

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 - MIDMORNING SESSION

VOLUME 2

Pages 96 through 298

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: H. RUTHE POTAMI, CSR, RPR
 Official Commission Reporter

APPEARANCES:

(As heretofore noted.)

DOCUMENT NUMBER-DATE

FLORIDA PUBLIC SERVICE COMMISSION 8842 SEP-25

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P R O C E E D I N G S

(Transcript follows in sequence from
Volume 1.)

ALPHONSO J. VARNER

was called as a witness on behalf of BellSouth
Telecommunications, Inc. and, having been duly sworn,
testified as follows:

DIRECT EXAMINATION

BY MR. MARKS:

Q Mr. Varner, would you please state your name
and business address for the record.

A Yes. My name is Alphonso Varner. My
business address is 675 West Peachtree Street in
Atlanta, Georgia.

Q Mr. Varner, are you the same individual who
filed -- how many pages of prefiled testimony?
Sixty-six pages of prefiled testimony in this matter.

A Yes, I am.

Q I'm sorry. Direct testimony in this matter.

A Yes.

Q Do you have any additions or deletions or
corrections to that prefiled testimony?

A Yes. I have a couple on the -- or a few on
the direct. On Page 11, Line 23, there's a reference
to the conference report, and it says "at 149". It

1 should be "148".

2 Q Is that on Line 23?

3 A Yes, it is.

4 CHAIRMAN JOHNSON: It should have been what?

5 WITNESS VARNER: 148 instead of 149.

6 CHAIRMAN JOHNSON: Thank you.

7 WITNESS VARNER: On Page 22, the sentence
8 beginning on Line 14 and ending on Line 16, should be
9 stricken.

10 Q (By Mr. Marks) I believe that was stricken
11 during --

12 A That was stricken during my deposition. I'm
13 just making it here to make the testimony conform with
14 what was discussed in the deposition.

15 On Page 44 at Line 25, the end of that
16 sentence "and to the extent that it is technically
17 feasible superior," those words should be stricken.
18 That requirement was vacated by the Eighth Circuit.

19 COMMISSIONER CLARK: Mr. Varner, I'm sorry.
20 Would you give us that page number and line number
21 again?

22 WITNESS VARNER: Page 44, Line 25. And it's
23 the words "and to the extent that it is technically
24 feasible superior." That requirement was vacated by
25 the Eighth Circuit.

1 Similarly, on Page 49, starting at Line 20,
2 to the bottom of the page, continuing over to Page 50,
3 Line 2 through the word "previously," should be
4 stricken. All of those requirements were vacated by
5 the Eighth Circuit.

6 **COMMISSIONER GARCIA:** What page? I'm sorry,
7 Mr. Varner.

8 **WITNESS VARNER:** Page 49, beginning at
9 Line 20.

10 **COMMISSIONER KIESLING:** And going to where?

11 **WITNESS VARNER:** Page 50.

12 **COMMISSIONER KIESLING:** So the entire answer
13 to that question --

14 **WITNESS VARNER:** It ends up with one
15 sentence remaining, starting "Rule 51.217" is all that
16 remains. All of those other rules were vacated by the
17 Eighth Circuit.

18 And then on Page 52, Line 13, the word
19 "retroactively" should be stricken. The true-up
20 mechanism in Florida was not retroactive.

21 Now, with respect to my Exhibit 3, it refers
22 to many of the FCC's rules.

23 **COMMISSIONER CLARK:** Mr. Varner, that
24 confuses me. They will be trued up; is that right?

25 **WITNESS VARNER:** Right, but not

1 retroactively. I'm just striking the word
2 "retroactively." They will be trued up, but they will
3 not be trued up retroactively to --

4 **COMMISSIONER CLARK:** How do you true
5 something up retroactively?

6 **WITNESS VARNER:** What you would do is you
7 would go back to the date that they actually ordered
8 the service and you would change the rate from that
9 date in the past all the way up to the date that you
10 actually changed it, and you would either bill them
11 more or make refunds.

12 **COMMISSIONER CLARK:** And what you propose to
13 do is just change the rate going forward?

14 **WITNESS VARNER:** That's correct.

15 **COMMISSIONER CLARK:** Okay.

16 **COMMISSIONER GARCIA:** Which exhibit are you
17 on, Mr. Varner?

18 **WITNESS VARNER:** It's Exhibit 3. And the
19 only changes I'm making here are to delete the rules
20 that were vacated by the Eighth Circuit. The first
21 one is on Page 3, and it's the rule that's in
22 parentheses, number 4, "That if so requested by a
23 telecommunications carrier," so forth. That rule was
24 vacated.

25 **Q** (By Mr. Marks) Mr. Varner, you're

1 sponsoring those exhibits. I think they are Exhibits
2 AJV-1 through AJV-12 -- through 7. I'm sorry.

3 A Yes.

4 The next one on is Page 4 and it's C at the
5 bottom. That rule was vacated also.

6 CHAIRMAN JOHNSON: Mr. Varner, where are
7 you?

8 WITNESS VARNER: Page 4 of Exhibit 3.

9 COMMISSIONER KIESLING: Do I understand that
10 that goes over then onto Page 5 so that all of Rule C
11 is --

12 WITNESS VARNER: It's all of C.

13 COMMISSIONER KIESLING: Okay.

14 A (Continuing) Likewise, on Page 22 of
15 Exhibit 3, Rules 51.205 and 51.207 were vacated. And
16 the last one is Page 24, Rule 51.703 is applicable to
17 CMRS providers only. It was vacated with respect to
18 everyone except CMRS providers.

19 COMMISSIONER KIESLING: What exactly --
20 change do you want to make?

21 WITNESS VARNER: That it would be --

22 COMMISSIONER KIESLING: Am I inserting
23 language?

24 WITNESS VARNER: No, you would just have to
25 make a note. The way that the Court did it is they

1 said, "This rule is vacated to the extent and applies
2 to anyone other than CMRS providers."

3 Q (By Mr. Marks) Mr. Varner, does that
4 address your exhibits on direct?

5 A Yes, it does.

6 MR. MARKS: All right. Madam Chair, we
7 would request that his direct testimony be inserted
8 into the record at this point as though read.

9 CHAIRMAN JOHNSON: It will be so inserted.

10 MR. MARKS: We would also request that his
11 exhibits be marked appropriately.

12 CHAIRMAN JOHNSON: Okay. Would you like
13 them marked as a composite exhibit?

14 MR. MARKS: Yes, that will be fine.
15 Composite exhibit, I guess it would be 4, 3 or 4.

16 CHAIRMAN JOHNSON: It's Exhibit Number 3.

17 MR. MARKS: 3?

18 CHAIRMAN JOHNSON: Uh-huh.

19 COMMISSIONER KIESLING: And just so that I'm
20 clear, that is AJV-1 through 3.

21 MR. MARKS: Through 7.

22 COMMISSIONER KIESLING: Attached to -- all
23 of that that's attached to his direct?

24 MR. MARKS: That's correct.

25 Q (By Mr. Marks) Mr. Varner --

1 **A** I'm sorry.

2 **Q** Through 3, AJV-1 through 3 are attached to
3 your direct?

4 **CHAIRMAN JOHNSON:** Say that again, because
5 I'm not --

6 **MR. MARKS:** AJV-1 through 3 will be marked
7 as Exhibit 3, Composite Exhibit 3.

8 **CHAIRMAN JOHNSON:** We'll mark that as a
9 composite exhibit, AJV-1 through 3.

10 (Exhibit 3 marked for identification.)

11 **Q** **(By Mr. Marks)** Mr. Varner, did you also
12 prefile rebuttal testimony in this matter?

13 **A** Yes.

14 **Q** Consisting of 95 pages?

15 **A** Yes.

16 **Q** Do you have any corrections or additions to
17 that testimony?

18 **A** There is one correction in that testimony
19 and it's on Page 87.

20 **Q** What was that page again?

21 **A** 87, on Line 21. The word "combination"
22 should be "provision".

23 **Q** Were there exhibits attached to your
24 rebuttal testimony?

25 **A** Yes, there were.

1 Q Are those exhibits AJV-4 through 7?

2 A Yes, they are.

3 Q Are there any corrections to those exhibits?

4 A No, there are not.

5 MR. MARKS: Madam Chairman, we would request
6 that his reuttal testimony be inserted into the record
7 at this point as though read.

8 CHAIRMAN JOHNSON: It will be so inserted.

9 MR. MARKS: And that his exhibits be marked
10 -- rebuttal exhibits be marked as Composite Exhibit 4.

11 CHAIRMAN JOHNSON: It will be marked as
12 Composite Exhibit 4, short titled, Composite, AJV-4
13 through 7.

14 (Exhibit 4 marked for identification.)

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1 **BELLSOUTH TELECOMMUNICATIONS, INC.**
2 **DIRECT TESTIMONY OF ALPHONSO J. VARNER**
3 **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**
4 **DOCKET NO. 960786**
5 **July 7, 1997**

6
7 Q. PLEASE STATE YOUR NAME, ADDRESS AND POSITION WITH
8 BELLSOUTH TELECOMMUNICATIONS, INC.

9
10 A. My name is Alphonso J. Varner. I am employed by BellSouth as Senior
11 Director for Regulatory for the nine state BellSouth region. My business
12 address is 675 West Peachtree Street, Atlanta, Georgia 30375.

13
14 Q. PLEASE GIVE A BRIEF DESCRIPTION OF YOUR BACKGROUND AND
15 EXPERIENCE.

16
17 A. I graduated from Florida State University in 1972 with a Bachelor of
18 Engineering Science degree in systems design engineering. I immediately
19 joined Southern Bell in the division of revenues organization with the
20 responsibility for preparation of all Florida investment separations studies
21 for division of revenues and for reviewing interstate settlements.

22
23 Subsequently, I accepted an assignment in the rates and tariffs
24 organization with responsibilities for administering selected rates and tariffs
25 including preparation of tariff filings. In January 1994, I was appointed

1 Senior Director of Pricing for the nine state region. I became a Senior
2 Director of Regulatory in August 1994.

3

4 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

5

6 A. The purpose of my testimony is to provide information which will assist the
7 Florida Public Service Commission (hereinafter referred to as "the
8 Commission") in fulfilling its consultative role under Section 271 of the
9 Telecommunications Act of 1996 (the "Act"). My testimony will : 1) provide
10 an overview of the requirements BellSouth must fulfill to achieve in-region
11 interLATA relief; 2) provide data to demonstrate BellSouth's compliance
12 with Section 271(c)(1)(A) and/or Section 271(c)(1)(B); 3) explain why this
13 Commission's proceeding for interLATA entry is timely; 4) discuss the
14 basis for the BellSouth Statement of Generally Available Terms
15 ("Statement") pursuant Section 252(f); and 5) define the obligations of
16 BellSouth to comply with the 14-point checklist as required under Section
17 271(c)(2)(B).

18

19 Q. WHAT IS THE GOAL OF THE TELECOMMUNICATIONS ACT OF 1996
20 AND SECTION 271 IN PARTICULAR?

21

22 A. The goal of the Act is to promote the development of competition across all
23 telecommunications markets. BellSouth is aggressively moving forward to
24 open the local exchange to competition on both a facilities-based and
25 resale basis through negotiated and/or arbitrated agreements with

1 competitors. In furtherance of this goal, Section 271 of the Act establishes
2 the criteria that the Bell Operating Companies (BOCs) must meet in order
3 to enter the in-region interLATA services market as defined in the Act.
4 Section 271 also outlines the roles the Federal Communications
5 Commission ("FCC"), the state commissions and the Department of
6 Justice ("DOJ") play in the process created by Congress by which BOCs
7 gain authority to enter the interLATA long distance market.

8

9 Q. WHAT DO YOU VIEW AS THE GOALS OF THIS PROCEEDING?

10

11 A. First, BellSouth is filing with this Commission a draft Statement and will file
12 an actual Statement in the near future pursuant to Section 252 of the Act.
13 Under Section 252(f)(3), this Commission will then have 60 days to review
14 the Statement after BellSouth's submission. BellSouth is asking that this
15 Commission find that the Statement complies with the competitive
16 checklist found in Section 271(c)(2)(B). BellSouth also believes that this
17 Commission's Orders in the AT&T and MCI arbitrations include provisions
18 that have resulted in agreements that comply with the checklist. In
19 addition, BellSouth has entered into over 55 local interconnection
20 agreements in Florida and over 150 local interconnection agreements
21 region-wide that provide items required by the checklist.

22

23 It is also important for the Commission to assess the current market
24 conditions existing in Florida. This assessment will assist this Commission
25 in consulting with the FCC as to whether BellSouth has met the

1 requirements of Section 271(c)(1)(A) ("Track A") or Section 271(c)(1)(B)
2 ("Track B").

3

4 Q. WILL BELLSOUTH AUTOMATICALLY RECEIVE IN-REGION INTERLATA
5 RELIEF UPON THIS COMMISSION'S RULING THAT IT IS NOW IN
6 COMPLIANCE WITH THE CHECKLIST?

7

8 A. No. The determination of whether BellSouth should be authorized in-
9 region interLATA relief will be made by the FCC. BellSouth must make its
10 application to the FCC for authorization to provide in-region interLATA
11 services. The FCC must grant this permission once it determines that the
12 requirements of Section 271(d) of the Act have been met.

13

14 Q. SHOULD THE COMMISSION CONTINUE WITH THIS PROCEEDING IN
15 LIGHT OF THE FCC'S RULING ON THE SOUTHWESTERN BELL (SBC)
16 OKLAHOMA APPLICATION? [ISSUES 1A and 1B]

17

18 A. Yes. First, BellSouth does not agree that the FCC has properly interpreted
19 the Act in its SBC decision. The FCC's decision establishes a "Black Hole"
20 between the Track A and Track B provisions of the Act. BellSouth does
21 not believe that Congress ever intended for the FCC to create a situation
22 where our competitors could effectively decide when customers can enjoy
23 the benefits of competition in the long distance market through in-region
24 BOC entry.

25

1 Regardless of the FCC's actions on the SBC petition, this proceeding is
2 still important for the following reasons. First, approval of the Statement,
3 independent of Section 271 concerns, will allow any new Alternative Local
4 Exchange Company ("ALEC"), particularly smaller ALECs who have found
5 the negotiation/arbitration process too costly to pursue, to compete without
6 negotiating/arbitrating separate agreements. Second, the Statement may
7 be used to demonstrate checklist compliance under either Track A or
8 Track B. This proceeding is necessary to allow this Commission to
9 respond to the FCC within the 20 days as specified in the FCC's
10 procedural requirements. Further, under Track A, if an agreement with a
11 competitor does not address a particular checklist item, a Statement may
12 be used to supplement the agreement and show checklist compliance.
13 Finally, under Track B, the Statement itself supplies all the elements of the
14 checklist and is required by statute.

15

16 Additionally, Track A/Track B is a federal, not a state issue. The Act
17 requires the FCC to consult with this Commission concerning compliance
18 with Track A/Track B provisions and the competitive checklist. This
19 Commission's role is consultative -- the approval decision is the FCC's.
20 The Act makes it clear that the BOC has the ability to file under either
21 Track A or Track B depending upon the facts in existence. BellSouth's
22 position from the outset has been that it is ultimately the role of the FCC to
23 make a determination as to whether the requirements of Section 271 have
24 been met. Since the FCC's decision is limited to an evaluation of Track A
25 versus Track B based on conditions in Oklahoma at the time of SBC's

1 filing, nothing in that FCC decision changes the need to go forward with
2 this proceeding.

3

4 Q. WHY SHOULD THE COMMISSION ACT NOW IN MAKING ITS
5 DETERMINATION THAT BELLSOUTH IS IN COMPLIANCE WITH THE
6 14-POINT CHECKLIST? [ISSUES 1A and 1B]

7

8 A. There are several reasons why it is important for this Commission to act
9 now. First of all, a positive response from this Commission will hasten the
10 day when consumers in Florida will see the benefits of increased long
11 distance competition. Also, positive action on BellSouth's requests will
12 likely accelerate the development of local competition in Florida.

13

14 Once BellSouth files for interLATA entry with the FCC, this Commission
15 will have 20 days to tell the FCC whether BellSouth has complied with the
16 checklist. To meet this 20 day deadline, Chairman Hundt of the FCC, in a
17 speech on February 25, 1997 before the National Association of
18 Regulatory Utility Commissioners (NARUC), stressed "the importance of
19 states completing their analysis of Bell Operating Company's compliance
20 with the Section 271 requirements prior to the date that the company files
21 its application with the FCC." One result of this docket will be to position
22 this Commission to provide the FCC with a record to support the
23 Commission's recommendations concurrent with BellSouth's filing with the
24 FCC. Acting promptly will greatly enhance this Commission's ability to
25 fulfill its pivotal role in the interLATA entry process. BellSouth firmly

1 believes that it will meet the checklist requirements upon approval of its
2 Statement. The Statement can be used alone or in conjunction with
3 approved negotiated or arbitrated agreements.

4

5 In the unlikely event this Commission does not agree, it is still important for
6 the Commission to act now. Advising BellSouth of this Commission's
7 views and the reasons for them at the earliest possible time will advance
8 the day when any perceived deficiencies can be remedied. If BellSouth is
9 not made aware of the views of this Commission, whatever they are, until
10 after its application is filed with the FCC, consumers in Florida will be
11 disadvantaged. They will be deprived for a longer period of the benefits
12 from increased interLATA competition that BellSouth can offer. It is vitally
13 important to the consumers in Florida for this Commission to act
14 expeditiously and with specificity.

15

16 Q. WHY SHOULD BELLSOUTH BE PERMITTED TO OFFER INTERLATA
17 SERVICE? [ISSUES 1A and 1B]

18

19 A. Congress has specified the requirements necessary to open local markets.
20 In compliance with these requirements, BellSouth offers all local
21 competitors interconnection on non-discriminatory terms which include the
22 opportunity to exchange traffic with BellSouth, to purchase unbundled
23 elements of BellSouth's local network and to buy retail services at
24 wholesale rates. BellSouth has lived up to its duties under the Act and has
25 satisfied the core preconditions for entry into the interLATA market in

1 Florida -- meeting the 14-point checklist. Specifically, with regard to the
2 checklist, BellSouth asks this Commission to confirm that it has
3 responsibly carried out its duties. Given that BellSouth has met the Act's
4 requirements, there is no doubt that customers will benefit from interLATA
5 entry by BellSouth. There is no sound policy reason to continue to delay
6 customer benefits from such entry.

7

8 I. GENERAL OVERVIEW OF SECTION 271 OF THE ACT

9

10 Q. WHAT IS THE ROLE OF THE FCC WITH REGARD TO OPENING THE
11 INTERLATA MARKET TO ALLOW BOC COMPETITION? [ISSUE 1]

12

13 A. BellSouth must file an application for interLATA relief with the FCC. Under
14 Section 271(d), the FCC shall issue written documentation either
15 approving or denying BellSouth's application within 90 days after receiving
16 the application. Further, the requested authority must meet the separate
17 affiliate requirements of Section 272. Finally, the FCC must determine
18 that the requested authorization is consistent with the public interest.

19

20 Q. WHAT IS REQUIRED OF BELL SOUTH UNDER SECTION 271 FOR
21 INTERLATA ENTRY? [ISSUES 1A, 1B, 2-15, and 17]

22

23 A. In order for the FCC to approve BellSouth's application for in-region
24 interLATA relief, BellSouth must meet certain conditions specified by the
25 Act. Those conditions, defined in Section 271(d)(3), are as follows:

1

2 “(A) the petitioning Bell operating company has met the requirements of
3 subsection (c)(1) and (i) with respect to access and interconnection
4 provided pursuant to subsection (c)(1)(A), has fully implemented the
5 competitive checklist in subsection (c)(2)(B); or (ii) with respect to access
6 and interconnection generally offered pursuant to a statement under
7 subsection (c)(1)(B), such statement offers all of the items included in the
8 competitive checklist in subsection (c)(2)(B);

9

10 (B) the requested authorization will be carried out in accordance with the
11 requirements of Section 272; and

12

13 (C) the requested authorization is consistent with the public interest,
14 convenience and necessity.”

15

16 Finally, Section 271(d) requires a BOC to file an application with the FCC
17 for authorization to provide interLATA services on a state-by-state basis.
18 There are no other requirements that BellSouth must meet to receive
19 interLATA entry.

20

21 Q. WHAT IS REQUIRED UNDER SECTION 271(c)(1)(A) AND SECTION
22 271(c)(1)(B)? [ISSUES 1A and 1B]

23

24 A. These subsections provide two alternative means by which BellSouth can
25 fulfill one of the requirements of Section 271(d)(3). Under both of these

1 provisions, BellSouth must also comply with the requirements of the
2 competitive checklist in Section 271(c)(2).

3

4 In order to satisfy Section 271(c)(1)(A), BellSouth must show that it “has
5 entered into one or more binding agreements that have been approved
6 under Section 252 specifying the terms and conditions under which the
7 Bell operating company is providing access and interconnection to its
8 network facilities for the network facilities of one or more unaffiliated
9 competing providers of telephone exchange service to residential and
10 business subscribers. Such telephone exchange service may be offered
11 by such competing providers either exclusively over their own telephone
12 exchange service facilities or predominantly over their own telephone
13 exchange service facilities in combination with the resale of the
14 telecommunications services of another carrier.” (Track A).

15

16 Section 271(c)(1)(B) allows BellSouth to file an application with the FCC
17 requesting interLATA authority even if no facilities-based competition
18 exists that allows BellSouth to meet the requirements of Section
19 271(c)(1)(A). In this case, a Statement pursuant to Section 252(f) of the
20 Act must be effective. This Statement must be available for competitors to
21 use to compete in the local exchange market. These terms and conditions
22 must encompass the 14-point checklist and be available to anyone wishing
23 to compete in this marketplace. Track B is available to BellSouth whether
24 or not BellSouth has entered into any local interconnection agreements

25

1 with a competitor or if no competitor that meets the requirements of Track
2 A is operational.

3

4 Section 271(c)(1)(A) allows BellSouth to meet the requirements for
5 providing interLATA service in less than 10 months after enactment of the
6 Act if an unaffiliated facilities-based competitor providing service to
7 residential and business customers predominantly over its own facilities is
8 present. In contrast, relief can be granted under Section 271(c)(1)(B) even
9 if no such facilities-based competitor is present within 10 months after
10 enactment. Under subsection (c)(1)(B), BellSouth can provide interLATA
11 services as long as it has opened its local market to competition, even if no
12 actual facilities-based local competition is in place. Clearly, Congress
13 intended to permit interLATA relief once the markets were open to
14 competition and did not require some actual level of competition.

15

16 Q. DOES THE ACT PRECLUDE BELLSOUTH FROM APPLYING FOR
17 INTERLATA RELIEF UNDER EITHER TRACK A OR TRACK B? [ISSUES
18 1A and 1B]

19

20 A. No. BellSouth may file under either track for which the qualifying criteria
21 are met. Under Track A, actual facilities-based competition must be
22 present in the local market. The Joint Explanatory Statement of the
23 Committee of Conference, S. Conf. Rep. No. 104 - 230, at ¹⁴³~~440~~ (1996)
24 ("Conference Report") makes clear that Track A requires an operational
25 facilities-based competitor, noting that "the requirement that the BOC 'is

1 providing access and interconnection' means that the competitor has
2 implemented the agreement and the competitor is operational."
3 (Conference Report on S. 652 at 148.) That the access and
4 interconnection agreement be implemented "is important because it will
5 assist the appropriate State commission in providing its consultation."
6 (Conference Report on S. 652 at 148.) Track A arose from Congress'
7 belief that cable companies would emerge quickly as facilities-based
8 competitors to telephone companies, justifying quicker BOC entry into the
9 long distance market. In addition, some states, such as Florida, had
10 already authorized local competition before the Act became effective.
11
12 Under Section 271(c)(1)(B) "[a] Bell operating company meets the
13 requirements of this subparagraph if, after 10 months after the date of
14 enactment of the Telecommunications Act of 1996, no such provider has
15 requested the access and interconnection described in subparagraph
16 (A)...." The provider described in subparagraph A must be a "competing
17 provider of telephone exchange service...to residential and business
18 subscribers exclusively or predominantly over its own facilities". Thus, the
19 "no such provider" phrase in Subparagraph (B) plainly states that Track B
20 remains open until a facilities-based competitor meeting the definition in
21 Subparagraph 271(c)(1)(A) requests access and interconnection. Unless
22 a facilities-based competitor that meets the requirements of Track A has
23 sought access and interconnection under the Act, Track B is the only route
24 available to BellSouth. BellSouth may file with the FCC under Track B up
25 to three months after it receives a request for access and interconnection

1 from a competitor that meets the requirements of Track A. This provision
2 ensures that competitors cannot block an application for long distance
3 authority by seeking interconnection after BellSouth has started down the
4 Track B route.

5

6 Q. IS THERE ANY LEGISLATIVE SUPPORT FOR BELLSOUTH'S
7 INTERPRETATION OF TRACK A VERSUS TRACK B? [ISSUES 1A and
8 1B]

9

10 A. Yes. Congress's goal was to open the long distance market to competition
11 by keeping one of the routes, Track A or Track B, open for BOCs to seek
12 long distance authority. The Conference Report makes the point that
13 Section 271(c)(1)(B) "is intended to ensure that a BOC is not effectively
14 prevented from seeking entry into the interLATA services market simply
15 because no facilities-based competitor that meets the criteria set out in
16 new section 271(c)(1)(A) has sought to enter the market." Conference
17 Report on S. 652 at 148 (emphasis added). This interpretation is
18 supported by a statement by Representative Tauzin (141 Cong. Rec.
19 H8457, H8458, August 4, 1995) which is attached as Varner Exhibit No. 1.
20 This statement contains seven examples of the application of Track A
21 versus Track B. The statement was made during the debate on House Bill
22 1555 which established the Track A and Track B dichotomy. Sections
23 245(a)(2)(A) and 245(a)(2)(B) of House Bill 1555 became Sections
24 271(c)(1)(A) and 271(c)(1)(B) of the Act respectively. Some excerpts from
25 Representative Tauzin's statement on H8458 are as follows:

1 “Example No. 2: If no competing provider of
2 telephone exchange services, has requested access
3 or interconnection-the criteria in section
4 245(a)(2)(B) has been met.”

5
6 “Example No. 3: If no competing provider of
7 telephone exchange service with its own
8 facilities or predominantly its own has requested
9 access and interconnection-the criteria in
10 section 245(a)(2)(B) has been met.”

11
12 “Example No. 4: If a competing provider of
13 telephone exchange with some facilities which
14 are not predominant has either requested access
15 and interconnection or the RBOC is providing
16 such competitor with access and interconnection-
17 the criteria in section 245(a)(2)(B) has been
18 met because no request has been received from an
19 exclusively or predominantly facilities-based
20 competing provider of telephone exchange service.
21 Subparagraph (b) uses the words “such provider”
22 to refer back to the exclusively or predominantly
23 facilities-based provider described in subparagraph
24 (A).”

25

1 “Example No. 6: If a competing provider of
2 telephone exchange service requests access to serve
3 only business customers-the criteria in section
4 245(a)(2)(B) has been met because no request has
5 come from a competing provider to both residences
6 and businesses.”

7
8 In addition to Representative Tauzin’s explanation, a statement made by
9 Congressman Hastert provides further support. (142 Cong Rec. H1152,
10 February 1, 1996). Congressman Hastert’s statement is as follows:
11 “As a member of the Commerce Committee, I worked on several
12 provisions of this bill, and was the author of section 245(a)(2)(B) of H.R.
13 1555 which deals with the issue of BOC entry into in-region inter-LATA
14 telecommunications service. This provision has become section
15 271(c)(1)(B) in the conference report. Section 271(c)(1)(B) provides that a
16 BOC may petition the FCC for this in-region authority if it has, after 10
17 months from enactment, not received any request for access and
18 interconnection or any request for access and interconnection from a
19 facilities-based competitor that meets the criteria in section 271(c)(1)(A).
20 Section 271(c)(1)(A) calls for an agreement with a carrier to provide this
21 carrier with access and interconnection so that the carrier can provide
22 telephone exchange service to both business and residential subscribers.
23 This carrier must also be facilities based; not affiliated with a BOC; and
24 must be actually providing the telephone exchange service through its own
25 facilities or predominantly its own facilities.” (emphasis added)

1

2 Clearly, Congress intended to keep a route open for BOCs to seek
3 interLATA authority if no competitor is meeting the requirements of Track
4 A.

5

6 The ability to proceed under Track A or Track B is determined by the
7 existence of a qualifying facilities-based competitor. The actual track will
8 have to be determined at the time of the filing of BellSouth's application
9 with the FCC. If a provider meeting the requirements of Track A requests
10 access three months or more before BellSouth files its application,
11 BellSouth must file under Track A. If not, Track B must be followed. Also,
12 if a competitor would otherwise qualify under Track A but does not
13 negotiate in good faith or delays implementation of its agreement, Track B
14 must be followed.

15

16 Q. WHICH TRACK CAN BELLSOUTH FOLLOW AT THIS TIME?

17

18 A. BellSouth meets the requirements of Track A based on the information
19 BellSouth has at this time.

20

21 Q. HAS BELLSOUTH ENTERED INTO ONE OR MORE BINDING
22 AGREEMENTS APPROVED UNDER SECTION 252 WITH
23 UNAFFILIATED COMPETING PROVIDERS OF TELEPHONE
24 EXCHANGE SERVICE? [ISSUE 1A(a)]

25

1 A. Yes. As of May 30, 1997, BellSouth had entered into interconnection
2 agreements with over 55 competitors in the state of Florida. Additionally,
3 several forms of wireless telecommunications service offerings, including
4 those provided over PCS spectrum licenses, also may be considered by
5 the FCC as "competing telephone exchange service" pursuant to Section
6 271. These wireless communications services are currently being
7 provided to both residence and business customers in a number of
8 markets in Florida. BellSouth has signed interconnection agreements with
9 a number of these wireless providers, several of which have been
10 approved by this Commission.

11

12 Q. IS BELLSOUTH PROVIDING ACCESS AND INTERCONNECTION TO
13 ITS NETWORK FACILITIES FOR THE NETWORK FACILITIES OF SUCH
14 COMPETING PROVIDERS WITHIN THE MEANING OF SECTIONS
15 271(c)(1)(A) and 271(c)(1)(B)? [ISSUE 1A(b) and 1B(a)]

16

17 A. Yes. BellSouth is provisioning network elements and network functions to
18 facility-based competitors in Florida. The network elements being provided
19 to such competitors in Florida include 7,612 interconnection trunks, 7
20 switch ports, and 1,085 loops. In addition, there are 7 physical collocation
21 arrangements in progress, 34 virtual collocation arrangements completed
22 and 24 more in progress. BellSouth has 9 poles, ducts and conduits/rights
23 of way license agreements. There are 277 ALEC trunks terminating to
24 BellSouth Directory Assistance, 911 and intercept and operator services,
25 11 verification and inward trunks and 31 ALEC trunks to BellSouth for

1 Operator services. See the testimony of BellSouth's witness Keith Milner
2 for the list of all checklist items BellSouth is currently providing in Florida.

3

4 The Statement provides an additional vehicle to provide those items of the
5 checklist that have not been requested by competing providers thus far.

6 Upon effecting its Statement, BellSouth will have generally offered every
7 item on the 14-point competitive checklist.

