

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Consideration of)	Docket No. 960786-TL
BellSouth Telecommunications,)	
Inc.'s entry into interLATA)	
services pursuant to Section 271)	
of the Federal)	
Telecommunications Act of 1996.)	

FIRST DAY - AFTERNOON SESSION

VOLUME 3

Pages 299 through 379

PROCEEDINGS: HEARING

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

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: Lisa Girod Jones, RPR, RMR

APPEARANCES:

(As heretofore noted.)

DOCUMENT NUMBER - DATE

08843 SEP-3 1997

FPSC-RECORDS/REPORTING

BUREAU OF REPORTING

RECEIVED 9-3-97

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

I N D E X

WITNESSES

NAME	PAGE NO.
ALPHONSO J. VARNER	
Cross Examination by Mr. Bond	302
Cross Examination by Ms. Rule	304
Cross Examination by Mr. Canis	316
Cross Examination by Mr. Fincher	353
Cross Examination by Ms. Barone	356

	EXHIBITS - VOLUME 3		
1	NUMBER	ID.	ADMTD.
2	1		379
3	2		379
4	3		379
5	4		379
6	5		379
7	6		379
8	7		379
9	8		379
10	9		379
11	10		379
12	11		379
13	12		379
14	13		379
15	14		379
16	15		379
17	16		
18	BellSouth's Response to MCI Telecommunications Corporation's First Request for Admissions	302	379
19	17		
20	BellSouth August 12th Letter Regarding Enhanced Service Providers Traffic	337	379
21	18		
22	Criteria For Determining Track A Versus Track B and Status in Florida	379	379
23			
24			
25			

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

P R O C E E D I N G S

ALPHONSO J. VARNER

continues his testimony under oath from Volume 2:

MR. BOND: Good morning. My name is Tom Bond. I am here on behalf of MCI Telecommunications Corporation. First, I would like to pass out an exhibit. Mr. Melson is going to pass it out for me. And if I could call your attention to the paragraph beginning at the bottom of the Page 5 and concluding at the top of Page 6. This is BellSouth's Response to MCI Telecommunications Corporation's First Request for Admissions.

MR. MARKS: Are we going to mark this?

MR. BOND: Yes, I believe Exhibit 16 is the current exhibit.

CHAIRMAN JOHNSON: You would like it marked?

MR. BOND: If I could mark it for identification as Exhibit 16.

CHAIRMAN JOHNSON: We'll mark it as Exhibit 16.

(Exhibit No. 16 marked for identification.)

CROSS EXAMINATION

BY MR. BOND:

Q Have you had a chance to read that paragraph, Mr. Varner?

1 A Yes, I did.

2 Q If I could, first, call your attention back to
3 your handout, Criteria For Determining Track A versus
4 Track B and Status of Florida. The last line of that
5 you had, "ALEC failed to comply with implementation
6 schedule," and you had a question about whether that was
7 the case or not; is that correct?

8 A That's correct.

9 Q Would you agree that BellSouth, in its
10 response to MCI's request for admissions, admitted that
11 there are no implementation schedules in any of the
12 interconnection agreements?

13 A Yes. That is what we said and that's correct,
14 there aren't any in any of the interconnection
15 agreements. What I was referring to on the handout is
16 this, is that several carriers have entered into
17 agreements with BellSouth. Entering into those
18 agreements there is some implied intent to offer
19 service. And I think what this commission should be
20 concerned with -- concerned about, is whether or not the
21 carriers who have in fact been certificated and have
22 agreements plan to enter service -- plan to provide
23 service, and when do they plan to do that? And that's
24 what I was indicating, that they don't have any
25 knowledge of their business plans or what their intent

1 is.

2 Q So your question only referred to what you
3 called the implied implementation schedules; is that
4 correct?

5 A That's correct.

6 MR. BOND: Okay, no further questions. Thank
7 you.

8 CHAIRMAN JOHNSON: Ms. Rule?

9 CROSS EXAMINATION

10 BY MS. RULE:

11 Q Mr. Varner, I'm Marsha Rule with AT&T. Are
12 you familiar with the revised SGAT that BellSouth filed
13 on August 25th?

14 A Yes, I am.

15 Q And are you familiar with the changes in
16 provisions regarding combination of network elements
17 that are found in the revised SGAT?

18 A Yes.

19 Q And that's a change from the original Draft
20 SGAT filed; is it not?

21 A Yes, it is.

22 Q And your testimony at Page 47 was that there
23 would be no substantive differences between the draft
24 statement and the final statement; BellSouth intends
25 simply to remove the word draft. Is that your

1 testimony?

2 A Yes, it is.

3 Q And this is more than simply removing the word
4 draft, is it not?

5 A Yes, it is. We haven't filed the final
6 statement yet. We will file the final statement, I
7 would suspect within a few days. And at that point in
8 time all we will do is take the word "draft" off of the
9 statement that we filed on August 25th.

10 Q Okay, so you intend then to rely on the
11 changes you made on August 25th; is that correct?

12 A That's correct.

13 Q Now regarding your testimony about the
14 differences between generally offering and providing
15 service, have you had the opportunity to look at
16 paragraph 110 of the FCC's Ameritec order? Therein the
17 commission discusses the difference between providing an
18 item and generally offering it. Do you recall that
19 discussion?

20 A I don't recall that. I would have to look at
21 it.

22 Q Well, let me read it to you. The FCC says:
23 "For the reasons discussed below, we conclude that a
24 BOC provides a checklist item if it actually furnishes
25 the item at rates and on terms and conditions that

1 comply with the Act, or where no competitor is actually
2 using the item if the BOC makes the checklist item
3 available as both a legal and practical matter."

4 And then the commission goes on to state
5 that: "To be providing the item, the BOC must have a
6 concrete and specific legal obligation to furnish that
7 item upon request pursuant to a state-approved
8 interconnection agreement."

9 MR. MARKS: Mr. Varner, do you have that
10 document before you?

11 WITNESS VARNER: Yes, I do.

12 MR. MARKS: Have you had a chance to read it?

13 WITNESS VARNER: I've been reading it as she
14 went along.

15 MR. MARKS: Do you want to take an opportunity
16 to read it first?

17 WITNESS VARNER: Yes, please. Okay, I've read
18 it.

19 Q (By Ms. Rule) I would like you also to take
20 a look at paragraph 114. And there the Commission says,
21 "Reading the statute as a whole, we think it's clear
22 that Congress used the term 'provide' as a means of
23 referencing those instances in which a BOC furnishes or
24 makes interconnection and access available pursuant to
25 state-approved interconnection agreements and the phrase

1 'generally offer' as a means of referencing those
2 instances in which a BOC makes interconnection and
3 access available pursuant to a statement of generally
4 available terms and conditions."

5 MR. MARKS: Mr. Varner, have you had a chance
6 to read that statement?

7 WITNESS VARNER: No, I was trying to find
8 where in the paragraph she was reading.

9 MS. RULE: I don't know if our pages are the
10 same. My copy is a --

11 WITNESS VARNER: It's a long paragraph and you
12 were not reading the whole thing. I think you started
13 somewhere in the middle.

14 MS. RULE: Third line from the bottom on the
15 official copy. I don't know if your copy is paginated
16 the same way.

17 WITNESS VARNER: Is it "Reading the statute as
18 a whole"?

19 MS. RULE: Yes.

20 MR. MARKS: Do you have a copy of what you are
21 reading?

22 MS. RULE: I think he found that.

23 COMMISSIONER KIESLING: Hold on. I can't hear
24 anybody. Your mike is not on, Mr. Marks.

25 And I need you to put your mike where your

1 mouth is when you turn to face the witness.

2 MS. RULE: Thank you.

3 COMMISSIONER KIESLING: Thank you.

4 Q (By Ms. Rule) Have you found that,
5 Mr. Varner?

6 A Yes, I was -- yes.

7 Q And you would have the Commission disregard
8 these paragraphs; is that correct?

9 A No, I don't think there is a reason to. In
10 the first paragraph, what the -- the first one that you
11 read is what the FCC is stating is what they agree --
12 that they agree with Ameritec, that Ameritec has said
13 that this is what they meant by "provide," and the
14 Commission agrees with that.

15 We don't use "provide" in the same way that
16 Ameritec did. So the fact that they agreed with the way
17 that Ameritec chose to define the term I don't think has
18 any bearing on BellSouth.

19 With respect to the second paragraph, I think
20 that's correct, that "provide" means that you're
21 offering the item -- that the action -- that the items
22 are actually in use.

23 And "generally offer" references the instances
24 that we're making it available under a statement of
25 generally available terms and conditions.

1 So I think that particular dichotomy is
2 correct. What the Act requires for checklist compliance
3 is that -- and if you read the beginning of the
4 checklist compliance --

5 Q Mr. Varner, I would like to cut you off
6 because that was not my question. My question was
7 whether you would have the Commission disagree with this
8 particular section of the order.

9 A And I was about to explain.

10 MR. MARKS: Mr. Varner, have you completed
11 your answer?

12 WITNESS VARNER: No.

13 CHAIRMAN JOHNSON: Go ahead and complete your
14 explanation. I understood him to answer the question
15 but he wanted to explain his answer.

16 MS. RULE: I believe we got quite an
17 explanation since it called for a yes or no answer.

18 CHAIRMAN JOHNSON: Yes, but he has the
19 opportunity to follow up, and I'm going to allow that,
20 and I appreciate the explanation.

21 WITNESS VARNER: Here it is, in 271(b) it
22 says, access or interconnection provided or generally
23 offered by Bell Operating Company meets the requirements
24 of this subparagraph if such access and interconnection
25 includes each of the following, and that's the 14 points

1 that follows.

2 To certify checklist compliance under Track A,
3 the Act says that the Bell Operating Companies met the
4 requirements with respect to access and interconnection
5 provided pursuant to (c)(1)(A), Track A, has fully
6 implemented the competitive checklist. Fully
7 implemented obviously means that we have either provided
8 or generally offered the items.

9 Q (By Ms. Rule) But the word you just read out
10 of the Act was "provided," was it not?

11 A The word I just read out of the Act as far as
12 the qualifying criteria was "fully implemented."

13 Q And could you go back to the sentence and read
14 the whole sentence?

15 A The sentence before says, access or
16 interconnection provided or generally offered.

17 Q No, I'm referencing the sentence you just read
18 that had "fully implemented" in it.

19 A Which one?

20 Q That had "fully implemented" in it.

21 A Yes. The petitioning Bell Operating Company
22 has met the requirements of subsection (c)(1), and with
23 respect to access and interconnection provided pursuant
24 to subsection (c)(1)(A), which is Track A.

