

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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

In the Matter of :
Consideration of BellSouth :
Telecommunications, Inc.'s entry :
into interLATA services pursuant :
to Section 271 of the Federal :
Telecommunications Act of 1996. :

DOCKET NO. 960786-TL



VOLUME 1
Page 1 through 164

PROCEEDINGS: **SPECIAL AGENDA CONFERENCE**

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

DATE: **Monday, November 3, 1997**

TIME: Commenced at 9:10 a.m.
 Concluded at 5:55 p.m.

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

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

DOCUMENT NUMBER - DATE
11627 NOV 13 96
FPSC-RECORDS/REPORTING

1 **PARTICIPATING:**

2 **MONICA BARONE**, FPSC Division of Legal
3 Services.

4 **MARTHA CARTER BROWN**, FPSC Division of Legal
5 Services.

6 **WALTER D'HAESELEER**, FPSC Division of
7 Communications.

8 **MARYROSE SIRIANNI**, FPSC Division of
9 Communications.

10 **STAN GREER**, FPSC Division of Communications.

11 **ROBIN NORTON**, FPSC Division of
12 Communications.

13 **VONNIE WIGGINS**, FPSC Division of
14 Communications.

15 **WAYNE STAVANJA**, FPSC Division of
16 Communications.

17 **SALLY SIMMONS**, FPSC Division of
18 Communications.

19 **BRIAN MUSSELWHITE**, FPSC Division of
20 Communications.

21

22

23

24

25

I N D E X

ISSUES

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

ISSUE NO.	PAGE NO.
Issue No. 1A	28
Issue No. 1B	74
Issue No. 1C	74
Issue No. 2	75
Issue No. 3	112
Issue No. 15	113

1 P R O C E E D I N G S

2 (Hearing convened at 9:30 a m.)

3 **COMMISSIONER DEASON:** If I could get
4 everyone's attention we're waiting for the Chairman's arrival.

5 **CHAIRMAN JOHNSON:** We are going to begin the
6 special agenda.

7 **MS. SIRIANNI:** Commissioners, pursuant to
8 the 1996 Telecommunications Act, the Bell Operating
9 Company must meet the requirements of Section 271(c)
10 prior to providing in-region interLATA services.
11 Furthermore, Section 271(d)(2)(b) of the Act states
12 that the FCC will consult with the appropriate state
13 commission to verify the compliance of a Bell
14 Operating Company with the requirements of
15 Subsection (c).

16 What you have before you today is Staff's
17 recommendation regarding whether BellSouth has met the
18 requirements of Section 271(c) in Florida.

19 Issues 1A, 1B and 1C of Staff's
20 recommendation deals with the requirements of Section
21 271(c)(1)(A) and (c)(1)(B), known as Track A and
22 Track B.

23 Issues 2 through 15 deal with Section
24 271(c)(2)(B) of the Act and cover the competitive
25 checklist.

1 Issue 16 refers to the requirements of
2 271(e)(2)(A) regarding intraLATA toll dialing parity.
3 In addition issue 18-A, which is a proposed agency
4 action item, deals with whether BellSouth's statement
5 of generally available terms and conditions is
6 satisfied pursuant to Section 252(f) of the Act.

7 Also, I have one correction on Page 15 of
8 Staff's recommendation, the first full paragraph.

9 **COMMISSIONER CLARK:** Where is she?

10 **MS. SIRIANNI:** Page 15, the first full
11 paragraph, about midway down it says "FCTA, however."
12 It should be "FCCA."

13 And at this point we can proceed issue by
14 issue as laid out in Staff's recommendation or in any
15 other order that you may choose.

16 **COMMISSIONER DEASON:** Is that the only
17 correction in a 311-page recommendation?

18 **MS. SIRIANNI:** No. That is the correction
19 we feel needs to be made at this time. There are
20 other minor errors.

21 **COMMISSIONER DEASON:** I was going to
22 congratulate you that this was the only.

23 **CHAIRMAN JOHNSON:** Commissioners, how would
24 you like to proceed? It's a pretty comprehensive
25 document here. Issue by issue?