8

9 Q. ARE SUCH COMPETING PROVIDERS PROVIDING TELEPHONE
10 EXCHANGE SERVICE TO RESIDENTIAL AND BUSINESS CUSTOMERS
11 EITHER EXCLUSIVELY OVER THEIR OWN TELEPHONE EXCHANGE
12 SERVICE FACILITIES OR PREDOMINANTLY OVER THEIR OWN
13 TELEPHONE EXCHANGE SERVICE FACILITIES? [ISSUE 1A(c) and
14 1B(a)]

15

16 A. Yes. The phrase "exclusively over their own telephone exchange service
17 facilities", means that the competitor is not reselling retail
18 telecommunications services of another carrier to provide local service to
19 its customers. Under Section 271(c)(1)(A) of the Act, a facilities-based
20 competitor may build 100% of its own network or the competitor may
21 purchase certain unbundled network elements from BellSouth and
22 combine them with facilities they have built to provide service to the end
23 user. When a competitor builds its network, the competitor can build
24 every component, lease components from another alternative local
25 exchange company, or lease components from BellSouth. Each of these

1 methods for acquiring facilities would make the competitor facilities-based.
2 A facilities-based competitor does not have to provide service exclusively
3 over its own facilities but can also resell BellSouth's services. The
4 competitor must, however, offer services exclusively or predominantly over
5 its own facilities to meet the requirement of Section 271(c)(1)(A). A pure
6 reseller or competitor providing service largely through resale of
7 BellSouth's exchange service would not qualify as a facilities-based
8 competitor.

9
10 The term "predominantly over their own telephone exchange service
11 facilities", means that a substantial portion of the telephone exchange
12 service that otherwise satisfies Section 271(c)(1)(A) is being provided over
13 the facilities of the competitor. Also, the Conference Board Report
14 accompanying S. 652 (Report 104-458) provides that the "predominance"
15 requirement is to "ensure that a competitor offering service exclusively
16 through the resale of the BOC's telephone exchange service does not
17 qualify, and that an unaffiliated competing provider is present in the
18 market." (Committee Report, p. 148).

19
20 Q. DOES AN UNAFFILIATED COMPETING PROVIDER QUALIFY UNDER
21 THE REQUIREMENTS OF TRACK A IF THE COMPETITOR IS
22 PROVIDING FACILITIES BASED SERVICE TO ONE CATEGORY OF
23 CUSTOMERS AND RESELLING TO THE OTHER CATEGORY? [ISSUE
24 1A(c)]

25

1 A. Yes, if the competing provider is providing facilities-based services to one
2 group of customers and resale to the other group, the provider still
3 qualifies under Track A. The Act requires a competing provider to serve
4 both business and residential customers. That provider must be
5 exclusively or predominantly facilities-based. However, the Act does not
6 require that provider to serve both customer classes over their own
7 facilities. In fact, the Act states that the competitor may be providing
8 service predominantly over its own facilities in combination with resale of
9 BOC services. Thus, the competitor can reach one class of customer
10 wholly through resale provided that the competitor's service as a whole is
11 predominantly facilities-based.

12

13 This view is consistent with Congress' dual objective of increasing the level
14 of competition in both the local and long distance markets. It ensures that
15 at least one facilities-based competitor is offering service to both
16 residential and business customers. Once that condition is met, there is
17 no reason to delay BellSouth's entry simply because that competitor opts
18 to serve one class of customer on a resale basis.

19

20 Q. DOES AN ALEC HAVE TO OFFER SERVICE THROUGHOUT THE
21 EXCHANGE FOR BELL SOUTH TO QUALIFY UNDER TRACK A?
22 [ISSUE 1A(b) & (c)]

23

24 A. No. ALECs must merely be offering service in competition with BellSouth.
25 There are several ALECs providing facilities-based service to business

1 customers in particular buildings in competition with BellSouth's business
2 offerings. Based on our information, at least one ALEC offers service in
3 the Multi-Family Dwelling Unit (MDU) sector of the marketplace. In this
4 case, both the ALEC and BellSouth offer service to customers in this MDU.
5 The ALEC appears to be providing residential service to all of its
6 customers over its own network facilities in competition with BellSouth.

7

8 Q. MUST A SINGLE PROVIDER HAVE TO MEET ALL OF THE CRITERIA
9 UNDER SECTION 271(c)(1)(A) OR CAN A COMBINATION OF
10 PROVIDERS MEET THE REQUIREMENTS IN ORDER TO SATISFY
11 TRACK A? [ISSUE 1A(c)]

12

13 A. A combination of facilities-based providers satisfies the requirements of
14 Track A. The Act does not state it must be a single provider to both
15 residential and business customers. One competitor with a binding
16 agreement may provide facilities-based service to residential customers
17 and another may provide facilities-based service to business customers.
18 The combined offerings of these two ALECs would allow the requirements
19 of Track A to be met.

20

21 Q. ARE ANY OF THE UNAFFILIATED COMPETING PROVIDERS THAT
22 HAVE QUALIFYING AGREEMENTS PROVIDING TELEPHONE
23 EXCHANGE SERVICE TO BUSINESS AND RESIDENCE CUSTOMERS
24 PREDOMINANTLY OVER THEIR OWN TELEPHONE EXCHANGE

25

1 SERVICE FACILITIES OR IN COMBINATION WITH THE RESALE OF
2 TELECOMMUNICATIONS SERVICES? [ISSUE 1A(c)]

3

4 A. Yes. BellSouth believes there are unaffiliated competing providers
5 providing telephone exchange service to residential and business
6 customers predominantly over their own facilities or in combination with
7 resale. From the information currently available to BellSouth,
8 interconnection, network elements and network functions which may be
9 utilized by facility-based providers to service residential and business
10 customers have been provisioned by BellSouth in Florida.

11

12 Eight facility-based ALECs have established between 100 and over 1000
13 local interconnection trunks between their networks and BellSouth's
14 network in Florida as of May 15, 1997. ~~One of these ALECs has received~~
15 ~~ported numbers for substantial numbers of both residential and business~~
16 ~~customers and does not resell any BellSouth services.~~ Purchasing
17 interconnection trunks indicates the competitor is at least planning to
18 provide services to both residential and business customers over its own
19 facilities. Another ALEC has ported hundreds of numbers for business
20 customers and a few residence customers. The low number of residence
21 ported numbers could possibly be representative of a test situation for
22 residence customers. The information available to BellSouth is
23 inconclusive as to whom this competitor is providing these residential
24 ported numbers. In addition to this ALEC, there are three other ALECs

25

1 who have ported a substantial quantity of numbers for business customers
2 and are reselling significant quantities to residential customers.

3

4 Given this set of conditions, BellSouth qualifies for Track A. First, at least
5 one and possibly two ALECs are providing facilities-based service over
6 their own network to both residential and business subscribers. The
7 second qualifying circumstance is that three or four other competitors
8 appear to be providing service to business customers over their own
9 network and reselling to residential customers. Third, the competitors who
10 provided facilities-based service to residence customers can be combined
11 with the ALECs providing facilities-based business service to qualify
12 BellSouth under Track A. BellSouth meets the requirements of Track A
13 since BellSouth has at least one facilities-based provider of residential
14 service in combination with several facilities-based providers serving
15 business customers.

16

17 In addition, PCS providers may also be qualifying carriers under Track A.
18 These providers could provide a fourth means for BellSouth to qualify for
19 interLATA relief under Track A.

20

21 Q, SHOULD PROVIDERS COMPETING WITH BELLSOUTH BE REQUIRED
22 TO PROVIDE TELEPHONE EXCHANGE SERVICE TO MORE THAN
23 ONE RESIDENTIAL SUBSCRIBER AND ONE BUSINESS
24 SUBSCRIBER?

25

1 A. No. Nowhere in the Track A criteria does the Act require that service be
2 provided to more than one residential and one business customer in order
3 to satisfy the Track A requirement.

4

5 Q. IF, BASED ON FURTHER INFORMATION, THIS COMMISSION
6 DETERMINES BELLSOUTH DOES NOT QUALIFY UNDER TRACK A,
7 CAN BELLSOUTH QUALIFY UNDER TRACK B? [ISSUE 1B]

8

9 A. Yes. If BellSouth does not qualify under Track A, then Track B becomes
10 open to BellSouth. Congress intended after 10 months that one of the two
11 tracks be available to BellSouth upon compliance with the checklist.

12

13 Q. DOES SECTION 271 ALLOW ADDITIONS TO THE CHECKLIST PRIOR
14 TO GRANTING IN-REGION INTERLATA RELIEF? [ISSUES 2-15]

15

16 A. No. Section 271(d)(4) states that the FCC may not limit or expand the
17 terms set forth in the competitive checklist. The 14-point checklist is the
18 mechanism by which Congress ensured that Bell companies will have
19 opened their local market to competitors by the time they provide in-region
20 interLATA services.

21

22 Q. WHAT IS THIS COMMISSION'S ROLE WITH REGARD TO
23 BELLSOUTH'S ENTRY INTO THE IN-REGION INTERLATA MARKET?

24

25

1 A. The Commission has played an active role in arbitration proceedings, has
2 the best view of the issues associated with promoting telecommunications
3 competition in this state, and plays a critical role in implementing the Act.
4 When BellSouth files its application for in-region interLATA relief, the FCC
5 must consult this Commission to verify that BellSouth has complied with
6 Section 271(c). This verification must be made before the FCC can make
7 any determination on BellSouth's application. In this proceeding, this
8 Commission is examining all of the issues necessary to make this
9 verification. BellSouth is filing its draft Statement and will be filing its actual
10 Statement soon. This Commission will determine whether that Statement
11 meets the checklist. Further, BellSouth also believes interconnection
12 agreements already approved by this Commission meet the requirements
13 of the checklist. Once BellSouth has proven its compliance with the
14 checklist, the local exchange is irreversibly open to competitors wishing to
15 enter this market.

16

17 Q. WHAT INFORMATION SHOULD THIS COMMISSION PROVIDE TO
18 ENABLE THE FCC TO DETERMINE IF BELLSOUTH SHOULD BE
19 ALLOWED ENTRY INTO THE IN-REGION INTERLATA MARKET?
20 [ISSUES 1A and 1B]

21

22 A. Although the Commission does not need any specific data on local
23 competition to determine if BellSouth is compliant with the checklist, this
24 Commission will need to provide factual input to enable the FCC to make
25 the decision of whether BellSouth has met the criteria of Track A or Track

1 B. The Commission will be in the best position to advise the FCC of the
2 relevant facts on this question because it involves the state of competition
3 in Florida. This type of factual input would likely include answers to
4 questions such as:

5

6 1. When BellSouth filed its application for in-region interLATA
7 authority, was one or more unaffiliated competing providers offering
8 telephone exchange service as defined in Section 3 (47) of the Act, but
9 excluding exchange access, operating in BellSouth's territory in
10 Florida?

11

12 2. Was this unaffiliated provider(s) providing such telephone exchange
13 service to residential and/or business customers in Florida?

14

15 3. Was this unaffiliated provider(s) providing such telephone exchange
16 service exclusively over its own facilities in Florida?

17

18 4. Was this unaffiliated provider(s) providing such telephone exchange
19 service in Florida predominantly over its own facilities in combination
20 with the resale of telecommunications from another carrier?

21

22 5. When BellSouth filed its application, was it providing access and
23 interconnection to its facilities in Florida for the network facilities of a
24 provider who meets all of the criteria listed in Questions 1 - 4?

25

1 6. At least 3 months prior to the date that BellSouth filed its application,
2 had an unaffiliated provider who meets all of the criteria of Questions 1
3 through 4 requested BellSouth to provide access and interconnection
4 to its facilities in Florida?

5

6 7. Has the provider or providers identified in response to question 6
7 been negotiating in good faith?

8

9 8. Has the provider or providers identified in response to question 6
10 delayed implementation of its agreement approved pursuant to Section
11 252?

12

13 In addition, the Commission may also want to develop a record concerning
14 whether requests from facilities-based competitors are qualifying requests
15 under the FCC's recent order concerning SBC's 271 application. To fulfill
16 its role in the process required for BellSouth to gain interLATA authority,
17 this Commission has already begun to gather information through surveys,
18 data requests and other reasonable means to answer the types of
19 questions listed above. With respect to the market as it exists currently,
20 the Commission should continue to gather this information from
21 competitors and potential competitors that are certificated to provide local
22 service in Florida. Additionally, the Commission should establish a
23 process to ensure that carriers inform the Commission of any relevant
24 changes that occur.

25

1 To carry out its consultative role on Track B, this Commission will also
2 need information concerning ALECs' efforts to implement their
3 agreements. If ALECs are delaying implementation of agreements,
4 BellSouth may qualify under Track B even if market conditions would
5 otherwise dictate an application under Track A. This Commission will be in
6 the best position to assess this situation.

7

8 This data gathering process is imperative because most of the information
9 that the Commission needs on this subject is possessed by the
10 competitors and not by BellSouth. For example, BellSouth cannot fully
11 answer questions about the type of customers served by competitors or
12 the manner in which their customers are served. Also, it will be critical for
13 this Commission to require factual documentation to enable it to verify the
14 new entrant's answers to the Commission's questions. This
15 documentation will be necessary to ensure that questions were interpreted
16 correctly.

17

18 Q. ARE THERE ANY OTHER EVENTS THAT OCCUR UNDER SECTION
19 271 UPON BELLSOUTH'S ENTRY INTO THE INTERLATA BUSINESS?
20 [ISSUE 16]

21

22 A. Yes. As required under Section 271(e)(1), until BellSouth is authorized to
23 provide in-region interLATA service within a state or until 36 months after
24 enactment of the Act, whichever comes first, certain telecommunications
25 carriers may not jointly market resold exchange service obtained from

1 BellSouth with interLATA services. Once BellSouth receives in-region
2 interLATA authority, this joint marketing restriction on large interexchange
3 carriers is eliminated. In addition, after BellSouth receives a grant of in-
4 region interLATA authority, Section 271(e)(2) requires BellSouth to provide
5 intraLATA toll dialing parity throughout the BellSouth territory coincident
6 with its exercise of interLATA authority. On February 13, 1995 in Docket
7 No. 930330-TP, the Florida Commission ordered BellSouth to provide 1+
8 intraLATA presubscription by the end of 1997. BellSouth has been
9 providing 1+ intraLATA toll presubscription in all of its end offices since the
10 end of March 1997.

11

12

13 II. LOCAL MARKETS ARE OPEN AND BELLSOUTH'S REQUEST FOR
14 INTERLATA ENTRY IS TIMELY

15

16 Q. DOES SECTION 271 REQUIRE A CERTAIN LEVEL OF COMPETITION
17 WITHIN THE LOCAL EXCHANGE PRIOR TO BOC ENTRY INTO THE
18 INTERLATA MARKET? [ISSUE 1A]

19

20 A. No. Section 271(c) requires that a BOC open its local markets to
21 competition. This opening can be achieved by entering into an approved
22 agreement with an operational facilities-based competitor as defined in
23 Section 271(c)(1)(A). In addition, the market can be opened by generally
24 offering a statement of terms and conditions for access and
25 interconnection that has been approved or permitted to take effect by the

1 relevant state commission. Both approaches reject the notion that
2 anything other than the creation of a market that is open to competition is
3 the appropriate measure of whether a BOC should be allowed to enter the
4 interLATA services market. By adopting Section 271(c)(1)(B), Congress
5 judged that BOC entry into interLATA service should be permitted even if
6 no competitor was present in a particular state, as long as that state's
7 market was open to competition.

8
9 As pointed out by Representative Bryant, "the Bell companies could enter
10 long distance without facing real local competition." (Cong. Rec. H8452,
11 August 4, 1995). In making this statement, Representative Bryant was
12 *objecting to the changes made to the bill to remove threshold requirements*
13 *for local competition prior to the Bell companies' entry into the long*
14 *distance market. It is very clear from his objections that no competitive*
15 *threshold was included in the Act.*

16
17 Section 271 does not require any quantification of competition in the local
18 market and provides no invitation to import any other additional measure of
19 competition into Section 271 in order for a BOC to enter the interLATA
20 services market. Importing any such measurement into Section 271 would
21 clearly be contrary to the intent of Congress and its judgment that open
22 markets be the appropriate gauge of competition as evidenced by the two
23 approaches created in Section 271(c)(1). This view is further supported by
24 Congress' explicit prohibition against adding to "the terms used in the
25 competitive checklist set forth in subsection (c)(2)(B)" in Section 271(d)(4).

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This view is also supported by Section 271's legislative history. For example, Congressman Bunn attempted to introduce an amendment that would require a ten percent threshold level of competition before in-region entry could be achieved. This minimum threshold level was defeated. Senator Kerrey also introduced an amendment to the Act that would have changed Section 271(c)(1) to say that "a Bell operating company may provide interLATA services in accordance with this Section only if that company has reached interconnection agreements under Section 251 with ... telecommunications carriers capable of providing a substantial number of business and residential customers with service". 141 Cong. Rec. S8310, S8319 (June 14, 1995)(emphasis added). A copy of the pertinent pages are attached to this testimony as Varner Exhibit No. 2. Although Senator Kerrey's proposed amendment only required the capability to serve a *substantial number of customers*, and did not attempt to create a requirement that any particular number or percentage of customers be served, the amendment was rejected. In the ensuing debate, Senators on both sides of this issue were explicit about their understanding that the Act would, absent Senator Kerrey's amendment, allow interLATA entry even if the qualifying local interconnection agreement was with a small company initially capturing only a few subscribers. *Id.* at S8319-8321. As the successful opponents of that amendment made clear, the Act "does not look at [a competitor's] size as being determinative of whether or not the Bell company could... provide service in the interLATA area." *Id.* at S8321. Thus, it is clear that Congress debated and explicitly decided to exclude a

1 specific level of local competition as being a requirement for interLATA
2 entry. Congress believed the requirements to comply with the 14-point
3 competitive checklist to prove the local market is open to competition and
4 Section 271(d)(3) of the Act struck an appropriate balance between
5 opening local markets and the BOCs being granted interLATA relief.

6

7 Q. WHY DOES BELLSOUTH BELIEVE IT WAS NOT THE INTENT OF
8 CONGRESS THAT LOCAL COMPETITION BE FULLY DEVELOPED
9 PRIOR TO BOC ENTRY INTO LONG DISTANCE? [ISSUE 1B]

10

11 A. Congress wanted competition in all telecommunications markets in order
12 to bring consumers the benefits of full competition. Section 271 ensures
13 that opening the BOCs' local markets will not only allow competition in
14 local services, but will also enhance competition in the long distance
15 business through BOC entry. Sections 271 and 272 establish stringent
16 safeguards evidencing Congress' desire to open the long distance market
17 without full local competition. This section was not established to give
18 incumbent interexchange carriers (IXCs) ways of postponing competition
19 from BOCs, but to allow a BOC to secure interLATA authority as soon as it
20 opened the local exchange to competition.

21

22 In addition, Congress recognized that competitive providers could attempt
23 to thwart BellSouth's entry into the long distance market. Congress
24 expressly did not want the ALECs to impede BellSouth's ability to obtain
25 interLATA authority beyond the 10 months stated in Section 271(c)(1)(B)

1 of the Act. Congress did not allow a competitor to prevent a BOC from
2 filing under Track B because the competitor requested access and
3 interconnection without making the pro-competitive investment in local
4 facilities that Congress thought necessary under Track A. If this was
5 permitted, a competitor could foreclose the BOC's entry into the interLATA
6 market by simply requesting access and interconnection and then limiting
7 or delaying facilities investments to only residential or business customers.

8

9 Q. DOES BELLSOUTH BELIEVE A THRESHOLD LEVEL OF LOCAL
10 COMPETITION SHOULD BE ESTABLISHED PRIOR TO BEING
11 ALLOWED ENTRY INTO THE INTERLATA MARKET? [ISSUES 1A and
12 1B]

13

14 A. No. As discussed above, BellSouth does not believe the level of local
15 competition should be a consideration. The Act clearly outlines the
16 guidelines required for a BOC to be allowed entry into the long distance
17 market. The Act only requires BellSouth to allow competitors access to
18 and interconnection with the local exchange by entering into
19 interconnection agreements and meeting the 14-point checklist. Nowhere
20 in Section 271 does the Act require a certain level of competition be met
21 prior to interLATA relief.

22

23 Congress realized that it takes time to build up competition once a market
24 is open to competitors. That is one reason Congress included a provision
25 in the Act that BellSouth could apply for in-region interLATA relief under

1 Section 271(c)(1)(B) even if it has no competitors at all. Clearly, the level
2 of local competition is not an issue that should impact BellSouth's entry
3 into the long distance market.

4
5 The intent of the Act is for all markets to be open to competition. Public
6 policy would best be served by having full competition in all markets. Once
7 local markets are open to competition, the necessary conditions for all
8 parties to compete are available. New entrants must determine how
9 quickly they will enter the local market. *Delaying BellSouth's entry into the*
10 *long distance market does not enhance the level of competition in the local*
11 *market; instead, it only lessens the benefits yet to be fully realized by*
12 *consumers in the long distance market in Florida.*

13

14 Q. DOES BELLSOUTH AGREE THAT COMPETITION IN THE LOCAL
15 TELECOMMUNICATIONS MARKET IS BENEFICIAL FOR FLORIDA
16 CUSTOMERS? [ISSUES 1A and 1B]

17

18 A. Yes. BellSouth believes that competition for local exchange services is
19 beneficial if implemented in a competitively neutral manner, devoid of
20 artificial incentives and/or regulatory rules that advantage or disadvantage
21 a particular provider or a group of providers. Competition properly
22 implemented can provide business and residence customers with real
23 choices from numerous telecommunications providers. Properly
24 implemented, competition will allow efficient competitors to attract
25 *customers and be successful in a competitive marketplace where*

1 regulatory oversight is minimized. BellSouth believes that this is the
2 environment that the Act intended to create. It is this view of competition
3 that BellSouth has used as the basis of negotiations with prospective
4 providers of local exchange service, and it is this view that BellSouth
5 believes Congress embraced with its emphasis on negotiated agreements.

6
7 BellSouth has strong financial incentives to comply with all provisions of
8 the Act. Congress has mandated that incumbent local exchange
9 companies must open their markets to competition, unless specifically
10 exempted. BellSouth is complying with the directives of the Act by
11 entering into numerous interconnection agreements with other providers.
12 In addition, Congress tied the ability of BellSouth and the other BOCs to
13 enter and continue to participate in the interLATA services market to
14 compliance with the "competitive checklist" contained in the Act. Congress
15 also restricted the ability of competitors to thwart that entry by defining
16 entry requirements in detail and prohibiting expansions of those
17 requirements. BellSouth has every intention of meeting the checklist in
18 order to provide a full array of telecommunications services to its
19 customers.

20

21 Q. HAVE BARRIERS TO ENTRY INTO THE LOCAL MARKET BEEN
22 REMOVED? [ISSUES 1A and 1B]

23

24 A. Yes. Congress has removed legal barriers to the local market. The core
25 rationale often cited for prohibiting Bell companies from providing

1 interLATA services is that so long as the local exchange market was
2 legally closed to competitive entry, the BOC could give affiliated
3 interexchange providers an advantage by raising the cost or lowering the
4 quality of the local services provided to its competitors. The Act ensures
5 that BellSouth cannot apply for in-region interLATA relief until facilities-
6 based competition is possible within the local exchange. The first step
7 was eliminating all legal barriers to local competition by compliance with
8 Section 253(a), which preempts any state or local statute or regulation that
9 "prohibit[s] ...the ability of an entity to provide an interstate or intrastate
10 telecommunications service."

11

12 Having addressed legal barriers to entry, Congress then took steps to
13 eliminate economic and operational barriers through the requirements of
14 Sections 251, 252, and 271(c)(2)(B) which specify, for example, criteria for
15 interconnection, unbundling and resale. Competitors can enter the local
16 market of BellSouth as pure resellers of BellSouth's services without
17 making network investments to provide local services. Or, to take
18 advantage of new technologies, specialized expertise or other efficiencies,
19 competitors can self-provide some network elements or services and use
20 BellSouth's facilities or services as they need. Various opportunities to
21 provide local competition are available; it is up to competitive
22 telecommunications providers to seize these opportunities.

23

24 In any event, BellSouth has opened the local exchange market in Florida.
25 BellSouth has successfully negotiated agreements with competing local

1 exchange providers. The Commission has participated in arbitrations with
2 AT&T, MCI, Sprint and MFS and has issued its orders regarding these
3 arbitrations. In addition to the negotiated and arbitrated agreements,
4 BellSouth is also planning to formally file its Statement with this
5 Commission in the near future. An informal or draft Statement is included
6 with Mr. Scheye's testimony.

7

8 III. STATEMENT OF GENERALLY AVAILABLE TERMS [ISSUE 1B(b)]

9

10 Q. WHAT EXACTLY IS THE STATEMENT OF GENERALLY AVAILABLE
11 TERMS?

12

13 A. Section 252(f) of the Act permits a Bell operating company to file with the
14 Commission a Statement of Terms and Conditions that the company
15 generally offers within the state to comply with the requirements of Section
16 251. After the Statement is filed, the Commission will have 60 days to
17 review and approve the Statement or permit the Statement to take effect.
18 The Statement that BellSouth plans to file with this Commission will be
19 checklist compliant as required in Section 271(c)(2)(B). Once the
20 Statement is approved, any competitor that wishes to enter the local
21 market can do so without negotiating a specific contract.

22

23 Q. WILL BELL SOUTH GENERALLY OFFER ALL ITEMS IN THE
24 COMPETITIVE CHECKLIST? [ISSUE 1B(b)]

25

1 A. Yes. Upon approval of the Statement, BellSouth will be generally offering
2 all of the items in the competitive checklist through that Statement that will
3 be pending approval before this Commission.

4

5 Q. WHY IS BELLSOUTH FILING THIS STATEMENT? [ISSUE 1B(b)]

6

7 A. The Statement is one method of generally offering all of the items on the
8 checklist. BellSouth is making this filing to provide a set of terms and
9 conditions from which any competitor wishing to provide local exchange
10 service in the state of Florida can order.

11

12 Once approved by this Commission, the Statement provides the proper
13 vehicle for other carriers to use, if they so desire, to enter the local market
14 quickly without having to negotiate an agreement. The Statement provides
15 a vehicle that ensures fair and equal interconnection to all competitors
16 within the same guidelines. Based on BellSouth's recent experiences with
17 negotiating contracts and participating in the arbitrations in Florida,
18 BellSouth has developed this Statement to provide the interconnection
19 features and options that ALECs appear to need to provide service in the
20 local market. The Statement may be particularly useful for smaller carriers
21 who wish to do business with BellSouth without becoming involved in
22 formal negotiations.

23

24 Of course, BellSouth will continue to negotiate agreements with any
25 competitor who chooses to enter an interconnection agreement with

1 BellSouth. The Statement in no way supplants any previously negotiated
2 agreements or restricts a carrier's right to negotiate. The Statement also
3 does not duplicate any particular negotiated or arbitrated agreement. If a
4 competitor desires, it can also still accept the contract of another carrier
5 rather than terms in the Statement in order to provide service.

6

7 IV. COMPLIANCE WITH 14-POINT CHECKLIST [ISSUES 1B(b), 2-15]

8

9 Q. CAN BELLSOUTH COMPLY WITH THE 14-POINT CHECKLIST?

10 [ISSUES 1C, 2-15]

11

12 A. Yes. BellSouth can comply with the requirements of the checklist through
13 its agreements and/or Statement. As covered in my overview, BellSouth
14 will or has satisfied the checklist through its negotiated and arbitrated
15 agreements approved by this Commission. In addition, BellSouth will,
16 upon Commission approval, offer its Statement in compliance with all 14
17 points. This Statement will be available to any competitor desiring to enter
18 the local exchange market.

19

20 Q. WILL THE AGREEMENTS RESULTING FROM THE RECENT
21 ARBITRATIONS COMPLY WITH THE 14-POINT CHECKLIST? [ISSUES
22 1C & 17]

23

24 A. Yes. BellSouth believes that the agreements resulting from the AT&T and
25 MCI arbitrations comply with the 14-point checklist. The arbitrated issues

1 must comply with the provisions of Sections 251 and 252 of the Act.
2 Under the arbitrations, BellSouth addressed the checklist items and the
3 Commission issued its orders accordingly. The agreements that resulted
4 from these decisions are checklist compliant.

5

6 Q. CAN BELLSOUTH MEET THE CHECKLIST USING ITS AGREEMENTS
7 AND THE STATEMENT? [ISSUE 17]

8

9 A. Yes. There are several ways that BellSouth can be in compliance with the
10 requirements of the checklist. BellSouth can enter into a single agreement
11 with a new entrant who offers local exchange service to both residential
12 and business customers. Alternatively, BellSouth can enter into multiple
13 agreements which collectively cover the 14-point checklist. Upon
14 Commission approval, BellSouth's Statement, which is also checklist
15 compliant, will offer another alternative to competitors. Finally, Section
16 271(d)(3) provides that a combination of the agreements and the
17 Statement could be used to meet the checklist requirements for a filing
18 under Section 271(c)(1)(A).

19

20 Q. WHY IS IT APPROPRIATE TO USE THE STATEMENT TO
21 SUPPLEMENT THE AGREEMENTS WHEN INTERLATA ENTRY IS
22 SOUGHT UNDER TRACK A? [ISSUES 1C & 17]

23

24 A. Qualifying agreements used under Track A may not contain all items on
25 the checklist. The combination of the agreements with the Statement does

1 provide a way for BellSouth to meet the checklist if the qualifying
2 competitor under Track A does not elect to have all of the checklist items
3 included in its agreement. For capabilities that new entrants are not using,
4 BellSouth must offer the item in its Statement and demonstrate readiness
5 to provide the item. This combination prevents the ALECs from requesting
6 some, but not all, of the items on the checklist, therefore, controlling the
7 timing of BellSouth's entry into the in-region interLATA market. As I
8 previously stated, Section 271(d)(3) of the Act permits these combinations
9 of statement and agreements.

10

11 Q. HAS BELLSOUTH FULLY IMPLEMENTED THE ITEMS IN THE
12 CHECKLIST UNDER THE AGREEMENTS? [ISSUES 2-15]

13

14 A. Yes. As discussed previously, BellSouth has fully implemented the items
15 in the checklist under the agreements. The term "fully implemented"
16 means that either the items are actually in service or are in fact functionally
17 available. For items that have actually been requested, BellSouth has
18 provided those items and they are in use. Clearly, those items are fully
19 implemented. For items not yet requested, BellSouth is making them
20 available through its Statement. BellSouth will provide every item on the
21 checklist when requested in a reasonable period of time in accordance
22 with applicable rules and regulations. Upon effecting the Statement,
23 BellSouth will have fully implemented each checklist item.

24

25

1 Q. TO WHAT EXTENT MUST EACH OF THE ITEMS IN THE CHECKLIST
2 BE IN USE TO PERMIT A GRANT OF INTERLATA RELIEF UNDER
3 TRACK B? [ISSUE 1B(b)]

4

5 A. The checklist items do not have to be in use at all to permit BellSouth
6 interLATA entry under Track B. BellSouth must generally offer each of the
7 items through its Statement. To meet this requirement, BellSouth will offer
8 each item in its Statement. When a competitor requests a checklist item,
9 BellSouth will provide it in accordance with applicable rules and
10 regulations.

11

12 Q. GENERALLY, WHAT ARE THE 14 POINTS ON THE CHECKLIST THAT
13 MUST BE MET BY BELLSOUTH? [ISSUES 2-15]

14

15 A. The 14-point checklist is located in Section 271(c)(2)(B) of the Act. The
16 Commission's role as stated in the Act is to verify BellSouth's compliance
17 with these requirements. Basically, the 14 points are as follows:

18

19 (1) Equal and Non-discriminatory Interconnection

20 (2) Unbundled Network Elements

21 (3) Access to Poles, Ducts, Conduits and Rights of Way

22 (4) Unbundled Local Loops

23 (5) Unbundled Local Transport

24 (6) Unbundled Local Switching

25 (7) a. Access to 911/E911 services

- 1 b. Access to Directory Assistance
- 2 c. Access to Operator Call Completion
- 3 (8) Access to White Page Listings
- 4 (9) Access to Telephone Numbers
- 5 (10) Access to Databases and Network Functionality
- 6 (11) Number Portability
- 7 (12) Dialing Parity
- 8 (13) Reciprocal Compensation Arrangements
- 9 (14) Full Resale of Telecommunications Services

10

11 Q. WHAT ARE THE REQUIREMENTS BELLSOUTH MUST MEET WITH
12 REGARD TO EACH ITEM ON THIS CHECKLIST? [ISSUES 2-15]

13

14 A. Varner Exhibit No. 3 provides details of the requirements that BellSouth
15 must meet to satisfy the checklist items. Section 251(d) of the Act gave
16 the FCC authority to set regulations to implement Section 271(d)(3). The
17 FCC's First and Second Orders in CC Docket No. 96-98 and the FCC's
18 Orders in CC Docket Nos. 95-116 (Order No. 96-286) and 97-74 have set
19 regulations to implement and fulfill the requirements of the Act. This
20 exhibit includes the requirements stated in the Act, the FCC rules and
21 related Florida dockets.