25 Q Provided pursuant to Track A, correct?

1 A Provided pursuant -- with respect to access
2 and interconnection provided pursuant to Track A, has
3 fully implemented the competitive checklist. We have to
4 actually be providing the access and interconnection
5 under the track -- to the Track A carrier in order for
6 Track A to qualify.

7 Once we have done that and made that
8 determination, we have to fully implement the
9 competitive checklist. To fully implement the
10 competitive checklist, we either have to be providing or
11 generally offering all of the items under the
12 checklist.

13 Q Referring to Section 252 of the Act, do you
14 have that before you?

15 A 252? Yes, I do.

16 COMMISSIONER KIESLING: While he's looking it
17 up, I'm still having a great deal of difficulty because
18 your mike is pointed down and your mouth is pointed that
19 direction.

20 MS. RULE: Whenever I put the microphone in
21 front of me, I put a paper right into it, so I'm trying
22 not to do that. Is this better?

23 COMMISSIONER KIESLING: That's good. Don't
24 turn your mouth that way though when you talk. Thank
25 you.

1 Q (By Ms. Rule) Do you have Section 252?

2 A Yes, I do.

3 Q Could you take a look at 252(f)?

4 A F?

5 Q Now that's the provision that tells the
6 Commission the circumstances under which it must approve
7 a BOC SGAT; is it not?

8 A Yes, it is. I was trying to find it in here.
9 Okay, I have it.

10 Q I would like you to take a look at 252(f),
11 subsection 2. Do you have that?

12 A Yes.

13 Q And that refers to the state commission
14 review?

15 A Yes, it does.

16 Q All right, now 252(f), subsection 2, states
17 that the state commission may not approve BellSouth's
18 SGAT unless it complies with subsection D of this
19 section. That's the pricing standards section; isn't
20 it?

21 A That's correct.

22 Q Has BellSouth filed any cost studies in this
23 docket to support the prices in its SGAT?

24 A No, we have not. The prices in our SGAT come
25 from the arbitration proceedings, and the cost studies

1 were filed in that docket. So it's the same prices that
2 were used in arbitration proceedings. So consequently
3 they're relying on the same cost basis that was used
4 there.

5 Q Is it your testimony that every cost or every
6 price in your SGAT has been approved by the Commission
7 in an arbitrated proceeding?

8 A No, not every one of them. There are at
9 least -- there's at least one item that I know of in
10 there that is not required for checklist compliance that
11 we have put in for intervenors. And the specifics of
12 the remainder, Mr. Scheye can tell you. But largely I
13 know they came from the arbitrated agreements. I can't
14 tell you each and every specific item did, with
15 certainty, and Mr. Scheye certainly can't.

16 Q So it's your testimony that at least one item
17 has not been approved by the Commission in an
18 arbitration proceeding?

19 A No, I think actually that item was approved by
20 the Commission. It was not required for checklist
21 compliance and there was no cost support for it. And
22 the item that I'm talking about is the required -- is
23 the offering that we make to interconnect to CLECs at
24 our tandem, and we have a tandem intermediary charge for
25 that.

1 Q Okay, I'm confused then. Was it approved by
2 the Commission in an arbitration proceeding, or was it
3 not?

4 A I don't remember. I think that it was in
5 Florida. Some states chose to approve it, some states
6 chose not to, and I just can't remember in Florida
7 whether they did or didn't.

8 Q Now BellSouth anticipates at some point in
9 time requesting authority from the FCC to enter the
10 Florida interLATA market; is that correct?

11 A That's correct.

12 Q Has BellSouth filed any applications to enter
13 the interLATA market in any other state?

14 A No, not yet.

15 Q Is there any prohibition in the
16 Telecommunications Act from BellSouth entering the long
17 distance market in any other state?

18 A In seven of our states we don't believe we've
19 yet met the requirements that allow us to enter. In two
20 of the states we believe we have.

21 Q Outside of the region that BellSouth currently
22 serves, is there any prohibition in the
23 Telecommunications Act from BellSouth entering the long
24 distance market? For example, in the state of
25 Washington.

1 A I don't believe there is in the Telecom Act.
2 There are whatever requirements you have to meet in that
3 state.

4 Q So BellSouth could have brought the benefits
5 of competition to the long distance market everywhere
6 except in its local region; is that correct?

7 A To -- assuming that we can fulfill the
8 requirements in that particular state, that would be
9 correct.

10 MS. RULE: No further questions.

11 MR. SELF: No questions.

12 COMMISSIONER DEASON: Let me ask a question
13 real quick like. Did I understand you to say that
14 you're using the terms "provide" and "available"
15 different than Ameritec used those terms?

16 WITNESS VARNER: Yes. Ameritec evidently used
17 the term "provide" to mean both that the item has
18 actually been offered -- I mean actually been requested
19 and put in service, and also that the item has been
20 generally offered. And they're using "provide" to mean
21 both of those.

22 When I use the term "provide," I use it to
23 only mean those things that have actually been requested
24 and put in service, and "generally offered" to mean
25 things that have not.

1 MR. CANIS: Madam Chairman, Commissioners,
2 Mr. Varner, my name is John Canis. I'm here for
3 Intermedia.

4 CROSS EXAMINATION

5 BY MR. CANIS:

6 Q Mr. Varner, I would just like to follow up on
7 the last line of questioning concerning rates in the
8 statement. I may slip and call it an SGAT, but I mean a
9 statement.

10 A I've heard that before.

11 Q One of the elements in there is a subloop
12 unbundled -- an unbundled subloop element for
13 distribution; is that not true?

14 A Yes, there's a loop distribution element.

15 Q That -- it is my recollection that doesn't
16 have a rate at all, but rather the price is
17 identified --

18 COMMISSIONER GARCIA: I'm having a problem
19 hearing you. If you could get closer to the mike.

20 MR. CANIS: Is this better, Commissioner?

21 COMMISSIONER GARCIA: I think so.

22 MR. CANIS: Great.

23 Q (By Mr. Canis) It's my recollection,
24 Mr. Varner, that that element doesn't have a rate
25 associated with it at all but is instead labeled BFR,

1 for bona fide request process. Is that true?

2 A No, that's not true. If it does, I don't have
3 it in front of me, so I'll accept that you said it's a
4 bona fide request process. What that means is that for
5 that particular element, in order to determine the terms
6 and conditions of prices under which that would be
7 offered, the competitor would go through the bona fide
8 request process, which is included in the statement,
9 which means they would have to submit that request to
10 BellSouth identifying what it is that they wanted, and
11 then we would determine what would be the price, the
12 cost-based price associated with that.

13 Subloop unbundling is a rather unique
14 case-by-case type element. And what would happen in
15 that case is they would be asking for us to provide a
16 portion of the loop from some point within our network
17 to some other point within our network. And the cost of
18 that is obviously going to vary depending on where that
19 is, what the geography, location and so forth of that.
20 So that's why that's in the BFR.

21 Q Well a subloop element is part of an unbundled
22 loop; is that not the case?

23 A That's correct.

24 Q Now you know what the costs are for those
25 unbundled loops because you've tariffed -- or you've put

1 rates in the statement. Why is it not possible to put
2 in rates for an unbundled subelement?

3 A Well, again, as I've tried to describe, the
4 variety of ways in which the unbundled subloop could be
5 offered is much greater than what it is with a loop.
6 What we would have to do in order to make it available
7 could vary widely from request to request. And we could
8 put in average prices. You can always put in average
9 prices, but when you do that on elements that have
10 widely disparate costs in given applications, it ends up
11 with some customers paying a lot more and some paying a
12 lot less. It's really more of a burden on us to do it
13 through the bona fide request process, but that assures
14 that the competitor gets a price that is closer to
15 whatever the costs are they're causing us to incur when
16 they've ordered the item than if we were to just put it
17 in average for something like that.

18 Q BellSouth has used average rate making for all
19 of its other subloop and all of its other unbundled
20 network elements; is that not the case?

21 A No. There are instances throughout the SGAT
22 where we've said if competitors want certain things they
23 would do it through the bona fide request process.

24 Q But in terms of subloop unbundled loops for
25 instance, those are all priced on an average basis;

1 isn't that not true?

2 A In the case of -- would you repeat that?

3 Q I'm sorry. For your unbundled loop elements
4 listed in the SGAT, in the statement, those are in fact
5 set at specific rates that are averaged rates; is that
6 not true?

7 A Yes, they're cost-based rates based on the
8 cost studies that were filed in the arbitration
9 proceedings with the Commission.

10 Q And there are significant -- well, let me ask
11 you this. Are there significant cost variables that
12 affect the prices for, let's say, unbundled HDSL,
13 unbundled ADSL, unbundled DS-1, unbundled ISDN loops?

14 A They do vary from case to case. I know in the
15 case of HDSL, though, those loops tend to be shorter
16 than average. So within that family there's probably
17 not very much variation. ADSL -- the remainder -- well,
18 DS-1 I'm familiar with, and there is such a large demand
19 for those that I think that an average price applicable
20 to those would pretty much even out any disparities.
21 I'm not familiar enough with the other two to be able to
22 answer those, and I would suggest you ask Mr. Scheye
23 about those.

24 Q Okay, that's fine. Is it safe to say then
25 that cost variations in other loop elements has not

1 prevented BellSouth from establishing averaged rates for
2 those elements in its statement?

3 A That's correct.

4 Q Is it BellSouth's contention that a BFR
5 designation is a final -- is a final rate for purposes
6 of analysis under the Communications Act?

7 A Yes, it is, because what the BFR process
8 provides for, which is included in the SGAT, is that the
9 prices will be cost-based. That is a requirement of the
10 BFR process. That's a requirement of the Telecom Act.

11 Q Can BellSouth obtain 271 relief, long distance
12 intraLATA long distance relief, if it has pending
13 interconnection and unbundled network element requests
14 that remain unfulfilled?

15 A Yes.

16 Q Is the statement a vehicle by which it can
17 obtain such authorization?

18 A I'm a little bit confused by that.

19 Q Okay, I'll rephrase that. Are you aware that
20 it is Intermedia's position that BellSouth has been
21 unable to provision unbundled subloop elements in
22 unbundled 4-wire digital loops for the better part of
23 the year?