1 **COMMISSIONER CLARK:** I think so.

2 **COMMISSIONER GARCIA:** I was going to ask a
3 few questions of Staff real quick just to start it
4 off. It's such a broad spectrum of people here.
5 Whoever can take it up with -- one of the concerns I
6 had -- and first off I want to again congratulate
7 Staff on the document. Press reports were pretty
8 savage in the last few days, but I think that the work
9 done here was important and it was done well and it's
10 thorough. And I want to thank Staff for that.

11 Secondly, I don't want this work to sort of
12 end up as part of a process which we begin again. And
13 I think that when we look at this, whatever those
14 items that are on the checklist that we feel meet the
15 checklist requirements, I believe that they should --
16 in essence, that should be passed and then we go
17 forward from that point.

18 And the reason I'm stating this now,
19 Commissioners, is because I want to be able to look at
20 this comprehensively and I wanted get a feeling from
21 the Commissioners what they thought of that. But my
22 concept is if Issues 2, 3 and 4 were met on the
23 checklist, then those issues should not be addressed
24 in a future docket unless there is some specific
25 problem with those issues. And I wanted to get a

1 feeling from other Commissioners on how they felt
2 about that.

3 **COMMISSIONER DEASON:** I'll be glad to give
4 you some comments. I tend to agree with you. First
5 of all, one of the problems we're dealing with here is
6 the massiveness of this record. I think the
7 transcript was what, over 4,000 pages, some hundred --
8 over a hundred exhibits. I think that in future
9 proceedings, if we can more narrowly focus on what the
10 relevant issues are, and if we can put things behind
11 us -- and I think that's the nature of what
12 Commissioner Garcia is trying to accomplish -- I'm all
13 for that.

14 And I think, though, that you did have a
15 caveat in that that you felt like, though, if there
16 were some changed circumstances, that we would always
17 maintain the flexibility to go back and look at
18 things, because none of this is static. Everything is
19 changing. Even as we're here today meeting, things
20 are changing out in the world.

21 So with that caveat I would agree, and I
22 think it would enable us to be able to focus on
23 things.

24 I also think that we have a situation here
25 where if things have changed, perhaps there needs to

1 be some type of an affirmative showing by folks out
2 there who think that a particular checklist item that
3 we find compliant, that circumstances have changed,
4 that they've have a burden to come forward and show
5 that.

6 I'm not saying it's their burden. I think
7 Bell's got the burden in this entire case. But I'm
8 concerned that there were so many things that were
9 brought to our attention in this hearing with
10 perceived problems, perhaps perceived, perhaps real,
11 that were not brought to our attention until we were
12 in the throes, in the middle of a 271 proceeding.

13 **COMMISSIONER GARCIA:** Agreed, and I was just
14 going to add to that that I think that this shouldn't
15 be a forum for complaints. Clearly, there are
16 procedures in place where, you know, if someone
17 doesn't get something for a year and a half from
18 BellSouth, this process, 271 proceeding, should not be
19 where this complaint is aired out. It should be
20 brought before the Commission and we should be able to
21 deal with that on that basis. But if there are things
22 in place, we shouldn't use this as a forum to sort of
23 air out those complaints. There may be a better place
24 to do that, and I think there is. This Commission can
25 arbitrate those things and probably dispatch them a

1 little bit quicker.

2 **COMMISSIONER DEASON:** I agree with that.

3 And in the future, I think there's on burden on
4 competitors who think they are aggrieved, that they're
5 not getting the process or not getting the services
6 they have agreed to, and this Commission approved an
7 interconnection agreement, they have a burden to come
8 forward bring that to us and not just sit back -- and
9 I'm not saying they sat back -- but it appeared that
10 we did not hear any of this until we were in the 271
11 proceeding.

12 It's almost, almost as if these things were
13 being held in reserve to be brought to our attention
14 to show that Bell has not met 271 compliance, and I
15 don't think that's the appropriate way to address
16 this. I think if there's a problem, it needs to be
17 brought to us. I think this puts Bell on notice --
18 perhaps they don't even know that there's a particular
19 problem area, and I know that the competitors and Bell
20 should be talking, and our Staff encouraged and I
21 would encourage that as well.