22

23 Q. WHAT ARE THE REQUIREMENTS OF THE FCC'S FIRST ORDER IN CC
24 DOCKET NO. 96-98 WITH REGARD TO EQUAL AND NON-
25 DISCRIMINATORY INTERCONNECTION? [ISSUE 2]

1

2 A. Rule 51.305 requires that an incumbent local exchange carrier ("ILEC"),
3 such as BellSouth, must provide interconnection with its network for the
4 facilities and equipment of any requesting telecommunications carrier.
5 This interconnection is for the transmission and routing of telephone
6 exchange and exchange access at any technically feasible point within the
7 ILEC's network. The points of interconnection within the ILEC's network
8 will include, at a minimum, the line-side of a local switch, the trunk-side of
9 a local switch, the trunk interconnection points for a tandem switch, central
10 office cross-connect points, out-of-band signaling transfer points and
11 access to call-related databases, and the points of access to unbundled
12 network elements. The interconnection to the ILEC's network will be at a
13 level of quality that is equal to that which the ILEC provides itself, a
14 subsidiary, an affiliate or any other party on terms and conditions that are
15 nondiscriminatory in accordance with agreements, requirements of
16 Sections 251 and 252, and the FCC's rules.

17

18 Q. WHAT ARE THE REQUIREMENTS OF THE FCC'S FIRST REPORT AND
19 ORDER IN CC DOCKET NO. 96-98 WITH REGARD TO UNBUNDLED
20 NETWORK ELEMENTS? [ISSUE 3]

21

22 A. Rule 51.311 in the FCC's First Report and Order states that the quality of
23 an unbundled access element, as well as the quality of access to the
24 unbundled element, must be the same for all telecommunications carriers
25 and at least equal, ~~and to the extent that it is technically feasible, superior~~

1 to the quality an ILEC provides itself. Previous successful access to an
2 unbundled element at a particular point and level of quality is evidence that
3 access is technically feasible at that point and level of quality.

4

5 Q. WHAT REGULATIONS ARE INCLUDED IN THE FCC'S FIRST REPORT
6 AND ORDER IN CC DOCKET NO. 96-98 PERTAINING TO CHECKLIST
7 ITEM NO. 3, ACCESS TO POLES, DUCT, CONDUITS AND RIGHTS OF
8 WAY? [ISSUE 4]

9

10 A. Under rule 1.1403, a utility shall provide any carrier with nondiscriminatory
11 access to any pole, duct, conduit, or right-of-way owned or controlled by it.
12 Notwithstanding this obligation, a utility may deny any telecommunications
13 carrier access to its poles, ducts, conduits, or rights-of-way, where there is
14 insufficient capacity or for reasons of safety, reliability and generally
15 applicable engineering purposes.

16

17 Q. WHAT ARE AN ILEC'S OBLIGATIONS UNDER THE FIRST REPORT
18 AND ORDER WITH REGARD TO CHECKLIST ITEM NO. 4 -
19 UNBUNDLED LOOPS, CHECKLIST ITEM NO. 5 - UNBUNDLED LOCAL
20 TRANSPORT, CHECKLIST ITEM NO. 6 - UNBUNDLED LOCAL
21 SWITCHING, CHECKLIST ITEM NO. 7 - ACCESS TO 911/E911
22 SERVICES, DIRECTORY ASSISTANCE, AND OPERATOR CALL
23 COMPLETION, CHECKLIST ITEM NO. 8 - WHITE PAGE LISTINGS AND
24 CHECKLIST ITEM NO. 10 - ACCESS TO DATABASES AND NETWORK
25 FUNCTIONALITY? [ISSUES 5, 6, 7, 8, 9, 11]

1

2 A. With regard to Checklist Item No. 4, Rule 51.319 requires an ILEC to
3 provide nondiscriminatory access to the following network elements on an
4 unbundled basis: local loop, interoffice facilities and switching capability.

5 The local loop network element is defined as a transmission facility
6 between the distribution frame in an ILEC central office and an end user
7 premises.

8

9 Interoffice facilities, Checklist Item No. 5, are defined as ILEC facilities
10 dedicated to a particular customer or carrier, or shared by more than one
11 customer or carrier that provide communications between wire centers or
12 between switches. The ILEC must provide exclusive use of facilities
13 dedicated to a particular customer or carrier, or use of the features,
14 functions and capabilities of facilities shared by more than one customer.
15 In addition, the ILEC must provide all technically feasible facilities,
16 features, functions and capabilities that the telecommunications carrier
17 could use to provide service. Further, the ILEC must permit a carrier to
18 connect such facilities to the requesting carrier's collocation equipment
19 and obtain the functionality provided by the ILEC's digital cross-connect
20 systems in the same manner that the ILEC provides the connection to
21 IXCs.

22

23 The local switching network element in Checklist Item No. 6 is defined as
24 either line-side facilities or trunk-side facilities. Pursuant to the FCC's
25 rules, local switching capability includes all features and functions of the

1 switch including basic switching, telephone number, white page listings
2 and dial tone. All other features, including custom calling, local area
3 signaling service, Centrex, and customized routing functions are also
4 included in local switching.

5

6 For Checklist Item No. 7, access to 911/E911 emergency services, access
7 to directory assistance, and access to operator call completion, the ILEC
8 shall provide nondiscriminatory access to switching capability including
9 customized routing functions. Paragraph 412 of the FCC's Order in CC
10 Docket 96-98 states that "it also includes the same capabilities that are
11 available to the incumbent LEC's customers, such as access to 911,
12 operator services and directory assistance." Footnote 914 in the Order
13 further states "we also note that E911 and operator services are further
14 unbundled from local switching."

15

16 Rule 51.319, as applicable to Item No. 8 - white page listings, states that
17 an ILEC shall provide nondiscriminatory access to the switching capability.
18 The local switching capability network element is defined as the same
19 basic capabilities made available to ILEC's customers, including white
20 page listings.

21

22 With regard to Checklist Item No. 10, access to databases and network
23 functionality, Rule 51.319 requires an ILEC to provide nondiscriminatory
24 access to signaling networks and call-related databases. When a
25 requesting carrier purchases unbundled switching, the ILEC must provide

1 access to its signaling network from that switch in the same manner in
2 which it obtains such access itself. The ILEC will provide a carrier with its
3 own switching facilities access to the ILEC's signaling network for each of
4 the carrier's switches in the same manner that an ILEC connects one of its
5 own switches. For query and database response, an ILEC will provide
6 access to its call-related databases by means of physical access.

7

8 Q. WHICH FCC RULE APPLIES TO CHECKLIST ITEMS NO. 7, ACCESS TO
9 911/E911 SERVICES, DIRECTORY ASSISTANCE, AND OPERATOR
10 CALL COMPLETION AND NO. 9, ACCESS TO TELEPHONE NUMBERS?
11 [ISSUES 8 & 10]

12

13 A. In the FCC's Second Order, Rule 51.217 applies to these checklist items.
14 This rule states that a LEC that provides operator services, directory
15 assistance services or directory listings to its customers or provides
16 telephone numbers, shall permit competing providers to have
17 nondiscriminatory access to that service or feature with no unreasonable
18 dialing delays. In addition, this rule requires a LEC to permit competing
19 providers to have access to telephone numbers that is identical to the
20 access that the LEC provides itself.

21

22 Q. HAS THE FCC ISSUED ANY RULES REGARDING ITEM NO. 11,
23 NUMBER PORTABILITY? [ISSUE 12]

24

25

1 A. Yes. In the First Report and Order and Further Notice of Proposed
2 Rulemaking released July 2, 1996 and the First Memorandum Opinion and
3 Order on Reconsideration released March 11, 1997 in CC Docket No. 95-
4 116, the FCC issued rules related to number portability. Rule 52.7
5 provides for the deployment of transitional measures for number portability.
6 On an interim basis, LECs may use Remote Call Forwarding (RCF) or
7 Flexible Direct Inward Dialing (DID). Rule 52.3 provides for the
8 deployment of long-term database methods for number portability by
9 LECs. Long term number portability must support network services,
10 features and capabilities existing at the time number portability is
11 implemented. It must efficiently use number resources and must not
12 require end users to change their phone numbers. In addition, the service
13 quality and network reliability should be maintained when implemented
14 and when customers switch carriers.

15

16 Q. WHAT ARE THE REQUIREMENTS IN THE FCC'S SECOND ORDER
17 WITH REGARD TO CHECKLIST ITEM NO. 12, DIALING PARITY?
18 [ISSUE 13]

19

20 ~~A. Under Rule 51.205 in the FCC's Second Order, a LEC shall provide local
21 and toll dialing parity to competing providers with no unreasonable dialing
22 delays. Dialing parity shall be provided for all services that require dialing
23 to route a call. Rule 51.207 states that a LEC shall permit telephone
24 exchange service customers within a local calling area to dial the same
25 number of digits to make a local call notwithstanding the identity of the~~

1 ~~customer's or the called party's telecommunications service provider. As~~
2 ~~stated previously~~, Rule 51.217 requires a LEC to permit competing
3 providers to have access to telephone numbers that is identical to the
4 access that the LEC provides itself.

5

6 Q. WHAT ARE THE FCC'S RULES RELATED TO CHECKLIST ITEM NO. 13,
7 RECIPROCAL COMPENSATION ARRANGEMENTS? [ISSUE 14]

8

9 A. In the FCC's First Report and Order, Rule 51.703 applies to reciprocal
10 compensation arrangements. Each LEC shall establish reciprocal
11 compensation arrangements for transport and termination of local traffic
12 with any requesting telecommunications carrier.

13

14 Q. WHAT ARE THE FCC'S RULES RELATED TO CHECKLIST ITEM NO. 14,
15 RESALE OF TELECOMMUNICATIONS SERVICE? [ISSUE 15]

16

17 A. The majority of the rules related to resale have been stayed by the Eighth
18 Circuit Court of Appeals. The rules that have not been stayed include
19 Rules 51.613, 51.615 and 51.617. Rule 51.613 provides for restrictions on
20 resale; Rule 51.615 provides for withdrawal of services; and Rule 51.617
21 provides for the assessment of the end user common line charge on
22 resellers.

23

24 Q. WITH REGARD TO THESE CHECKLIST ITEMS, WHAT IS THE PRICING
25 STANDARD THAT APPLIES? [ISSUES 2-15]

1

2 A. Section 252(d) establishes the pricing standards to be used for
3 interconnection and unbundled elements. Section 252(d)(1) states that
4 "interconnection and network element charges... shall be based on the
5 cost (determined without reference to a rate-of-return or other rate-based
6 proceeding) of providing the interconnection or network element
7 (whichever is applicable), and [be] nondiscriminatory, and may include a
8 reasonable profit." The Act is clear that the rates for these elements
9 should be based on cost and not set equal to cost. The Act does not
10 define the cost standard that should apply; however, the appropriate cost
11 standard should provide for full recovery of BellSouth's costs and may
12 include a reasonable profit.

13

14 Q. DO THE RATES ORDERED BY THE COMMISSION IN ARBITRATIONS
15 MEET THE CRITERIA OF SECTION 252(d)? [ISSUES 2-15]

16

17 A. Yes. According to Section 252(c)(2), "in resolving by arbitration...any open
18 issues and imposing conditions upon the parties to the agreement, a State
19 commission shall--establish any rates for interconnection, services or
20 network element according to subsection (d)...." Subsection (d), as
21 defined above, is the pricing standard which requires rates for
22 interconnection and unbundled network elements to be cost-based.

23

24 In the AT&T and MCI arbitrations, for each unbundled network element
25 that AT&T and MCI requested, the Commission ordered permanent prices

1 to be based on BellSouth's TSLRIC cost studies. Where no TSLRIC was
2 provided, interim rates were based on the Hatfield model or BellSouth's
3 tariffs. While BellSouth does not necessarily agree that the proper cost
4 standard has been applied in all cases, the Commission approved rates
5 that are based on costs consistent with Sections 252(c)(2) and (d)(1).

6

7 Q. WHAT IS THE TRUE-UP MECHANISM ORDERED BY THIS
8 COMMISSION?

9

10 A. BellSouth has filed verifiable cost studies in support of the prices for those
11 unbundled network elements lacking a filed study on March 18, 1997. The
12 differences between the ordered rates and the prices developed pursuant
13 to the cost studies will be trued-up or down ~~retroactively~~. When the cost
14 studies are approved and permanent rates are established, these rates will
15 also be cost-based.

16

17 Q. DOES THE FACT THAT THE COMMISSION ORDERED THE INTERIM
18 RATES TO BE SUBJECT TO TRUE-UP CHANGE THE FACT THAT THE
19 INTERIM RATES ARE COST-BASED? [ISSUES 2-15]

20

21 A. No. The fact that the Commission has ordered the interim rates to be
22 subject to a true-up to reflect new cost studies does not change the
23 Commission's decision approving the interim rates. Section 252(d)
24 requires the rates for interconnection and unbundled network elements to
25 be cost-based but does not specify what methodology this Commission

1 must use. The Commission is certainly free to allow one methodology to
2 establish interim cost-based rates, while ordering a different cost-based
3 methodology to true-up these costs and establish permanent prices.

4

5 Q. OTHER THAN THE REQUIREMENTS OF THE ACT AND THE FCC'S
6 RULES ARE THERE ANY ADDITIONAL REQUIREMENTS THAT
7 BELLSOUTH MUST MEET IN ORDER TO COMPLY WITH THE
8 CHECKLIST?

9

10 A. No. BellSouth does not believe that there are any additional requirements
11 BellSouth must meet to comply with the checklist.

12

13 Q. DOES BELLSOUTH INTEND TO CONTINUE FULFILLING THE
14 REQUIREMENTS OF THE CHECKLIST AFTER BELLSOUTH IS
15 GRANTED INTERLATA AUTHORITY? [ISSUES 2-15]

16

17 A. Yes. BellSouth has every intention of continuing to fulfill the checklist
18 requirements once BellSouth has entered the interLATA market. The
19 approved agreements and the Statement will be under the authority of this
20 Commission. BellSouth is legally bound by the terms and conditions of
21 these agreements. BellSouth has a long history of complying with federal
22 and state laws and regulatory commissions' orders and regulations.
23 BellSouth will continue to comply with the laws established under the Act
24 and the regulations of its federal and state regulators. In addition to legal
25 compliance, if BellSouth discontinued open access to the local market, it

1 could in turn lose its authority to be in the interLATA market. That would
2 be a "no win" situation for all telecommunications providers and
3 consumers.

4

5 To comply with the Act, BellSouth has negotiated and will continue
6 negotiating interconnection agreements. The Commission will have the
7 continued responsibility to arbitrate and approve these agreements. This
8 responsibility gives the Commission continued oversight of BellSouth's
9 interconnection agreements and BellSouth's activities to satisfy the terms
10 of these agreements.

11

12 *When the terms of the existing agreements expire, BellSouth will be in the*
13 *position to renegotiate the terms and conditions under the same*
14 *negotiation and arbitration processes it has just accomplished. This*
15 *Commission has a continuing responsibility to oversee these negotiations*
16 *and settle issues through arbitration. Renegotiations will go much*
17 *smoother if the competitors are satisfied with the service and level of*
18 *interconnection they have received from BellSouth.*

19

20 Furthermore, BellSouth is offering a general Statement that future
21 competitors may choose for interconnection purposes if they do not wish to
22 negotiate. This Statement will continue to be under Commission oversight
23 and any changes in this Statement must be approved by this Commission.

24

25

1 Q. ARE THERE SAFEGUARDS IN PLACE UNDER SECTION 271 OF THE
2 ACT? [ISSUES 2-15]

3

4 A. Yes, Section 271(d)(6) of the Act provides the FCC with the authority to
5 enforce the conditions of the Act. If the FCC determines that BellSouth is
6 not meeting the conditions required for entry into the long distance market,
7 the FCC may "1) issue an order to such company to correct the deficiency;
8 2) impose a penalty on such company... or 3) suspend or revoke such
9 approval."

10

11 Q. DOES THE ACT INCLUDE STRUCTURAL REQUIREMENTS AND NON-
12 DISCRIMINATION SAFEGUARDS FOR THE BOCS ENTERING THE
13 INTERLATA ARENA? [ISSUES 2-15]

14

15 A. Yes. To receive interLATA relief under Section 271 it requires such relief
16 to be exercised in accordance with requirements of Section 272. Section
17 272 of the Act imposes numerous safeguards with regard to BOC entry
18 into long distance for a minimum of three years. Under Section 271, the
19 checklist essentially requires any BOC seeking to provide in-region long
20 distance service to open its local network at many levels at non-
21 discriminatory prices and terms supervised by the state commissions. The
22 FCC must find that BOC entry is in accordance with the safeguards
23 required in Section 272 and is in the public interest. The first obligation
24 under Section 272 is that for at least three years the long distance
25 business is to be conducted by a separate subsidiary that operates

1 independently of the local company. Further, Section 272 deals explicitly
2 with potential cost misallocation and price discrimination.

3

4 Q. ARE THERE OTHER SAFEGUARDS REQUIRED UNDER SECTION 272
5 OF THE ACT? [ISSUES 2-15]

6

7 A. Subsections 272(c) and (e) contain detailed non-discrimination
8 requirements that prevent BellSouth from favoring its affiliate. BellSouth
9 “may not discriminate between the company or affiliate and any other
10 entity in the provision or procurement of goods, services, facilities and
11 information, or in the establishment of standards” and shall account for all
12 affiliate transactions in accordance with regulations established by the
13 FCC. Section 272(e) mandates that services offered by BellSouth to its
14 affiliate be at parity with the services offered to unaffiliated entities. That is
15 BellSouth: (1) is to respond to requests of an unaffiliated entity for
16 exchange or exchange access service within the same time period in
17 which it would provide such services to its own affiliate; (2) shall provide
18 the same facilities, services or information concerning exchange access to
19 the affiliate as are available to other providers of interLATA services on the
20 same terms and conditions; (3) shall charge the affiliate or impute to itself
21 (if using the access for its provision of its own services) an amount for
22 access to its telephone exchange service and exchange access service
23 that is no less than the amount charged to any unaffiliated interexchange
24 carriers for such services and; (4) may provide any interLATA or intraLATA
25 facilities or services to its interLATA subsidiary if such facilities or services

1 are made available to all carriers at the same rates, terms and conditions
2 and so long as the costs are appropriately allocated.

3

4 Further, Section 272(d) provides for biennial audits. Every two years,
5 BellSouth must initiate an independent federal/state audit to prove its
6 compliance with the separate subsidiary requirements of the Act. The
7 auditor, the FCC and state commissions have access to the financial
8 accounts and records of BellSouth and of its affiliates to the extent
9 necessary to verify that transactions have been made in compliance with
10 the Act.

11

12 Q. HAS THE FCC ESTABLISHED ANY SAFEGUARDS TO ENSURE BOC
13 COMPLIANCE UNDER THE ACT?

14

15 A. The FCC already has available many regulatory mechanisms in place to
16 oversee BellSouth's participation in the long distance market to ensure that
17 no harm results to the public or competition. These mechanisms include
18 cost accounting requirements, nondiscrimination provisions, access charge
19 guidelines and equal access requirements.

20

21 In addition, the FCC's Orders in Docket No. 96-98 discuss several options
22 that parties have for seeking relief if they believe that a carrier has violated
23 the standards under Section 251 or 252. These include bringing an action
24 in federal district court, using the Section 208 complaint process, and
25 seeking relief under the antitrust laws, other statutes, or common law.

1 Therefore, there are ample avenues to pursue if a party believes it has not
2 been dealt with justly under the Act.

3

4 Q. WHAT SAFEGUARDS, IF ANY, EXIST UNDER THIS COMMISSION'S
5 SUPERVISION? [ISSUES 2-15]

6

7 A. Rates, terms and conditions for local interconnection must be set so as not
8 to discriminate between providers. In addition, negotiations are to be
9 conducted in good faith between the providers. Negotiated agreements
10 must be filed with the Commission for approval. If the terms and
11 conditions cannot be adequately negotiated, the Commission has authority
12 to determine the rates, terms and conditions for interconnection services
13 through arbitration. The Commission must also determine reasonable
14 discounts and terms for the resale of local exchange services. It is the
15 Commission's responsibility to ensure that no local exchange company or
16 telecommunications provider gains an unfair market position. Of course,
17 competitors have the option of filing a complaint with this Commission in
18 the event they believe they have been treated unfairly.

19

20 Q. ARE THERE ANY OTHER EXAMPLES OF FEDERAL OR STATE
21 REGULATORY SAFEGUARDS WITH WHICH BELLSOUTH MUST
22 COMPLY? [ISSUES 2-15]

23

24 A. Yes. In addition to the many legal requirements established in the Act,
25 BellSouth Telecommunications, Inc. (BST) must still operate under all of

1 the existing regulatory requirements as well. BST is still subject to far
2 more regulation than its competitors. For example, at both the federal and
3 state levels, price regulation provides protection for concerns regarding
4 cross-subsidization of BST's interexchange operations. Under price
5 regulation, BST does not benefit by cross-subsidizing any of its regulated
6 services with other services. The essential feature of this form of price
7 regulation is that the linkage between cost and price is broken. BST would
8 therefore not have an incentive to improperly allocate costs of its services.

9
10 In addition to price regulation, BST must file tariffs with the FCC and state
11 commissions prior to offering new services or changing existing ones.
12 BellSouth is subject to regulatory audits, structural separation
13 requirements, accounting requirements, separation processes, interstate
14 depreciation prescription, and cost allocation rules, among other regulatory
15 requirements. BellSouth has a strong incentive to comply with the rules
16 and regulations in both the interstate and intrastate jurisdictions.

17
18 Q. DOES BELLSOUTH BELIEVE THE VARIOUS SAFEGUARDS
19 DISCUSSED WILL ENSURE OPEN COMPETITION ONCE INTERLATA
20 RELIEF IS GRANTED? [ISSUES 2-15]

21
22 A. Yes, with the opening of local markets pursuant to the checklist, the
23 Section 272 safeguards, and the oversight of federal and state regulators,
24 there should be no doubt that BOCs will not have the ability to impede
25 competition through their entry into the long distance market. In addition

1 to complying with the law, BellSouth will continue to have a strong
2 business incentive to cooperate in the development of local competition
3 after interLATA authority is granted. BellSouth will still be heavily
4 regulated and its competitors will not. This inequality increases
5 BellSouth's costs and constrains its ability to compete. As markets
6 become more competitive, regulation of BellSouth must be relaxed for it to
7 have any possibility of competing effectively. Regulators are not likely to
8 relax regulation until they are confident that the marketplace will discipline
9 the behavior of BellSouth. An uncooperative BellSouth cannot hope to
10 achieve the equality of regulation that it needs. Although interLATA relief
11 is important, it is by no means the ultimate relief that BellSouth needs from
12 regulators. As the local market becomes more competitive, any ability that
13 BellSouth may have to impede competition will be quickly eroded.
14 Contrary to impeding competition, BellSouth's entry into the interLATA
15 market will bring substantial benefits of increased competition.

16

17 Q. HOW WILL CUSTOMERS BENEFIT FROM BELLSOUTH'S ENTRY INTO
18 THE INTERLATA MARKET? [ISSUES 1A & 1B]

19

20 A. Customers will benefit from BellSouth's entry into the interexchange
21 market in Florida immediately. Allowing BellSouth to enter the in-region
22 interLATA market in Florida will promote interLATA competition in a way
23 that will more effectively deliver the benefits of long distance competition to
24 all consumers than is currently provided. Although competition in the
25 interexchange business has grown substantially since divestiture in 1984,

1 it is still not all that it could be. AT&T, MCI, Sprint and WorldCom carry the
2 majority of the interLATA traffic but maintain a classic oligopoly. Prices
3 move up in lock-step without regard to decreasing costs; profit margins are
4 high and rising; and carriers target discounts at high-volume, price-
5 sensitive customers while charging the majority of callers inflated basic
6 rates.

7
8 BellSouth is uniquely positioned to compete in Florida by reducing the
9 ability of interexchange carriers to engage in the pricing behavior
10 mentioned above. This will occur because entry by BellSouth will increase
11 the: (1) number of effective facilities-based competitors; (2) diversity of
12 cost characteristics; (3) diversity of product mix among the industry
13 members; and (4) rate of technological change. By dismantling the
14 artificial barriers that have separated telecommunications markets between
15 local, intraLATA and interLATA services, benefits will flow to consumers as
16 companies are able to use existing facilities to supply additional services.
17 BellSouth will also be able to resell its retail interexchange service to small
18 carriers on non-discriminatory terms so that they have a new alternative to
19 purchasing the wholesale services of AT&T, MCI and Sprint.

20
21 Another benefit to consumers in Florida is that they will begin to regain
22 some of the benefits of vertical integration that were given up at
23 divestiture. Such vertical integration would improve efficiency within
24 telecommunications networks.

25

1 Q. HOW WILL BELLSOUTH'S ENTRY INTO LONG DISTANCE BENEFIT
2 LOCAL COMPETITION IN FLORIDA? [ISSUES 1A & 1B]

3

4 A. Granting BellSouth entry into the interLATA business will likely hasten the
5 development of local competition rather than hinder it. When BellSouth is
6 able to offer a full service package to its customers, Section 271(e) of the
7 Act allows other companies to match this capability. Providing BellSouth
8 the ability to offer a full range of services to customers will be a powerful
9 stimulus for the interexchange carriers (IXCs) to do the same. This means
10 that IXCs who are not currently planning to provide local service will almost
11 certainly enter the local market to compete effectively for their long
12 distance customers. IXCs who were either planning to enter or have
13 entered the local market, will do so faster and with greater intensity.

14

15 The presence of a major company which can provide one-stop shopping
16 will make providing local service dramatically more attractive to IXCs. The
17 major thrust of their local market interest to date has been associated with
18 long distance access because of its relationship to long distance margins.
19 If BellSouth can provide one-stop shopping, IXCs will certainly want to do
20 the same. To offer one-stop shopping, they must offer local service, not
21 just find alternatives for long distance access. This event will dramatically
22 increase the attractiveness of providing local service for the IXCs.

23

24 BellSouth, too, can offer, along with its existing quality telecommunications
25 services, the ability for consumers to purchase local, intraLATA and

1 interLATA telecommunications services from a single provider- - one-stop
2 shopping. As a full service provider, BellSouth will be able to offer
3 packages of local, wireless and long distance services. Having BellSouth
4 in this market would ensure that customers receive services at lower prices
5 than if BellSouth were not a participant. Customers have been requesting
6 one-stop shopping since divestiture, and BellSouth will be added to the list
7 of carriers who are able to respond to their requests.

8

9 Of course, BellSouth will start with zero market share in an in-region
10 interLATA business dominated by IXCs with vast resources. Through
11 strong marketing, BellSouth will have to convince consumers that
12 BellSouth offers higher quality, lower priced services or both in order to
13 obtain their business. BellSouth plans to compete vigorously for
14 customers' business and believes that customers would like to be able to
15 choose BellSouth as an interLATA carrier.

16

17 In summary, BellSouth's entry into in-region interLATA services will only
18 increase competition in telecommunications markets by prompting IXCs to
19 enter the local exchange business more quickly and ending restrictions on
20 joint marketing of resold Bell company local services. Together with
21 BellSouth's comparable offerings, there will be a whole new dimension to
22 local competition. This provides more choices and better prices for
23 consumers in all telecommunications markets.

24

25

1 Q. WHAT WOULD BE THE CONSEQUENCES FOR FLORIDA
2 CONSUMERS IF THE FCC DENIES BELLSOUTH'S REQUEST FOR
3 INTERLATA RELIEF? [ISSUES 1A & 1B]

4

5 A. BellSouth strongly believes that all competitors should have an opportunity
6 to compete fairly in all markets. BellSouth has met the requirements of the
7 Act and opened its markets to local exchange competition. In the event
8 BellSouth is excluded from the in-region interLATA market as our
9 competitors expand into the local market, consumers in Florida will not
10 enjoy the true benefit of totally open markets and fair competition.

11

12 If in-region interLATA relief is delayed over a period of time, customer's
13 prices will be higher overall than would otherwise be the case if BellSouth
14 were allowed to compete. As competitors come into the local market, they
15 will target BellSouth's most lucrative, high volume customers by pricing
16 slightly lower than BellSouth. Competitors can even use the fact that
17 BellSouth is providing the underlying service to enhance their marketing
18 efforts. Contribution that BellSouth currently receives will then go to the
19 ALECs in the competitive environment. If BellSouth is unable to respond
20 effectively by offering competitive bundled service offerings and lower
21 prices, it will lose substantial retail revenue which could lead to rate
22 increases on less competitive customers to cover total costs. If
23 competitors are allowed to "cherry pick" the high volume local market prior
24 to BellSouth's interLATA relief, these competitors will have an unfair
25 advantage in offering bundled services - one stop shopping - to the most

1 lucrative customers currently on BellSouth's network once the joint
2 marketing restriction is lifted. BellSouth's ability to market, price and
3 provide services would be inhibited.

4

5 SUMMARY

6

7 Q. PLEASE SUMMARIZE YOUR TESTIMONY.

8

9 A. Throughout my testimony I have described the requirements in the Act
10 with regard to BellSouth's entry into the long distance market. The Act
11 was written for two purposes - to open the local market to competition and
12 to allow the BOC, in turn, to offer long distance service. I have described
13 the conditions of the Act, including the requirement to meet the 14-point
14 checklist, and have identified what BellSouth has done to comply with
15 each of these requirements. BellSouth is now seeking this Commission's
16 verification of that compliance.

17

18 BellSouth has clearly satisfied the requirement to open local exchange
19 markets to competition. BellSouth has negotiated agreements in good
20 faith with its competitors to offer equitable local interconnection. In
21 addition, BellSouth will officially file with this Commission a Section 252(f)
22 Statement of General Terms and Conditions which will be available to any
23 competitor who wishes to enter this market.

24

25

1 Once BellSouth has demonstrated compliance with the provisions in
2 Section 271, the Act entitles BellSouth to receive in-region interLATA
3 relief. Within my testimony, I have sought to provide this Commission
4 assurance that BellSouth will compete fairly within the constraints of the
5 law and will maintain open local markets to all interconnectors. BellSouth
6 has played by the rules in the past, and there is no reason to believe it will
7 behave any differently in the future.

8
9 Finally, I have shown that it will be beneficial to the consumers in the state
10 of Florida to allow BellSouth into the in-region interLATA market. As a new
11 long distance competitor, BellSouth will offer many competitive
12 opportunities for consumers in Florida and has the potential to break up
13 the long distance oligopoly that has existed in Florida since 1984.
14 BellSouth's entry into this market will benefit consumers because long
15 distance rates should decline and cost efficiencies gained by IXCs should
16 now be passed to consumers. In addition, BellSouth along with the IXCs
17 will be able to offer one-stop shopping by the joint marketing of local,
18 intraLATA and interLATA services in bundled packages. The time is right
19 for all competitors to be free to compete in an open market. Consumers
20 will benefit if BellSouth is one of the carriers they can choose to provide all
21 of their telecommunications services.

22

23 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

24

25 A. Yes.

1 BELL SOUTH TELECOMMUNICATIONS, INC.
2 REBUTTAL TESTIMONY OF ALPHONSO J. VARNER
3 BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
4 DOCKET NO. 960786-TL
5 JULY 31, 1997
6

7 Q. PLEASE STATE YOUR NAME, ADDRESS AND POSITION WITH
8 BELL SOUTH TELECOMMUNICATIONS, INC. (HEREINAFTER
9 REFERRED TO AS "BELL SOUTH".)