24 A I believe you're referring to the frame relay
25 loops?

1 Q Yes.

2 A Is that the issue?

3 Q That is correct.

4 A I'm aware that there has been a lot of
5 discussion between Intermedia and BellSouth with respect
6 to those particular loops. There's a long history
7 associated with that, associated with whether or not it
8 was even a requirement of the Intermedia agreement.
9 We've, I think, worked our way through that, and as far
10 as I know, we've finally reached accommodation and a
11 means of provisioning that to you.

12 Q That's as an interim resale arrangement as
13 opposed to the provision of unbundled loops; is that not
14 the case?

15 A Well, we've reached the interim retail
16 arrangements some months ago. It was sometime, I think,
17 last year is where we reached that. I understood that
18 some time, oh, around May, June, somewhere in that time
19 frame, we have reached an agreement with -- to provide
20 you with the actual unbundled elements.

21 Q Let me ask this as a hypothetical then. Let's
22 assume that BellSouth has been unable and continues to
23 be unable to provision the -- a subloop unbundled
24 element and the digital 4-wire loops that Intermedia has
25 requested. Let's assume that as a hypothetical.

1 Is it BellSouth's contention that the fact
2 that it lists unbundled loop distribution -- well,
3 4-wire unbundled digital loops and subloop unbundled
4 distribution in its statement, is basis enough to obtain
5 271 relief?

6 A No, that's not actually true. There are two
7 parts to your question. One is that the specific loops
8 that Intermedia has requested, first, those loops have
9 to be identified as a network element that we are
10 required to provide in order to show checklist
11 compliance.

12 If that is the case, then we would obviously
13 have to provide those loops upon request with
14 Intermedia. If those loops are not required to be
15 provided under the Telecom Act, then, no, it wouldn't --
16 it would have no impact on checklist compliance. And as
17 I understand it, the loops that Intermedia has been
18 requesting, I think they're called frame relay loops,
19 are not designated network elements.

20 Q So does BellSouth -- is that also BellSouth's
21 position with subloop unbundled -- unbundled subloop
22 elements?

23 A Unbundled subloop elements of loops that are
24 not required to be offered, yes. It is not our position
25 with respect to subloop elements for the ones that are

1 required to be offered, like 2-wire analog and 4-wire
2 analog and DS-1, and whatever subloop unbundling has
3 been identified as an unbundled network element for.
4 But if it's a subloop of a loop that we don't have to
5 offer, then --

6 Q How about other loops, like digitally
7 conditioned 64 and 56 kilobit loops? Are those -- can
8 BellSouth obtain 271 authorization without providing
9 those as unbundled network elements?

10 A Again, I don't know if you're referring to a
11 loop that is in fact one that we're required to offer or
12 not. If you are referring to one that we are required
13 to offer, then -- and somebody has asked for it, then we
14 would have to offer it, within whatever the time frame
15 is that we're required to and under the terms and
16 conditions that we have to offer it. Based on that
17 description, I can't tell whether that's one that we
18 have to offer or not.

19 COMMISSIONER CLARK: Mr. Varner, let me follow
20 up on that. Is it your testimony that if it is a
21 designated network element that you have to offer, that
22 using the bona fide request process is sufficient to
23 meet the requirement that prices for that element be
24 cost-based?

25 WITNESS VARNER: Yes, in the instance that

1 we've used it for those subloop elements, because the
2 bona fide request process requires that the price be
3 cost-based.

4 COMMISSIONER DEASON: How does that process
5 work, that a bona fide request is deemed to place an
6 item at cost?

7 WITNESS VARNER: It doesn't necessarily mean
8 that the price will be at cost. It means that the price
9 will be based on cost. And it's similar to a process
10 that we've had for sometime called special assemblies,
11 where people want something that's somewhat unique and
12 they request it, and we go and determine what is the
13 cost of providing that particular item to that specific
14 customer in the specific circumstances that they've
15 asked for it, and then we would establish a price for it
16 based on their specific set of circumstances.

17 COMMISSIONER DEASON: So under that process,
18 you identify a procedure you will follow to identify the
19 cost of providing that on a case-by-case basis?

20 WITNESS VARNER: Yes. And that process is
21 included in the statement. It's identified in the
22 statement what that process is, and it has in there
23 commitment dates by which we would get back to them with
24 information and so forth to process their request. And
25 it has the commitment that the prices would be

1 cost-based as well. That whole process is defined as an
2 attachment to the statement.

3 Q (By Mr. Canis) Mr. Varner, just to finish up
4 on this line of questioning, you talked about a
5 distinction between the kinds of unbundled loops that
6 BellSouth is required to provide and the kind that it is
7 not required to provide. You know that Intermedia is
8 particularly interested in digital circuits, that it
9 tends to have a digital network, provides both voice and
10 data and other services using digital facilities. Is
11 BellSouth required to provide digital unbundled loops?

12 A We have to provide the DS-1 loops, I know,
13 which is a digital unbundled loop. I can't remember on
14 the others. Well, the four -- I can't remember on the
15 HDSL and ADSL. I think those are required in Florida.
16 I just don't remember for sure. Mr. Scheye can tell
17 you.

18 Q Would you accept, subject to check, that ADSL,
19 HDSL, ISDN and 56 and 64 kilobit voice grade loops are
20 listed in the statement?

21 A I would accept that. The only one that I'm a
22 little questioned about is the last one.

23 Q Okay.

24 A ISDN, HDSL, ADSL I believe are. I don't
25 recall something that said 54 -- 56 or 64 kilobit loop.

1 I don't recall any description like that.

2 Q Fair enough. Is the fact that these loops are
3 listed in the statement reflective of BellSouth's
4 position that it is in fact obligated to provide these
5 before it can obtain -- if requested, before it can
6 obtain 271 authorization?

7 A Only if in fact they have been defined by this
8 Commission as network elements. To the extent that they
9 have, then yes. In putting together the statement, we
10 put in the things that were required for checklist
11 compliance. We've also had negotiations with carriers,
12 and we've -- to the extent that there were things that
13 we were offering the carriers, that -- that look like
14 they had somewhat broad appeal, they were included in
15 the statement as well to make them available to the
16 small carriers.

17 So there's a combination of things that are in
18 fact those that are required for checklist compliance,
19 as well as some items that may not be required for
20 checklist compliance. But there's an indication that it
21 may be useful to the small carriers to be able to
22 purchase those items from the statement.

23 Q You were discussing in response to a question
24 from another counsel a little earlier some of the
25 circumstances under which a carrier could adopt a

1 negotiated or arbitrated agreement signed by another
2 carrier.

3 Can I ask you to just explore that a little
4 bit more. Is it your position that a -- if the carrier
5 has an existing agreement, it must wait until that
6 agreement expires before it can opt into either -- take
7 service out of the statement or opt into another
8 agreement signed by another carrier?

9 A I don't have a position on that. As I said,
10 clearly, once their agreement expires, they can go to
11 the statement, renegotiate another agreement, do
12 whatever they feel is in their best interests. Prior to
13 their statement expiring, I don't know what there are --
14 what provisions of contract law would govern their
15 ability to use the statement instead of an agreement.
16 That seems to me to be a legal question, and I'm just
17 unable to answer it.

18 Q Fair enough. Let's assume that Intermedia's
19 interconnection agreement with BellSouth expires
20 tomorrow. Let's also assume that AT&T has an
21 interconnection agreement with BellSouth that it
22 negotiated a year ago and has a one-year term left.
23 Intermedia then can adopt that AT&T agreement?

24 A Yes.

25 Q Can it adopt it for the two-year original term

1 of that agreement or only the one year remaining in that
2 agreement?

3 A That would be subject to the negotiations
4 between Intermedia and BellSouth. It could be the one
5 year that remains. It could be the two years. It might
6 be five years. That would be one of the things that
7 would be negotiated is what would be the term of the
8 agreement with Intermedia.

9 Q Has BellSouth changed its position on what
10 constitutes a model interconnection agreement in light
11 of the 8th Circuit decision?

12 A I don't know that we had a position on what
13 constitutes a model interconnection agreement. I can't
14 say that we've changed it because I'm not aware that we
15 had one.

16 Q Let me ask it this way. Is BellSouth, in
17 light of the 8th Circuit decision, not offering items
18 in -- on an ongoing basis that it had previously
19 offered in interconnection agreements?

20 A Would you repeat that, please? You lost me
21 somewhere.

22 Q As a result of the 8th Circuit decision, has
23 BellSouth stopped including things in interconnection
24 agreements that it used to put in there?

25 A I don't know. I'm not involved in the process

1 of negotiating those. So I can't say.

2 Q So you don't know about whether BellSouth will
3 continue to execute interconnection agreements with a
4 most favored nations provision, for instance?

5 A We will continue to execute agreements that
6 have the provision, yes.

7 Q On Page 52 of your direct testimony, you
8 discuss a true-up process.

9 A Direct?

10 Q Your direct, yes.

11 A I have it.

12 Q And I'm just talking generally about true-up.
13 Is it -- we discussed briefly a little while ago that
14 Intermedia had an interim arrangement whereby because
15 BellSouth was unable to provide certain unbundled
16 digital loops, it was essentially reselling its
17 SynchroNet service. Are you generally familiar with
18 that agreement?

19 A No, I'm not familiar with the Intermedia
20 agreement. Also, as I understood it, there was -- the
21 first issue that arose in that regard is whether or not
22 the agreement contained the requirement to offer the
23 loops that Intermedia had requested. And as an
24 accommodation, we were able to provide them with a
25 resale arrangement utilizing SynchroNet service, if I

1 remember correctly, to provide them with an interim way
2 of being able to provision the service that they were
3 trying to provision. I think the first issue is whether
4 or not the agreement actually contained the requirement
5 to offer what it was that Intermedia was trying to
6 order.

7 Q Did BellSouth engage in this interim agreement
8 under an assumption that it was not required to provide
9 those kinds of loops to Intermedia?

10 A I knew that that was a concern at the outset
11 of the discussions between BellSouth and Intermedia.
12 The principal reason is not that -- not so much that we
13 were not obligated to do so, we did not know that we
14 could, that it was technically feasible for us to
15 provide what it was that Intermedia was requesting. And
16 it was not required by the agreement. Therefore, we
17 were trying to find some way to allow Intermedia to be
18 able to do things that they wanted to do, as closely as
19 we could, considering the fact that we were -- they were
20 asking us to do something that we didn't -- that wasn't
21 technically feasible for us to do, nor something that we
22 had committed to do in the agreement.

23 Q I think you mentioned a little while ago that
24 interim agreement is over and that in fact it's your
25 understanding that BellSouth is providing those

1 unbundled loops that Intermedia requested?

