Compare
6 this offer to Paragraph 140 of the Ameritech order in
7 which the FCC said the standard regarding a provision
8 of usage data is equivalency of access.

9 In the end you will see that all of
10 BellSouth's attempts to avoid the impact of this
11 shortcoming have one thing in common: Each flies in
12 the face of a clear requirement of the Act or of an
13 order or rule of the FCC.

14 Thank you.

15 **MR. MELSON:** Commissioners, Rick Melson
16 representing MCI. I won the arm wrestling match, so
17 I've got a disproportionate share of our pool, 21
18 minutes.

19 I'm going to adress a couple of related
20 topics. First I'm going to talk about the operating
21 support systems that Bell makes available to its
22 competitors and give you some detail as to how I
23 believe the record is going to show that those systems
24 don't provide the required parity with Bell's own
25 systems.

1 And, second, I'm going to discuss
2 performance measurements and data, what's needed to
3 show that BellSouth is providing interconnection,
4 UNEs, resale, OSS functions on a nondiscriminatory
5 basis, and how the record is going to be totally
6 inadequate to make that showing.

7 I'm going to begin briefly with the legal
8 framework. As the FCC said in the Ameritech order,
9 the duty to provide access to UNEs and the duty to
10 provide resale, which are two of the methods of entry
11 that Mr. Wiggins talked about, both include the duty
12 to provide nondiscriminatory access to OSS functions.

13 So in order to determine if Bell meets the
14 checklist Item 2 on network elements and checklist
15 Item 14 on resold services, you have to look at the
16 OSS systems that support those methods of entry and
17 whether that performance is at a parity with
18 BellSouth.

19 I say "at a parity." There are actually two
20 tests. If BellSouth offers a retail service that is
21 analogous to what a new entrant offers, for example,
22 in the resale situation, the requirement for parity is
23 that Bell provide equal quality, accuracy and
24 timeliness. That applies essentially to ordering,
25 preordering, provisioning, and maintaining resold

1 services, because those all have analogs in Bell's own
2 retail services.

3 Where the function Bell provides is not
4 analogous to something that it provides itself, such
5 as ordering and provisioning UNEs, the test is a;
6 little different. It's whether the BellSouth's OSS
7 systems provide an efficient competitor a meaningful
8 opportunity to compete. And the way you determine
9 this is to look -- in part, is to look at performance
10 standards.

11 You have to see first if there's specific
12 standards in place to measure BellSouth's performance
13 and to measure the performance that it offers to
14 competitors; and, second, you have to consider whether
15 those standards meet the nondiscrimination
16 requirements of the statute.

17 I'm going to move away for a minute from the
18 legal requirements and look at some of the things that
19 the record is going to show about the difference
20 between the OSS functions provided to ALECs and the
21 OSS functions that BellSouth uses itself.

22 The record will show that for preordering
23 and ordering services BellSouth relies on providing
24 the competitors with two different systems: LENS for
25 preordering, EDI for ordering. This contrasts with

1 the BellSouth customer service representative who uses
2 a single system for both the ordering and the
3 preordering process. That's not parity.

4 The record will show that an ALEC can only
5 order the top 30 resold services on an electronic
6 basis through the EDI ordering interface. It has to
7 submit manual orders for other services. A BellSouth
8 rep can order all retail services on an electronic
9 basis. That's not parity.

10 The record will show that a BellSouth
11 representative can easily access customer payment
12 history information. An ALEC can't access that
13 information at all, even though MCI's right to get
14 that information was specifically arbitrated by the
15 Commission. That's not parity.

16 The record will show that if an ALEC uses
17 LENS for preordering to obtain the information
18 necessary to move to the other system and place an
19 order for new service, the ALEC has to repeatedly
20 validate the customer's address at every step in the
21 process.

22 When a BellSouth representative moves
23 through this preordering and ordering process, the
24 address is validated once and it carries over from
25 step to step. That's not parity.

1 The record will show that when a LEC uses
2 the LENS preordering mode to obtain a telephone number
3 assignment to use in the EDI ordering process, the
4 ALEC has to go to a separate number assignment screen
5 and choose a number in a process that requires several
6 physical steps. In the Bell systems a telephone
7 number is automatically assigned as soon as the
8 address is validated. That's not parity.