10

11 A. My name is Alphonso J. Varner. I am employed by BellSouth as Senior
12 Director for Regulatory for the nine state BellSouth region. My business
13 address is 675 West Peachtree Street, Atlanta, Georgia, 30375.

14

15 Q. ARE YOU THE SAME ALPHONSO J. VARNER THAT FILED DIRECT
16 TESTIMONY IN THIS PROCEEDING?

17

18 A. Yes. I filed direct testimony with the Florida Public Service Commission
19 (the "Commission" or the "FPSC") on July 7, 1997.

20

21 Q. WHAT IS THE PURPOSE OF THE TESTIMONY THAT YOU ARE
22 FILING TODAY?

23

24 A. My rebuttal testimony addresses the direct testimony filed by most of the
25 other parties' witnesses on July 18, 1997. Specifically, my testimony

1 refutes the following erroneous assertions raised in the intervenor's
2 testimony: 1) the allegation that BellSouth's entry into the in-region
3 interLATA market should be delayed until full local competition has
4 developed; 2) the representation that BellSouth does not meet the
5 requirements of Section 271(c)(1)(A) of the Telecommunications Act of
6 1996 (the "Act") and that the above section is, therefore, not available to
7 BellSouth; 3) attempts by witnesses to expand the Act's 14 point
8 checklist; 4) proposals for rearbitration of issues already resolved by this
9 Commission; 5) the inappropriateness of interim rates to satisfy the
10 requirement of 252(d)(1); 6) BellSouth's draft Statement of Generally
11 Available Terms and Conditions (Statement) does not meet the
12 requirements of the 14 point checklist; 7) alleged bad acts committed by
13 BellSouth; and 8) the inability of BellSouth to provide items on the
14 checklist as identified by the various intervenors.

15

16 Q. THE INTERVENORS HAVE SPENT MANY WORDS AND PAGES ON
17 THE TRACK A VS. TRACK B ARGUMENT AND THE PERTINENCE OF
18 BELLSOUTH'S STATEMENT. PLEASE COMMENT.

19

20 A. As I stated in my direct testimony, BellSouth meets the requirements of
21 Track A with regard to filing for interLATA relief in Florida with the
22 Federal Communications Commission ("FCC"). In response to Issue 1.c.
23 of this Commission's Issues List, BellSouth's Statement may or may not
24 be necessary to supplement the approved interconnection agreements in
25 effect at the time we file with the FCC.

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BellSouth is asking the Commission in this proceeding to do two things:

1) Approve BellSouth's Statement as being compliant with the checklist in Section 271(c)(2)(B) of the Act; and

2) Accumulate the facts necessary to assess the current market conditions existing in Florida and fulfill its consultative role for the FCC when BellSouth does file its application for interLATA entry.

When BellSouth Corporation files its for interLATA relief with the FCC, it anticipates using a combination of its approved interconnection agreements and its approved Statement to fulfill the requirements of the 14-point checklist and demonstrate that it meets the conditions of Track A.

Q. WOULD YOU COMMENT GENERALLY ON THE TESTIMONY FILED BY THE OTHER PARTIES?

A. Yes. This Commission has received detailed testimony from thirteen (13) witnesses generally opposing the views of BellSouth. Through my testimony, and the testimony our other witnesses, BellSouth responds to a substantial portion of the detail in their testimony to demonstrate that there are serious flaws in these parties' conclusions. However,

1 BellSouth does not attempt to respond to every erroneous allegation.
2 Given the complexity of these filings, it would become very easy for this
3 Commission to become mired in the details. However, it is unnecessary
4 and hazardous for this Commission to do so. The policy choices that this
5 Commission has to make are very clear and, by keeping them in focus,
6 will result in the best decision for Florida consumers. To benefit Florida
7 consumers, this Commission will need to do only the two things listed
8 above.

9
10 Contrary to Mr. Wood's erroneous assertion that he is responding to
11 "BellSouth's application to provide in-region interLATA services",
12 BellSouth has not asked this Commission to give it interLATA authority.
13 The Commission could not do so even if BellSouth did ask. As
14 recognized in the discussion of Item Number 26 during the July 15, 1997
15 Agenda Conference, Commissioner Clark @ p.32, Commissioners
16 Kiesling and Deason @ p.33, and Chairman Johnson @ p. 35, the role of
17 this Commission with respect to the FCC is "consultative" and "advisory".
18 The authority for granting interLATA relief rests with the FCC. In order to
19 satisfy its responsibilities, this Commission must determine whether it is
20 appropriate to take the two actions that BellSouth has requested.

21
22 Q. PLEASE COMMENT ON HOW THE STATEMENT AFFECTS THE
23 OTHER PARTIES IN THIS PROCEEDING.

24

25

- 1 A. It is somewhat puzzling that so many parties are critical of the Statement.
2 The parties who filed testimony in this proceeding have an agreement
3 with BellSouth, either through negotiation or through arbitration.
4 Although these parties could use the Statement, one would expect that
5 their agreements would provide for their needs.
6
7 BellSouth's Statement is designed primarily for those local market
8 entrants who do not have an agreement and do not want to go through
9 the negotiation process. Criticisms by parties who already have
10 agreements are largely attempts to turn the Statement into an improved
11 form of their agreement or delay interLATA entry by BellSouth. They
12 would have this Commission arbitrate issues again and reject the
13 Statement because it does not provide them with a better agreement
14 than they negotiated or received through arbitration. The Commission
15 does not need to rearbitrate issues in this proceeding. Of course, the
16 Interexchange Carriers (IXCs) are motivated to support rejection of the
17 Statement since rejection forestalls BellSouth from competing with them.
18
- 19 Q. GENERALLY, ARE THE INTERVENORS' STANDARDS FOR
20 INTERLATA ENTRY CONSISTENT WITH THE ACT?
21
- 22 A. No. Throughout their testimony, intervenors propose for this
23 Commission to establish additional barriers to interLATA entry that are
24 not in the Act. Congress obviously debated and considered this subject
25 extensively and established its view of the appropriate standards that

1 should apply to determine interLATA entry. Congress also established a
2 prohibition against adding additional criteria. Despite these clear
3 requirements of the Act, intervenors would have this Commission ignore
4 Congress and institute a set of more stringent criteria. Some examples
5 of these criteria include:

6

7

- delaying entry until local competition is developed;

8

- expanding the checklist to include additional capabilities;

9

- requiring that each checklist item actually be in use before

10

checklist compliance can be determined;

11

- an ongoing need to eliminate dangers of discrimination, even

12

with safeguards; and

13

- redefining Sections 271(c)(1)(A) and (B).

14

15

The recurring fallacy in each of these requirements is that they are

16

prohibited by the Act. Obviously, intervenors' self interest is promoted by

17

establishing more stringent criteria than the Act requires. However,

18

Congress specifically prohibited the imposition of additional criteria.

19

Furthering their self interest does not permit intervenors to ignore the

20

Act's requirements and rewrite the requirements to their satisfaction.

21

This Commission should critically examine each of the intervenors'

22

proposals to determine their consistency with the Act. More often than

23

not, such examination will reveal a glaring inconsistency.

24

25

1 Q. SEVERAL INTERVENORS USE THE TERM FULLY IMPLEMENTED.
2 PLEASE DEFINE THE TERM "FULLY IMPLEMENTED" AS USED BY
3 BELLSOUTH.

4
5 A. As I stated in my direct testimony, "fully implemented" means that either
6 the items are actually in service or are, in fact, functionally available. The
7 intervenors have incorrectly defined the term as meaning only actually
8 provided. Even the DOJ, which many of these parties use to support
9 several of their positions, apparently disagrees with the definition being
10 used by the intervenors. The DOJ stated in its response to SBC's
11 Oklahoma request for interLATA relief, "[a] BOC is providing an item, for
12 purposes of checklist compliance, if the item is available both as a legal
13 and practical matter, whether or not any competitors have chosen to use
14 it...A BOC...can satisfy the checklist requirement with respect to an item
15 for which there is no demand."

16
17 Q. HOW IS THE REMAINDER OF YOUR TESTIMONY ORGANIZED?

18
19 A. I have organized the remainder of my testimony into seven sections that
20 address the issues raised by the intervenors. These sections are as
21 follows: 1) Timeliness of BellSouth's Entry; 2) Track A vs. Track B; 3)
22 Statement of Generally Available Terms and Conditions; 4) Checklist
23 Expansion; 5) Rebundled Elements; 6) Sufficiency of Interim Rates; and
24 7) Allegations of Unfair Competition. Also, where applicable in response
25 to intervenor testimony, I address the effect of the Eighth Circuit Court of

1 Appeals' Ruling No. 96-3321, filed July 18, 1997 (attached to my
2 testimony as Exhibit AJV-4).

3

4 **TIMELINESS OF BELLSOUTH'S ENTRY**

5

6 Q. WHAT ARE SOME EXAMPLES OF INTERVENORS' CONTENTIONS
7 THAT IT IS NOT TIMELY FOR BELLSOUTH TO RECEIVE INTERLATA
8 ENTRY?

9

10 A. It is a pervasive theme of the intervenors' testimony that BellSouth
11 should not be allowed into the interLATA business until some level of
12 facilities based local competition has occurred. A few examples of these
13 contentions include:

14

15 Strow p.17 - "meaningful" facilities-based competition is a precondition
16 to a grant of in-region interLATA authority;

17 Murphy p.4 - PSC should withhold support of BellSouth's 271
18 application until significant facilities-based competition
19 has developed;

20 Hamman p.5-6 - BellSouth entry would take away incentive for
21 BellSouth to continue to work with the industry to
22 resolve issues necessary to ensure checklist items are
23 being offered;

24 Gillan p. 9 - there is no measurable local exchange competition in
25 Florida today;

- 1 Gillan p. 6 - competition must be present on a broad scale
2 commercial level;
- 3 Gillan p. 31 - interLATA authority should be delayed until others
4 can just as easily offer local services and compete;
- 5 Wood p. 7 - local competition must develop first, then BOC entry
6 into interLATA may be permitted;
- 7 Wood p. 12 - if BellSouth is granted interLATA entry before local
8 competition develops, BellSouth will have the
9 opportunity to use its control of local facilities to gain an
10 advantage in the interLATA market;
- 11 Gulino p. 5 - checklist must be fully and fairly implemented; and
12 McCausland p.2- once BellSouth receives interLATA authority,
13 BellSouth will no longer have an incentive to ensure
14 that local competition is implemented and could
15 actually slow the development of local competition.

16
17 Q. PLEASE RESPOND TO THESE ALLEGATIONS.

18
19 A. The language of the Act clearly does not permit imposition of a mandate
20 that BellSouth face some level of facilities-based competition in the local
21 market before obtaining interLATA relief. The criteria of Section 271
22 (c)(1)(A) ("Track A") requires the presence of a facilities-based
23 competitor providing service to residential and business customers
24 predominantly over their own telephone exchange service facilities. It
25 does not specify or refer to any minimum threshold level. In fact, as

1 more fully discussed in my direct testimony, attempts by Senator Kerry
2 and Representative Bunn to add a threshold were defeated. In addition,
3 an application may be filed under Section 271(c)(1)(B) ("Track B") even if
4 no facilities-based local competitor exists under Subparagraph (A).
5 Subparagraph (B)'s statement of generally available terms must meet the
6 requirements of the 14 point competitive checklist to indeed prove that
7 the local market is open to competition, not that any level of competition
8 has developed. Congress felt this standard and the requirements of
9 Section 271(d)(3) of the Act struck a balance between opening local
10 markets and the BOCs being granted interLATA relief.

11
12 In many cases, intervenors have attempted to supplant the Act's
13 requirements with their own more stringent standards. Although they
14 may not like the standards imposed by the Act, they cannot simply
15 rewrite or ignore them. The requirements for interLATA entry, which
16 were Congress' decision to make, are specified in the Act. Despite
17 intervenors' dissatisfaction with those specifications, they, like BellSouth,
18 must abide by them.

19
20 Q. MR. WOOD, ON PAGE 8, REFERS TO STATEMENTS OF SENATOR
21 HOLLINGS WHICH SUPPOSEDLY INFER THAT LOCAL
22 COMPETITION MUST DEVELOP BEFORE THE RBOCS MAY ENTER
23 THE LONG DISTANCE MARKET. HOW WOULD YOU DESCRIBE MR.
24 WOOD'S CONCLUSIONS?

25

1 A. There was substantial discussion and debate in Congress on this issue.
2 Congress affirmatively chose not to establish a threshold level of local
3 competition as a precondition of interLATA entry by BellSouth.
4 Consequently, Mr. Wood misconstrues the statement of Senator
5 Hollings. When viewed in relation to the events that were occurring, his
6 statement cannot be interpreted as meaning that the Act requires some
7 level of competition before interLATA entry can be granted to BellSouth.

8
9 Senator Hollings is quoted on page 8 of Mr. Wood's testimony. This
10 statement is not referring to conditions for interLATA entry. Senator
11 Hollings is referring to conditions that should apply before
12 telecommunications services are deregulated. Mr. Wood quotes the
13 following portion of Senator Hollings statement:

14
15 "The basic thrust of the bill is clearly competition is the best
16 regulator of the marketplace. Until that competition exists,
17 monopoly providers of services must not be able to exploit their
18 monopoly power to the consumer's disadvantage. Timing is
19 everything. Telecommunications services should be deregulated
20 after, not before, markets become competitive." (emphasis
21 added)

22
23 There is no mention of criteria for interLATA entry at all. The Act was a
24 deregulatory bill. Senator Hollings is describing the conditions that
25 should exist before he believes that telecommunications services should

1 be deregulated. In contradiction of Mr. Wood's assertion, Senator
2 Hollings made the following statements in the same speech (142 Cong.
3 Rec. S688):

4
5 "I believe that this legislation on the whole presents a balanced
6 package that deserves the support of every Member of this
7 body."

8
9 "We should not attempt to micromanage the marketplace; rather
10 we must set the rules in a way that neutralizes any party's
11 inherent market power, so that robust and fair competition can
12 ensue."

13
14 "I am pleased that the conference agreement recognizes that
15 the RBOCs must open their networks to competition prior to
16 entry into long distance." (emphasis added)

17
18 Senator Hollings made these statements on February 1, 1996, after the
19 Conference Report was submitted to the Senate. He had full knowledge
20 that Track B existed and he did not indicate that some level of local
21 competition must exist. No reasonable interpretation of his statements
22 could lead to the conclusions reached by Mr. Wood.

23
24 Q. PLEASE RESPOND TO THE CONCLUSIONS REACHED BY MR.
25 WOOD AS A RESULT OF SENATOR KERRY'S STATEMENT.

1

2 A. His conclusions here are also unfounded. First, Mr. Wood's quote of
3 Senator Kerry is incorrect. Mr. Wood substitutes the word competitor for
4 competition in the quotation. The actual quote is as follows:

5

6 "Neither bill had sufficient provisions to ensure that the local
7 telephone market was open to competition before the RBOCs
8 entered long distance." (emphasis added)

9

10 Senator Kerry's statement refers to competitive tests and openness to
11 competition as the criteria for permitting entry. He does not indicate that
12 some level of competitive development needs to occur first.

13

14 Senator Kerry, probably better than any other Senator, knew that the Act
15 did not require development of local competition before interLATA entry
16 could be granted. As I stated in my direct testimony, Senator Kerry
17 introduced an amendment to change Section 271(c)(1) to say that "a Bell
18 operating company may provide interLATA services in accordance with
19 this Section only if that company has reached interconnection
20 agreements with...telecommunications carriers capable of providing a
21 substantial number of business and residential customers with service".
22 141 Cong. Rec. S8319 (June 14, 1995) (emphasis added). That
23 amendment, which only attempted to require the presence of a carrier
24 who was capable of providing service to a substantial number of
25 customers, not even that the carrier was providing service, was defeated.

1 Surely, Senator Kerry knew that the Act, which he voted to approve, did
2 not contain any competitive development requirements.

3

4 Q. DO THE STATEMENTS OF REPRESENTATIVES BUNNING AND
5 FORBES QUOTED IN MR. WOOD'S TESTIMONY SUPPORT A
6 CONCLUSION THAT THE ACT REQUIRES COMPETITION TO BE
7 DEVELOPED TO SOME DEGREE BEFORE INTERLATA ENTRY CAN
8 BE GRANTED?

9

10 A. No. These Congressmen's statements have been either misunderstood
11 or misinterpreted. Representative Bunning's statement reflects his
12 opposition to the fact that the House Bill did not contain requirements for
13 competitive local development as a condition for entry into long distance.
14 Representative Bunning opposed the Bill because he believed that the
15 entry restrictions were too lax. Thus, his statement supports the point
16 that attempts to impose some degree of competitive local market
17 development were rejected by Congress and is not required by the Act.
18 This is definitely contrary to Mr. Wood's conclusion.

19

20 The only reasonable interpretation of Representative Forbes' statement
21 is that he refers to the Track A provisions of the Bill. He supported
22 H1555 which included both Track A and Track B. The Congressional
23 record indicates that how Track A and Track B operated was very clearly
24 presented to Representative Forbes.

25

1 Q. WHY DOES BELLSOUTH BELIEVE IT WAS NOT THE INTENT OF
2 CONGRESS THAT LOCAL COMPETITION BE FULLY DEVELOPED
3 PRIOR TO BOC ENTRY INTO LONG DISTANCE?
4

5 A. As I stated in my direct testimony, Congress wanted to open all
6 telecommunications markets in order to bring consumers the benefits of
7 full competition. Section 271 ensures that opening the BOCs' local
8 markets will not only allow competition in local services, but will also
9 enhance competition in the long distance business through BOC entry.
10 Nowhere did Congress establish that any particular type of local
11 competition must exist as a prerequisite to BOC entry into the long
12 distance business within its region. Congress intended that Section 271
13 would provide a path for BOCs to seek authority from the FCC to enter
14 the long distance market as soon as they demonstrate that their local
15 markets are open.
16

17 In addition, Congress recognized that competitive providers could
18 attempt to thwart BellSouth's entry into the long distance market.
19 Congress did not allow a competitor to prevent a BOC from filing under
20 Track B because the competitor requested access and interconnection
21 without making the pro-competitive investment in local facilities that
22 Congress thought necessary under Track A. If this was permitted, a
23 competitor could foreclose the BOC's entry into interLATA by simply
24 requesting access and interconnection and then limiting facilities
25 investments to only residential or business customers. In fact, Mr.

1 Gillan, beginning on page 37, has stated that it is too expensive for
2 competitors to build facilities and it will be a long time before there will be
3 true facilities-based competition. However, under their interpretation of
4 the Act, these same competitors can enter the local market through
5 resale, establish a strong presence in that market, and use
6 mischaracterization of the Act to prevent BellSouth from entering the
7 interLATA market for years.

8

9 Q. AS A POLICY MATTER, SHOULD THE COMMISSION DELAY
10 BELLSOUTH'S ENTRY AS PROPOSED BY THE OTHER PARTIES?

11

12 A. No. Without the maximum number of choices of providers for all
13 services, the public will certainly be harmed. Intervenors clearly can offer
14 the full range of telecommunications services that customers want. They
15 can offer local and long distance service today. However customers
16 cannot avail themselves of all of the services that BellSouth can offer
17 until interLATA relief is granted. With interLATA relief for BellSouth,
18 customers' choices will be increased.

19

20 Q. MR. WOOD ON PAGE 14 , MR. MCCAUSLAND ON PAGE 2, MR.
21 GULINO ON PAGE 40, AND SEVERAL OTHER WITNESSES STATE
22 THAT IF THE "CARROT" OF INTERLATA ENTRY IS OFFERED TOO
23 SOON, BELLSOUTH WILL NO LONGER HAVE AN INCENTIVE TO
24 CONTINUE THE DEVELOPMENT OF LOCAL COMPETITION. WHAT
25 IS YOUR RESPONSE TO THIS ASSERTION?

1
2 A. The intervenors seem to have forgotten one thing - whether or not
3 BellSouth is in the interLATA long distance business, BellSouth is legally
4 obligated to comply with the requirements of the Act, in particular
5 Sections 251 and 252. After interLATA authority is granted, BellSouth
6 must continue to comply with Sections 271 and 272. These legal
7 obligations are not magically removed once in-region interLATA authority
8 is granted. As I stated in my direct testimony, the Act, the FCC and the
9 State Commission all have significant safeguards in place to ensure
10 BellSouth's compliance. Some of the safeguards are that BellSouth will
11 have to continue to negotiate agreements subject to arbitration and
12 approval by this Commission. Current agreements will have to be
13 renegotiated subject to arbitration and approval by this Commission.
14 This Commission must approve any changes that are made in the
15 Statement of General Terms and Conditions once it is initially approved.
16 The FCC has authority under Section 271 of the Act such that if
17 BellSouth ceases to meet the requirements of interLATA entry after it is
18 granted, it can take a number of steps, including revoking the grant of
19 relief that it had previously given. BellSouth also must comply with the
20 structural requirements of Section 272, i.e., create a separate interLATA
21 affiliate, maintain non-discriminatory safeguards as prescribed by the
22 FCC and participate in biennial audits. The inclusion of these safeguards
23 was Congress' way to ensure that BellSouth, or any RBOC, does not
24 stop cooperating with potential competitors once they are granted in-
25 region interLATA authority.

1

2 Practical experience has proven that BellSouth's entry into new markets
3 indeed enhances competition. Before real competition was established,
4 BellSouth entered other markets, such as cellular, PCS, and enhanced
5 services when legal safeguards existed. BellSouth's entry has proven to
6 be in the public interest. Safeguards in these other markets have
7 certainly worked and will work in the interLATA market. To delay
8 BellSouth's entry into the interLATA market until local competition has
9 fully developed is simply to insulate the interLATA market from more
10 effective competition.

11

12 Q. ON PAGE 12 OF MR. WOOD'S TESTIMONY HE SURFACES A
13 CONCERN OVER "DOCUMENTED ANTICOMPETITIVE BEHAVIOR"
14 RESULTING IN THE LONG DISTANCE RESTRICTION IMPOSED BY
15 THE CONSENT DECREE. PLEASE COMMENT.

16

17 A. While BellSouth does not disagree, in general, with Mr. Wood's
18 assessment, the behavior that Mr. Wood is referring to was exhibited by
19 AT&T and not the post-divestiture Bell operating companies. One overt
20 purpose of Sections 251, 252 and 272 of the Act as well as the checklist
21 requirements is to prevent just the behavior to which Mr. Wood refers.

22

23 Mr. Wood goes on to further discuss the 1986 Court ruling banning
24 interLATA entry by the RBOCs, citing their ability to "utilize their
25 monopoly advantages to affect competition". The Court ruling that Mr.

1 Wood notes is talking about the future conditions. It makes no claim of
2 anticompetitive behavior by the RBOCs. Again the Act substitutes
3 Sections 251, 252, 271 and 272, in addition to federal and state
4 oversight, for the previous ban on interLATA entry by the RBOCs.

5

6 Mr. Wood's apparent lapse in memory is again displayed as he states
7 that "[t]his danger has not diminished merely with the passage of time;".
8 He is correct in one aspect; it is not the passage of time that has
9 diminished the danger, if there was any, but the passage of the
10 Telecommunications Act that he seems to overlook. With this in mind,
11 Mr. Wood has absolutely no basis for his conclusion that BellSouth "will
12 have both the incentive and the opportunity to use its control of these
13 local bottleneck facilities to again gain an advantage in the interLATA
14 market."

15

16 Q. MS. MURPHY, ON PAGE 27 OF HER TESTIMONY, STATES
17 REGARDING SECTION 271, "IT WILL BE NEARLY IMPOSSIBLE TO
18 RETRACT THIS AUTHORITY." PLEASE RESPOND.

19

20 A. Before BellSouth has a significant base of customers, it would be
21 relatively simple for the FCC to withdraw interLATA authority. I would
22 agree, however, that BellSouth would have to engage in egregious
23 behavior before the authority would be retracted after a substantial
24 customer base has been built. Retracting interLATA authority, however,
25 is only one of several actions that can be taken to penalize BellSouth if it

1 does not continue to fulfill its obligations under the Act. Section 271(d)(6)
2 of the Act provides the FCC with the authority to enforce the conditions of
3 the Act. If the FCC determines that BellSouth is not meeting the
4 conditions required for interLATA entry, the Commission may:

5

6 1) "issue an order to the Company to correct the deficiency;

7 2) impose a penalty on such company...; or

8 3) suspend or revoke such approval."

9

10 To make Ms. Murphy's argument even more ludicrous, the Florida
11 Commission may also penalize the Company for actions that do not
12 comply with its rules. BellSouth must legally abide by the terms and
13 conditions of its agreements and also its Statement when it is approved.
14 In addition, complaint processes before regulatory bodies may be used
15 and the courts are certainly available for an aggrieved party to seek relief
16 under antitrust laws, other statutes, or common law.

17

18 There are ample avenues, other than retracting authority, that can be
19 pursued if BellSouth does not continue to comply with legal and
20 regulatory requirements after interLATA entry has been granted. Since
21 there are so many viable avenues to ensure compliance, it can hardly be
22 said that it will be nearly impossible to retract the grant of interLATA
23 authority as Ms. Murphy has stated.

24

25

1 Q. DOES BELLSOUTH HAVE ANOTHER BUSINESS INCENTIVE TO
2 CONTINUE DEVELOPMENT OF LOCAL COMPETITION?

3

4 A. Yes. In addition to complying with the law, BellSouth will continue to
5 have a strong business incentive to cooperate in the development of
6 local competition after interLATA authority is granted. BellSouth will still
7 be heavily regulated and its competitors will not. This inequality
8 increases BellSouth's costs and constrains its ability to compete. As
9 markets become more competitive, regulation of BellSouth must be
10 relaxed for it to have any possibility of competing effectively. Regulators
11 are not likely to relax regulation until they are confident that the
12 marketplace will discipline the behavior of BellSouth. An uncooperative
13 BellSouth cannot hope to achieve the equality of regulation that it needs.
14 Although interLATA relief is important, it is by no means the ultimate
15 relief that BellSouth needs from regulators.

16

17 Another incentive that BellSouth has to continue the development of
18 local competition is that BellSouth now provides unbundled network
19 elements to ALECs as a wholesaler. Provision of such wholesale
20 services is expected to be a substantial business for BellSouth. As a
21 wholesale provider, BellSouth needs to provide quality service to the
22 needs of its customers in order to stay in business and generate
23 revenues.

24

25

- 1 Q. SEVERAL WITNESSES, INCLUDING MR. GULINO ON PAGE 5 AND
2 MR. HAMMAN ON PAGE 5, STATE THAT ACTUAL PROVISION OF
3 THE CHECKLIST ITEMS IS REQUIRED BEFORE CHECKLIST
4 COMPLIANCE CAN BE DETERMINED. PLEASE COMMENT.
5
- 6 A. Section 271(c)(2)(B) contains each of the 14 points referred to as the
7 competitive checklist. BellSouth is required to generally offer and
8 provide, if requested, access and interconnection to other
9 telecommunications carriers as specified by the 14-point checklist. The
10 term generally offer is key. Any competitor can obtain any of the items
11 on the 14-point checklist from the statement of generally available terms
12 and conditions. If the Statement is approved, it will then be available to
13 all Alternative Local Exchange Companies ("ALECs"). The Act does not
14 include the requirement that BellSouth currently provide each of these
15 checklist items. It is ludicrous to conclude from the language of the Act
16 that all of the items must already be provided in order for BellSouth to
17 comply with the checklist. There may be items on the checklist that no
18 competitor will ever request.
19
- 20 Q. MR. HAMMAN ON PAGE 5 STATES THAT BELLSOUTH HAS NOT YET
21 FULLY IMPLEMENTED AN INTERCONNECTION AGREEMENT OR ITS
22 STATEMENT TO DEMONSTRATE THAT IT IS OFFERING THE
23 ELEMENTS REQUIRED UNDER THE CHECKLIST. SHOULD THIS BE
24 CAUSE TO REJECT BELLSOUTH'S STATEMENT OF TERMS AND
25 CONDITIONS AS NOT MEETING THE CHECKLIST?

1

2 A. No. First, BellSouth does not agree with Mr. Hamman's statement.

3 BellSouth meets all of the requirements of the checklist. If this were not
4 the case, however, what Mr. Hamman would have this Commission do is
5 wait until ALECs decide that they want each of the checklist items before
6 BellSouth can seek entry into long distance. Since BellSouth does not
7 control the speed or degree with which competitors choose to enter the
8 market, waiting until ALECs order each checklist item would put
9 BellSouth's ability to enter the long distance market solely under the
10 control of the people who most want to keep BellSouth out of this
11 business. Congress recognized this possibility and prevented this tactic
12 by establishing Track B.

13

14 In addition, Congress provided the ability to use the Statement to
15 supplement negotiated/arbitrated agreements when interLATA entry is
16 sought under Track A. As Commissioner Clark states on page 30 of the
17 July 15, 1997 Agenda Conference transcript, "...but that in determining
18 whether they have met the checklist for A you can look at the SGATC.
19 It's not a hybrid of B." The Act recognizes that agreements used under
20 Track A may not contain all items on the checklist. For capabilities that
21 new entrants are not using, the only demonstration that can be made is
22 readiness to provide such capability. Upon approval of the Statement,
23 BellSouth will have complied with the requirements of the competitive
24 checklist in Section 271(c)(2)(B) of the Act. Whether competitors take
25 advantage of this opportunity is up to the competitor, not BellSouth. In

1 fact, Congress recognized that development of competition was under
2 the control of the competitors after local markets were open.

3

4 Q. YOU USED THE TERM "READINESS" IN YOUR PREVIOUS
5 RESPONSE. WHAT DO YOU CONSIDER READINESS TO MEAN?

6

7 A. Readiness means that when a competitor requests a checklist item,
8 BellSouth will provide it within a reasonable period of time, in accordance
9 with applicable rules and regulations.

10

11 Q. ACCORDING TO THE INTERVENORS, WHAT MUST BE DONE TO
12 DEMONSTRATE FULL IMPLEMENTATION?

13

14 A. It is not clear from the testimony of witnesses for AT&T and MCI what
15 must be done to demonstrate full implementation. A stated set of criteria
16 is noticeably absent. It presents an insurmountable challenge to provide
17 something that is not (and cannot be) defined. The only thing that can
18 be concluded is that AT&T and MCI will know "full implementation" when
19 they see it. In short, these intervenors want BellSouth's interLATA entry
20 to be deferred until they decide that it is okay to allow such entry. Of
21 course, AT&T and MCI have a vested interest in keeping BellSouth out of
22 the long distance market.

23

24 Further, beginning on page 36 of his testimony, Mr. Gillan compares
25 current barriers to local entry to entry into the long distance market. He

1 implies a set of criteria regarding the establishment of interLATA
2 competition and states the establishment of long distance networks was
3 successful and relatively rapid - "only" taking 20 years. He then states
4 that entering the local market is even more difficult than entering the
5 interLATA market. It appears Mr. Gillan is suggesting the local
6 exchange companies (LECs) must wait at least 20 years before being
7 allowed entry into the interLATA market. This kind of delay is ridiculous
8 on its face.

9

10 Q. IN THE SUMMARY OF HIS TESTIMONY, MR. GILLAN STATES "THE
11 COMMISSION SHOULD REMEMBER THAT BELLSOUTH MUST
12 PROVE THAT IT HAS SATISFIED EACH OF THESE CONDITIONS. IT
13 IS NOT THE RESPONSIBILITY OF OTHER PARTIES, THE STAFF, OR
14 THE COMMISSION TO PROVE BELLSOUTH'S NON-COMPLIANCE."
15 DO YOU AGREE WITH MR. GILLAN?