2 A Again, you keep describing it as an interim
3 agreement. I don't think there was an agreement,
4 per se, on this interim arrangement. I don't think
5 anything was -- there was a modification to the
6 Intermedia agreement or any kind of an addendum or
7 anything for this arrangement.

8 This was an agreement between -- when I say
9 agreement, Intermedia and BellSouth representatives met
10 over a period of time to arrive at something that
11 Intermedia could utilize. And that's what we provided.
12 And at the same time we said we would continue to try to
13 determine if in fact we could provide something that was
14 closer to what Intermedia wanted. That's what I
15 understood we were able to do around -- if I remember
16 right, it was around May or June of this year.

17 Q All right, well, was it -- was part of this
18 agreement -- whether we call it an interim agreement or
19 not, was the understanding there that BellSouth would
20 essentially resell its digital service to Intermedia at
21 a discount in lieu of providing unbundled digital loops?

22 A Well, what it was is that Intermedia would be
23 able to resell SynchroNet service to provide the service
24 that it was trying to provide. And then we would --
25 that's what we -- what it turned out would be the way

1 that Intermedia could do what they wanted to do while we
2 were trying to determine if there was a way to provide
3 the unbundled loops that they were requesting.

4 Q But the SynchroNet services that were being
5 resold by Intermedia why not pure resale. I mean you
6 weren't offering it at the tariffed rates less the
7 wholesale discount, were you?

8 A I don't recall. I don't recall what the
9 prices were of that arrangement.

10 Q So you don't know whether those tariffed rates
11 were discounted to approximate what the costs of an
12 unbundled digital loop would have been?

13 A As I said, I don't know what the pricing
14 arrangement was in that interim.

15 Q Do you know whether that arrangement is still
16 going on?

17 A I don't know.

18 Q Do you know if there were any disputes between
19 Intermedia and BellSouth over the rates charged for
20 those services?

21 A Yes, I believe there were. I seem to recall
22 some correspondence some time last year wherein there
23 was evidently a misunderstanding on Intermedia's part
24 about what rate elements applied for SynchroNet service,
25 and that's really all I remember about it.

1 Q Do you know whether that was effectively --
2 during that negotiation process -- that was subject to a
3 true-up mechanism once the parties resolved that issue?

4 A Well, first, I don't know that there was a
5 negotiation process going on. And as far as a true-up
6 mechanism, the instance that I'm talking about, there
7 was nothing applicable to true-up.

8 What it was was there was a charge for -- if I
9 remember correctly it was a node charge that is
10 applicable on SynchroNet service. It's in the tariff.
11 Intermedia was buying SynchroNet service from the
12 tariff, but for some reason did not realize that it had
13 to pay the node charge.

14 Q Wasn't that finally resolved so that the node
15 charge was not applied?

16 A I don't know how it was resolved.

17 Q Do you know what the amount, what the
18 magnitude of that charge was?

19 A No, I don't.

20 Q So you don't know whether it was a quarter
21 million dollars or not?

22 A No, I do not.

23 Q Let's just say hypothetical it was a quarter
24 million dollars. Do you think a true-up mechanism
25 whereby BellSouth can unilaterally withhold a quarter of

1 a million dollars is a fair process to new entrants and
2 one that should be -- should be approved under the
3 Communications Act?

4 A When you say "unilaterally withhold," I am
5 having difficulty with that because I don't think that's
6 what applies in this case. What applies in this case
7 was a situation wherein Intermedia wanted to resell
8 SynchroNet service. The charges for SynchroNet service
9 are stated in our published tariff. For some reason
10 when Intermedia made the decision to resell it,
11 evidently they didn't realize that that charge was
12 applicable. Now I don't know why that happened or what,
13 but that's not a situation wherein a true-up would
14 apply.

15 A true-up applies, as I'm describing it here
16 in my testimony, is the case wherein this Commission
17 ordered interim rates in arbitration because they didn't
18 have cost studies of the type that they wanted in order
19 to set permanent rates, and said that we will set these
20 rates on an interim basis, you will come in, you will
21 file the cost studies, BellSouth, and then we will
22 determine whether these rates need to be modified.
23 That's what I'm referring to when I say a true-up. The
24 rate for the item will be changed, or maybe not changed,
25 but at least will be readdressed when the proper cost

1 studies are filed, and those cost studies have been
2 filed already.

3 Q I would like to direct your attention to
4 Page 56 of your direct testimony. And I'm just talking
5 generally about some of the discussion that you have on
6 that page. But you talked about safeguards against
7 anti-competitive conduct.

8 Do you know, is it BellSouth's position to pay
9 terminating access for local calls made to Internet
10 service providers?

11 A You'll have to give me a little bit more
12 specifics on the situation as to who is calling whom.

13 Q Let's say I am Intermedia and I own the
14 nation's eighth largest Internet service provider,
15 called Digex. There are Digex subscribers on the
16 BellSouth network. They make a local call to Digex.
17 It's carried over the BellSouth network. It's rated as
18 a local call. It's terminated on the Intermedia
19 network, and they hand it off to Digex. That would be
20 terminating local traffic under the interconnection
21 agreement.

22 Is it BellSouth's position that it will pay
23 terminating mutual compensation for that traffic?

24 A No, it's not, because the -- we don't agree
25 that that is in fact local traffic. What happens is

1 that the origination and termination point of that
2 traffic is not within the local calling area. In some
3 cases it's somewhere else in the country. But it's not
4 local traffic, so we are not going to pay local
5 interconnection on traffic that's not local traffic.

6 Q Is that a fairly new position taken by
7 BellSouth?

8 A I don't know if it is or -- I don't think it
9 is. It's been consistent as far as I know.

10 Q Isn't it the fact that this position was just
11 announced to interconnected CLECs in a letter dated
12 August 12th, 1997?

13 A I don't think that it was just announced in a
14 letter dated August of '97. All of our interconnection
15 agreements at the time that they have been entered into
16 have been for local interconnection. They have been for
17 local traffic and we've been very careful to point that
18 out. So that's been the position in the interconnection
19 agreements all along, that we would pay for reciprocal
20 compensation on local traffic.

21 MR. CANIS: Madam Chairman, I would like to
22 mark as Intermedia Exhibit No. 17 a letter from
23 BellSouth to All Competitive Local Exchange Carriers
24 concerning BellSouth's position on the payment of
25 terminating mutual compensation for Internet traffic and

1 other enhanced service provider traffic dated August
2 12th.

3 CHAIRMAN JOHNSON: I'll mark this as Exhibit
4 17 and give it the short title BellSouth August 12th
5 Letter Regarding Enhanced Service Providers Traffic.

6 (Exhibit No. 17 marked for identification.)

7 CHAIRMAN JOHNSON: Sir, how much more
8 questioning do you have, if you could estimate the
9 time?

10 MR. CANIS: I would assume about 15 minutes,
11 possibly 20.

12 CHAIRMAN JOHNSON: Any other questions?

13 MR. FINCHER: I have about two questions.

14 CHAIRMAN JOHNSON: Is that it then? Okay.

15 Q (By Mr. Canis) Mr. Varner, I would like to
16 direct your attention to the first paragraph, fifth line
17 down at the end of that sentence, it says, every
18 reasonable effort will be made to ensure that ESP
19 traffic does not appear on our -- that is BellSouth --
20 bills, and such traffic should not appear on your
21 bills -- that is CLEC bills -- to us.

22 Does the fact that BellSouth is talking about
23 every reasonable effort suggest to you that some of that
24 traffic is in fact passed through to CLECs in a mutual
25 compensation arrangement?

1 A No, it does not. What it suggests to me is
2 that we will take every step to ensure that it is not
3 passed through to CLECs. The more -- I think the first
4 statement of this letter is consistent with what I've
5 said. It says, the purpose of this letter is to call to
6 your attention that our interconnection agreement
7 applies only to local traffic. That's been the case
8 with interconnection agreements from their inception.

9 And it goes on to explain that this ISP
10 traffic is jurisdictionally interstate and thus is not
11 subject to the interconnection agreements.

12 And the statement that you read was our
13 commitment to ensure that we don't bill you for that
14 traffic and asking you not to bill us for that traffic.

15 Q At anytime in the past, to your knowledge, has
16 BellSouth included local calls made to Internet service
17 providers and the traffic it passes off to CLECs for
18 mutual compensation?

19 A Well, there's no way to pass off a local call
20 to an Internet service provider because the traffic is
21 interstate, so we can't pass you a local call. The call
22 that we pass you would be an interstate call.

23 COMMISSIONER DEASON: And is it interstate
24 because that's the way the FCC has defined it?

25 WITNESS VARNER: Yes, it's been

1 jurisdictionally defined as interstate traffic.

2 Q (By Mr. Canis) How are those calls rated?

3 A I don't know. It depends on where they
4 originate and what kind of service the originating
5 customer has as to how they would be rated.

6 Q In fact, aren't those calls rated out of
7 BellSouth's local tariff, and in fact, isn't that what
8 the FCC has required?

9 A What the FCC has said is that the traffic is
10 jurisdictionally interstate but access charges do not
11 apply; and has said, if I remember it -- I can't get
12 this exactly right, but what they have said is that the
13 charges for that traffic shall be the local service
14 charges that would normally apply for that type of
15 facility. This is the same arrangement that's been in
16 place for years with CompTel and CompuServ, I think, and
17 other places wherein they've been allowed to utilize --
18 they're just basic 1FBs and 1FRs -- to provide enhanced
19 service provider traffic without the payment of access
20 charges. And they've received an exemption from access
21 charges, but the FCC has consistently maintained that
22 the traffic is in fact jurisdictionally interstate.
23 They're just saying that the charges for it will be the
24 same as the charges for local service.

25 Q If I'm a residential user on BellSouth's

1 network and I want to make a call, I use BellSouth's
2 Internet subsidiary, BellSouth.com, as my Internet
3 service provider and I make a call to BellSouth.com, do
4 I pay local charges out of BellSouth's local tariff?

5 A You mean dot net?

6 Q I'm sorry, dot net.

7 A I had to do that.

8 Q Thank you.

9 A But if you -- are you the end user or are
10 you -- you have to tell me whether you're the end user.

11 Q I'm an end user.

12 A You're an end user. What happens is when you
13 make a call to their server, if they have a local
14 presence, which many Internet providers do, they set up
15 something akin to foreign exchange arrangements, so
16 customers can call in to a local number, and then they
17 carry the call to wherever they happen to be located.
18 Then you would be making a local call. It's just like
19 you would if you were calling a foreign exchange line.