9 The record will show that when an ALEC
10 places an order for a resold service, it has to
11 indicate whether the customer is subject to city and
12 state taxes. When a BellSouth representative places
13 that order, the system automatically fills out that
14 tax information based on the customer's address.
15 That's not parity.

16 The record will show that when an ALEC
17 customer wants to choose WorldCom for intraLATA toll
18 and LCI for interLATA toll, the customer rep has to
19 click repeatedly through a random selection of IXCs to
20 get the information that's necessary to complete that
21 order. A BellSouth representative simply types in the
22 first few letters of the name, and all the necessary
23 information pops up on the screen. That's not parity.

24 The record will show that LENS and EDI, the
25 systems offered to the ALECs, offer almost nothing in

1 the form of realtime edit checks. In other words, the
2 system generally doesn't tell the rep that you've left
3 something out or you've formatted it wrong, or what
4 you put in that field doesn't make sense. What that
5 means is it's only after that order is submitted and
6 the BellSouth downstream systems look at that and
7 reject that you find out a mistake has been made.

8 In contrast, BellSouth, the customer rep
9 gets realtime edit checks on all of these types of
10 problems, so that the chance of having that order
11 rejected once it's been submitted is almost zero.
12 That's not parity.

13 What happens when the order is rejected? In
14 BellSouth the rejection comes back electronically to
15 the customer service rep in the case of a business
16 service, or it comes back electronically to a problem
17 solving group in the case of a residential service.
18 For ALECs, the rejection comes back manually via a fax
19 from the local customer service center. That's not
20 parity.

21 The record will show that an ALEC can't view
22 a summary of a pending order or make any changes to a
23 pending order. BellSouth representative can do both.
24 That's not parity.

25 Commissioners, that is not a complete

1 summary of the differences between the OSS that
2 BellSouth provides to ALECs and the OSS it uses
3 itself. There's not the time to do that, even though
4 I got a disproportionate share of it, but it is enough
5 to get a flavor of the differences.

6 The bottom line is the lack of parity in
7 access to OSS functions. Because of that lack, an
8 ALEC can't process even a simple resale order as
9 quickly and as efficiently as the BellSouth customer
10 service representative handles an analogous retail
11 order.

12 During Ms. Calhoun's summary, you're going
13 to seem a demonstration of LENS and EDI and you're
14 going to see that they're pretty. But like my mother
15 said, it's not pretty that counts, it's what's inside.
16 And if you look at what's inside LENS and EDI, it
17 doesn't hold a candle to the systems that BellSouth
18 uses for itself.

19 I turn now to performance measurements,
20 which is the way you determine whether Bell is meeting
21 the parity requirement, not only with OSS, but with
22 all of the other checklist elements it provides. And
23 the purpose of those measurements is to provide an
24 objective way to determine whether parity is being
25 met.

1 Now, performance measurement has two parts.
2 First, what are you going to measure and, second, what
3 is the standard you have to meet to judge satisfactory
4 performance.

5 Remember, if Bell provides -- uses something
6 analogous itself, the test is parity. If there's no
7 specific analog, then the FCC said that the
8 measurements have to ensure that there's
9 nondiscrimination and a reasonable opportunity to
10 compete.

11 How does BellSouth's case stack up against
12 these tests? I submit not very well. First, with
13 regard to the things to be measured: As you heard in
14 Bell's opening, Bell proposes to measure a number of
15 items that were negotiated in its AT&T agreement.

16 Those are things such as percentage of
17 rejects communicated in less an hour, percent of
18 appointments met, percent of trouble reports within 30
19 days. While those are important measurements, they're
20 not enough to paint a complete picture of relative
21 performance.

22 There are a number of other things you have
23 to know to determine parity, things that BellSouth
24 does not propose to measure.

25 The record will show that BellSouth does not

1 propose to measure average installation intervals,
2 either for resale or for loops or for local switching.
3 BellSouth does not propose to measure the percentage
4 of orders rejected. BellSouth does not propose to
5 measure the percentage of orders that require manual
6 intervention. BellSouth does not propose to measure
7 internal and external call completion rates. Yet all
8 of those things would be important measurements if you
9 were trying to determine parity.