16

17 A. Although it seems a strange statement for Mr. Gillan to make after
18 spending the previous 39 pages disputing the logic that BellSouth
19 purports, we certainly agree with him. In the July 15, 1997 Agenda
20 Conference, Commissioner Deason states "[a]nd I think that BellSouth
21 should be granted latitude to bring in any information or evidence they
22 think is relevant to those 14 checklist items, but that's what we need to
23 concentrate on." BellSouth is trying to do exactly what Mr. Gillan and
24 Commissioner Deason suggest; submit information to support the fact

25

1 that it has satisfied the conditions necessary to gain interLATA relief in
2 Florida.

3

4 Q. ON PAGE 8, MR. GILLAN PRESENTS A TABLE ON THE STATUS OF
5 LOCAL ENTRY IN BELLSOUTH'S REGION. PLEASE COMMENT ON
6 THIS TABLE.

7

8 A. This chart is not a comparison of similar capabilities. Although we do not
9 agree with the accuracy of all of the information portrayed in the table,
10 e.g., it does not include interoffice trunks within the competitors'
11 networks which the competitors provide themselves, we will not argue
12 about the magnitudes of the results. With the recent opening of the local
13 market, it would be ludicrous to expect anything different. A point that
14 Mr. Gillan fails to note in his table, however, is that once the ALECs are
15 connected to BellSouth's network in Florida, they too will have access to
16 all of the BellSouth trunks, regardless of what the quantity actually is.

17

18 Q. DO YOU AGREE WITH MR. GILLAN THAT LOCAL SERVICE FIRST
19 MUST BECOME COMPETITIVE OR FULL SERVICE COMPETITION
20 WILL NEVER BE A REALITY?

21

22 A. No. Mr. Gillan is attempting to rewrite the Act to suit his (and the IXC's)
23 own purposes. There is no requirement in the Act that local service
24 markets must be competitive prior to BellSouth's interLATA entry. The
25 Act requires BellSouth to open the local markets and BellSouth has done

1 so. Mr. Gillan further confuses BellSouth's ability to offer interLATA
2 services with the success BellSouth will have in this market as a new
3 entrant. It is totally unnecessary as a matter of law and policy to delay
4 full competition in the long distance market until AT&T and MCI decide to
5 compete in the local market.

6

7 Q. MR. WOOD, ON PAGE 9, REFERS TO A REPORT BY THE STAFF OF
8 THE TENNESSEE REGULATORY AUTHORITY (TRA) WHICH
9 SUGGESTS THAT BELLSOUTH'S OPPORTUNITY TO COMPETE IN
10 THE LONG DISTANCE BUSINESS SHOULD BE DELAYED UNTIL
11 LOCAL COMPETITORS ARE ESTABLISHED AND MEETING THEIR
12 BUSINESS OBJECTIVES. DOES BELLSOUTH AGREE WITH THE
13 STAFF'S ASSESSMENT?

14

15 A. No. On February 10, 1997, BellSouth filed comments on the Tennessee
16 Staff's draft report which I have attached as Exhibit AJV-5. BellSouth
17 explained to the staff that Section 271 and Congress' debates
18 concerning BOC entry into long distance point to the existence of an
19 open local market, not the existence of some level of local competition.
20 Congress recognized that allowing such entry would create enormous
21 consumer benefit. The staff's approach would serve to penalize
22 Tennessee consumers by unnecessarily delaying the benefits that real
23 long distance competition will bring. Section 271 does not create any
24 quantitative requirement of competition in the local market and provides

25

1 no invitation to import any other additional measure of competition into
2 Section 271 in order for a BOC to enter the interLATA services market.

3

4 On February 18, 1997, the TRA staff provided its report to the Directors
5 of the TRA. The report included a minority staff position. It states in part
6 that:

7

8 "While we do not disagree with the overall conclusion of the Staff
9 Report, we do object to the implication that the profitability, or
10 success relative to a business plan, of any individual competitor
11 is relevant to the assessment of competition."

12

13 "Indeed, the Staff Report analysis of the long distance market (p.
14 6) is mildly inconsistent with the Statement on pp. 7-8. In long
15 distance, despite the presence of successful rivals to AT&T, the
16 Report suspects that consumers are not receiving all the
17 potential benefits of price competition."

18

19 "Moreover, the Report suggests that the TRA may be about to
20 commit the oft-derided policy error of protecting or promoting
21 *competitors at the expense of competition.*"

22

23 "In the end, we concur with the Report that regulators must
24 endeavor to create an environment conducive to fair competition
25 among all market participants, with special favor toward none."

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This minority report shows that the TRA staff has some disagreement with Mr. Wood's assessment. On April 18, 1997, the Hearing Officer issued his recommendation to adopt the informal Section 271 Investigation and Report conducted by the TRA staff including the minority staff report and BellSouth's comments.

Q. MR. GILLAN, BEGINNING ON PAGE 32, POINTS OUT THAT IT WILL BE EASY FOR BELL SOUTH TO OFFER LONG DISTANCE BECAUSE OF ALL OF THE INDUSTRY INFRASTRUCTURE CHANGES THAT HAVE BEEN MADE OVER THE LAST 15 YEARS. PLEASE COMMENT ON MR. GILLAN'S ASSERTIONS.

A. Mr. Gillan accurately describes many of the changes that have occurred in the telecommunications industry since divestiture. However, he fails to point out that most of the changes he listed were actions taken by the LECs to open the long distance market. For example, the LECs were responsible for deploying equal access software, providing new switch software to establish different trunk groups for different traffic categories, and designing carrier billing systems. With our experience in helping to successfully open the long distance market, the LECs should once again be able to use that experience to successfully open the local market.

1 Q. PLEASE COMMENT ON MR. GILLAN'S ASSERTION THAT
2 BELLSOUTH'S INTERLATA ENTRY IS IMMEDIATE AND
3 UBIQUITOUS.

4
5 A. Mr. Gillan trivializes the hurdles that BellSouth must overcome to
6 compete in this market. BellSouth must first gain approval of its
7 Statement from the state commissions. Once the Statement is approved
8 at the state level, then BellSouth must go to the FCC to seek relief. The
9 FCC must decide to grant interLATA authority in order to remove the
10 legal barrier to BellSouth's providing long distance services in its region.
11 The Act has been in effect for well over a year and still no RBOC has
12 been granted in-region, interLATA authorization.

13

14 Once the legal barriers have been eliminated, BellSouth will then enter
15 the in-region interLATA market with 0% market share. BellSouth will be
16 competing against huge, experienced, global competitors who are
17 offering similar packages of telecommunications services. BellSouth will
18 face immense market barriers. On page 33 of his testimony, Mr. Gillan
19 lists some of the hurdles that BellSouth will face in offering long distance
20 services. Although he concludes that such hurdles are trivial, Mr. Gillan
21 provides no basis or analysis for his belief. If, in fact, these hurdles are
22 so easy to overcome, why did MCI and Sprint have so much trouble
23 doing it when they started; and why did it take them so long to get a good
24 foothold? His assertion is simply without merit.

25

1 Q. MR. GILLAN, BEGINNING ON PAGE 36, MR. MCCAUSLAND ON
2 PAGE 16, AND MR. WOOD ON PAGE 13, DISCUSS THAT IT IS
3 MORE DIFFICULT AND/OR COSTLY FOR COMPETITORS TO ENTER
4 THE LOCAL MARKET THAN IT IS FOR BELLSOUTH TO ENTER THE
5 LONG DISTANCE MARKET. DOES BELLSOUTH AGREE THAT THIS
6 IS INDEED THE CASE?

7

8 A. No. Entering the local market as a pervasive facilities-based competitor
9 would be costly and may initially be difficult for competitors. These
10 witnesses, however, seem to suggest that the only way to enter the local
11 market is to build a pervasive facilities-based network. There is no
12 mention that, just as BellSouth's entry into the interLATA market will be
13 as a reseller, potential competitors have the capability to enter the local
14 market using resale which requires no network investment. They can
15 also enter by purchasing unbundled elements with minimal network
16 investment.

17

18 Also, the FCC does not believe that disparate capabilities of IXCs and
19 LECs are cause for concern. In its Memorandum Opinion and Order
20 Report No. LB96-32, January 31, 1997, the FCC stated the following at
21 paragraphs 48 and 50:

22

23 "We observe that MCI and others are also capable of offering
24 one-stop shopping, by building their own local facilities, by
25 reselling unbundled network elements, or by reselling PacTel's

1 facilities and adding that local offering to their existing long
2 distance service. The customers who want one-stop shopping
3 may choose the combined local and long distance services of
4 SBC/PacTel or one of its competitors. If SBC/PacTel composes
5 such an offering first and satisfies all regulatory requirements,
6 then it should benefit from being first to the market with one-stop
7 shopping.”

8
9 “Customers have grown accustomed to receiving long distance
10 service from AT&T, MCI, Sprint, and many others for more than
11 a decade. A massive shift of customers upon the entry of a new
12 supplier (SBC/PacTel) is unlikely unless that new supplier offers
13 them something more attractive than the existing suppliers are
14 offering and can possibly offer in response. MCI has not
15 established that if SBC/PacTel wins a modest share of the traffic
16 for which it will be newly able to compete, the incentives for entry
17 into its local markets will be reduced to a significant degree.”

18
19 These statements indicate that it will be quite difficult for BellSouth to
20 compete in the interLATA market and that IXCs will be able to compete
21 effectively in the local market.

22
23 Q. ARE THERE ANY OTHER FALLACIES IN THEIR ARGUMENT?

24
25

1 A. Yes. The intervenors are suggesting that they will have to build facilities
2 to provide service to all customers in all markets that BellSouth serves.
3 In the event an ALEC decides it is feasible to construct facilities, it would
4 only have to build the facilities for its particular customers in specific
5 areas, e.g., major urban areas. They can use the BellSouth network to
6 serve other areas. In addition, there are Alternative Access Vendors
7 ("AAVs") who have already constructed local networks in urban areas in
8 Florida. An IXC and an AAV could join services, add switching and be in
9 business.

10

11 One additional fallacy that seems common throughout the testimony of
12 the intervenors is that they ignore the existence of any statutory
13 requirements. Mr. Wood, on page 13 of his testimony, complains about
14 a "monopoly supplier that is hardly a motivated seller and faces no
15 competitive constraints on the rates it seeks to charge." There are so
16 many requirements regarding local competition that this assumption is
17 absurd.

18

19 Q. HAVE MR. GILLAN AND MR. MCCAUSLAND CORRECTLY
20 CHARACTERIZED THE AVAILABILITY OF INTERLATA CAPABILITIES
21 TO BELLSOUTH?

22

23 A. No. These witnesses suggest that BellSouth is free to mix and match
24 interLATA network elements in any combination it chooses to create any
25 services it desires and use of these elements parallels the interLATA

1 market opportunities. Although Mr. Wood states that there are numerous
2 long distance carriers that have capacity to sell or lease, there is,
3 however, no requirement that their network elements must even be
4 offered. There are no pricing standards which apply to these so called
5 network elements. BellSouth will enter this market as a reseller, not as a
6 user of unbundled elements. Nowhere has AT&T stated its willingness to
7 give BellSouth interLATA capacity at cost. Mr. Gillan's analysis of the
8 number of switches, on page 37 of his testimony, is irrelevant to
9 addressing barriers to entry. It does show, however, that, assuming the
10 price of the switches is comparable, IXCs should offer switching to
11 BellSouth at 1/20 the price that BellSouth offers them switching.

12

13 Q. MR. WOOD ON PAGE 13 ALLUDES TO BELLSOUTH'S
14 ADMINISTRATIVE NETWORK AS HAVING SUFFICIENT CAPACITY
15 TO ALLOW IT TO OFFER IN-REGION INTERLATA SERVICES
16 IMMEDIATELY WITH NO ADDITIONAL INVESTMENT. IS THIS A
17 POSSIBILITY?

18

19 A. No. Again, Mr. Wood seems simply to ignore the FCC's First Report and
20 Order, In the Matter of Implementation of the Non-Accounting
21 Safeguards of Sections 271 and 272 of the Communications Act of 1934,
22 which appears to allay this concern. As long as BellSouth owns the
23 official services network, paragraphs 261 and 262 of that Order appear to
24 prohibit use of that network to provide almost all interLATA services, with
25 the exception of grandfathered and incidental interLATA services.

1 Paragraph 218 appears to prohibit the transfer of the official services
2 network to any BellSouth long distance affiliate unless "unaffiliated
3 entities have an equal opportunity to obtain ownership of this facility."

4

5 Q. HOW DOES MR. GILLAN BELIEVE BELLSOUTH'S ABILITY TO OFFER
6 "ONE-STOP SHOPPING" AFFECTS THE MARKETPLACE?

7

8 A. Mr. Gillan implies that the "one-stop shopping" capability will be unique to
9 BellSouth. What he fails to mention is that the interexchange carriers
10 (IXCs) can enter the local market today and have the same one-stop
11 shopping capability concurrent with BellSouth. In fact, they will receive
12 this capability on February 8, 1999 whether or not BellSouth has entered
13 the interLATA market. This is a key point. The only benefit the IXCs
14 gain from BellSouth's entry into the long distance market is the ability to
15 offer one-stop shopping sooner. Therefore, they have nothing to lose by
16 delaying BellSouth's interLATA entry since they gain this capability in
17 February 1999 regardless of what BellSouth does. This is a strong
18 incentive for their continuing baseless assertions that BellSouth's entry is
19 premature.

20

21 Q. ON PAGE 36, MR. GILLAN ASSERTS THAT BELLSOUTH'S
22 POTENTIAL CLAIM OF A COMPETITORS' "HEAD START" IF
23 BELLSOUTH IS NOT GRANTED INTERLATA ENTRY IS AN ILLUSION.
24 PLEASE COMMENT ON MR. GILLAN'S ASSERTION.

25

1 A. Mr. Gillan is simply wrong. BellSouth does not assert that competitors
2 get a "head start" if BellSouth is not guaranteed immediate entry.
3 BellSouth only asserts that an unfair "head start" occurs when additional
4 criteria are imposed as a condition to such entry which is contrary to the
5 Act. Mr. Gillan's analogy of the IXCs only receiving a head start like the
6 outside runner in a race is cute, but inaccurate. The situation is more
7 analogous to IXCs wanting to run the entire race before BellSouth is
8 allowed onto the track. For example, the IXCs have already benefited
9 from 1+ presubscription in Florida prior to BellSouth's authorization to
10 provide interLATA long distance service. This head start has resulted in
11 an intraLATA toll loss to BellSouth in Florida of almost 1,000,000
12 residential access lines in one year. This is hardly an illusion and does
13 not even consider business lines.

14

15 Q. MR. GILLAN AND MR. GULINO STATE, AND MS. STROW IMPLIES
16 THAT EACH AND EVERY ASPECT OF LOCAL COMPETITION IS NEW
17 AND UNTESTED. IN FACT, MR. GULINO STATES, ON PAGE 5 OF
18 HIS TESTIMONY, "THERE ARE NO TIME-TESTED PROCESSES IN
19 PLACE THROUGH WHICH A CUSTOMER CAN ORDER, BILL, AND
20 MAINTAIN THE CRITICAL ELEMENTS NEEDED TO ACTUALLY
21 PARTICIPATE IN THE LOCAL MARKET." DO YOU AGREE WITH THIS
22 ASSUMPTION?

23

24 A. No. Their presumption is not true. First, there is no requirement that all
25 items on the Statement must be ordered. BellSouth must generally offer

1 the items and they must be functionally available. BellSouth may
2 demonstrate through testing procedures that all items are in fact
3 available. Nonetheless, most of these items are currently being
4 provided. This is discussed in more detail in the testimony of Mr. Keith
5 Milner. As Mr. Milner shows, BellSouth is actually providing many of the
6 checklist items and, therefore, these items can no longer be considered
7 new and untested.

8
9 Mr. Gulino and Ms. Strow submit that the interconnection agreements
10 are paper promises to try to do what the competitive checklist requires.
11 Mr. Gulino alleges that the contracts lack the particulars needed to
12 provide service. If these particulars were lacking in the contracts, the
13 ALEC could have requested them in arbitration. The ALECs have now
14 decided to establish yet another, after the fact, hurdle that the arbitrated
15 agreements do not contain all of the particulars they need. This is
16 obviously just more evidence of their desire to stall BellSouth's entry by
17 any means necessary.

18
19 Ms. Strow contends that BellSouth is not meeting the terms of the
20 interconnection agreement between the two companies. Ms. Strow's
21 dispute is based primarily on her insupportable contentions regarding
22 unbundled network elements related to frame relay service. Her
23 conclusions are simply wrong. As of March 24, 1997, BellSouth has
24 made available the capabilities that Intermedia has requested. This
25

1 issue is discussed in more detail in the rebuttal testimony of Mr. Keith
2 Milner.

3

4 Q. ARE THERE ANY BARRIERS TO PREVENT THE ALECS FROM
5 ENTERING THE LOCAL MARKET?

6

7 A. No. Since BellSouth has opened its local markets to competition,
8 barriers no longer exist. ALECS have negotiated agreements to provide
9 access and interconnection. They can purchase unbundled network
10 elements or resell BellSouth's services today. The timing of their entry is
11 now their decision. BellSouth, on the other hand, still has the legal
12 barrier of gaining approval for in-region interLATA entry from the FCC.
13 Specifically, BellSouth must prove checklist compliance as required in
14 the Act .

15

16 Q. MR. GILLAN, ON PAGE 38 OF HIS TESTIMONY, SUGGESTS THAT
17 BELL SOUTH'S ENTRY INTO LONG DISTANCE SHOULD BE
18 DELAYED BECAUSE EVEN WITH THE SAFEGUARDS IN SECTION
19 272 THERE ARE STILL ONGOING DANGERS OF DISCRIMINATION.
20 PLEASE COMMENT.

21

22 A. Mr. Gillan is attempting to supplant Congress' views with his own.
23 Congress implemented substantial nondiscrimination provisions in
24 Sections 251, 252, 271, and 272 of the Act. If Congress wanted
25 additional safeguards to further delay entry, it certainly knew how to

1 enact them. Although Mr. Gillan is apparently dissatisfied with the Act's
2 provisions, he cannot simply ignore them and impose his own
3 requirements. His speculation about possible discrimination despite the
4 numerous safeguards is not a valid basis for denying a BellSouth
5 application for interLATA relief. If this allegation was valid, BellSouth
6 would never be authorized to offer in-region long distance.

7

8 Q. MR. GULINO, ON PAGE 7, STATES THERE IS NO GENERAL
9 UNDERSTANDING OR PAST PRACTICE TO FALL BACK ON SHOULD
10 THERE BE A DISPUTE. FOR THESE REASONS THERE NEEDS TO
11 BE DETAILED AND SPECIFIC IMPLEMENTATION PROVISIONS THAT
12 HAVE NOT BEEN ADDRESSED. HOW DO YOU RESPOND?

13

14 A. Mr. Gulino is simply mistaken. There are numerous vehicles to settle
15 disputes. There are federal and state complaint processes. BellSouth
16 must continue to negotiate agreements and this Commission can
17 arbitrate disputes. There is also recourse to the Courts. Certainly there
18 are means to settle disputes. With regard to the need for implementation
19 detail, BellSouth has filed extensive documentation containing such
20 details and is continuing to share such details with ALECs. Two ALEC
21 training conferences have recently been held to assist with the process
22 and procedures for implementation.

23

24 Q. MR. GULINO, ON PAGE 8, IMPLIES THAT SINCE BELLSOUTH'S
25 WITNESSES RECOGNIZED THAT OPERATIONAL INTERFACES ARE

1 EVOLUTIONARY, EVEN BELLSOUTH CANNOT KNOW WHEN ITS
2 SYSTEMS WILL BE AVAILABLE. DO YOU AGREE WITH THIS
3 STATEMENT?

4

5 A. No. Mr. Gulino's statements are a mischaracterization of the testimony
6 of BellSouth's witnesses. Although it is true that the systems will
7 continue to evolve as needs change and as new capabilities are
8 developed, as is the case with any mechanized system, the systems are
9 ready and operational today.

10

11 Q. THE INTERVENORS HAVE SUGGESTED A NUMBER OF REASONS
12 WHY BELLSOUTH'S ENTRY IS PREMATURE. SPECIFICALLY, WHEN
13 DOES THE ACT SAY ENTRY IS PREMATURE?

14

15 A. Section 271(c) of the Act states that entry is premature under Track A
16 without an agreement with a qualifying carrier, under Track B in less than
17 10 months of enactment; and when the checklist has not been met. It
18 does not include any of these other standards that the intervenors
19 attempt to establish.

20

21 **TRACK A VS TRACK B**

22

23 Q. HOW GERMANE IS THE ISSUE OF WHICH ROUTE, I.E., SECTION
24 271(c)(1)(A) (TRACK A) OR 271(c)(1)(B) (TRACK B), BELLSOUTH IS

25

1 PERMITTED TO FOLLOW TO SEEK INTERLATA RELIEF IN THIS
2 PROCEEDING?

3

4 A. Track A vs. Track B is a federal, rather than a state, decision. The issue
5 of which track BellSouth is permitted to follow to seek interLATA relief,
6 therefore, should have little, if any, significance in this proceeding. I
7 believe, however, that we have clearly stated our position on this issue
8 and that is, BellSouth meets Track A in Florida. We have interconnection
9 agreements with facilities-based ALECs that serve both business and
10 residence customers.

11

12 The FCC will review the facts and make its decision after BellSouth files
13 its application for interLATA relief. Contrary to Mr. Wood's contention, on
14 page 4 of his testimony, that "a determination of whether BellSouth must
15 proceed according to Track A or Track B has certain implications for the
16 decision and recommendation that the Commission must make in this
17 proceeding," there has been no indication that this Commission will need
18 to determine whether the correct track was followed. As I stated in my
19 direct testimony, this Commission will need to provide factual input to
20 enable the FCC to make the decision of whether the appropriate track
21 was followed. This Commission should be in the best position to advise
22 the FCC of the relevant facts regarding the status of competition in
23 Florida.

24

25

1 Subjecting itself to hearing long-winded arguments about the intent of
2 Track A or Track B, or which track is appropriate or foreclosed, will not
3 provide this Commission with the information that it needs. These
4 arguments will only waste the Commission's time by having it listen to
5 debate of a question or questions that it will not need to answer.

6

7 Q. WHAT ARE THE CONSEQUENCES OF THE INTERVENORS'
8 POSITIONS REGARDING WHETHER BELL SOUTH MAY FILE FOR
9 INTERLATA AUTHORITY UNDER TRACK A OR TRACK B?

10

11 A. Let me first reiterate what I have said previously in both this testimony
12 and in my direct, the positions that the intervenors are taking are simply
13 erroneous. It is the FCC, not the FPSC, that must approve the track on
14 which BellSouth will base its request for interLATA relief. It appears,
15 however, that based on their positions, the intervenors are requesting the
16 Commission to abandon this whole docket. Ms. Murphy says, on page 5
17 of her testimony, that Track B is not available to BellSouth because
18 Track B is "only available under very limited circumstances which do not
19 apply here." Since ACSI and other carriers have requested access and
20 interconnection, she contends that Track B is not available. She further
21 states that BellSouth cannot comply with Track A because there is no
22 facilities-based competition in the business or residential market.
23 Similarly, Ms. Strow states on page 4, that BellSouth is precluded from
24 pursuing Track B because BellSouth has had several requests for
25 access and interconnection. She states that although Track A is

1 available, "the facts in this case will demonstrate that BellSouth does not
2 meet the requirements of Track A..."

3

4 If BellSouth cannot request relief from the FCC under either Track A or
5 Track B, then there is nothing more for this Commission to decide on the
6 issue of interLATA relief. Of course, the plain language of the Act belies
7 that ludicrous assertion. BellSouth is certainly not in some type of
8 sustained no-man's land, or "Catch-22" as referred to by Commissioner
9 Deason in the July 15, 1997 Agenda Conference, where "there is just no
10 alternative, and BellSouth cannot proceed under either Track A or Track
11 B."

12

13 Q. MR. BRADBURY ON PAGE 11, MS. STROW ON PAGE 10, MR.
14 GILLAN ON PAGE 25, AND OTHERS DISCUSS THE DEPARTMENT
15 OF JUSTICE'S (DOJ) EVALUATIONS IN SOUTHWESTERN BELL'S
16 (SBC) OKLAHOMA AND AMERITECH'S MICHIGAN APPLICATIONS
17 WITH THE FCC. WHAT SHOULD THE DOJ'S ROLE BE IN THE 271
18 PROCEEDING?

19

20 A. Under section 271(d)(2)(A), the DOJ is required to provide to the FCC
21 "an evaluation of the application using any standard the Attorney General
22 considers appropriate." It is clear, however, that the role Congress
23 envisioned for the DOJ in Section 271 was limited to the DOJ's expertise
24 regarding the impact the BOC's entry into the interLATA market would
25 have on competition in that market. The DOJ has gone far beyond this

1 role by offering its opinions on the availability of Track A and Track B
2 under Section 271; by accepting, without any independent analysis,
3 complaints of competitors concerning SBC's provision of physical
4 collocation, interim number portability and OSS access; and by setting a
5 subjective standard for measuring and managing competition in the local
6 market even though Congress specifically and intentionally did not set
7 such a standard.

8
9 Congress provided examples of the kinds of inquiries that the DOJ might
10 pursue. These examples include such antitrust-based questions as
11 whether the BOC's entry into the in-region interLATA market would allow
12 the BOC to impede competition in the interLATA market or whether there
13 is a substantial possibility that the BOC could use its power in the local
14 market to impede competition in the interLATA market. The many
15 statements made by Congress support that Congress intended for the
16 FCC to give "substantial weight" only to an evaluation grounded in the
17 DOJ's expertise in antitrust matters. By venturing into areas in which it
18 has no expertise and by establishing vague standards that are
19 inconsistent with Congressional design, the DOJ has effectively
20 abdicated its responsibility under Section 271 and delegated to
21 BellSouth's competitors in the local market the decision whether
22 BellSouth may enter the in-region interLATA market.

23
24 To my knowledge the DOJ has no particular expertise in OSS or in the
25 technical requirements of providing telecommunications services. It is

1 BellSouth's position that the DOJ's role in consulting with the FCC is
2 limited to antitrust issues. Thus, the DOJ's opinions concerning OSS or
3 checklist compliance are not binding or persuasive.

4
5 Q. MS. STROW, ON PAGE 18 OF HER TESTIMONY, SUGGESTS THAT
6 IT IS NECESSARY FOR AN INDIVIDUAL FACILITIES-BASED
7 COMPETITOR TO PROVIDE SERVICE TO BOTH RESIDENTIAL AND
8 BUSINESS CUSTOMERS. SHE ALSO STATES THAT IT IS
9 NECESSARY FOR COMPETING PROVIDERS TO BE PROVIDING
10 SERVICE TO MORE THAN ONE RESIDENTIAL SUBSCRIBER AND
11 ONE BUSINESS SUBSCRIBER. ARE THESE REQUIREMENTS OF
12 THE ACT?

13
14 A. No, Ms. Strow is mistaken. As I stated in my direct testimony, if a
15 competing provider is providing facilities-based services to one group of
16 customers and resale to the other group, that provider still allows
17 BellSouth to qualify for interLATA entry under Track A. The Act requires
18 only that a competing provider serve both business and residential
19 customers and be exclusively or predominately facilities-based. It does
20 not require that both classes of customers be served over that provider's
21 own facilities. In fact, one competitor may provide facilities-based
22 service to business customers and another may provide facilities-based
23 service to residential customers. This combination may also allow Track
24 A to be met.

25

1 With regard to the number of subscribers necessary in any one class,
2 Ms. Strow is also incorrect. As I have previously stated, nowhere in the
3 Track A criteria does the Act require that service be provided to more
4 than one residential and one business customer in order to satisfy the
5 Track A requirement. Ms. Strow's reference to "principles of statutory
6 construction" is just obfuscation at its best.

7

8 Q. IN SEVERAL REFERENCES THROUGHOUT HER TESTIMONY, MS.
9 STROW STATES THAT BELLSOUTH HAS NOT MET THE
10 REQUIREMENT FOR A SPECIFIC ITEM ON THE CHECKLIST. SHE
11 INSINUATES THAT BELLSOUTH MAY INTENTIONALLY BE
12 ATTEMPTING TO DELAY COMPETITION, PARTICULARLY FOR
13 FACILITIES-BASED COMPETITORS. IS THERE ANY TRUTH TO MS.
14 STROW'S INSINUATION?

15

16 A. Absolutely not. First, BellSouth does not agree that it is not in
17 compliance with many of the points on the checklist that Ms. Strow cites.
18 Second, and of equal if not more importance, BellSouth is certainly not
19 attempting to delay competition in the local market, particularly with
20 regard to facilities-based providers. Delaying local competition would be
21 extremely counter productive to BellSouth's business objective to enter
22 the in-region interLATA market; even mentioning the possibility is absurd.
23 BellSouth is working diligently with ICI, as well as all other ALECs, to
24 meet their needs and facilitate their local market entrance. Ms. Strow is

25

1 just trying to obfuscate the real issues in this docket and may be trying to
2 mislead this Commission.

3

4 **STATEMENT OF GENERALLY AVAILABLE TERMS AND CONDITIONS**

5

6 Q. WHY IS BELLSOUTH FILING ONLY A DRAFT STATEMENT OF
7 GENERALLY AVAILABLE TERMS AND CONDITIONS?

8

9 A. BellSouth has filed a Draft Statement to allow this Commission additional
10 time to review the Statement before it must make a final decision. Under
11 Section 252(f) of the Act, the Commission must, within 60 days of
12 submission, either complete its review of the Statement or permit it to
13 take effect. This Commission's decision in this proceeding is currently
14 scheduled for November 3, 1997. Filing the Draft Statement allows the
15 Commission approximately two additional months for review. BellSouth
16 plans to file its final Statement on a schedule that will allow the
17 Commission to make its decision within the 60 day limit. There will be no
18 substantive differences between the Draft Statement and the Final
19 Statement. BellSouth simply intends to remove the word "Draft".

20

21 Q. MS. STROW SUGGESTS THAT SINCE ICI DOES NOT BELIEVE
22 BELLSOUTH MEETS TRACK A, THERE IS NO NEED FOR THE
23 COMMISSION TO EVEN REVIEW BELLSOUTH'S STATEMENT.
24 PLEASE COMMENT.

25

1 A. Ms. Strow, through her suggestion, would apparently have the
2 Commission terminate this proceeding. That suggestion is ridiculous on
3 its face. BellSouth's Statement has more uses than just as a tool for
4 BellSouth to qualify for entry into the interLATA market under Track B.
5 Upon Commission approval, BellSouth's checklist compliant Statement
6 will be available to any competitor desiring to enter the local exchange
7 market.
8
9 Moreover, there are several ways that BellSouth can establish its
10 compliance with the requirements of the 14-point checklist for entry
11 under Track A. In addition to the several combinations of approved
12 agreements, discussed in my direct testimony, that are available to
13 demonstrate checklist compliance, Section 271(d)(3) of the Act allows
14 that a combination of the agreements and the Statement can be used to
15 meet the checklist requirements for a filing under Section 271(c)(1)(A).
16
17 Also, if a competitor would otherwise qualify under Track A but this
18 Commission certifies that the competitor has not negotiated in good faith
19 or has somehow delayed implementation of its agreement, Track B must
20 be followed. The Commission's ability to certify that a competitor has
21 delayed implementation its agreement becomes important as a result of
22 the FCC's SBC 271 Order which creates a situation where competitors
23 can forestall BellSouth's entry into the in-region interLATA market. While
24 BellSouth does not necessarily agree with the FCC's interpretation, its
25 existence heightens the importance of the Commission's evaluation of

1 whether competitors have delayed implementation of their agreements.
2 Such delay by competitors could cause the FCC to inappropriately delay
3 BellSouth's interLATA entry. For example, delayed implementation may
4 result when competitors that have negotiated agreements with BellSouth
5 and have stated that they plan to provide service are still not doing
6 anything yet to provide that service. Or, perhaps a substantial timeframe
7 has passed and the competitors are providing facilities-based service to
8 business customers but have not provided any service to residential
9 customers. Clearly, BellSouth has opened the markets to competition,
10 but these competitors would be delaying BellSouth's entry into the in-
11 region interLATA market by delaying implementation of their agreements.