20 Q Is BellSouth's position on the definition of
21 local calls made to Internet service providers an
22 accepted industry standard, or is that a controversial
23 issue?

24 A I don't know. As far as the fact that
25 interconnection agreements supplying the local traffic

1 only, as far as I know, all of the RBOC's
2 interconnection agreements do the same thing in that
3 regard. Obviously the FCC's rules about this traffic
4 being interstate is certainly an industry standard that
5 everybody complies with.

6 Q Doesn't the FCC currently have two pending
7 rulemaking proceedings addressing this issue?

8 A Evidently, according to this letter, there
9 are.

10 Q Are you familiar with those proceedings at the
11 FCC?

12 A Not the current status. I believe those are
13 the proceedings on access reform. The other one on
14 treatment of interstate information service providers
15 I'm not. I'm somewhat familiar with the one on access
16 reform. Not with respect to this question, but with
17 respect to the other issues of what they did on access
18 reform.

19 Q So you're not familiar then that while all the
20 LECs make the same argument that BellSouth does in
21 filings before the FCC, every competitive carrier
22 contended exactly the opposite, that this was local
23 traffic subject to mutual compensation?

24 A That doesn't surprise me at all. Over the
25 years the issue of appropriate charges to apply for

1 information service or enhanced service providers has
2 been one that's been debated many times. The
3 application of access charges is usually the point of
4 the debate, and it always breaks down exactly as you
5 described. You have the local exchange companies saying
6 that access charges should apply and the ILECs saying
7 that no -- I mean the information service providers,
8 saying no, they shouldn't.

9 Q Would you characterize this then as an issue
10 that is in dispute?

11 A I don't know whether it's in dispute because I
12 don't know that there's any sort of complaint or
13 whatever pending. I would characterize it as an issue
14 where there are two different points of view as to how
15 it should be resolved.

16 Q Are you aware that dispute resolution
17 provisions in the interconnection agreements negotiated
18 between BellSouth and Intermedia?

19 A Would you repeat that please?

20 Q Are you familiar with the dispute resolution
21 provisions of the interconnection agreement negotiated
22 between BellSouth and Intermedia?

23 A No, I am not.

24 Q Are you aware generally of dispute resolution
25 provisions in interconnection agreements executed by

1 BellSouth?

2 A No, I am not.

3 Q So if I were to tell you that the
4 interconnection agreements negotiated by Intermedia
5 required disputes to be referred to the appropriate
6 state commission for resolution, and do not authorize
7 unilateral action by either party, you wouldn't have any
8 position one way or the other on that?

9 A As I said, I'm not familiar with the
10 provisions. I don't know what they say.

11 Q On Page 44 of your rebuttal testimony, and I'm
12 looking at Line 24 and 25 --

13 A What page was that?

14 Q I'm sorry, Page 44, bottom of the page, Lines
15 24 and 25. You state, "To my knowledge, the DOJ has no
16 particular expertise in OSS or in the technical
17 requirements of providing telecommunications services."

18 On the next page, a couple sentences down,
19 "Thus, DOJ's opinion concerning OSS or checklist
20 compliance are not binding or persuasive."

21 Do you have any knowledge of the DOJ's 271
22 review process?

23 A Yes, I believe I do. In -- to the extent that
24 the review process is reflected in the comments that
25 they have filed to the FCC.

1 Q Did those comments include statements by
2 technical experts on OSS systems that were hired by DOJ?

3 A I remember there were some affidavits. I do
4 not remember whether any of them were technical experts
5 on OSS systems. From what I recall the affidavits were
6 from economists.

7 Q So you don't know whether DOJ has hired expert
8 outside consultants to assist it in reviewing OSS issues
9 for its 271 reviews?

10 A No, and I didn't see any evidence of it in
11 their filing.

12 Q I would like to refer you to Page 66 of your
13 rebuttal testimony. In there on Line 12 you state, "In
14 fact, BellSouth currently offers rebundled elements."
15 Are you familiar with a term -- I don't know, it's a
16 technical term -- I think it's a popular term called
17 GLUE charges?

18 A I've heard something talked about.

19 COMMISSIONER GARCIA: Would you repeat that?

20 MR. CANIS: Yes, references to a term called
21 GLUE, G-L-U-E, charges.

22 Q (By Mr. Canis) Let me just explain what I
23 think GLUE charges are, and perhaps we can use this as a
24 basis for further discussion. Some parties consider the
25 term "GLUE charges" as an additional charge above and

1 beyond what may be listed in an interconnection
2 agreement, an arbitrated proceeding or a statement of
3 generally available terms and conditions that includes
4 an additional charge to cover the costs associated with
5 combining unbundled network elements.

6 Assuming that we can use my definition, is it
7 BellSouth's position that it will or will not apply GLUE
8 charges if a series of unbundled network elements are
9 requested?

10 A We would not apply them, and I think I
11 probably need to explain why. In looking at -- at the
12 time that we filed this testimony, as you can see, it
13 says, "We believe that we will continue to offer such
14 rebundled elements if BellSouth can establish the
15 appropriate prices for these elements." We don't think
16 we can and we don't intend to offer them. So there
17 won't be any GLUE charges because we won't offer the
18 capability.

19 Q Let's say I'm Intermedia, and I want to order
20 a 56 kilobit digital loop, and I want to combine it to a
21 multiplexer within BellSouth's central office before it
22 gets to my collocated cage. Would BellSouth impose a
23 GLUE charge for combining that loop with that
24 multiplexer?

25 A No. What you referred to in a GLUE charge

1 would be only -- from what I've seen, it's only the case
2 wherein BellSouth would actually be combining the
3 elements, not the case where you would be combining them
4 yourself. That's the situation that I've described that
5 we would not be offering. We will not combine them for
6 you. We will terminate them in your collocation space
7 and you can combine them yourself.

8 Q I'm sorry. That in fact was my question.
9 Let's say Intermedia wasn't inclined to put a
10 multiplexer in its collocated cage, but instead wanted
11 BellSouth to perform that multiplexing function and then
12 provide a cross-connect from that multiplexer to
13 Intermedia's collocated cage. In that case, would
14 BellSouth impose a GLUE charge for combining the
15 unbundled loop with the multiplexer?

16 A Well, no, we would not apply a GLUE charge in
17 that case as you described it, because the GLUE charge
18 would only be applicable if BellSouth was combining the
19 elements itself. We will not be combining them.

20 Now the other issue of whether or not such a
21 service as you described will even be offered, I can't
22 answer. You'll need to ask Mr. Scheye, because what you
23 seem to have described is another variation of subloop
24 unbundling.

25 Q So is it your -- is it BellSouth's position,

1 then, that if I am Intermedia and I said I want to order
2 a 56 kilobit digital loop, or let's say some other kind
3 of loop, let's say one of the loops that's definitely in
4 your statement, a DS-1 loop, and I said, hey, BellSouth,
5 I would like you to multiplex this in the central office
6 to me before handing it off to my collocated cage,
7 BellSouth would reject that request?

8 A Well, there's no reason to multiplex a DS-1
9 loop.

10 Q Let's say I wanted a DS-3 cross-connect to my
11 cage.

12 A If you wanted a DS-3 loop, I think you would
13 request that through the bona fide request process, if
14 it was offered.

15 Q Well, let's say the MUXing I want, I wanted to
16 MUX it down into a bunch of voice grade circuits.

17 A Again, if you wanted to put in a multiplexer,
18 you're free to do that, and you can multiplex it however
19 you want. What you're describing with a GLUE charge is
20 somehow where BellSouth combines multiple network
21 elements. It doesn't sound like what you're asking for
22 is in fact even multiple network elements. It sounds
23 like it is some subpart of a network element that you
24 want to have divided somehow.

25 Q Well, let's use another example then. Let's

1 say I wanted a DS-1 unbundled loop and I wanted to
2 purchase BellSouth's DS-3 interoffice transport. I
3 wanted to buy each of those as an unbundled network
4 element. Would BellSouth hook those two elements up for
5 me?

6 A We will send them to your collocated cage and
7 then you can hook them yourself. We won't combine them
8 for you.

9 Q How about a loop and a network interconnection
10 device, if I --

11 A That is the loop.

12 Q BellSouth defines the loop as including a NID?

13 A Yes.

14 Q Let's talk about the unbundled -- the subloop
15 distribution element listed in the BellSouth statement.
16 Let's say I wanted that and in a NID. Could I get those
17 two?

18 A I don't know how you would do it. If you
19 could figure out a way to do it.

20 Q Let's say I wanted to provide my own feeder --
21 my own feeder, all right, so I'm going to run a DS-1
22 feeder from my collocated cage to a controlled
23 environmental vault halfway in the loop. I want there
24 to cross connect to a 56 digital conditioned feeder a
25 distribution loop, which is listed -- a distribution

1 plant that's listed in BellSouth's statement, and I
2 wanted that to terminate at the NID at a building.
3 Could I do that?

4 A I don't believe you could, for a number of
5 reasons. One is that what you described as the 56
6 kilobit subloop unbundled element, I don't think is an
7 element that is in the statement at all to be offered.
8 The NID that you've described would not be applicable on
9 that kind of a circuit. The NID is on the -- if I
10 remember right -- the 2-wire and 4-wire analog
11 circuits. So what you're describing as a NID is
12 something different than what's in the statement as a
13 NID. So the things that you're talking about getting
14 are not in the statement, and they're not things that
15 have been identified as network elements that we have to
16 offer.

17 Q So when BellSouth lists distribution plant
18 as -- or distribution element as a subloop unbundled
19 element, its position is that that only includes analog
20 circuits?

21 A No, it's subloops associated with the various
22 kinds of loops that we're offering in the statement.

23 Q So it could include a 56 digital 4-wire loop?

24 A From my recollection there's nothing in the
25 statement called a 56 digital 4-wire loop.

1 Q Well, the distribution plant just says
2 distribution. It doesn't say what kind of
3 distribution. And I guess that's what I'm asking a
4 clarification of, what do you mean by distribution
5 plant?

6 A It would be distribution plant associated with
7 the kinds of loops that we offer in the statement.

8 Q Say it was a DS-1.

9 A Then I believe it's applicable in that case.

10 Q And is your position that network interface
11 devices are only available for analog circuits, not
12 digital circuits?

13 A The NID that's described in the statement, as
14 I recall, was only the NID that was for plain old
15 telephone, or POTS service, residence and business
16 service. That's the only NID that is in the statement.