10 After you decided what you're going to
11 measure, the second question is, what's the standard.
12 The record will show that BellSouth and AT&T have
13 agreed on what is to be measured, but they haven't
14 agreed on the standards. In fact, Bell has not
15 proposed any specific standards in this case.

16 Instead, it proposes a methodology to be
17 used to establish a range of performance which would
18 be considered acceptable. And I submit to you the
19 record will show that that methodology does not
20 produce a satisfactory way of measuring parity.

21 Finally let's talk about data. What
22 empirical data has BellSouth provided to show that
23 it's meeting the obligation of parity today? The
24 answer is almost none. While Bell has been capturing
25 some limited performance data since April or May, the

1 first real comparative performance reports are not due
2 until mid-September.

3 Now, even if those were to miraculously
4 appear here during the first week of the hearing, the
5 Staff and the parties won't have had a chance to look
6 at those reports or to examine the underlying data;
7 and without empirical data, BellSouth can simply not
8 meet its burden of proving parity.

9 In summary, two points: The record will
10 show that the OSS functionality that Bell provides to
11 the ALECs is not at parity. It's inferior in terms of
12 quality, accuracy and timeliness to what BellSouth
13 uses itself. It will show that BellSouth does not
14 have the empirical data necessary to prove that it's
15 providing service at parity. And, finally, even the
16 performance measurements that they've proposed aren't
17 sufficient if you had that data to show you whether
18 you've got parity or not.

19 Thank you.

20 MR. WILLINGHAM: Commissioners, my name is
21 Bill Willingham. I'll be appearing on behalf of
22 Teleport Communications Group, which we will commonly
23 refer to as Teleport and TCG for brevity purposes.

24 Commissioners, BellSouth's petition must be
25 denied unless BellSouth demonstrates that the

1 interconnection and access that it provides to
2 competitors in Florida satisfy each of the 14
3 requirements set forth in the competitive checklist.

4 The testimony and exhibits that BellSouth
5 has prefiled simply do not demonstrate compliance with
6 the checklist. The primary concern to TCG, which is a
7 facilities-based competitor, is that BellSouth's
8 testimony and exhibits do not address the
9 interconnection issues that are unique to
10 facility-based ALECs, such as TCG.

11 As demonstrated by the prefiled testimony
12 submitted by TCG and other intervenors, the quality of
13 interconnection services that BellSouth presently
14 provides to its competitors in Florida is inferior to
15 the service that BellSouth provides to itself and to
16 other parties.

17 As Mr. Melson discussed, the performance
18 measures proposed by BellSouth generally are not
19 adequate. They apply to end-to-end interconnection
20 services that BellSouth provides to competitors at
21 resale -- BellSouth's services, they generally do not
22 demonstrate compliance with the checklist.

23 BellSouth's proposed performance measures
24 are lacking in sufficient detail in terms of the
25 preordering process, order provisioning, maintenance

1 and repair, billing and many network operation
2 functions, including but not limited to the frequency
3 and source of call blockage that are vital to
4 facilities-based competitors such as TCG.

5 Until BellSouth provides performance
6 measures that provide a comparison of the
7 interconnection service that any one ALEC receives
8 from BellSouth to the interconnection services that
9 BellSouth provides to other LECs, ALECs and to its
10 retail customers in the same rate center, the
11 Commission cannot determine whether the services
12 provided by BellSouth satisfy the checklist.

13 Moreover, it is evident that BellSouth is
14 not in compliance with the checklist. The
15 interconnection service that BellSouth provides to TCG
16 does not satisfy the first checklist item, which item
17 requires BellSouth to provide interconnection that is
18 at least equal in quality to that provided by the
19 local exchange carrier to itself or to any subsidiary,
20 affiliate, or any other party to which the carrier
21 provides interconnection.

22 As demonstrated by the prefiled testimony of
23 Mr. Frank Hoffman and Mr. Paul Kouroupas, in the real
24 world BellSouth does not provide interconnection to
25 its facility-based competitors that is at least equal

1 in quality to the interconnection that BellSouth
2 provides to itself, its subsidiaries or its
3 affiliates.

4 Among other problems, TCG has experienced an
5 inordinate amount of call blockage. The result of
6 this blockage is that TCG's customers cannot receive
7 calls from BellSouth's end use customers.