12

13 Q. HAVE ANY OTHER STATES REVIEWED BELLSOUTH'S
14 STATEMENT?

15

16 A. No BellSouth state has refused to review BellSouth's statement. In
17 addition to the reference in Mr. Wood's testimony to Georgia and
18 Louisiana, South Carolina has recently determined unanimously (7-0)
19 that BellSouth had opened the local market to competition. The South
20 Carolina Commission ruled that BellSouth's Statement meets the
21 requirements of the 14 point checklist and that interLATA entry by
22 BellSouth in South Carolina is in the public interest. That Order has not
23 yet been issued.

24

25

1 Q. DO YOU HAVE ANY FURTHER COMMENTS ON THE SOUTH
2 CAROLINA RULING?

3

4 A. Yes. There are three companies that are currently offering businesses in
5 South Carolina alternative local service. According to South Carolina
6 Commissioner Dukes Scott, "[t]his isn't a ruling for BellSouth. This is a
7 ruling for competition. This will let the customer decide what they want."
8 In addition to "lock-step" pricing among long-distance companies, which
9 was one of the reasons the Commission made its decision, the
10 Commission hopes to force AT&T to enter the local markets in South
11 Carolina. AT&T's reported response of "fat chance" certainly brings into
12 question its true intentions with regard to the local market. If it is not
13 willing to enter a local market where BellSouth can apply for interLATA
14 relief, what incentive does it have to enter a local market where
15 BellSouth cannot yet apply?

16

17 Q. MR. WOOD, ON PAGES 28 AND 29 OF HIS TESTIMONY, DISCUSSES
18 THE RECOMMENDATIONS OF THE ADMINISTRATIVE LAW JUDGE
19 ("ALJ") IN LOUISIANA TO THE LOUISIANA PUBLIC SERVICE
20 COMMISSION. WOULD YOU PLEASE COMMENT ON HER
21 RECOMMENDATION.

22

23 A. As Mr. Wood describes in his testimony, the ALJ suggested to the LPSC
24 that there was insufficient information available to make a decision with
25 regard to BellSouth's Statement filed in Louisiana and it should,

1 therefore, be rejected. What Mr. Wood fails to mention in his testimony,
2 is the fact that the ALJ's recommendation was directly contradicted by
3 the LPSC. In its decision on July 16, 1997, and confirmed in its Order
4 dated July 28, 1997, the Louisiana Commission rejected the ALJ's
5 Recommendation. The matter was remanded to the ALJ, and the staff is
6 to provide a recommendation that is limited to whether BellSouth's
7 Statement complies with the 14-point competitive checklist. The
8 Louisiana PSC will vote on BellSouth's Statement on August 20, 1997 .

9

10 Q. MR. MCCAUSLAND STATES ON PAGE 8 OF HIS TESTIMONY, THAT
11 BELL SOUTH MAY NOT RELY ON ITS STATEMENT IN ORDER TO
12 OBTAIN SECTION 271 AUTHORITY. DO YOU AGREE?

13

14 A. No. Mr. McCausland bases his allegation on the FCC's Order rejecting
15 SBC's Section 271 application. However, the FCC did not reject use of
16 the Statement. If this Commission confirms that the Statement is
17 checklist compliant, it can be used to demonstrate compliance under the
18 Act. The Act makes it clear that the BOC has the ability to file under
19 Track A or Track B, depending upon the facts in existence.

20

21 In addition, BellSouth may rely on its Statement even when interLATA
22 relief is sought under Track A. There is nothing in the Act that says the
23 Statement and Track A are mutually exclusive conditions. Qualifying
24 agreements used under Track A may not contain all items on the
25 checklist. The combination of approved agreements with the Statement

1 may provide a means for BellSouth to meet the checklist if the qualifying
2 competitors under Track A do not elect to have or use all of the checklist
3 items included in their agreements.

4

5 Q. INTERVENORS HAVE COMMENTED THAT BELL SOUTH'S
6 STATEMENT OF GENERALLY AVAILABLE TERMS FILED IN
7 GEORGIA WAS REJECTED. PLEASE COMMENT ON THE RECENT
8 GEORGIA DECISION.

9

10 A. There were two basic premises included in the Georgia Order rejecting
11 the Statement. First, the Operational Support Systems (OSS) were not
12 complete and operational. BellSouth agreed with this finding and in fact
13 requested an extension until the end of April to provide OSS. The
14 second reason for rejection was that the interim rates in the Statement
15 did not comply with Section 252(d) of the Act which requires rates to be
16 cost based. BellSouth has filed a Motion for Rehearing and Clarification
17 or, in the Alternative, for further Consideration of this issue. The Georgia
18 Commission denied the Motion because of concerns about the validity of
19 retroactive adjustments caused by the true-up. That situation does not,
20 however, exist in Florida. The Florida rates are not subject to retroactive
21 treatment. The Georgia Commission's finding in the March 20, 1997
22 Order that the rates it adopted in the arbitration proceedings were not
23 "cost-based rates under Section 252(d)" conflicts with the requirements
24 of Section 252(c) and the Commission's statements that it was
25 establishing rates in the arbitrations consistent with Section 252(d).

1 Section 252(d) requires that the rates for interconnection and unbundled
2 network elements be cost based; it does not specify what methodology
3 the Commission must use. The Commission can use a different
4 methodology when establishing permanent rates if it so desires. This
5 premise was certainly upheld by the Eighth Circuit Court of Appeal's
6 Ruling.

7

8 Q. YOU MENTION THE EIGHTH CIRCUIT COURT'S RULING ABOVE.
9 DOES BELLSOUTH'S STATEMENT NEED TO BE CHANGED TO
10 COMPLY WITH THE COURT'S OPINION?

11

12 A. No. The terms, conditions, and prices are permitted by the Eighth
13 Circuit's opinion.

14

15 Q. DOES THE COURT'S OPINION HAVE AN IMPACT ON ANY OF THE
16 INTERVENORS' TESTIMONY PRESENTED IN THIS PROCEEDING?

17

18 A. Yes, it certainly does. The Eighth Circuit Court's Ruling vacated a
19 number of the FCC's Rules in its First Report and Order in CC Docket
20 No. 96-98. The Court held that State Commissions have exclusive
21 jurisdiction to interpret the statutory requirements and set prices for local
22 interconnection, unbundled elements, and resale without interference or
23 input from the FCC. Since the Court ruled that the FCC lacked
24 jurisdiction to issue the pricing rules, the Court declined to review the
25 merits of those rules.

1

2 The Court also vacated the FCC's "pick and choose" rule. It found the
3 rule to be an unreasonable interpretation of the statute. The Court found
4 the FCC's interpretation to be inconsistent with Act's preference for
5 negotiated agreements. The Court went on to explain that an
6 interconnector seeking to receive the benefit of a term in a preexisting
7 interconnection agreement must also accept the trade-offs negotiated by
8 the original party. In addition, the Court vacated the requirement for
9 submission to the State Commissions for approval, pre-Act agreements
10 between incumbent LECs. The Court also found that the FCC cannot
11 preempt state rules simply because they are inconsistent with FCC
12 regulation. The Court interpreted subsection 251(d)(3) of the Act to
13 preserve state statutes enacted prior to the Act that were designed to
14 open local markets to competition.

15

16 Further, the Court vacated the presumption that any item that can
17 technically be unbundled should be unbundled. The Court rejected the
18 FCC's attempt to use "technical feasibility" to define those elements that
19 are subject to unbundling. The Court agreed with the LECs that
20 "technical feasibility" defines where within the network unbundling is to
21 take place, not which elements are subject to unbundling. In addition,
22 the rules requiring ILECs to offer interconnection and unbundled
23 elements superior in quality to their own, and requiring that ILECs
24 recombine unbundled network elements for the ALECs were also
25 vacated.

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The Court also rejected the FCC's claim that it could enforce its interpretations of Sections 251 and 252 through Section 208 complaint proceedings, holding that the State Commissions have exclusive authority to enforce the terms of the interconnection agreements reached under the Act. If there is a disagreement with the State Commission in decisions regarding Sections 251 and 252, the Court stated that the exclusive means to review such decisions lies with Federal District Court under Section 252(e)(6) of the Act. The Court upheld the FCC rules applicable to CMRS providers and reversed the FCC's standards for determining when a rural LEC is exempt from the requirements of Sections 251 and 252.

Although the ramifications of vacating many of these rules is readily apparent, due to the short timeframe since the filing by the Eighth Circuit, BellSouth has not completed its analysis of the implications of several of the decisions.

Q. WHAT SECTIONS OF THE FCC'S RULES WERE VACATED BY THE EIGHTH CIRCUIT?

A. Specifically, the Court vacated the following provisions:

Section 51.303 - Preexisting agreements;

Section 51.305(a)(4) - requirement for superior quality of interconnection, if requested;

1 Section 51.311(c) - requirement for superior quality of access to
2 unbundled network elements, if requested;

3 Section 51.315(c)-(f) - requirement to combine unbundled
4 network elements;

5 Section 51.317 - Standards for identifying network elements to
6 be made available. This section was only vacated to the extent
7 that the rule establishes a presumption that a network element
8 must be unbundled if it is technically feasible to do so;

9 Section 51.405 -Rules with regard to rural telephone companies;

10 Sections 51.501-51.515 - Pricing standards for elements,
11 including the application of access charges;

12 Sections 51.601-51.611 - Pricing standards for resale;

13 Sections 51.701-51.717 - Reciprocal Compensation for
14 Transport and termination of Local Telecommunications Traffic
15 (some sections in this group are excluded as they apply to
16 CMRS providers); and

17 Section 51.809 - Availability of agreement provisions to other
18 telecommunications carriers under section 252(l) of the Act.

19

20 Q. MR. HAMMAN AND MR. BRADBURY SUGGEST THAT THE
21 STATEMENT OF GENERALLY AVAILABLE TERMS AND CONDITIONS
22 SHOULD BE REJECTED BECAUSE IT DOES NOT INCLUDE
23 SEVERAL FEATURES OF THE AT&T ARBITRATED AGREEMENT.
24 DOES THIS ARGUMENT HAVE MERIT?

25

1 A. Absolutely not. The Statement fulfills the requirement to offer each of the
2 items on the 14-point checklist. This is the only requirement that the
3 Statement has to meet. It provides the proper vehicle for other carriers
4 to use, if they so desire, to enter the local market quickly without
5 negotiating agreements and possibly going through the complex process
6 of arbitration. Of course, negotiation is still available to these competitors
7 as well. The Statement, as written, is checklist compliant as is required
8 by Section 271(c)(2)(B).

9
10 Mr. Hamman and Mr. Bradbury argue that the Statement must contain
11 capabilities included in AT&T's arbitrated agreement without regard for
12 whether those capabilities are required by the checklist. The Statement
13 does not include nor is it required to have included, every item that is
14 included in negotiated or arbitrated agreements because some of these
15 items go beyond the requirements of the checklist and were specifically
16 requested by individual carriers to be included for their own purposes.
17 Other carriers may not necessarily want all the conditions that AT&T has
18 in its agreement. Of course, if other carriers choose, they can avail
19 themselves of previously negotiated or arbitrated agreements. In
20 addition, they can use the bona fide request process provided for in the
21 Statement to obtain additional capabilities. It seems disingenuous for
22 AT&T to complain about the lack of provisions in the Statement when it
23 already has an arbitrated agreement that is more extensive than the
24 Statement and AT&T should have no interest in the Statement as long as

25

1 the items in its agreement are at least as good as what is included in the
2 Statement. One questions the motivation for such complaints.

3

4 **CHECKLIST EXPANSION**

5

6 Q. THROUGHOUT THE TESTIMONY OF MANY OF THE WITNESSES
7 THERE HAVE BEEN ATTEMPTS MADE AT EXPANDING THE
8 REQUIREMENTS INCLUDED IN THE COMPETITIVE CHECKLIST. IS
9 SUCH EXPANSION ALLOWED BY THE TELECOMMUNICATIONS
10 ACT?

11

12 A. No. Section 271(d)(4) clearly states that: "The Commission may not, by
13 rule or otherwise, limit or extend the terms used in the competitive
14 checklist set forth in subsection (c)(2)(B)." Congress decided the
15 checklist was necessary and sufficient to open the local markets to
16 competition and apparently gave great thought as to what the provisions
17 should be. Congress could have added more items but they chose not
18 to do so and even included this provision prohibiting expansion of the
19 checklist. This Commission should ignore the self-serving
20 recommendations of parties in this docket to expand the checklist.
21 Checklist expansion is in contravention of the Act.

22

23 Q. PLEASE PROVIDE SOME EXAMPLES OF CHECKLIST EXPANSION.

24

25

1 A. First, on page 7, Mr. Gillan concludes that “local competition
2 depends...upon whether the tools entrants actually needed are available
3 in ways that support entry on a commercial scale.” Nowhere in the Act is
4 there a requirement that the checklist items be in use on a commercial
5 scale before interLATA entry can be sought. This assertion is contrary to
6 the logic that produced Track B. BellSouth can comply with the checklist
7 even if no facilities-based competitor exists. Given this fact, it is
8 impossible for the checklist to contain any kind of actual use requirement
9 before compliance can be demonstrated.

10

11 In addition, several intervenors, like Mr. Wood on page 9 of his
12 testimony, recommend that regulators should wait to authorize BOC
13 interLATA entry until the Commission is confident that markets are
14 indeed open. This recommendation is simply a market share test in
15 disguise. Again, market share thresholds are not a requirement of the
16 Act and were affirmatively rejected by Congress.

17

18 In addition, several intervenors try to expand the checklist to include a
19 laundry list of items necessary to BOC entry, that they believe should not
20 have been omitted from the Act . Mr. Hamman, beginning on page 3,
21 adds operational expertise to the list. Mr. Pfau, on page 3, states that
22 BellSouth must demonstrate it is providing nondiscriminatory access by
23 obtaining data through performance measurements. Mr. Hamman’s and
24 Mr. Bradbury’s additional requirements place competitors in control of
25 when the local market will be open to competition. None of these

1 requirements are in the checklist. These requirements would totally belie
2 Track B, as stated above, and force a de facto market share test that
3 Congress affirmatively rejected.

4

5 Q. HAVE THERE BEEN OTHER CRITERIA PROPOSED WHICH WOULD
6 EXPAND THE CHECKLIST?

7

8 A. Yes. Mr. Gillan on page 39, although not specific, alludes that access
9 charges must be reduced to cost prior to BellSouth's entry into long
10 distance. Reduced access charges has been a recurring theme in many
11 dockets across the nation for years.

12

13 However, this issue of access charge reductions is so far removed from
14 the scope of this proceeding that it is obviously just another attempt to
15 hold interLATA entry by BellSouth hostage until their demands are met.
16 The IXCs have provided a whole wish list of items that they say must be
17 met prior to BellSouth's entry into the long distance market. Reducing
18 access charges is unnecessary in this proceeding and should not be
19 considered. I predicted in my direct testimony that this argument would
20 be made by interexchange carriers. What I said in that testimony is still
21 true. Reducing access charges to cost is not included in the fourteen
22 checklist points. If Congress had intended this to be a requirement, they
23 clearly would have included it in the checklist.

24

25

1 Q. WHAT ARE THE CONSEQUENCES OF REDUCING ACCESS
2 CHARGES TO COST?

3

4 A. As I stated in my direct testimony, the consequence of this proposed
5 reduction in access charges is the elimination of a substantial source of
6 support for universal service. If this source of support is eliminated, then
7 universal service could be jeopardized. Access charge reductions, as
8 well as their effects on universal service, are so far removed from this
9 docket that these issues should be considered at another time. Universal
10 service and access reform, although vitally important, are extremely
11 complex issues; reform of these systems, however, simply has no role in
12 this proceeding. The Commission's attention should not be misdirected
13 to address such issues.

14

15 Q. ARE THERE OTHER ATTEMPTS TO EXPAND THE CHECKLIST THAT
16 YOU WOULD LIKE TO COMMENT ON?

17

18 A. Yes. Mr. Gillan repeatedly concludes that availability of network element
19 combinations is a necessary precondition for interLATA entry. Network
20 element combinations are not a checklist requirement. In fact, as I stated
21 above, the Eighth Circuit Court ruled that BellSouth is not required, by
22 the Act, to offer such combinations. A capability that is not even required
23 to be offered by the Act, surely cannot be a checklist requirement.

24

25 **REBUNDLED ELEMENTS**

1

2 Q. SEVERAL OF THE INTERVENORS HAVE RAISED THE ISSUE OF
3 REBUNDLED NETWORK ELEMENTS. WOULD YOU PLEASE
4 COMMENT.

5

6 A. Yes, since it has received so much attention, I would like to comment
7 briefly on the issue of the recombining or rebundling of network elements
8 into services equivalent to those offered at retail. Several of the
9 intervenors have opined that BellSouth has not provided recombined
10 elements as they, the intervenors, have requested. This is simply not the
11 case. BellSouth has provided recombined elements as ordered by this
12 Commission. In the Order on Motions for Reconsideration of the
13 Arbitration Orders ("Reconsideration Order"), the Commission stated that
14 it had not addressed the price of rebundled elements in its original Order.
15 In its original Order on arbitration, the Commission expressed its concern
16 with the FCC's interpretation of Section 251(c)(3) of the Act, Unbundled
17 Access. Specifically, the Commission was "concerned that the FCC's
18 interpretation could result in the resale rates we set being circumvented if
19 the price of the same service created by combining unbundled elements
20 is lower." The issue here is not the technical provision of the elements,
21 but the price that BellSouth charges for the recombined elements.

22

23 As information, I have attached Exhibit AJV-6, which illustrates the
24 consequences of pricing recombined elements as proposed by AT&T.
25 This exhibit is the same format that was used in the arbitration

1 proceeding. However, I have changed the resale discount and
2 unbundled prices to reflect this Commission's Order.

3

4 Q. WOULD YOU PLEASE BRIEFLY EXPLAIN THE CHART YOU HAVE
5 INCLUDED AS AJV-6?

6

7 A. Certainly. Exhibit AJV-6 illustrates the financial effect of this issue. Let
8 me give you a hypothetical example. Assume there is a business
9 customer with two business lines with hunting and a single vertical
10 feature on each of his lines. Based on these assumptions, this business
11 customer pays BellSouth \$69.62 each month for his first line.

12

13 Now consider that this business customer decides to purchase local
14 service from AT&T, for instance. As a reseller of BellSouth's local
15 service, AT&T would pay BellSouth \$61.27, the retail rate less the
16 avoided cost discount approved by this Commission, each month for the
17 line and the Company would continue to receive access charges from
18 that customer.

19

20 Now consider that AT&T orders unbundled elements to provide the
21 equivalent service as provided above. The revenues paid to BellSouth,
22 based on the unbundled rates ordered by this Commission, would drop
23 to \$32.77 for this line. Not only does BellSouth lose significant revenue,
24 but AT&T is not subject to the joint marketing restriction on resold
25 services.

1

2 Page 2 of the exhibit further illustrates the effect of recombination. It
3 shows the average rate for business lines and trunks and residence
4 lines, including vertical services, toll and access. First, it shows the
5 average retail price of the service. Next, it shows the price for the
6 combination of these services for an average customer if the services are
7 resold. Then, it shows a difference of (\$21.27) for business, if the same
8 package of services was sold as AT&T requested. As can be seen, the
9 difference between the revenues for the recombined elements and the
10 resold services, the loss due to regulatory rules, is significant. When the
11 per line losses are multiplied by the number of respective lines, it
12 produces the contribution loss at various levels of market share erosion.
13 For residence customers, the difference is positive so ALECs would not
14 order recombined elements. Essentially, for each ten percent of market
15 share that an ALEC gains in this manner, BellSouth loses \$35M in
16 contribution. This is the loss experienced over and above that from
17 providing the services at the resale discounted level.

18

19 Based on these results, I believe that this Commission was correctly
20 concerned about allowing AT&T to usurp the contributions that this
21 Commission placed in retail rates through the artifice of renaming resale
22 as rebundling.

23

24 Q. IS BELL SOUTH REQUIRED TO REBUNDLE UNBUNDLED ELEMENTS
25 TO COMPLY WITH THE CHECKLIST?

1

2 A. No. The Eighth Circuit Court examined the FCC Rules and determined
3 that BellSouth is not required to rebundle under the Act. As stated
4 above, the Court vacated rule 51.315(c)-(f) as well as its affiliated
5 discussion sections. The Court found that "Section 51.315(c)-(f), cannot
6 be squared with the terms of subsection 251(c)(3)." They go on to say
7 that "[w]hile the Act requires incumbent LECs to provide elements in a
8 manner that enables the competing carriers to combine them, unlike the
9 Commission, we do not believe that this language can be read to levy a
10 duty on the incumbent LECs to do the actual combining of elements."
11 Certainly if BellSouth is not required to rebundle under the Act, it cannot
12 be a requirement of the checklist.

13

14 Q. MR. GILLAN CONTENDS THAT THE ABILITY TO RECOMBINE
15 NETWORK UNBUNDLED ELEMENTS AT THE UNBUNDLED
16 ELEMENT PRICES IS A NECESSARY CONDITION FOR
17 DEVELOPMENT OF LOCAL COMPETITION. MR. GULINO ASSERTS
18 ON PAGE 18, THAT PRICING OF REBUNDLED SERVICES IS
19 INCONSISTENT WITH THE FEDERAL ACT. ARE EITHER OF THESE
20 ASSERTIONS CORRECT?

21

22 A. No. There are substantial margins in business vertical services and
23 access prices. That is no surprise. As a matter of public policy, this
24 Commission originally set these prices to support local residential rates.
25 If new entrants are permitted to capture or eliminate those margins

1 immediately, residential, principally rural, customers will be harmed. It is
2 the customers that AT&T and MCI do not want to serve who will fund the
3 multi-million dollar price breaks that AT&T, MCI and other ALECs will
4 receive. This windfall will be achieved by simply changing the way
5 services are ordered. ALECs will simply request rebundled elements
6 instead of resold service. Nothing else is different. To protect
7 consumers, the price for recombined elements cannot equal the sum of
8 unbundled element prices when the rebundled and resold services are
9 equivalent. This Commission has heard the intervenors arguments
10 before and there is no need to address them again in this proceeding.
11 BellSouth has not said that it will not provide the recombined elements
12 that, in this case, AT&T is requesting. In fact, BellSouth currently offers
13 rebundled elements. We believe that we will continue to offer such
14 rebundled elements, if BellSouth can establish the appropriate prices for
15 these elements. BellSouth is, however, evaluating this decision in light of
16 the Eighth Circuit's opinion. What BellSouth has said is that there is no
17 requirement in the Act and there is no valid policy reason for the carriers
18 to receive recombination priced as they have requested. Additionally,
19 the Eighth Circuit found that BellSouth does not have to offer such
20 rebundling; and, consequently, such rebundling is not a criterion for
21 determining whether the Statement is checklist compliant.

22

23 Q. HOW DOES BELLSOUTH RESPOND TO MR. GILLAN'S ASSERTION
24 ON PAGE 12, LINES 13-14, THAT IN PRICING NETWORK ELEMENTS

25

1 THE ENTRANT AND THE INCUMBENT SHOULD FACE THE SAME
2 COST STRUCTURE FOR THE NETWORK THEY SHARE?

3
4 A. Mr. Gillan's suggestion that interconnectors will only utilize unbundled
5 elements is contrary to the intent of Congress to provide incentives to
6 build infrastructure. He incorrectly implies that prices should be set equal
7 to cost and that interconnectors will only utilize unbundled elements.
8 Setting prices equal to cost is not required by the Act and would not be
9 sound public policy. In addition, in its Reconsideration Order, the
10 Commission states, on page 24, "[w]e note that AT&T expected all rates
11 to be set at cost. However, our rates were based on TSLRIC cost and
12 included contribution to joint and common costs. We agree with
13 BellSouth that we were not required to set rates at cost." (emphasis
14 added)

15
16 Q. PLEASE COMMENT ON MR. GILLAN'S STATEMENT ON PAGE 12,
17 LINES 28-30, THAT "NETWORK ELEMENTS ESTABLISH THE
18 ENTRANT AS A COMPLETE PROVIDER OF LOCAL AND EXCHANGE
19 ACCESS SERVICES, AN ECONOMIC PREDICATE TO FULL SERVICE
20 COMPETITION."

21
22 A. Much has been said about the different business opportunities that
23 rebundled elements present. The only different business opportunity is
24 that ALECs want to pay less for the resold service; avoid paying access
25 charges; and avoid the joint marketing restriction. The carrier is no more

1 the customer's access service provider using rebundled elements than
2 they are using resale. The access service is provided by the same
3 BellSouth loop and switch in either case.

4
5 Another baseless reason to support their contention of a difference
6 between resale and rebundling is the need to bill for access services.
7 Under either scenario, BellSouth provides the access services to the
8 carrier. If AT&T, for instance, is the end user's long distance provider,
9 AT&T will not bill access to anyone. End users don't pay carrier access
10 charges, carriers do. AT&T, in this case won't be billing access to
11 anyone; they will simply stop paying it to BellSouth, even though they
12 continue to use the same BellSouth equipment in the same way.

13
14 Now, if an AT&T end user served by rebundled elements decides to use
15 MCI as their IXC, AT&T would propose to bill MCI for access, but that is
16 unnecessary. BellSouth does not need AT&T to bill MCI for the access
17 service that BellSouth provides. And, by the way, AT&T also wants to
18 keep the revenue in this case. Somehow they believe that it is
19 appropriate for BellSouth to provide all of the investment but AT&T to
20 receive all of the revenue.

21

22 Q. HOW DOES BELLSOUTH RESPOND TO MR. GILLAN'S ASSERTION,
23 ON PAGE 13, THAT NETWORK ELEMENTS ENABLE THE
24 COMPETITIVE PROVIDER TO DEVELOP ITS OWN UNIQUE LOCAL
25 SERVICES?

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A. Mr. Gillan asserts that there are additional capabilities the competing provider can offer that are different than what they can provide under resale. We disagree with Mr. Gillan's assertion in this matter. If a competitive provider uses unbundled elements combined with facilities of their own, unique local services could be developed. However, by strictly using elements rebundled by the LEC, no additional capabilities beyond resale can be gained. A competitor gets the same capabilities of the BellSouth network that are provided through resold services. What they can add to the service, what they can do with the service, their ability to innovate and serve the customer are all the same under either circumstance.

Q. ON PAGE 26, MR. GILLAN STATES THAT THE FCC REAFFIRMED ITS DECISION ON THE PROVISION OF NETWORK ELEMENT COMBINATIONS. HOW DO YOU RESPOND?

A. First, Mr. Gillan is incorrect; all the FCC did in the recent access reform decision was reaffirm its rule that access charges should not apply to unbundled elements. It did not reaffirm that recombined elements should be offered. As I stated previously, the Eighth Circuit Court vacated the FCC rules that prohibited charging access on unbundled elements and that required BellSouth to rebundle network elements. The fact that the FCC has resurrected the access charge rule under access reform has no bearing on this proceeding.

1

2 Q. PLEASE COMMENT ON MR. GILLAN'S ASSERTION, ON PAGE 16,
3 THAT UNBUNDLED LOCAL SWITCHING IS THE HEART OF LOCAL
4 EXCHANGE SERVICE.

5

6 A. If unbundled local switching is truly the most critical element to create
7 services and generate revenues, then competition should be in full force.
8 The switch is one of the easiest items for the IXC's to provide on their
9 own, as several ALECs have already done. If what Mr. Gillan says is
10 true, then there should be broad scale local competition from all carriers
11 providing services using their own switches.

12

13 Q. DOES THE UNBUNDLED LOCAL SWITCHING NETWORK ELEMENT
14 ESTABLISH THE PURCHASER AS ITS SUBSCRIBER'S LOCAL
15 TELEPHONE COMPANY IN EVERY RESPECT?

16

17 A. No. Nowhere in the Act or the FCC rules does it state that the unbundled
18 local switch establishes its purchaser as its subscriber's local carrier.
19 The part of the FCC Order that Mr. Gillan quotes on page 18 says
20 nothing about the entrant becoming the subscriber's local telephone
21 company. It is ludicrous to believe that the unbundled local switching
22 network element could do this alone. Other elements are required in
23 conjunction with the switch to provide service coequal to BellSouth. The
24 ALEC can purchase the unbundled local switching element from

25

1 BellSouth and combine it with loop, transport and other services obtained
2 from a third-party or provided themselves.

3

4 Q. DOES BELLSOUTH PROVIDE AN UNBUNDLED LOCAL SWITCHING
5 ELEMENT THAT SATISFIES THE REQUIREMENTS OF THE ACT AND
6 THE FCC RULES?

7

8 A. Yes. The ALEC can buy BellSouth unbundled switching and receive all
9 of the features the switch provides. Mr. Gillan's criticism of unbundled
10 switching is based on the fact that BellSouth advocates that AT&T
11 should not receive the access revenues when it purchases the combined
12 loop and port. Mr. Gillan just does not like the price AT&T should pay for
13 the recombined services. Mr. Gillan has repeatedly attempted to
14 distinguish between recombination and resale but has not successfully
15 achieved this goal.

16

17 Q. PLEASE COMMENT ON MR. GILLAN'S REFERENCE, ON PAGE 24,
18 TO THE DOJ'S REJECTION OF AMERITECH'S MICHIGAN
19 COMPLIANCE WITH THE CHECKLIST.

20

21 A. First, whether the DOJ is right in their rejection of Ameritech's Michigan
22 compliance is not germane. The DOJ nor the Attorneys General have
23 any expertise in evaluating the requirements of the competitive checklist.
24 The DOJ stated that Ameritech could not receive in-region interLATA
25 authority unless it makes common transport available in conjunction with

1 both unbundled switching and the "network platform". The "network
2 platform" is available in the BellSouth region and ALECs can purchase
3 combinations of network elements. In addition, the way Ameritech
4 provides common transport is different than the way BellSouth provides
5 common transport. Common transport is available to competitors in
6 Florida. BellSouth does not have the same problems offering common
7 transport that the DOJ was alluding to in the Ameritech evaluation.

8

9 Q. DOES THE ACT REQUIRE BELLSOUTH TO PROVIDE UNBUNDLED
10 NETWORK ELEMENTS IN A MANNER EQUIVALENT TO THE
11 MANNER BELLSOUTH PROVIDES SUCH ELEMENTS TO
12 THEMSELVES AS MR. GULINO STATES ON PAGE 22?

13

14 A. No, the Act requires the provision of nondiscriminatory access. In
15 addition, BellSouth does not provide unbundled loops to itself so the
16 statement that BellSouth provides loops to itself in 48 hours or less is
17 simply not true. In addition, Mr. Gulino expresses concern about huge
18 delays in BellSouth's provisioning of unbundled loops. This is a
19 mischaracterization with regard to the parity issue. If no facilities are
20 available, BellSouth as well as the competitor would be delayed by an
21 equal amount of time in providing service.

22

23 Q. WHAT OTHER ISSUES RELATED TO RECOMBINATION NEEDS TO
24 BE ADDRESSED?

25

1 A. Mr. Hamman, at pages 27-32, uses the term unbundled platform or
2 platform configuration to describe recombination of elements. He then
3 states that BellSouth is unable to implement this unbundled platform.
4 There is nothing unique about the means to provision this unbundled
5 platform which is simply recombination of network elements. Their
6 platform is simply retail services that will be resold. Consequently,
7 BellSouth can implement AT&T's request, provisioned as resale. Again,
8 BellSouth is not required to offer this capability and, therefore, it has no
9 bearing on checklist compliance.