17 Q And is it BellSouth's position -- well, what
18 would BellSouth's position be if Intermedia requested a
19 digital NID?

20 A If there were such a thing, we would say -- we
21 would take it through the bona fide request process.

22 Q Would BellSouth reject that request?

23 A I have no idea.

24 COMMISSIONER CLARK: Mr. Varner, I'm really
25 confused. What's a network interface device?

1 WITNESS VARNER: That's the little box
2 that's --

3 COMMISSIONER CLARK: On the side of your
4 house?

5 WITNESS VARNER: Huh?

6 COMMISSIONER CLARK: On the side of your
7 house?

8 WITNESS VARNER: On the side of your house.
9 That's what it is. That's the little box on the side of
10 your house where we terminate the loop and it has like a
11 jack in there to connect your inside wire on one side
12 and the loop on the other, that little box.

13 COMMISSIONER CLARK: And that's part of the
14 loop; that you don't unbundle the NID?

15 WITNESS VARNER: We will unbundle it if they
16 want it. They can buy the NID by itself if they want,
17 or they can buy it with the loop if they want it. They
18 have a choice, they can go at it either way.

19 COMMISSIONER CLARK: If they buy the loop and
20 they buy the NID, will you connect the two?

21 WITNESS VARNER: Well, when they buy the loop,
22 if they want a loop including the NID, that is the
23 loop. So it's already connected, and there's nothing
24 for us to do.

25 COMMISSIONER CLARK: You're saying that the

1 smart thing would just be to buy the loop. But what if
2 they want to buy the NID and the loop separate?

3 WITNESS VARNER: Then they'll have to connect
4 it themselves.

5 COMMISSIONER CLARK: Let me ask you this: Is
6 it your view or your position that you don't need a NID
7 if you have a digital line?

8 WITNESS VARNER: No, that's not my view.
9 There are network interface devices that are applicable
10 associated with all kinds of lines that we put in, all
11 kinds of different capacities, and types. But the one
12 that is in the statement is the one that's applicable
13 for plain old telephone service. Any of these others,
14 if there was something separate that somebody wanted to
15 order, then they would order it separate.

16 They would get the network interface device,
17 for example, as part of a DS-1 loop when they ordered
18 the loop. Whatever network interface device was
19 required for that loop would be included in the DS-1
20 loop.

21 The only NID that was pulled out from the loop
22 and ordered to be offered as a separate item, separate
23 and apart from the loop, was the one for POTS service.
24 The others are all included in the price for the loop.

25 COMMISSIONER CLARK: And it's your position

1 that BellSouth doesn't have to unbundle the NID from the
2 loop for services other than the voice grade?

3 WITNESS VARNER: Yes. That's the only one
4 that's been identified as a network element, as separate
5 unbundled network element, separate and apart from the
6 loop. In the case of all the others, it's included in
7 as part of the loop.

8 Q (By Mr. Canis) Will BellSouth offer, as an
9 unbundled element, lateral or riser cable within a
10 building that it owns?

11 A I don't think so. If I recall correctly, no,
12 we don't.

13 MR. MARKS: Could you repeat that question
14 again, please?

15 MR. CANIS: Yes, I'm sorry. Will BellSouth
16 offer, as an unbundled network element, lateral and
17 riser cable that it owns within a building?

18 I have no further questions, thank you.

19 MR. FINCHER: Thank you, Madam Chair.

20 CROSS EXAMINATION

21 BY MR. FINCHER:

22 Q Mr. Varner, I'm Ben Fincher with Sprint. I
23 have two questions for you.

24 In your opening statement or summary you
25 handed out the two-page handout you were talking from.

1 But on the second page, in referencing the 252(f)
2 statement under Track B, as I recall you made a
3 statement to the effect that without the statement small
4 carriers would be forced to negotiate their own
5 agreements. Do you recall that? Would deny small
6 carriers the ability to adopt a statement or --

7 A I don't recall saying that they would be
8 forced to negotiate their own agreement, but --

9 Q That's right.

10 A Well, yes, without the statement, the only way
11 they could get interconnections is they would have to
12 have an agreement of their own.

13 Q Would you agree that they could adopt another
14 interconnection agreement under 252(i)?

15 A Yes. But in order to do that, what they would
16 end up doing is they would come to us and say, okay, I
17 want an agreement with you, and the agreement that I
18 want is the AT&T agreement. And then we would in fact
19 have an agreement with that carrier that references the
20 AT&T agreement. It would be a separate agreement with
21 that carrier.

22 The problem with that is that, if you've seen
23 some of these agreements, they're huge. And a small
24 carrier looking at, you know, a stack of paper that high
25 and saying, I don't know if I want to commit to

1 everything that's in there, I think presents them with
2 somewhat a big problem. So what we're providing is a
3 very simple way for them to be able to get in the
4 business and get access to the various elements they
5 might need.

6 Q Would you agree that there are agreements out
7 there that they could start with to adopt, if they so
8 chose?

9 A Yes, but that's a much more complicated and
10 difficult process than utilizing the Statement. If
11 that's what they want to do, we're not going to try to
12 dissuade them from doing that. That's their option, to
13 adopt another carrier's agreement, if they want to do
14 that. But looking at the size of those agreements and
15 thinking about a very small carrier, you know, a very
16 small business, who may have one or two people working
17 there, and trying to review something the size of the
18 AT&T agreement, for example, to make a decision about
19 whether or not they want that, seems to be, you know, an
20 unnecessary hurdle for them to have to go through.

21 Q Have you personally discussed with a
22 representative of SMNI the problems that SMNI has had in
23 Orlando?

24 A No, I have not.

25 Q And so in your rebuttal testimony when you

1 state that the problems have been resolved, you don't
2 know that of your own personal knowledge, do you?

3 A It's based on the discussions with BellSouth
4 people who have been involved in the problems.

5 Q But you have not been involved in any of those
6 discussions?

7 A Not personally, no.

8 MR. FINCHER: That's all I have.

9 CHAIRMAN JOHNSON: We're going to take a
10 30-minute lunch break.

11 MR. MARKS: Commissioners, before we break,
12 could I make one comment? Both Mr. Canis and
13 Mr. Willingham made a reference to whether their
14 respective clients could opt out of their agreements or
15 not. I think if you direct that question to Mr. Scheye,
16 he might be able to respond to it.

17 CHAIRMAN JOHNSON: All right, we'll reconvene
18 at quarter till 2.

19 (Recess from 1:15 p.m. until 2:00 p.m.)

20 CHAIRMAN JOHNSON: We're going to go back on
21 the record. I think we were at Staff.

22 MS. BARONE: Yes, Madam Chairman.

23 CROSS EXAMINATION

24 BY MS. BARONE:

25 Q Good afternoon, Mr. Varner. I just have a few

1 questions and they relate to your testimony on poles,
2 ducts, conduits and rights of way. Specifically, on
3 Page 17 of your direct testimony, you state that
4 BellSouth has nine poles, ducts and conduits, rights of
5 way license agreements. And what I'm looking for in my
6 questioning here is I would like you to be able to
7 distinguish between license agreements and licenses to
8 access poles or ducts.

9 First of all, would you explain what a license
10 agreement is and what that license agreement provides
11 for?

12 A Yes, that's the agreement between us and the
13 carrier that provides the terms, conditions and the
14 prices under which they would get access to the poles,
15 ducts and conduits.

16 Q Does an ALEC have to get a license agreement
17 before it can apply for a specific license to access
18 poles and ducts?

19 A I don't know that they have any specific
20 license that they have to apply for. All they need from
21 us is the licensing agreement, the agreement that
22 licenses them to access the poles, ducts and conduit
23 that we own. They may need some sort of local municipal
24 construction permits or something like that, but that
25 doesn't have anything to do with the relationship

1 between us and them.

2 Q If an ALEC chooses to use the SGAT rather than
3 negotiate an interconnection agreement with BellSouth,
4 does the ALEC still have to have a license agreement and
5 also apply for a license for each access request?

6 A Yes, they -- well, they still have to have the
7 licensing agreement. And as far as a license, I don't
8 know, you would need to ask Mr. Scheye.

9 Q Is it BellSouth's position that the Act or FCC
10 rules call for these licensing procedures or the license
11 agreement?

12 A Yes, they require us to provide access to the
13 poles, ducts and conduit, and this is the method by
14 which we do that, is through this agreement.

15 Q Is that method specifically called for under
16 the Act?

17 A I believe that it is. It doesn't say by name
18 that you have to have a -- something called a licensing
19 agreement, but there has to be some sort of agreement
20 between us and the carriers that spells out the terms
21 and conditions, which is what this is.

22 Q And what section of the Act or the rules do
23 you base your position on?

24 A That we have to -- it's the Section that says
25 that we have to offer it. I think it's in 251.

1 Q And it's your testimony that that requires a
2 license agreement?

3 A It requires an agreement. What we call it is
4 a licensing agreement. It does require us to have an
5 agreement with the carrier in order to provide the
6 access to the poles, ducts and conduits. There are a
7 number of ways you could do that. We could include all
8 those terms and conditions in the interconnection
9 agreement, as opposed to having a separate capsule
10 arrangement that has it all in there, which is already
11 in existence.

12 Q Mr. Varner, the license agreement that you're
13 referring to, does that agreement allow the ALEC to
14 attach to any pole, conduit, right of way? What's the
15 extent of that license agreement?

16 A It's generally to -- for anything that we own
17 or control, right of way that we own or control.

18 Q So is it your testimony then that the ALEC
19 would not have to come back again to access any pole,
20 duct or conduit, that it would be covered under that one
21 license agreement?

22 A Yes, the one license agreement would cover
23 it. Then when they wanted to do specific work, they
24 would obviously have to let us know that they were going
25 to do some specific work if we needed to know that.

1 Q On Page 45 of your direct testimony, you quote
2 from FCC Rule 1.1403, which states, "A utility may deny
3 any telecommunications carrier access to its poles,
4 ducts, conduits or rights of way where there is
5 insufficient capacity, or for reasons of safety,
6 reliability and generally applicable engineering
7 purposes."

8 Mr. Varner, if BellSouth denies access to an
9 ALEC under this rule, what recourse does the ALEC have?
10 In other words what happens next?

11 A I don't know. I think their recourse in this
12 case, if they were to dispute this, would be to file a
13 complaint with the FCC, would be the dispute resolution
14 mechanism associated with this.