22 But these things need to be discussed,
23 worked out, and if they can't, bring a dispute to us.
24 But don't bring all of this stuff in a 271 proceeding.
25 I just feel like it would be better to deal with it in

1 a separate proceeding. And if there is going to be a
2 dispute, have a dispute. And if we have to resolve
3 it, let's resolve and let's get on.

4 I'm just concerned there are too many
5 problems brought to us in this particular -- and
6 perhaps this is because this is the first time. I
7 mean, this is the first time that we've dealt with 271
8 we're all plowing new ground I realize that but I
9 think there's going to be a future 271 proceeding. I
10 would like to have it more narrowly focused in what
11 the true problems are. Let's deal with them. And I
12 think we have a responsibility here today to provide
13 guidance not only to Bell, but to the intervenors and
14 to the competitors as to what we think is going to
15 require compliance. Just don't say Checklist Item X,
16 Y or Z is noncomplaint without specifying "Here's what
17 has to be done, if you do A, B and C." Here, again,
18 holding everything else constant and there are no
19 changed circumstances that need to be brought to our
20 attention, then this checklist item is going to be
21 compliant, and I think all of the parties are better
22 informed as to how we're going to view it.

23 And the Bottom line of all this is that this
24 is just a consultative role. I mean, we do not have
25 the final say. And I think that we -- while I think

1 we have a very important role to play in this, that we
2 need to try to expedite these things along and provide
3 the best input that we can to the FCC. And that's why
4 I think it's important to try to focus and get to what
5 the relevant issues are and, hopefully, have a lot of
6 these disputes and things worked out before we come to
7 the next 271 filing. So In that regard, I think I'm
8 in agreement with what I hear you say.

9 **COMMISSIONER CLARK:** I'm not sure that we
10 have -- I noticed in some of the recommendations we
11 have been fairly specific about what they need to do
12 to be considered compliant, and I'm not sure we've
13 done that in every item, and I guess we can discuss
14 that as we get there.

15 I haven't heard anything I don't agree with,
16 and I know that some of the competitive providers
17 raised a concern that we don't say, you know, "Here's
18 what you've complied with, and any other further
19 proceeding will be limited to those things you haven't
20 complied with." There was some concern about that.
21 But I think all of the parties need to understand what
22 we're trying to do is make sure that there's
23 competition in the local market, and that there is
24 fair competition and we're not -- you know, we're not
25 going to endlessly litigate this stuff.

1 **COMMISSIONER DEASON:** I agree that we have
2 that responsibility. We're trying to ensure effective
3 competition in the local market, but we also have the
4 responsibility to ensure that there's continued
5 competition and the most vigorous competition as
6 possible in the interLATA market. And to the extent
7 Bell not is a participant, I don't think that that
8 market is competitive as it could be. And to the
9 extent Bell has kept out of that market, well, then
10 there are some negatives associated with that, as
11 well, and we have to weigh both of those.

12 **COMMISSIONER DEASON:** Any other comments?

13 **MR. GREER:** Commissioners, as far as not
14 looking at the issues again, when -- or if it comes
15 back in a later proceeding, my only concern,
16 essentially, is the record being different than, you
17 know, for the issues that we passed, what goes at the
18 FCC does may be different from us. And I think at
19 least from a Staff level, we would need to look at
20 that information and have Bell file a complete filing
21 to meet all the checklist items, so we can at least
22 look to see if the information is different. Because
23 we would want to consult with the FCC on what the
24 record -- on the evidence that they are going to
25 provide to the FCC, and they may not provide what is

1 in this --

2 **COMMISSIONER GARCIA:** Stan, and maybe when
3 -- Martha or Monica could address this. I think if we
4 keep these issues open, can't we simply address those
5 issues? And I think we do that with certain dockets
6 here, that we take care of part of a docket, and then
7 we keep something open. And simply have the companies
8 refile on those particular issues in the docket until
9 we get additional information which is then put on.