10

11 SUFFICIENCY OF INTERIM RATES

12

13 Q. MR. WOOD ON PAGE 5, ALLEGES THAT THE INTERIM RATES AND
14 PERMANENT RATES SET BY THIS COMMISSION IN ARBITRATION
15 DOCKETS DO NOT SATISFY THE REQUIREMENTS OF 252(d)(1) OF
16 THE ACT. HOW DO YOU RESPOND?

17

18 A. Mr. Wood is just plain wrong. Interim and permanent rates as
19 established by this Commission satisfy the requirements of Section
20 252(d) of the Telecommunications Act. Again, I reiterate what the
21 Commission stated in its Reconsideration Order, "[w]e agree with
22 BellSouth that we were not required to set rates at cost." Mr. Wood's
23 erroneous contention is based on his misrepresentation that Section
24 252(d)(1) requires that rates should equal cost. However, Section
25 252(d)(1)(A) states that interconnection and network element charges

1 should be "based on the cost of providing the interconnection or network
2 element..." Mr. Wood acknowledges this definition on page 16 of his
3 testimony but chooses to ignore it.

4

5 Q. MR. WOOD, ON PAGE 24, STATES THAT THE RATES SET IN THE
6 ARBITRATION ARE INTERIM AND NEED FURTHER INVESTIGATION
7 BEFORE PERMANENT COST-BASED RATES ARE SET. DOES THIS
8 MEAN THE INTERIM RATES ARE NOT COST BASED?

9

10 A. No. The Commission has adopted TSLRIC as the cost methodology for
11 establishing permanent rates. Where TSLRIC studies were not provided,
12 the Commission set interim rates based on Hatfield Model costs or
13 BellSouth tariffs. The FPSC will set permanent rates for these items
14 based on TSLRIC studies that have now been filed by BellSouth. The
15 fact that a different cost methodology was used to set interim rates does
16 not change the Commission's conclusion that the interim rates are cost-
17 based. Section 252(d) requires the rates for interconnection and
18 unbundled network elements to be cost-based but does not specify what
19 methodology this Commission must use. The Commission is certainly
20 free to use one methodology in establishing interim cost-based rates,
21 while using a different methodology to adjust these costs and prices on a
22 permanent basis. The rates ordered by this Commission in the
23 arbitration will remain in effect until such time as the Commission orders
24 the rates changed just as is done today with tariffed rates. Existing rates

25

1 are always subject to review and change - a characteristic that is
2 common in the marketplace.

3

4 The Florida Commission will determine what the proper permanent rates
5 should be. BellSouth is currently in compliance with the Act and,
6 therefore, there is no reason to delay BellSouth's entry into the interLATA
7 long distance until permanent rates are set.

8

9 Q. ON PAGES 30-32 OF HIS TESTIMONY, MR. WOOD DISCUSSES THE
10 GEOGRAPHIC DEAVERAGING OF SOME NETWORK ELEMENTS.
11 PLEASE COMMENT ON HIS DISCUSSION.

12

13 A. First, rate deaveraging is not a requirement of the Act, is not required to
14 be checklist compliant or to obtain interLATA relief. It is, therefore, not a
15 relevant issue to be considered in this proceeding. Since Mr. Wood has
16 raised it, I will, however, respond briefly. BellSouth has never agreed to
17 deaverage rates in Georgia, which is what Mr. Wood seems to be trying
18 to insinuate in his testimony. While BellSouth agrees that costs may vary
19 by geographic area and that there are different levels of universal service
20 support in different rates, this is not the arena to address the issue. The
21 different levels of universal service support, while an important issue, is
22 more appropriately addressed in conjunction with all other issues,
23 including rate rebalancing, related to universal service, not as a stand
24 alone issue. The Commission addressed geographic deaveraging of
25 unbundled elements in its Order No. PSC-96-1579-FOF-TP. In that

1 Order on page 23, they state, "[w]e also find that the Act can be
2 interpreted to allow geographic deaveraging of unbundled elements, but
3 we do not believe it can be interpreted to require geographic
4 deaveraging. We further find that the record in this proceeding does not
5 support a decision to geographically deaverage the price for unbundled
6 elements..."

7

8 Q. DO YOU AGREE WITH MR. WOOD'S ASSERTION THAT TSLRIC
9 CANNOT BE USED AS A COST BASIS FOR DETERMINING RATES
10 UNDER SECTION 252 OF THE ACT?

11

12 A. No. Mr. Wood claims that because TELRIC and TSLRIC produce
13 different results, this Commission's rates are not cost based. This claim
14 is irrelevant, as well as being wrong. The Act does not specify a
15 particular cost method. The Commission decided to use TSLRIC. The
16 fact that it is different from TELRIC is obvious and does not change the
17 fact that this Commission set prices based on cost. In addition, the
18 Eighth Circuit's Ruling has vacated the FCC's pricing rules and has given
19 sole responsibility for pricing to the states. This Commission is free to
20 choose the appropriate cost method to meet the Act's requirement that
21 prices are set based on cost. As I stated previously, the Eighth Circuit's
22 Ruling gave the State Commission exclusive jurisdiction over such issues
23 as this.

24

25 **ALLEGATIONS OF UNFAIR COMPETITION**

1

2 Q. VARIOUS PARTIES HAVE ALLEGED THAT BELLSOUTH HAS
3 EXHIBITED UNFAIR COMPETITIVE PRACTICES IN THE PAST. ARE
4 THEIR CHARGES TRUE?

5

6 A. No. In an attempt to demonstrate that BellSouth does not compete fairly,
7 the intervenors have listed several past occurrences in which BellSouth
8 and these parties have not agreed on certain issues. Some of these
9 alleged acts were ordered by Commissions; some have been resolved
10 by the parties through the normal course of business; and others have
11 been resolved by regulators in favor of BellSouth. These parties would
12 have the Commission believe that anytime BellSouth has a legitimate
13 disagreement with another carrier, that BellSouth is acting
14 anticompetitively. This is not only untrue, it is simply an attempt to keep
15 BellSouth out of the interLATA market and retain the existing oligopoly.

16

17 BellSouth has been a leader among local exchange carriers in pro-
18 competitive policies and actions. A USTA advertisement in The Wall
19 Street Journal on February 13, 1997 shows that BellSouth has
20 negotiated more interconnection agreements than any other RBOC. In
21 fact, BellSouth has over 577 signed agreements to date, 93 in Florida.
22 BellSouth has repeatedly stated that it believes that competition for local
23 exchange services will be in the public interest if implemented in a
24 competitively neutral manner.

25

1 In my following testimony, I will address many of the allegations
2 presented by the intervenors. BellSouth has provided reasonable
3 explanations to these allegations which clearly do not reflect that
4 BellSouth has participated in any anticompetitive activity.

5

6 Q. ALLEGATIONS HAVE BEEN MADE BY SEVERAL WITNESSES THAT
7 THE ACSI AND SPRINT METROPOLITAN EXPERIENCES
8 DEMONSTRATE THAT BELL SOUTH CANNOT PROVIDE
9 INTERCONNECTION AND ACCESS AS REQUIRED BY THE ACT.
10 PLEASE RESPOND TO THESE ALLEGATIONS.

11

12 A. As these customers can attest, BellSouth has indeed provided the
13 access and interconnection that was agreed upon in their negotiated
14 contracts. BellSouth agrees that, as with most new processes, there
15 have been some start-up problems. BellSouth has handled these
16 problems and is currently providing the services requested. Further,
17 BellSouth is continually striving to ensure that these new processes work
18 properly. There is no basis for concluding from these occurrences that
19 BellSouth cannot meet the requirements of the checklist.

20

21 Q. MS. CLOSZ TESTIFIED CONCERNING SPRINT METROPOLITAN
22 NETWORK'S DIFFICULTIES IN OPERATING AS AN ALEC IN
23 CENTRAL FLORIDA. HAS BELL SOUTH ADDRESSED HER
24 CONCERNS?

25

1 A. Yes. The events Ms. Closz references in her testimony are past
2 operational issues concerning unbundled loop provisioning. These
3 issues have been subsequently resolved. If additional issues arise,
4 BellSouth will naturally continue to work with Sprint Metro to resolve
5 them.

6

7 Q. ON PAGE 7, MS. MURPHY STATES THAT BELLSOUTH'S PRICING
8 POLICIES MAKE IT ECONOMICALLY INFEASIBLE FOR ACSI TO
9 PROVIDE LOCAL SERVICE TO RESIDENTIAL CUSTOMERS. WHAT
10 IS YOUR RESPONSE TO THIS ALLEGATION?

11

12 A. Ms. Murphy is suggesting that BellSouth's unbundled loop is priced too
13 high and BellSouth should lower its unbundled loop price in order for the
14 ALECs to be able to compete. However, she totally ignores the fact that
15 BellSouth's residential local exchange service is priced below cost. As
16 required by the Act, the unbundled loop is priced based on cost and
17 therefore exceeds BellSouth's basic residential exchange service rate.
18 An ALEC can offer vertical services, long distance or other features in
19 conjunction with basic service to the residential customer which makes
20 the offering economically feasible and allows the ALEC to compete with
21 BellSouth's retail offerings. See Exhibit AJV-6.

22

23 One way to resolve this problem is through the establishment of a
24 universal service fund from which ACSI and other parties could draw
25 funds to support the unbundled loop. Another resolution would be rate

1 rebalancing in which residential local exchange service is increased to
2 cover its cost and business exchange service is reduced closer to cost.
3 Ironically, this solution has been proposed in Kentucky and Ms. Murphy
4 objected to rebalancing rates. In Kentucky she stated that rebalancing is
5 anticompetitive because ACSI would have difficulty competing for
6 business customers if BellSouth decreased business rates closer to cost.

7

8 Q. MS. MURPHY, ON PAGE 10 OF HER TESTIMONY, BEGINS A
9 DISCUSSION REGARDING COMPLAINTS ACSI HAS FILED WITH THE
10 GEORGIA PUBLIC SERVICE COMMISSION AND WITH THE FCC DUE
11 TO "BELLSOUTH'S CONTINUING FAILURE TO PROVISION
12 UNBUNDLED LOOPS TO ACSI ON A TIMELY BASIS". PLEASE
13 COMMENT.

14

15 A. ACSI is attempting to bring forward again the complaint which was filed
16 with the Georgia Commission in December, 1996. BellSouth responded
17 to that complaint on January 16, 1997. The Georgia Commission
18 ordered that ACSI's original complaint be held in abeyance pending
19 review and recommendation by the Commission staff. ACSI withdrew
20 that complaint and refiled in July, 1997, making many of the same
21 allegations that were made in December. On June 3, 1997, BellSouth
22 filed its Opening Brief in File No. E-97-09 with the FCC in response to
23 ACSI's Federal Complaint on this same issue. A copy of BellSouth's
24 brief in reply to ACSI's complaint at the FCC is attached as Exhibit AJV-
25 7.

1

2 In BellSouth's responses to the complaints, BellSouth acknowledged that
3 ACSI had experienced some unintended delays and service interruptions
4 in connection with the initial unbundled loops it ordered from BellSouth.
5 These problems have been corrected. In addition, BellSouth has
6 demonstrated that ACSI's own failures contributed significantly to the
7 problems of which it complains. Moreover, since ACSI's complaint was
8 filed, BellSouth has successfully provisioned several hundred loops in
9 compliance with the performance criteria contained in the
10 BellSouth/ACSI agreement.

11

12 Her allegation of continuing problems is contradicted by ACSI's own
13 witness Richard Robertson in Georgia. On March 3, 1997, Mr.
14 Robertson admitted under cross examination that ACSI has no current
15 complaint with the status of BellSouth's efforts to correct service
16 problems (Georgia PSC Docket No. 6863-U, March 3, 1997, Hearing
17 Transcript pages at 1216 and 1219). He further stated that BellSouth
18 has been "responsive" in addressing such issues (Georgia PSC Docket
19 6863-U, March 3, 1997, Hearing Transcript at page 1219).

20

21 Q. MS. MURPHY ASSERTS ON PAGE 11 THAT "BELLSOUTH
22 UNILATERALLY ADMINISTERED THE CUTOVER WITHOUT
23 CONTACTING ACSI". WOULD YOU EXPLAIN WHY BELLSOUTH DID
24 NOT CONTACT ACSI FOR A COORDINATED CONVERSION?

25

1 A. It is not solely BellSouth's responsibility to contact ACSI regarding
2 conversions of end user customers from BellSouth to ACSI. As stated in
3 Section IV, D3. of the ACSI/BellSouth Interconnection Agreement,
4 approved by the Commission in Order No. 961509 dated December 12,
5 1996, issued in Docket No. 960969, it is both ACSI's and BellSouth's
6 responsibility to establish "a 30-minute window within which both the
7 ACSI and BellSouth personnel will make telephone contact to complete
8 the cutover." There obviously was a miscommunication or no
9 communication made by either party for these initial cutovers of
10 unbundled loops. ACSI submitted these "live" customer orders without
11 contacting BellSouth for proper procedures or testing for the orders. To
12 ensure this is not an on-going problem, BellSouth is currently initiating
13 contact with ACSI on each conversion of end user customers to ensure
14 each conversion is performed on a coordinated, consistent and accurate
15 basis.

16
17 Ms. Murphy does not admit that the agreement is also binding on the part
18 of ACSI with regard to coordination and communication efforts. Per
19 Section XVIII. of the Interconnection Agreement, ACSI and BellSouth
20 were to "adopt a schedule for the implementation of this Agreement. The
21 schedule shall state with specificity, ordering, testing, and full operational
22 time frames."

23
24 According to BellSouth's records, there has been no discussion to
25 implement this part of the agreement. Instead, without communicating

1 with BellSouth, without testing any ordering processes, without
2 establishing any time frames for coordination, ACSI began submitting
3 orders for the conversion of "live" access lines from the BellSouth switch
4 to ACSI's equipment.

5

6 Q. ON PAGE 12, MS. MURPHY SAYS THAT ON DECEMBER 23, 1996,
7 ACSI RECEIVED ORDERS FOR 113 ACCESS LINES AND ASSUMING
8 A FIVE DAY TURN AROUND, THESE 113 ACCESS LINES SHOULD
9 HAVE BEEN CUT OVER BY DECEMBER 28, 1996, BUT IN FACT,
10 BELL SOUTH HAD CUTOVER FAR FEWER LINES BY THAT DATE.
11 WOULD YOU ADDRESS THIS ASSERTION?

12

13 A. Yes. According to BellSouth's documentation, as of December 28, 1996,
14 BellSouth had received only 37 orders for unbundled loops, not 113. Of
15 those 37 unbundled loop orders, 16 unbundled loops were completed by
16 December 28, 1997 and an additional 21 unbundled loops were pending
17 with a due date that had not arrived. Orders issued by ACSI in mid and
18 late December were either worked by the due date or were re-negotiated
19 with ACSI for deferred due dates. Since December 18, 1996, BellSouth
20 has processed all ACSI orders for unbundled loops by the agreed upon
21 due dates.

22

23 Q. MS. MURPHY STATES, ON PAGE 14, THAT THE PROBLEMS ACSI
24 HAS EXPERIENCED ARE NOT RESOLVED. ADDITIONALLY, SHE
25 GOES ON TO STATE THAT BELL SOUTH HAS NOT PUT THE

1 PROPER SYSTEMS IN PLACE TO HANDLE ANY SIGNIFICANT
2 VOLUMES. DO YOU AGREE WITH THAT CLAIM?

3

4 A. No. It is unclear why Ms. Murphy continues to make such a claim.
5 BellSouth is processing orders for unbundled network elements from any
6 ALEC. As stated earlier, BellSouth has resolved the problems
7 encountered with ACSI's initial orders for unbundled loops. According to
8 BellSouth documentation, when ACSI filed the complaint with the
9 Georgia Commission on December 23, 1996, BellSouth had worked all
10 orders that had been submitted by ACSI with a due date of December
11 23, 1996 or earlier.

12

13 Q. HAS ACSI SUBMITTED ORDERS TO BELLSOUTH IN ACCORDANCE
14 WITH ITS INTERCONNECTION AGREEMENT?

15

16 A. No. ACSI has submitted and continues to submit orders to BellSouth's
17 Local Carrier Service Center (LCSC) in a variety of formats in
18 contravention of Section IV.C.1 of the Interconnection Agreement. This
19 type of ordering behavior causes delays and errors to occur with the
20 process. The submission of orders in non-standard formats has caused
21 severe processing delay in some of the orders that Ms. Murphy refers to.

22

23 Q. CAN YOU EXPLAIN SOME OF THE FORMATS IN WHICH
24 BELLSOUTH HAS ACCEPTED ORDERS FROM ACSI FOR

25

1 UNBUNDLED LOOPS AND THE ASSOCIATED NUMBER
2 PORTABILITY?

3

4 A. Yes. For example, some of the orders for unbundled loops submitted by
5 ACSI include the printing of a "computer screen form" and faxing that
6 printed form to the center as a Local Service Request (LSR). This
7 computer screen form does not match the LSR. The Local Carrier
8 Service Center (LCSC) representative who has been specifically trained
9 on what information to utilize on the LSR is unnecessarily delayed in
10 processing the order by having to translate and interpret the information
11 and populate the LSR, all without introducing errors.

12

13 Service Provider Number Portability (SPNP) forms are designed to
14 provide the information required for porting the existing BellSouth
15 number to the new local exchange carrier number, and to also provide
16 information for the directory listing. ACSI has provided copies of the
17 actual directory page, attached to the SPNP form, with the end user
18 customer's information circled for the BellSouth LCSC representative's
19 use to complete the directory information on the SPNP form.

20

21 Most of ACSI's unbundled loop orders have included and have required
22 SPNP orders to be worked simultaneously with the installation of the
23 unbundled loops. Contrary to Ms. Murphy's claims, some of ACSI's
24 orders carried a due date for the unbundled loops two days prior to the
25 due date for the telephone numbers to follow the new loops. If BellSouth

1 had worked the orders the way the orders appeared in the LCSC, the
2 ACSI end user customers would not have been able to receive incoming
3 calls for two days. BellSouth negotiated another due date with ACSI for
4 the conversion of these customers so the loop and the telephone number
5 would be worked simultaneously.

6
7 When supplementing LSRs to defer due dates, ACSI has provided the
8 information in the form of a typed sheet versus a supplemental LSR. The
9 sheet appears with a list of telephone numbers in one column, the due
10 date in the next column and the new or supplemental due date in the last
11 column. This information is provided to the BellSouth LCSC
12 representative for the representative's use in completing the
13 supplemental LSR forms on behalf of ACSI.

14
15 Upon receipt of such non-standard ordering information from ACSI, the
16 LCSC representative must input the customer's information on the proper
17 ordering forms to accommodate the customer's requests. The ordering
18 systems can only process information which is provided in the correct
19 format. This is true of ACSI's and any other Company's orders, including
20 BellSouth's. This type of ordering behavior causes confusion, creates
21 additional potential for error, and a need for special handling by the
22 LCSC representative. It also results in delay in processing orders for
23 other customers utilizing the LCSC. In order for the service to be
24 properly and promptly provisioned, both BellSouth and ACSI, or any
25 ALEC, have to fulfill their obligations to the process.

1

2 Q. ON PAGE 20, MS. MURPHY STATES THAT IN ORDER FOR ACSI TO
3 BE ABLE TO COMPETE EFFECTIVELY, BELLSOUTH MUST PROVIDE
4 INSTALLATION SERVICES AT PARITY WITH BELLSOUTH'S
5 INSTALLATION FOR ITS OWN CUSTOMERS. PLEASE RESPOND.

6

7 A. Ms. Murphy misrepresents that installation intervals for unbundled loops
8 ordered by the ALEC must be the same as installation intervals for
9 bundled services provided by BellSouth to its basic exchange service
10 customers. From her statements, it appears that the installation of these
11 services is similar. However, this is not the case. Provisioning
12 unbundled loops requires physical labor to separate the facility from the
13 BellSouth network and connect it to ACSI's facilities. On the other hand,
14 when BellSouth provisions bundled service for basic exchange
15 customers, the loop usually already exists and the only activity required
16 is to activate the service in the switch. The requirements to provide
17 these two types of installation are totally different.

18

19 The FCC recognized the difference in setting its rules for unbundled
20 elements. In the FCC's First Report and Order in CC Docket 96-98, the
21 FCC established Rule 51.313 on ^{provision} ~~combination~~ of unbundled network
22 elements. Specifically, Rule 51.313(b) states that "where applicable, the
23 terms and conditions pursuant to which an incumbent LEC offers to
24 provide access to unbundled network elements, including but not limited
25 to, the time within which the incumbent LEC provisions such access to

1 unbundled network elements, shall at a minimum, be no less favorable to
2 the requesting carrier than the terms and conditions under which the
3 incumbent LEC provides such elements to itself." The rule requires
4 BellSouth to provide the ALEC access to unbundled elements the same
5 as BellSouth would provision unbundled elements for itself. As stated
6 above, installing unbundled loops is not the same activity as provisioning
7 an existing loop for a new end user customer. In order to have parity
8 with BellSouth's service to end users, ACSI could resell BellSouth's
9 services while they are establishing their network.

10

11 Q. HAS BELL SOUTH REFUSED TO NEGOTIATE SPECIFIC
12 INSTALLATION INTERVALS WITH ACSI?

13

14 A. No. The ACSI agreement contemplates that the parties will establish
15 installation intervals that will enable ACSI to provide service via
16 unbundled loops to its customers in an equivalent timeframe as
17 BellSouth provides services to its own customers. Such intervals are
18 *currently being negotiated and have not yet been agreed upon.*

19 However, BellSouth has provided proposed language to ACSI that it will
20 cutover subscribers to ACSI within five days of receipt of a complete
21 order from ACSI. ACSI has not accepted this proposal; nevertheless,
22 BellSouth has adhered to this commitment since December 12, 1996 in
23 Georgia and will continue to meet the due dates requested by ACSI on
24 orders for unbundled loops.

25

1 Q. WHAT IS BELLSOUTH'S RESPONSE TO MS. MURPHY'S
2 ALLEGATION ON PAGE 21 OF HER TESTIMONY, THAT BELLSOUTH
3 IS ENGAGING IN ACTIVITIES THAT ARE IMPEDING ACSI'S ABILITY
4 TO COMPETE IN THE MARKET FOR LOCAL SERVICE?

5

6 A. Ms. Murphy has provided several examples of BellSouth activities that
7 she states prevent ACSI from freely competing for local customers. Her
8 first complaint is that BellSouth has signed up business customers to
9 multi-year contracts before opening its local markets. The *Customer*
10 *Service Arrangements* that she is alluding to have been in place for years
11 as BellSouth's response to certain competitive situations. Once these
12 contracts expire, ALECs as well as BellSouth can bid on providing future
13 services. In addition, ALECs can still market to these customers. If a
14 particular ALEC provides a more appealing service offering, these
15 business customers can certainly opt out of the BellSouth contract
16 according to the termination of contract provisions.

17

18 *Ms. Murphy also presents testimony regarding access to buildings.* She
19 states that BellSouth has established entrances to all office buildings in
20 the business district while ACSI has difficulty gaining access to some
21 buildings due to limited space or requests for large sums of money to
22 enter buildings. If any inequity exists here, it is controlled by the property
23 owners, not BellSouth. BellSouth is not charging access fees to
24 buildings; the property owners are. These fees are established by the
25 property owner as a source of revenue from telecommunications

1 companies. For future entry, BellSouth would be subject to pay these
2 same access fees to enter the buildings. In fact, BellSouth has
3 encountered some of these same problems in Florida with regard to
4 other ALECs. This is a problem, not only for ACSI but for all
5 telecommunications carriers.

6

7 Q. WHAT OTHER EXAMPLES OF ANTICOMPETITIVE BEHAVIOR DOES
8 MS. MURPHY PROVIDE TO SHOW THAT BELLSOUTH IS IMPEDING
9 ACSI'S ABILITY TO COMPETE IN THE MARKET FOR LOCAL
10 SERVICE?

11

12 A. On pages 22 and 23, Ms. Murphy further states that BellSouth's Property
13 Management Services Agreement is anticompetitive. These agreements
14 are voluntary agreements made between BellSouth and property
15 management. There is nothing to prevent ACSI from offering this same
16 type of agreement if they so desire. As a type of sales agent, the
17 property manager recommends BellSouth as the provider of choice.
18 However, the agreement in no way excludes ACSI's entry into the
19 building. Paragraph 10 of the standard agreement states "even though
20 Property Management shall recommend BellSouth as the provider of
21 choice for local telecommunications services to tenants, nothing in this
22 Agreement shall be construed to preclude any building tenant from
23 obtaining telecommunications services from others legally authorized to
24 provide such service." Clearly, ACSI can market to any of the tenants,
25 the ultimate user of the service. In addition, the Property Management

1 Agreement has a provision that if either party is dissatisfied with the
2 alliance, upon written notice, the contract can be terminated within 30
3 days and the property manager simply loses incentive credits. It should
4 be noted here that, in Florida, ALECs are entering into similar, more
5 exclusive agreements with property owners. In fact, BellSouth has been
6 told by the property owners that it cannot serve customers on these
7 properties or even come onto the property.

8
9 Finally, Ms. Murphy on page 24 of her testimony, states that BellSouth
10 has been requiring sales agents to sell BellSouth local services
11 exclusively. Again, these are voluntary arrangements between BellSouth
12 and the sales agents. ACSI can do the same thing. Surely there are
13 other sales agents available in Florida should ACSI choose to use this
14 option.

15
16 Q. FINALLY, ON PAGE 25, MS. MURPHY CITES THE FORMAL
17 COMPLAINT REGARDING ACTL MOVES FILED BY ACSI WITH THE
18 FCC ON FEBRUARY 15, 1996, AS AN EXAMPLE OF
19 ANTICOMPETITIVE CONDUCT ENCOUNTERED WITH BELLSOUTH
20 FOR CARRIER BUSINESS. PLEASE RESPOND.

21
22 A. ACSI is trying to draw an interstate access issue that is currently being
23 investigated by the FCC into this proceeding. ACSI alleges that
24 BellSouth waived Reconfiguration Non-Recurring Charges (RNRCs)
25 under the Network Optimization Waiver (NOW) tariff for its customers

1 and did not waive those charges for ACSI. This issue arises because the
2 NOW project did not apply to Access Customer Termination Location
3 (ACTL) Moves. An RNRC is always applicable for ACTL Moves, whether
4 the activity involves a BellSouth customer or an ACSI customer. ACSI is,
5 in fact, BellSouth's customer in this case.

6
7 As an example, there is no RNRC applicable for a single non-
8 channelized special access DS3 (because of the LightGate Link
9 architecture). However, because the switched access DS3s are not
10 under the LightGate architecture, RNRCs do apply. These charges
11 apply equally to a BellSouth customer or an ACSI customer. A special
12 access DS3 may or may not be channelized; a switched access DS3 is
13 always channelized to the DS0 level. The charges applicable for each
14 type of service are indeed different, but these charges are applied
15 equally without regard to the type of customer.

16
17 The FCC has an ongoing investigation into this complaint, FCC File No.
18 E96-20. BellSouth responded to two sets of interrogatories dated June
19 3, 1996 and July 29, 1996 and two Motions to Compel both dated August
20 28, 1996 in this complaint proceeding. In the responses to the
21 interrogatories, BellSouth outlined in detail how the charges are applied
22 and described the functions to support the costs incurred for the work
23 performed. The responses to the interrogatories are a matter of public
24 record and we ask the Commission to take administrative notice of the
25 responses.

1

2 Q. MS. STROW INCLUDES AS EXHIBITS JS-8 AND JS-9 TO HER
3 TESTIMONY TWO LETTERS FROM ICI TO BELL SOUTH RAISING
4 ISSUES. PLEASE COMMENT ON THESE ISSUES.

5

6 A. The issues that Ms. Strow raises by inclusion of these exhibits are old
7 issues, as the dates on the letters demonstrate. These issues were
8 responded to and, as far as the BellSouth personnel responsible were
9 aware, satisfactorily resolved. BellSouth is committed to resolve all
10 problems and/or misunderstandings with ALECs in as timely a manner
11 as possible, and did so in this case. Ms. Strow appears either to be
12 aware of only the problems that ICI encounters and not the solutions, or
13 is trying to paint a very one-sided picture of BellSouth's performance. In
14 either case, her portrayal is less than accurate.

15

16 Q. PLEASE SUMMARIZE YOUR TESTIMONY.

17

18 A. My rebuttal testimony has, I hope, made it very clear that BellSouth plans
19 to file for, and meets the requirements for, entry into the interLATA
20 market under Track (A) of the Telecommunications Act. I have
21 emphasized throughout my testimony that, in this proceeding, BellSouth
22 has requested this Commission to do just two things. First, the
23 Commission should approve BellSouth's Statement, which will be used
24 for several purposes, as being compliant with the checklist requirements
25 in Section 271(c)(2)(B) of the Act. Second, this Commission, in order to

1 fulfill its consultative role to the FCC, should accumulate the facts
2 necessary to assess the current market conditions existing in Florida.
3 These are the only two actions that this Commission needs to address in
4 this docket.

5
6 Based on the facts, this determination can easily be made. BellSouth
7 has proven that the Statement does indeed meet the 14-point
8 competitive checklist and should be approved to further open local
9 markets. Consumers in Florida will indeed benefit from BellSouth's entry
10 into the long distance market. The fact that the IXCs are so insistent
11 that BellSouth's entry should be delayed for some unknown period of
12 time proves that they are fearful of real competition in the long distance
13 market that might break up the comfortable oligopoly that has existed
14 since divestiture.

15
16 On the other hand, nothing has been presented in the cases of any of
17 the intervenors which would prevent this Commission from concluding
18 that the Statement should be approved as checklist compliant. The wish
19 list of items the ALECs have provided is nothing more than a tactic to
20 delay BellSouth's entry. This wish list, in many cases, runs counter to
21 the Act and the intent of Congress to open all markets to competition.

22
23 BellSouth would ask that this Commission not be sidetracked by all of the
24 issues raised which are not germane to the purpose of this docket. The
25 requests to rearbitrate numerous issues, the expansion of the checklist to

1 include items such as reduced access charges, the list of alleged bad
2 acts, etc. are simply red herrings and are clearly irrelevant to the task at
3 hand. Clearly, the IXCs and the ALECs have been grasping at straws
4 and pulling out every trick in the book to take the focus away from the
5 two goals of this proceeding. BellSouth would ask this Commission to
6 ignore all the attempted side-shows and distractions and keep focused
7 on the goals of this proceeding.

8

9 Q. DOES THIS CONCLUDE YOUR REBUTTAL?

10

11 A. Yes.

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 **MR. MARKS:** Now, Mr. Varner, do you have a
2 summary of your testimony?

3 **A** Yes, I do.

4 **Q** All right. Is there a document that you
5 would like the Commission to have in order to help you
6 with your summary?

7 **A** Yes. There is a document that is a -- sort
8 of a depiction of the Track A and B issue that I'm
9 going to discuss in my summary.

10 **Q** Before we get to that, I understand as well
11 that there is -- we need to address the errata sheet
12 as well that you want to make available to all the
13 parties with regards to your deposition?

14 **A** Yes. After reading the deposition, there
15 were some additional errata that needed to be made in
16 the deposition.

17 **Q** And that will be made available to the
18 parties?

19 **A** Yes.

20 **Q** Was there anything else that we need to
21 provide to the parties at this point?

22 **A** No, there isn't.

23 **COMMISSIONER GARCIA:** Can we see the errata
24 sheet?

25 **MR. MARKS:** Yeah. We'll give you copies of

1 the errata sheet to his deposition.

2 **CHAIRMAN JOHNSON:** Did you want this -- the
3 summary criteria marked or is it just for
4 demonstrative purposes?

5 **MR. MARKS:** Well, that's up to the
6 Commission. It's really a matter to help him explain
7 his summary of his testimony. If the Commission would
8 like it to be marked as an exhibit, we have no
9 objection to that.

10 **CHAIRMAN JOHNSON:** No, that's fine.

11 **MS. BARONE:** Madam Chairman, may I ask a
12 question? Are you referring to the errata sheet to be
13 marked?