15 Q Is there another witness that might be able to
16 shed more light on this?

17 A I don't know if there is or isn't.

18 MS. BARONE: Thank you, Mr. Varner. That's
19 all I have.

20 CHAIRMAN JOHNSON: Commissioners?

21 COMMISSIONER CLARK: I have a couple
22 questions.

23 You indicate on Page 17 with respect to
24 interconnection agreements and the definition of
25 competing telephone exchange service, and you appear to

1 speculate that it could include wireless
2 telecommunications service, including PCS.

3 Do you -- what indication do you have that the
4 FCC would consider that to be, I guess, a competitor for
5 purposes of meeting Track A?

6 WITNESS VARNER: Yes, the -- I was trying to
7 recall it because I was just looking at it last week,
8 where the FCC, in another proceeding, separately from
9 this, indicated that PCS may well be a competitor for
10 LAN line local service. I cannot recall the number, the
11 docket number, wherein that was issued.

12 COMMISSIONER CLARK: Well, but did they make
13 the link and say that that would be adequate to satisfy
14 the requirements for a Track A?

15 WITNESS VARNER: No, they did not, and that's
16 why it's stated the way that it is in my testimony, is
17 that the issue with regard to PCS is, in fact, is it a
18 competitor? And they've never, as far as I know, with
19 respect to 271, offered a position on that.

20 COMMISSIONER CLARK: Okay. And just so I'm
21 clear, it's your view that you're entitled to -- you
22 meet the requirements of Track A. If there is one
23 carrier providing facilities-based service to one
24 residential customer and there's another carrier,
25 whether it's the same one or not, providing service to

1 one business customer, that's enough to meet the
2 requirements of the competitor providing service
3 exclusively over its facilities-based --

4 WITNESS VARNER: If both of those are
5 facilities-based carriers, and neither one of them are
6 resale, then yes.

7 COMMISSIONER CLARK: Okay. In your rebuttal
8 testimony, I noticed on Page 23, you quoted something I
9 said at agenda. What was the purpose for that quote?

10 WITNESS VARNER: I have to look at it and
11 see.

12 COMMISSIONER CLARK: Page 23, Line 16.

13 WITNESS VARNER: Of the rebuttal?

14 COMMISSIONER CLARK: Yes.

15 WITNESS VARNER: Line 15?

16 COMMISSIONER CLARK: Well, it starts on 16.

17 WITNESS VARNER: Oh yes. The purpose for that
18 was this. I was looking through that transcript and
19 there was a lot of discussion about this issue of mixing
20 tracks and mixing between Track A and Track B. And then
21 when I got to what you said at the end, I said, that is
22 what we've been trying to say all along, that you're not
23 mixing tracks. It's not some hybrid. All we're saying
24 is you can use a statement under either one. And it
25 appeared from reading what you said that that's what you

1 were trying to convey.

2 COMMISSIONER CLARK: Well, let me just ask
3 you, are you clear that that's not my conclusion; that I
4 was simply trying to interpret what Ms. White was
5 saying? I was trying to understand her position. I was
6 not reaching that conclusion. Is that clear?

7 WITNESS VARNER: It is.

8 COMMISSIONER CLARK: When I saw that I
9 thought, well, I don't think I said that. But let me
10 ask you, on Page 36, I didn't understand the distinction
11 you were making on Line 1 through Line 4 with respect to
12 what you meant by head start.

13 WITNESS VARNER: Yes. What I was responding
14 to was Mr. Gillan's statement that BellSouth claims that
15 competitors will get a head start, if you will, on
16 providing packages of service, unless we will provide
17 guaranteed immediate entry into the market. That's not
18 what we're saying at all. Whether competitors are able
19 to offer packages before us or not is not a problem as
20 long as the conditions under which we're allowed to
21 offer service are the conditions that are in the Act.

22 If they get a head start because of the fact
23 that they're more capable or whatever, then so be it.
24 Our concern and our problem is is that what he does is
25 he puts on a whole bunch of conditions that were not in

1 the Act that prevent us from being able to offer service
2 and provides them with the ability to go ahead and offer
3 the packages of services long before we're able to do
4 so.

5 That's why I go on further and talk about
6 where he -- how he describes it is that us getting a
7 head start -- their getting a head start is like the
8 outside runner in a race, implying that, well, they're
9 not getting anything more than an illusion, and that's
10 not the case. Because what they're asking for is to
11 impose a set of conditions on BellSouth that effectively
12 allows them to enter into the marketplace and tie up
13 pretty much the whole market before we're ever able to
14 enter.

15 COMMISSIONER CLARK: I guess I saw both of
16 them turn on the notion of entry.

17 WITNESS VARNER: They do.

18 CHAIRMAN CLARK: And I guess that's where I
19 got confused. If you're not allowed to enter the
20 market, they will get a head start, whether that's by
21 imposing additional conditions or some other means.
22 It's the same thing. You're delayed in entry and
23 therefore they get a head start.

24 WITNESS VARNER: That's exactly right. And as
25 I was trying to explain, is we're not objecting if in

1 fact they get a head start and we're delayed entry, and
2 we're delayed entry because we haven't been able to live
3 up to the requirements of the Telecom Act.

4 What we do object to is their getting a head
5 start because we've been able to live up to the
6 requirements of the Telecom Act, but just haven't been
7 able to live up to the additional conditions on top of
8 the Act that they want to impose.

9 COMMISSIONER CLARK: If you're unfairly denied
10 entry --

11 WITNESS VARNER: Yes, then we have a problem.

12 COMMISSIONER CLARK: With respect to Page 41,
13 you make the statement, "There has been no" -- I'm
14 sorry, on Line 17 and 18. You make the statement that
15 "There has been no indication that this commission will
16 need to determine whether the correct track was
17 followed." I guess, then, what are we doing?

18 WITNESS VARNER: Yes. I think what you're
19 doing is that you are gathering the information that you
20 will need in order to be able to tell the FCC what the
21 conditions are in Florida so that they'll be able to
22 make that determination when the application is filed.
23 You will be in the position to know whether or not we
24 have agreements with competitors, whether they're
25 providing service to residence and business customers,

1 and you know, whether they're doing it over their own
2 facilities or not. That's the information that you will
3 need to give to the FCC for them to make the
4 determination on whether or not the appropriate track
5 was followed when we filed.

6 COMMISSIONER CLARK: Well, didn't you cite to
7 other commissions who have said that they reached the
8 conclusion that you followed the correct track and
9 you're entitled to -- and it's in the public interest to
10 grant you the authority to provide the interLATA
11 service?

12 WITNESS VARNER: I don't recall referring to
13 them with the correct track, and quite frankly, I don't
14 remember whether they addressed the track issue or not.
15 What I was referring to is, it was South Carolina and
16 Louisiana were the two that I was referring to. And the
17 two things that they did do were -- was to determine
18 that we were checklist compliant, that we complied with
19 the checklist, and that our entry was in the public
20 interest.

21 And the second of those was a result of a
22 request by Reed Hunt that said that he would be asking
23 the states for their opinion and their views on whether
24 or not our entry would be in the public interest.

25 COMMISSIONER CLARK: But we don't need to do

1 that? Is that what you're saying?

2 WITNESS VARNER: Don't need to do -- what?

3 COMMISSIONER CLARK: Determine whether it's in
4 the public interest.

5 WITNESS VARNER: I think your views on that is
6 something that you -- that the FCC will ask you for.
7 And I believe that you would need to be in the position
8 as to tell them what those views are in order to ensure
9 that at least your position on that is known to the FCC,
10 because they've indicated that they will ask you. So I
11 think it is something that you will need to determine.

12 COMMISSIONER CLARK: What is our role in this
13 specifically, under the Act?

14 WITNESS VARNER: In -- there are a couple.
15 You -- they will consult with you on 271(c).

16 COMMISSIONER CLARK: And I guess --

17 WITNESS VARNER: And 271(c) includes really
18 two major parts. The first part is Track A versus
19 Track B, on what are the conditions in the state,
20 competitive conditions, so that the FCC can make a
21 determination of whether an appropriate track was
22 followed.

23 COMMISSIONER CLARK: Why doesn't that include
24 a recommendation from us that we think one or the other
25 is appropriate?

1 WITNESS VARNER: Oh it can. There is nothing
2 that prevents that from happening. All I was pointing
3 out here is that you don't have to.

4 COMMISSIONER CLARK: Okay. Would you prefer
5 we didn't?

6 WITNESS VARNER: No, I think you should do
7 whichever one you feel most comfortable with.

8 COMMISSIONER CLARK: This gets back to a
9 question I asked you just after you finished your
10 summary, and it's on Page 52. And you make -- you make
11 some distinction about the Georgia Commission denied the
12 motion because of the concerns about the validity of the
13 retroactive adjustments caused by the true-up. And then
14 you indicate that this does not apply because of the
15 retro -- we're not subject to the retroactive
16 treatment.

17 WITNESS VARNER: Yes.

18 COMMISSIONER CLARK: But I take it the rates
19 will be adjusted on a forward-going basis to account for
20 any overcharge or undercharge. Is that correct?

21 WITNESS VARNER: In Florida or Georgia?

22 COMMISSIONER CLARK: In Florida.

23 WITNESS VARNER: In Florida, yes. What will
24 happen is we have rates that are in place now as a
25 result of the arbitration. We filed the cost studies.

1 I think the proceeding has actually been set up to
2 review those cost studies and decide permanent rates.
3 As a result of those proceedings, then new rates,
4 permanent rates, will be put in place, and those rates
5 will be charged going forward.

6 COMMISSIONER CLARK: But it will true up any
7 over- or undercharge from the past, right?

8 WITNESS VARNER: When you say true up, do you
9 mean --

10 COMMISSIONER CLARK: Suppose you didn't
11 recover maybe 100,000 of what we determine you should
12 have under cost-based. Are you entitled to recover that
13 in the rates that you then charge?

14 WITNESS VARNER: My understanding is no.

15 COMMISSIONER CLARK: What is the true-up
16 then?

17 WITNESS VARNER: In case that we're looking at
18 here? Or in Florida? I'm a little bit --

19 COMMISSIONER CLARK: In Florida.

20 WITNESS VARNER: The only true-up in Florida
21 is going forward. The rates will be changed to rates
22 based on the new cost studies going forward.

23 COMMISSIONER CLARK: Okay, but will that -- to
24 me, the notion of true-up is you account for any over-
25 or undercharges that occurred in the past.