8 TCG is powerless to cure this problem, which
9 is a function of BellSouth's failure to properly size
10 its network to meet TCG's needs.

11 Obviously, TCG operates at a serious
12 competitive disadvantage if its customers cannot
13 receive calls from the largest local exchange provider
14 in this state.

15 Congress has mandated that this Commission
16 verify the compliance of BellSouth with each and every
17 item in the checklist. TCG submits that the evidence
18 prefiled by BellSouth in this proceeding is not
19 sufficient to provide a basis for a finding of
20 compliance with many of the checklist items, and that
21 the evidence provided by the intervenors unequivocally
22 demonstrates that BellSouth is not in compliance with
23 the first checklist item.

24 Therefore, TCG respectfully requests that
25 the Commission deny BellSouth's petition.

1 **MS. WILSON:** Commissioners, I'm Laura Wilson
2 representing the FCTA. In this proceeding FCTA is
3 representing and has submitted discovery on behalf of
4 nine certificated telecommunications companies,
5 including Media One Florida Telecommunications and
6 Media One Fiber Technologies.

7 FCTA's main position is that BellSouth has
8 had qualifying requests for interconnection and,
9 therefore, must proceed under Track A. However,
10 BellSouth has failed to demonstrate that the
11 requirements of Track A are met. BellSouth has failed
12 to demonstrate the presence of facilities-based or
13 predominantly facilities-based competition for
14 residential and business local exchange service; has
15 not demonstrated that it has an interconnection
16 agreement that is fully operational as to all 14
17 checklist items.

18 With respect to the presence of
19 facilities-based competition, BellSouth Witness
20 Varner's testimony contains broad assertions about the
21 existence of competition, but with no economic
22 underpinnings.

23 FCTA's rebuttal witness, Dr. Pacey, will
24 present objective, economic criteria for the
25 Commission to utilize in determining whether a

1 competitor is actually functioning in the marketplace.

2 The evidence will demonstrate the lack of
3 competition especially in the residential market,
4 significant obstacles experienced in interconnecting
5 with BellSouth, and the lack of meaningful performance
6 standards for facilities-based competitors.

7 For these reasons, BellSouth's entry into
8 the interLATA market is premature.

9 **CHAIRMAN JOHNSON:** There's only about a
10 minute left.

11 **MR. COHEN:** Thank you. I won't rehash the
12 reasons we're here, Madame Chairman and Commissioners.
13 You know why.

14 Time Warner is just beginning to offer
15 services to its business customers predominantly over
16 its own facilities. At this time, Time Warner is
17 still negotiating performance standards with
18 BellSouth, but based on Time Warner's real world -- we
19 have heard the term, real world -- the real world
20 experiences in another state, in Tennessee, BellSouth
21 is unable to meet the essential provisions contained
22 in its interconnection agreement with Time Warner.

23 In order to satisfy some of the 14 checklist
24 items, BellSouth must have a fully operational
25 interconnection agreement. BellSouth has not been

1 able to meet one of the most fundamental provisions of
2 the BellSouth/Time Warner agreement, and that is the
3 firm order commitment -- which we'll hear, an FOC,
4 with a facilities check. Until BellSouth can provide
5 this service and many other services, we submit that
6 this matter is prematurely brought. Thank you.

7 **CHAIRMAN JOHNSON:** Thank you. BellSouth.

8 **MS. WHITE:** I'll be very brief. Mr. Marks
9 warned you that some of the parties would urge you to
10 blindly follow the FCC in its recent proclamations,
11 and I think that the opening statements of the
12 intervenors has shown that they've done just that.

13 Essentially what they are asking you to do
14 is close your mind to the evidence you will hear over
15 the next two weeks and put FCC filters in your ears.
16 The bar is whether BellSouth has met the requirements
17 of Section 271 of the Act.

18 This Commission must look at all the facts
19 with an open mind, not at the sound bites of the
20 attorneys for the parties, but the facts. To do that,
21 you need to hear the witnesses, and that's where we
22 think we need to go now.

23 Thank you.

24 **CHAIRMAN JOHNSON:** Thank you. I think,
25 then, we're prepared for Bell to call the first

1 witness.

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(Transcript continues in sequence in

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