14 **CHAIRMAN JOHNSON:** No, we don't have an
15 errata sheet yet. I was referring to the criteria for
16 determining Track A and Track B.

17 **Q** **(By Mr. Marks)** Mr. Varner, would you
18 please provide a summary of your testimony?

19 **A** Yes. Good morning. I'm Al Varner, and I've
20 previously come before this Commission to discuss
21 various aspects of competition in the telecom
22 marketplace. Today is no exception.

23 Today I'm going to talk about whether the
24 circumstances in Florida are right for BellSouth to be
25 allowed to obtain authority to provide interLATA

1 service. The short answer to that question is, yes,
2 those circumstances are right. And this is true in
3 large measure because of the pro-competitive steps
4 that this Commission has taken over the years.

5 You've recognized that increased levels of
6 competition when properly implemented will benefit
7 consumers. BellSouth's entry into the interLATA
8 marketplace is but one more step along that road of
9 bringing the full benefits of competition to customers
10 in Florida.

11 This step will hasten the development of
12 competition in not only the long distance market, but
13 the local market as well. This Commission has the
14 opportunity to play a vital role in the process of
15 furthering competition in the interLATA market.

16 To that end, BellSouth is asking you to do
17 two things in this proceeding. First, we ask you to
18 approve the statement of generally available terms and
19 conditions that BellSouth has filed. And, second, we
20 ask this Commission to find that that statement is
21 compliant with the 14-point checklist contained in the
22 Telecommunications Act.

23 BellSouth's entry into the interLATA long
24 distance market will benefit Florida's consumers.
25 Acting promptly will greatly enhance this Commission's

1 ability to fulfill its pivotal role in that process.

2 Now, the intervenor testimony filed in this
3 proceeding offers a number of purported reasons why
4 BellSouth should not be allowed into the interLATA
5 market. And I want to explain to you why
6 circumstances are right for Florida's consumers to
7 begin receiving the benefits that BellSouth's entry
8 can bring.

9 To begin, I'd like to give you the reasons
10 why it's important for this Commission to act now.
11 The short answer is having this commission go on
12 record, and approval, as commissions in South Carolina
13 and Louisiana have done, will have a significant and
14 positive impact on the ability of BellSouth to bring
15 interLATA benefits to Florida. Also, your positive
16 action to BellSouth's request will likely also
17 accelerate the development of local competition in
18 Florida.

19 At the appropriate time, BellSouth will file
20 its application for interLATA authority with the FCC.
21 This Commission will then have 20 days to tell the FCC
22 whether BellSouth has complied with the competitive
23 checklist. To meet this 20-day deadline, Reed Hundt
24 in a speech before NARUC stressed the importance of
25 states completing their analysis of our compliance

1 before the application is filed. Through this
2 proceeding you've already recognized that importance.

3 Now, our purpose here is to provide you with
4 information to carry out your consultative role.
5 Customers will benefit in a number of ways when
6 BellSouth is allowed to enter the market.

7 First, customers will be able to choose
8 BellSouth, AT&T, MCI, or anybody else to provide all
9 of their communications needs. BellSouth, the IXCs
10 and all other providers will have the same opportunity
11 to offer this capability because joint marketing
12 restrictions will be removed sooner if BellSouth is
13 allowed to enter the market.

14 Instead of hastening the ability of
15 customers to receive this benefit, the IXCs say that
16 our entry is premature. This is simply incorrect. All
17 that their position does is permit them to reap a
18 windfall from customers by excluding BellSouth from
19 the market. And a recent study estimates this
20 windfall to be about \$10 billion annually nationwide.

21 Now, you will be asked to conclude that
22 entry is premature, for example, because substantial
23 market share hasn't been lost yet, because each
24 checklist item hasn't been ordered or that the
25 safeguards are insufficient.

1 Now, the Act says entry is premature only
2 under three circumstances: One, under Tract A
3 without an agreement with a qualified carrier; two,
4 under Track B in less than ten months from enactment;
5 and, three, when the checklist hasn't been met. It
6 does not include any of the other criteria that the
7 intervenors are attempting to establish. The volumes
8 of their assertions are impressive, but the substance
9 is simply nonexistent.

10 Allowing BellSouth to enter the long
11 distance market will not hinder development of local
12 competition as the IXCs contend. Contrarily, such
13 entry will provide a much needed incentive for IXCs to
14 enter the local market.

15 The intervenors seem to have forgotten one
16 thing: Whether or not BellSouth is in the intraLATA
17 market, BellSouth must comply with the provision of
18 the Telecom Act, in particular, Sections 251 and 252.
19 BellSouth must also continue to comply with the FCC's
20 rules and the rules of this Commission. After
21 intraLATA entry is granted, BellSouth must also
22 continue to apply -- comply with Sections 271 and 272
23 of the Act. These legal obligations and safeguards do
24 not magically disappear once entry into intraLATA
25 authority is granted.

1 In addition to complying with the law,
2 BellSouth will continue to have strong business
3 incentives to cooperate in the development of local
4 competition.

5 One incentive results from the fact that
6 BellSouth will still be heavily regulated and its
7 competitors will not. This inequality increases
8 BellSouth's costs and constrains its ability to
9 compete.

10 As markets become more competitive,
11 regulation of BellSouth must be relaxed for it to have
12 any possibility of competing effectively. Regulators
13 are not likely to relax regulation until they are
14 confident that the marketplace will discipline our
15 behavior. An uncooperative BellSouth cannot hope to
16 achieve the quality of regulation that it needs.
17 Although intraLATA relief is important, it is by no
18 means the ultimate relief that BellSouth needs from
19 regulators.

20 As a policy matter, BellSouth's entry is not
21 premature and should not be delayed. There is no
22 doubt that the level of long distance competition will
23 increase upon BellSouth's entry. In addition, local
24 competition will benefit as well. Providing BellSouth
25 the ability to offer a full range of services to

1 consumers will be a powerful stimulus for the IXCs to
2 do the same.

3 IXCs who are not planning to enter the local
4 market will certainly enter the local market to
5 compete effectively for their long distance customers.
6 IXCs who were planning to enter will do so faster.
7 Those who have already entered the market will compete
8 with greater intensity.

9 Presence of a major company which can
10 provide one-stop shopping will make providing local
11 service dramatically more attractive to the IXCs. The
12 major thrust of their local market interest to date
13 has been associated with long distance access because
14 of its relationship to long distance merchants.

15 If BellSouth can provide one-stop shopping,
16 IXCs will certainly want to do the same. To offer
17 one-stop shopping, they must offer local service, not
18 just find alternatives fpto long distance access.
19 This event will dramatically increase the
20 attractiveness of providing local service for the
21 IXCs.

22 Now, BellSouth has stated that it believes
23 it meets the entry requirements for Track A. I would
24 like to describe the criteria for determining the
25 appropriate track and show how agreement and

1 statements are used in each track.

2 As a result of this, you will see why the
3 statement may be necessary under either track, and
4 I've provided you this handout to illustrate this,
5 which I'd like to just go over briefly.

6 The first page of the handout is entitled
7 "Criteria for Determining Track A versus Track B and
8 the Status in Florida," and it's divided into two
9 parts. At the top is Track A and the bottom is
10 Track B.

11 What I've done on this handout is I've gone
12 to the Telecom Act and I've pulled out the five
13 conditions that must be met in order for BellSouth to
14 have a Track A qualifying competitor; and that is BST
15 must have a Section 252 agreement with an ALEC; BST
16 must be providing local access and interconnection
17 under that agreement; the ALEC must be unaffiliated
18 with BST; the ALEC has to be providing service to
19 residence and business customers; and the ALEC has to
20 offer service either exclusively over their own
21 facilities or predominantly over their own facilities.

22 Now, next to each one of these, you'll see
23 I've placed a yes or no, and what that indicates is
24 whether or not that condition exists in Florida. If
25 it's yes, it does, if it's no, it does not.

1 In every case except that an ALEC provides
2 service exclusively over its only facilities, that
3 condition exists in Florida, according to the
4 information that we have. That means that BellSouth
5 has a Track A qualifying competitor in Florida.

6 I've also gone ahead and listed Track B just
7 so we can identify the requirements for that track.
8 And the first requirement is that there is no ALEC
9 that meets the Track A criteria, which are the five
10 criteria listed above, has requested local access or
11 interconnection three months or more before we filed
12 our application.

13 We don't believe that situation exists in
14 Florida, as I said. We believe there are carriers in
15 Florida who fulfill the Track A requirements.

16 The other way that Track B becomes
17 applicable is if, in fact, there was a Track A
18 qualifying competitor who did request access, that
19 that ALEC did not negotiate in good faith.

20 We don't believe that's the case based on
21 negotiations that we've had with the ALECs. We don't
22 believe that any of them have negotiated in bad faith.

23 The other way that Track B becomes open is
24 that if there is a Track A -- otherwise qualifying
25 Track A competitor, and the ALEC failed to comply with

1 an implementation schedule in its agreement, and for
2 that one I have a question mark, because we don't know
3 whether that's the case or not. And that points up
4 one of the needs that this Commission has for
5 marketplace information.

6 The second page of this handout describes
7 the relationship of the filing track to the checklist
8 compliance vehicles as well as the status in Florida.
9 To determine Track A or B compliance, you only need
10 the criteria on the first page.

11 Having made the determination of whether or
12 not we file under Track A or B, the second
13 determination that has to be made is whether or not we
14 have complied with the checklist. And on this
15 exhibit -- or on this second page of the handout, I've
16 identified Track A, yes, that's where we are; Track B,
17 we are not.

18 Under Track A to comply with the checklist,
19 we can either provide all 14 items -- we don't believe
20 that that's the case -- or we can provide the items
21 that have been requested by carriers, which we've
22 done, and generally offer the remainder; and that is
23 pending with the statement.

24 The way that we provide the items is through
25 any 252 agreement. The way that we generally offer

1 items is through the statement. This is how the
2 statement is used in Track A. It is used to
3 demonstrate that we generally offer items that
4 competitors have not yet requested.

5 Under Track B, which we do not believe we're
6 under in Florida, checklist compliance requires that
7 we generally offer all 14 items on the checklist, and
8 the statement is the way to do that.

9 And the reason I put this together is that
10 there has been some confusion about mixing between
11 Track A and Track B and we're not mixing between Track
12 A and B. The statement is applicable under either
13 track. It can be used under Track A or Track B.

14 Now, it's clear from the conference report
15 accompanying the Act that one of these two routes
16 would be open to BellSouth after ten months have
17 elapsed from the passage of the Act. Track A is open
18 if a carrier meeting the requirements of 271(c)(1)(A)
19 exists. Track B is open if no such provider exists.

20 The FCC attempted to rewrite the Track B
21 provisions of the Act in its order rejecting
22 Southwestern Bell's Oklahoma application. They
23 concluded that Track B is foreclosed when a potential
24 provider requests access.

25 The Act does not, however, say "potential

1 provider." It says "no such provider." And that
2 refers to the criteria in Track A.

3 Under the FCC's scenario, interLATA entry by
4 BellSouth would be completely controlled by its
5 competitors. Congress specifically sought to prevent
6 this aberration by creating Track B, as stated on
7 Page 148 of the Conference Report to the Telecom Act.

8 Now, it's clear from the handout why a
9 statement is needed under either track; and,
10 therefore, why BellSouth has filed the statement. The
11 statement provides comprehensive proof that the local
12 market in BellSouth's territory is open to competition
13 in conformance with the competitive checklist.

14 The statement provides a set of terms and
15 conditions from which a competitor in Florida can
16 order to provide competing local exchange service.
17 And why should this Commission approve this statement?
18 I'll focus on two reasons.

19 One, the statement will benefit small
20 carriers. Two, it is necessary for BellSouth to be
21 granted interLATA relief in Florida. First, the
22 statement makes local market entry by small carriers
23 easier. Small competitors can simply buy what they
24 need from the statement and go into business.
25 Negotiating an interconnection agreement with

1 BellSouth will not be necessary.

2 Of course, we will continue to negotiate
3 with anyone who wants to do so, but they can use the
4 statement to provide service while such negotiations
5 are progressing. In this manner your approval of the
6 statement furthers the development of local
7 competition regardless of its use for interLATA
8 relief.

9 Instead of allowing BellSouth to provide
10 this tool to ease small carriers' entry into the local
11 market, intervenors would have this Commission reject
12 the statement. Most of the intervenors have an
13 agreement with BellSouth. They don't need the
14 statement. It is quite interesting that large
15 competitors who don't need the statement are
16 attempting to deny its availability to small carriers,
17 their potential competitors.

18 The only purposes served by their proposed
19 rejection are, one, to insulate themselves from these
20 small competitors who are not inclined to pursue
21 negotiations; two, delay, delay, delay; and, three,
22 continue to receive the \$10 billion windfall that
23 excluding RBOCs from the market allows them to reap.

24 Of course, as I've previously shown, an
25 approved statement can also be used by BellSouth to

1 seek interLATA relief.

2 Now, Mr. Scheye and Ms. Calhoun discuss the
3 statement in detail. I will focus briefly on one
4 policy point associated with that issue.

5 The statement is compliant because BellSouth
6 would generally offer each of the items required by
7 the checklist through its statement. By "generally
8 offer," I mean that when a competitor requests a
9 checklist item, BellSouth will provide it within a
10 reasonable period time and in parity with its own
11 retail customers in accordance with the applicable
12 rules and regulations. This is what the Act requires
13 to show checklist compliance.

14 Intervenors would have this Commission
15 withhold certification of checklist compliance until
16 each of the items in the checklist has been ordered
17 and supplied in significant quantities. This
18 requirement is contrary to the Act. In fact, the Act
19 will permit a grant of intraLATA relief even if no
20 local competition exists.

21 Also, Section 271 of the Act does not allow
22 the competitive checklist to be expanded. And what
23 they're requesting is certainly an expansion.

24 As Mr. Marks stated, you will be asked by
25 some parties to follow the FCC's recently issued

1 orders. One of these is the Ameritech order. That
2 would be a grave mistake for customers in Florida.

3 This Commission was at the forefront in
4 challenging the FCC to preserve the rights of state
5 commissions to act in the best interests of consumers.
6 Intervenor would now have you forfeit to the FCC the
7 ability to do just that.

8 Simply, the FCC's Ameritech order is poor
9 public policy. It is an attempt by the FCC to
10 reimpose the same rules and requirements on the states
11 that the Eighth Circuit Court of Appeals just told
12 them that they did not have the authority to impose.

13 For example, the Eighth Circuit clearly
14 states that states have the sole authority to set
15 prices for interconnection on unbundled elements.
16 Despite this clear decision of the Court, in Paragraph
17 288 of the Ameritech order, the FCC notes that even if
18 they lacked authority to review Bell operating company
19 prices for checklist compliance, they would certainly
20 consider such prices to be a relevant concern in their
21 public interest inquiry.

22 In Paragraph 287 the FCC states that prices
23 for interconnection or unbundled elements include
24 actual costs. Then the checklist would not be met.
25 And in Paragraph 292 the FCC states that TELRIC-based

1 prices are necessary but not sufficient for checklist
2 compliance. The FCC said that prices must also be
3 geographically deaveraged. In arbitration, this
4 Commission disagreed with these conclusions of the
5 FCC.

6 Another area where the FCC appears not to be
7 following the Eighth Circuit Court's decision is on
8 the recombination of network elements. This
9 Commission expressed concern about the relationship of
10 recombined network elements and resale in arbitration.
11 The Court clearly stated that BellSouth is not
12 required to recombine network elements.

13 Again, despite the Court's direction, the
14 FCC said in Paragraph 334 of its order that Congress
15 required the Commission to verify that a BOC was
16 meeting its obligation to provide access to
17 combinations of network elements. The Court said no
18 such requirement exists and vacated the FCC's rules
19 requiring such combination.

20 The last example I would like to convey is
21 based on Section 271(d)(4), which prohibits the
22 Commission from expanding the checklist. However, in
23 Paragraph 390 the FCC describes the checklist as
24 minimum requirements and says that they are
25 insufficient to assure that barriers to local entry

1 are removed.

2 Now, in Paragraph 391 the FCC says this
3 action does not expand the checklist. However,
4 denying that they have expanded the checklist doesn't
5 change the fact that they have.

6 I have simply identified a few of the
7 glaring discrepancies in the FCC's Ameritech order for
8 this Commission. The important point to realize here
9 is that there is nothing in the Ameritech order that
10 is binding on this Commission.

11 You and Florida consumers won in the court
12 receiving a pivotal decision-making role in this
13 process. There is no reason to forfeit that victory
14 just because intervenors ask you to so. The Ameritech
15 order is just another attempt by the FCC to usurp this
16 Commission's authority, sidestep the Telecom Act, and
17 circumvent the ruling of the Eighth Circuit Court of
18 Appeals.

19 Florida consumers will be severely
20 disadvantaged if this Commission follows the
21 intervenors' request.

22 I know I've covered a lot of ground. I
23 certainly appreciate your patience. I limited my
24 summary, however, to just those points which were most
25 important. Your job is difficult, but not nearly as

1 complicated as the intervenors are trying to make it.

2 Your role in the intraLATA entry process is
3 embodied in two actions BellSouth has asked you to
4 take. One, approve the statement, and, two, find that
5 BellSouth complies with the checklist. These two
6 actions, plus your need to get a marketplace
7 information, are the issues which are germane to this
8 proceeding.

9 The time is right for all competitors to be
10 free to compete in an open market. Consumers will
11 benefit if BellSouth is one of the carriers they can
12 choose to provide all of their telecommunications
13 services. The customers in Florida need you to
14 continue to demonstrate your leadership in encouraging
15 competition in all markets.

16 And I thank you for your time.

17 **MR. MARKS:** Before tendering Mr. Varner for
18 cross-examination, we do have the errata sheets to
19 this deposition, and we'll pass them out at this time.

20 **COMMISSIONER CLARK:** Madame Chair, can I
21 just ask a clarifying question? Mr. Varner, what use
22 should we make of the Ameritech order? Is it your
23 position that we should just ignore it altogether?

24 **WITNESS VARNER:** Pretty much, yes. The
25 Ameritech order presents some views in it -- well,

1 maybe I shouldn't be that radical. It presents some
2 views in it that are clearly contrary to the Telecom
3 Act.

4 I think what you should do is you should
5 look at the Ameritech order in light of where it is
6 consistent with the Act and where it is not consistent
7 with the Act, and to the extent that it is not
8 consistent with the Act, it should not be followed.
9 The bar here is whether or not we meet the
10 requirements of the Telecom Act.

11 **COMMISSIONER CLARK:** Okay.

12 **MR. MARKS:** And with that, we'll tender
13 Mr. Varner for cross-examination.

14 **MS. BARONE:** Madam Chairman, we're prepared
15 to mark our exhibits at this time.

16 **CHAIRMAN JOHNSON:** Okay.

17 **MS. BARONE:** Madam Chairman and
18 Commissioners, you have a stack of exhibits before
19 you. We begin with AJV-8, which consists of
20 Mr. Varner's deposition transcript, and we will
21 include his errata sheets in that packet, his
22 late-filed deposition exhibits as well. We would ask
23 that this exhibit be marked as Composite Exhibit
24 Number 5.

25 **CHAIRMAN JOHNSON:** You said the -- okay.

1 AJV-8?

2 MS. BARONE: Yes, ma'am.

3 CHAIRMAN JOHNSON: We will mark AJV-8 as
4 Composite Exhibit 5.

5 (Exhibit 5 marked for identification.)

6 MS. BARONE: AJV-9 consists of BellSouth's
7 response to Staff's interrogatories, the first, second
8 and third sets. We would ask that that be marked as
9 Composite Exhibit Number 6.

10 CHAIRMAN JOHNSON: We'll identify it as
11 Exhibit 6, Composite Exhibit AJV-9.

12 (Exhibit 6 marked for identification.)

13 MS. BARONE: The next exhibit is AJV-10,
14 which we've indicated is too voluminous to copy.
15 That's BellSouth's responses to Staff's first set of
16 production of documents, Items 1 through 7. We ask
17 that that be marked as Exhibit 7.

18 CHAIRMAN JOHNSON: Okay. It will be
19 identified Composite AJV-10.

20 (Exhibit 7 marked for identification.)

21 MS. BARONE: AJV-10 will just be Exhibit
22 Number 7.

23 CHAIRMAN JOHNSON: Okay. AJV-10, Exhibit 7.

24 MS. BARONE: AJV-11 consists of BellSouth's
25 responses to FCCA's First Set of Interrogatories,

1 Items 1 through 30; FCCA's Second Set of
2 Interrogatories, Items 31 through 44; Responses to
3 FCCA's Third Set, Items 45 through 52; and FCCA's
4 fifth set, Items 62 through 92. We ask that that be
5 marked as Composite Exhibit Number 8.

6 **CHAIRMAN JOHNSON:** It will be marked as
7 Composite 8, AJV-11.

8 (Exhibit 8 marked for identification.)

9 **MS. BARONE:** AJV-12, BellSouth's responses
10 to FCCA's First Set of Interrogatories, Items 1
11 through 3, we ask that that be marked as Exhibit 9.

12 **CHAIRMAN JOHNSON:** It will be marked as 9,
13 short titled AJV- 12.

14 (Exhibit 9 marked for identification.)

15 **MS. BARONE:** Next we have included a few
16 additional exhibits that were not in the prehearing
17 order. These have been passed out to the parties.
18 This begins with AJV-13. It's BellSouth's responses
19 to AT&T's First Set of Interrogatories, Items 10, 11,
20 13, 16, 19, 22 through 24. We would ask that that be
21 marked as Exhibit 10.

22 **CHAIRMAN JOHNSON:** It will be marked as 10
23 and short titled AJV-13.

24 (Exhibit 10 marked for identification.)

25 **MS. BARONE:** Next, Madam Chairman, we have

1 AJV-14, which is responses to AT&T's First Set of
2 Production of Documents, Item 12, and we would ask
3 that that be marked as Exhibit 11.

4 **CHAIRMAN JOHNSON:** It will be marked as 11
5 and short titled AJV-14.

6 (Exhibit 11 marked for identification.)

7 **MS. BARONE:** AJV-15, this is the arbitrated
8 agreement between BellSouth and MFS in Docket 960757.
9 We ask that that be marked as Exhibit 12.

10 **CHAIRMAN JOHNSON:** It will be marked as 12
11 and short titled AJV-15.

12 (Exhibit 12 marked for identification.)

13 **MS. BARONE:** AJV-16 is arbitrated agreement
14 between BellSouth and AT&T in Docket 960833. We would
15 ask that that be marked as Exhibit 13.

16 **CHAIRMAN JOHNSON:** It will be marked as 13
17 and short titled AJV-16.

18 (Exhibit 13 marked for identification.)

19 **MS. BARONE:** Next is AJV-17. That is the
20 arbitrated agreement between BellSouth and MCI in
21 Docket 960846. We ask that that be marked as Exhibit
22 14.

23 **CHAIRMAN JOHNSON:** It will be marked as 14
24 and short titled AJV-17.

25 (Exhibit 14 marked for identification.)

1 **MS. BARONE:** Next is the arbitrated
2 agreement between BellSouth and Sprint in Docket
3 961150, and that's AJV-18. We'd ask that that be
4 marked as Exhibit 15.

5 **CHAIRMAN JOHNSON:** It will be marked as 15,
6 short titled AJV-18.

7 (Exhibit 15 marked for identification.)

8 **MS. BARONE:** That's all we have. Thank you.

9 **CHAIRMAN JOHNSON:** Thank you. And the
10 witness has been tendered?

11 **MR. MARKS:** Yes, Commissioner; the witness
12 is tendered for cross-examination.

13 **CROSS EXAMINATION**

14 **BY MR. McGLOTHLIN:**

15 **Q** Hello, Mr. Varner.

16 **A** Good morning.

17 **Q** If you'll just take a quick look at Page 2
18 of the handout which you were referring to a moment
19 ago. Do you have that, sir?

20 **A** Yes, I do.

21 **Q** Looking under Track A, there's a reference
22 to generally offer remainder-pending. By that, do you
23 refer to the draft SGAT?

24 **A** Yes.

25 **Q** And then there's an arrow pointing to a

1 reference to the 252(f) statement. That is also the
2 draft SGAT, is it not?

3 A That is the SGAT.

4 Q And that document is something other than an
5 approved interconnection agreement with a competing
6 carrier, isn't it?

7 A It's part of -- there was one word I lost in
8 your question.

9 Q The 252 statement is something other than an
10 approved interconnection agreement with a competing
11 carrier; is that right?

12 A Oh, yes, it is.

13 MR. McGLOTHLIN: Those are all the questions
14 I have.

15 **CROSS EXAMINATION**

16 **BY MS. WILSON:**

17 Q Good morning Mr. Varner, I'm Laura Wilson
18 representing the Florida Cable Telecommunications
19 Association.

20 A Good morning.

21 Q Would you turn to your direct testimony at
22 Page 21, Lines 2 through 6. And there you describe a
23 situation where at least one ALEC offers service in a
24 multifamily dwelling unit sector of the marketplace in
25 competition with BellSouth; is that correct?

1 A You said Page 21?

2 Q Sorry. Yes, Lines 2 through 6.

3 A Yes, I see it now.

4 Q And a multifamily dwelling unit is
5 essentially an apartment building; is that correct?

6 A Yes.

7 Q And BellSouth has an interconnection
8 agreement with Media One; isn't that correct?

9 A Yes, we do.

10 Q And your understanding is that that
11 agreement was negotiated and approved pursuant to
12 state law; is that correct?

13 A Initially that's correct. It was initially
14 negotiated and approved pursuant to state law. It was
15 subsequently resubmitted under the Telecom Act.

16 Q But there is no final order of this
17 Commission approving that agreement pursuant to
18 Section 252 of the Federal Act, is there, to your
19 knowledge?

20 A No, there is not, but I'm -- doesn't
21 indicate that there needs to be one. That was a
22 negotiated, not an arbitrated, agreement. So it can
23 go into effect and become effective under the Telecom
24 Act without action by the Commission.

25 Q But it was, again, negotiated and approved

1 pursuant to state law originally; is that correct?

2 A Originally that's correct, but then
3 resubmitted under the Telecom Act.

4 Q Okay. And it's BellSouth's position that
5 the Media One agreement does not comply with all 14
6 checklist requirements, isn't it?

7 A It does not allow us to show checklist
8 compliance. I don't remember the specifics of the
9 agreement, but from what I recall -- as to whether or
10 not each of the 14 items are in there. I don't
11 believe Media One is ordering all of the 14 items. So
12 in that regard we cannot use the agreement to
13 demonstrate we're actually providing all 14 items on
14 the checklist.

15 Q Okay. And in the multifamily dwelling unit
16 competitive situation that you describe here on Page
17 21 of your direct testimony, tell me what steps
18 BellSouth has taken in response to that alleged
19 competition?

20 A I don't know of any specific steps that
21 we've taken in response to it.

22 Q Has BellSouth responded by lowering its
23 prices to the remaining residential customers?

24 A No, we have not.

25 Q Has BellSouth taken any demonstrable steps

1 to improve its service quality to its customers?

2 A We continually improve our service quality
3 to our customers. We haven't done anything special as
4 a result of the Media One entry.

5 Q And do you know how many subscribers
6 Media One has for residential telephony?

7 A Only what Media One has said, and that is,
8 as I understand it, between about 25 or so.

9 Q Okay. Now, on Page 21, I guess it's at Line
10 3, you state that at least one ALEC is providing
11 service to the MDU sector of the marketplace.

12 A Do you know how many MDUs actually have a
13 competitive provider in them in BellSouth territory
14 presently.

15 A No, I don't, but there are several.

16 Q Do you know whether it's more than one?

17 A Yes, there is more than one.

18 Q Do you know whether Media One is competing
19 in more than one apartment complex?

20 A Actually providing service, no, I don't. I
21 do know that they have -- they're in negotiations with
22 several. Now, whether they're actually providing
23 service to any of those others, I don't know.

24 Q Do you know whether Media One has billing
25 systems in place to bill the customers in the

1 apartment complex they're providing service in?

2 A I believe that they do. I can't say
3 affirmatively whether they do or they do not. Media
4 One is *Continental Cablevision. Continental
5 Cablevision provides cable television service. They
6 have the ability to bill for their cable service.

7 I don't know what sort of package
8 arrangement they have decided to offer to customers to
9 provide telephone service. It could be a part of the
10 cable service price structure. Now, if that's what
11 they've done, then obviously they have the ability to
12 bill it, because they bill for the cable service. So
13 if they needed something special to bill for telephone
14 service, I don't know and I can't say.

15 Q But you don't know whether Media One is
16 billing separately for a local exchange service or
17 not?

18 A Based on some interrogatory responses, it
19 doesn't say that they're billing separately. But they
20 don't have to be billing separately in order to be
21 billing for local telephone service. They could be
22 billing as part of the cable bill.

23 Q Has Media One subscribers generated any
24 local exchange service revenues, to your knowledge?

25 A I don't know whether they have or not. If

1 they have generated revenues for local telephone
2 service being offered as a package with cable service,
3 I don't know whether Media One would call that local
4 telephone service revenue or call it cable service
5 revenue.

6 Q But, again, you don't know whether they're
7 offering the service in a package or not, do you?

8 A No, I do not. But what I do know is that at
9 least seven of the customers that they provide service
10 to do not take service from BellSouth. That is their
11 sole provider is Media One.

12 Q Thank you.

13 MS. WILSON: I have no further questions.

14 **CROSS EXAMINATION**

15 **BY MR. WILLINGHAM:**

16 Q Mr. Varner, my name is Bill Willingham. I'm
17 here on behalf of Teleport. Are you aware that
18 Teleport presently operates pursuant to an
19 interconnection agreement with BellSouth?

20 A Yes, I am.

21 Q And my question is, under the Statement of
22 Generally Available Terms, will BellSouth be able to
23 abandon the interconnection agreement that it
24 presently operates under and operate under the
25 statement?

1 **A** No, that's not correct.

2 **Q** Thank you.

3 **MR. WILLINGHAM:** I have no further
4 questions.

5 **MR. BOND:** Good morning. Tom Bond --

6 **COMMISSIONER DEASON:** Just a second. Why is
7 it that that would not be available, the Statement of
8 Generally Accepted Terms would not be available to
9 anyone?

10 **WITNESS VARNER:** Oh, it would be available.
11 As I understood what he was asking, is whether or not
12 the statement would allow us to abandon the agreement
13 that we have with them and force them to take service
14 under the statement. That's not the case. They can
15 still take service under their agreement regardless of
16 whether the statement is in place or not.

17 **COMMISSIONER DEASON:** The question was then
18 would they be forced to abandon the agreement.

19 **WITNESS VARNER:** Yes.

20 **COMMISSIONER DEASON:** And your answer was
21 no.

22 **WITNESS VARNER:** That's correct.

23 **COMMISSIONER DEASON:** Now, what if they
24 chose to abandon the agreement and wanted service
25 under the Statement of Generally Accepted Terms?

1 **WITNESS VARNER:** In that case, I'm not sure
2 what the situation is. That's a matter, I think, of
3 state contract law, about whether or not -- the
4 validity of the contract, which I just don't know.

5 **MR. WILLINGHAM:** Well, actually my question
6 was, would we have the right to operate under the
7 SGAT. And I guess -- if you don't know that answer,
8 do you know another BellSouth witness that would know
9 whether or not we were allowed to abandon our current
10 contract?

11 **WITNESS VARNER:** Well, first, once your
12 agreement expires, once the term of your agreement
13 expires, you certainly would have the ability to
14 operate under the statement.

15 What I don't know is whether or not the term
16 of your agreement has to expire under some provisions
17 of state contract law before you are able to do that.
18 I just don't know, and I don't know of any other
19 witness who would be able to tell you.

20 **MR. WILLINGHAM:** Thank you. I have no
21 further questions.

22

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23 (Transcript continues in sequence in
24 Volume's 3.)

25