1 WITNESS VARNER: No, not in the case of
2 Florida.

3 COMMISSIONER CLARK: Oh, all right.

4 WITNESS VARNER: In the case of Georgia that
5 is the case. But in the case of Florida --

6 COMMISSIONER CLARK: I don't mean you redo the
7 rates and say, you know, for February through June we
8 didn't charge you the right rates. We charged you \$10.
9 It should have been 15, and now we want --

10 WITNESS VARNER: The other five.

11 COMMISSIONER CLARK: -- the extra money. I
12 don't mean that. What I mean is that we discovered that
13 it should have been 15, and therefore there's what?
14 Maybe \$25 we should have collected? So we're going to
15 add that to the new rates for the revenue requirement
16 and adjust the rates accordingly.

17 WITNESS VARNER: I didn't understand that was
18 going to be the case in Florida.

19 COMMISSIONER CLARK: Then what is the true-up
20 that's taking place in Florida?

21 WITNESS VARNER: My understanding of what the
22 true-up would be in Florida was that you would come in
23 in, let's say, December, or whenever you did it, and
24 say, okay, the rate for this element that we said was an
25 interim rate \$10, we've now determined that rate should

1 be \$15. That's it.

2 COMMISSIONER CLARK: So we'll readjust it?

3 WITNESS VARNER: Yes.

4 COMMISSIONER CLARK: Thank you, Mr. Varner.

5 CHAIRMAN JOHNSON: Any other questions,
6 Commissioners?

7 COMMISSIONER DEASON: Yes, I have a question.
8 Mr. Varner, I need some clarification as to your
9 position concerning Track A versus Track B.

10 First of all, do you think it's relevant for
11 this commission to determine which track you're on?

12 WITNESS VARNER: Not to make a specific
13 determination of which track, I don't think you'll need
14 to. However, you will need the information, as I was
15 discussing with Commissioner Clark, to be able to tell
16 the FCC when we file whether we were on the right track,
17 whether we did fulfill the requirements of the track
18 that we said we'd fulfill when we filed the
19 application.

20 COMMISSIONER DEASON: So you're saying right
21 now it's not necessary for us to determine which track
22 you're on, but when you file with the FCC and you tell
23 the FCC which track you want, we'll be able to tell the
24 FCC whether, based upon our proceeding here, you meet
25 the requirements of the track you choose?

1 WITNESS VARNER: That's correct. And what
2 we're telling you in this proceeding is, based on
3 everything we have in Florida, that's going to be
4 Track A.

5 COMMISSIONER DEASON: Well, I'm looking at the
6 two-page handout that you provided in conjunction with
7 your summary, and I'm looking under Track B. The
8 only -- under this, the only time Track B would apply
9 is if there is some implementation, whether actual or
10 implied, that was not followed by an ALEC.

11 WITNESS VARNER: In the case of Florida,
12 that's correct. In some other states that would not be
13 the case. But in the case of Florida, that seems to be
14 the only case.

15 The only other way that Track B might reopen
16 is if, as a result of this proceeding, you find that one
17 of these five areas under Track A where I've marked a
18 yes next to, is in fact a no; that the information we
19 have is not correct, and one of those ought to be a no.
20 And if that were to occur, if you were to gather that
21 kind of information in this proceeding, then Track B
22 would be open.

23 COMMISSIONER DEASON: I guess I'm a little
24 confused then as to how you perceive whatever comes out
25 of this proceeding is going to be used by the FCC. Do

1 you anticipate this commission issuing an order saying,
2 under Track A this is what we find, and under Track B
3 this is what we find? Or we're going to wait until you
4 find how you apply to the FCC and then we inform the FCC
5 whether you meet the requirements of that track?

6 WITNESS VARNER: What I would anticipate in
7 terms of an order would be, BellSouth, your statement is
8 approved -- I'll take the positive -- and it meets the
9 checklist, you know, in your rationale for why it says
10 that. And looking at the state of competition in
11 Florida, we find that either, you know, you have an
12 agreement with an ALEC and so forth, the five points
13 that we have on here.

14 But that's what I would envision. Because if
15 you were to make a determination, let's say today, when
16 you -- let's say you were to issue that order today and
17 say you're now Track A compliant, what is of importance
18 is what is the situation when we file the application?
19 Let's say we didn't file the application for a year
20 later. What you would be asked by the FCC to do is to
21 confirm what the situation was at the time that we filed
22 the application.

23 I think this proceeding puts you in the
24 position to be able to have gathered up the information
25 that you need in order to be able to do that. And I

1 think that's the important part of this proceeding, with
2 respect to the Track A and B. And then the other issue
3 is the checklist compliance of the statement.

4 COMMISSIONER DEASON: Thank you.

5 CHAIRMAN JOHNSON: Mr. Varner, I have one
6 question for you. Earlier, I'm not certain as to who
7 asked you the question, but someone asked you the
8 question of whether the Commission should follow the
9 guidelines or the advice provided in the Ameritec
10 order. And you stated that the Commission should look
11 to the Act as our guidance, and to the extent that we
12 found that there were portions of the Ameritec order
13 that complied with the Act, we should follow it, but if
14 there were issues or elements that we thought did not
15 comply, then perhaps we should not follow that.

16 My question is: What posture does that put
17 BellSouth in if we did not follow the criteria that was
18 stated by the FCC in doing our fact finding when you
19 then filed before the FCC, or if there were
20 determinations that were contrary to something that they
21 had stated in the order? How do y'all intend to handle
22 that, or what are your thoughts on that issue?

23 WITNESS VARNER: Yes. Let me clear up another
24 thing. With respect to the Ameritec order, what I would
25 suggest is that, as you said, using the Act as your

1 guide. And looking at the order when it's consistent
2 with the Act, if you feel that that gives you some
3 guidance, then, fine. If it doesn't, then I wouldn't
4 even use it in that instance either.

5 But if we go to the FCC, or when we go to the
6 FCC, and let's say you've determined that we're
7 checklist compliant for an item, and FCC has already
8 said that, no, that doesn't fit, you have to do
9 something else in order to make that work. What will
10 happen at that point in time is that when we make the
11 application to file, the FCC denies the application on
12 that basis, then we will have to deal with that
13 situation when it arises, whatever the appropriate means
14 would be. But it would be between BellSouth and the
15 FCC, because the FCC will have made the determination.

16 CHAIRMAN JOHNSON: Okay. With respect to this
17 proceeding, are we -- does BellSouth intend to
18 provide -- and maybe this is better asked of the
19 attorneys -- but do you intend to provide for us your
20 comments as to where the Ameritec order should be
21 binding and where it should not?

22 WITNESS VARNER: I hadn't planned on it, but I
23 think -- I would be glad to.

24 CHAIRMAN JOHNSON: The only reason I was
25 interested is there was some conversation, and we had

1 suggested that the parties could discuss the Ameritec
2 order in the context of this proceeding. And I wasn't
3 sure if -- through who or how, or if that would be done
4 in briefs.

5 MS. WHITE: Well, we would certainly expect to
6 do it in briefs. If the Commission would prefer some
7 kind of late-filed exhibit, we can do that as well.

8 CHAIRMAN JOHNSON: Perhaps it will be best
9 handled in the briefing process. But it is an issue and
10 I know Mr. Varner did generally touch upon the issue.
11 If we are and Staff is to do a complete analysis and to
12 make those determinations, I would like for us to be in
13 a posture of if we thought the FCC did something that
14 was outside of the Act, to state that, state why, what
15 they should have done and why, so that we would all
16 stand a better chance when that petition is filed of,
17 perhaps, one, having them clarify something, or two, so
18 that they at least clearly understand our position
19 before it goes to the federal courts, if it ever does go
20 to the federal courts.

21 WITNESS VARNER: There was one other thing
22 about the Ameritec order that's a little bit different,
23 too, than the interconnection order. The Ameritec order
24 is not rules.

25 CHAIRMAN JOHNSON: It's not what?

1 WITNESS VARNER: It's not rules. That was not
2 a rulemaking on the part of the FCC, whereas the
3 interconnection order was. Ameritec order has nothing
4 in it that binds the Commission to do anything in any
5 way, shape or form.

6 CHAIRMAN JOHNSON: That's a good point,
7 because as you read it -- and I called it guidelines or
8 whatever -- but I guess that's a point for the brief,
9 too, what is the legal effect of that, those suggestions
10 or whatever guidelines, or whatever they might be?
11 Okay.

12 WITNESS VARNER: Our understanding of it is
13 that the effect of it is that's what the FCC decided
14 with respect to Ameritec. That's really as far as it
15 goes. That's what they would expect an application to
16 have in it. But they could turn around and approve an
17 application that was filed the next day that didn't have
18 any of those things in it and not violate anything.

19 CHAIRMAN JOHNSON: Which is true, which goes
20 more to the position of why we might want to
21 delineate -- if we wanted to deviate from those criteria
22 we would want to delineate why. Because if it's not a
23 rule and it's not necessarily binding, they could --

24 WITNESS VARNER: They could change anytime
25 they wanted to.

1 CHAIRMAN JOHNSON: Okay, thank you. Any other
2 questions?

3 MR. MARKS: No redirect.

4 CHAIRMAN JOHNSON: No redirect?

5 MR. MARKS: No.

6 CHAIRMAN JOHNSON: Okay, exhibits?

7 MR. MARKS: We'll move exhibits, I believe
8 they're 3 and 4.

9 MS. BARONE: And Staff moves 5 through 15.

10 MR. BOND: MCI would like to move Exhibit 16.

11 MR. CANIS: Intermedia moves Exhibit 17.

12 CHAIRMAN JOHNSON: I don't remember, but in an
13 abundance of caution, Staff, did we move 1 and 2?

14 MS. BARONE: Madam Chairman, the parties
15 agreed to move those in by stipulation.

16 CHAIRMAN JOHNSON: Then we'll show Exhibits 1
17 through 17 admitted without objection.

18 MS. RULE: Commissioners, given the discussion
19 that we've had on Mr. Varner's handout on the Criteria
20 For Determining Track A versus Track B, I would like to
21 identify that as an exhibit too and enter it into the
22 record.

23 CHAIRMAN JOHNSON: We'll identify it as
24 Exhibit 18.

25 MR. MARKS: We have no objection, Madam

1 Chairman.

2 CHAIRMAN JOHNSON: And short title it Criteria
3 For Determining Track A versus Track B and Status in
4 Florida. And we will show it admitted without
5 objection.

6 (Exhibit No. 18 marked for identification.)

7 (Exhibit Nos. 1 through 18 received into
8 evidence.)

9 (Transcript continues in sequence in
10 Volume 4.)

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25