10 **MR. GREER:** And I'm just concerned with
11 whatever changes may happen in an FCC filing may be
12 different than what this Commission has seen or looked
13 at. That's my only concern. I don't have a problem
14 with, you know, just asking the companies what's the
15 changed circumstances, if any? But I do have a
16 concern with consulting with the FCC and having
17 something that's not ever looked at, something that
18 they are looking at to say yea or nay.

19 **COMMISSIONER DEASON:** But don't you think
20 that if we pass on a checklist item, say that it is
21 compliant based upon the information in this record,
22 and we anticipate that that is going to be the going
23 forward way of doing business and it should continue
24 to be compliant, that if there are changed
25 circumstances and for some reason intervenors or

1 competitors think that it is not compliant, don't you
2 think they will come forward and tell us that and show
3 us that?

4 MR. GREER: Yes, I hope so. And that's why
5 I'm okay.

6 COMMISSIONER DEASON: I think they probably
7 have a responsibility to do that.

8 MR. GREER: Yes, I agree.

9 COMMISSIONER DEASON: And I don't think
10 They'll hesitate for a moment if we pass on something
11 and say it's compliant and they come forward and say,
12 "Oh, but Bell has changed all its procedures since you
13 voted that out, and now they are doing this and it's
14 discriminatory," or it's not cost-based or whatever.

15 MR. GREER: And I guess my whole thing is I
16 just want them to file whatever they are going to file
17 with the FCC whatever their proposal is to file with
18 the FCC, when they file it with us just so we can see
19 if the evidence is the same. And so we can say to the
20 FCC, "Yeah, you're right it is."

21 And, I mean, my whole look at issues that we
22 would pass would essentially be what you all talked
23 about. What's the changed circumstances? Are there
24 any? And If there's not any, then I don't plan on
25 spending a lot of time looking at those individual

1 issues. But I do want BellSouth to file whatever they
2 are going to use at the FCC with us so that we can at
3 least see it.

4 **CHAIRMAN JOHNSON:** And, Stan, I guess you
5 saying procedurally as part of our consultative role we
6 need to have a complete record to give back to the FCC
7 if this goes up again?

8 **MR. GREER:** Well, I hate to say record,
9 because that means issues in the hearing and that kind
10 of thing, but have a complete document that they're
11 planning on filing with the FCC, yes; I would like to
12 is he see that.

13 **CHAIRMAN JOHNSON:** I thought that the FCC
14 rules required that they file the -- what they file at
15 the state is what they must file at the FCC.

16 **MR. GREER:** I think they do.

17 **CHAIRMAN JOHNSON:** So we'll get that.

18 **MR. GREER:** Yeah. I really don't think
19 there's a problem. I just, you know, I was a little
20 concerned with the consultative role that we're going
21 to play. And I don't want somebody to think that just
22 because we passed it, you know, we're not going to pay
23 any attention to what other evidence they file with
24 the FCC.

25 **MS. BARONE:** Commissioners, I think that it

1 really depends on what you want your consultative role
2 to be.

3 When BellSouth does file at the FCC, again,
4 it's going to be a point in time. There will be just
5 this point in time. And if they would file tomorrow,
6 it would be different than what they file with you
7 today. So we're not going to have -- when you consult
8 with them, it will be -- there may be a lag time. So
9 what I'm suggesting to you is if you want to consult
10 with them on the evidence that you've received to this
11 date, and tell the FCC that, yes, as of this date and
12 this information that we had at this time, BellSouth
13 passed.

14 If, for example, if another party does come
15 in and tell you that there's a problem, then we'll
16 have to look at that. But I really think it's up to
17 you to determine what kind of role that you want to
18 play in this. If you want to -- if you look at the
19 evidence now and you find that they've passed several
20 items and you want to limit a future proceeding, I
21 think that's up to you.

22 I do agree that the FCC has stated that all
23 of the evidence has to be filed here first. And,
24 Commissioner Deason, as you said, a party can let us
25 know whether there's something different. It may be

1 that you pass five, and a party let's us know that, no
2 there's this problem, and we'd have to revisit that.
3 But I think it's flexible, and I think that you can do
4 what you want to do in your role.

5 **CHAIRMAN JOHNSON:** Listening to the opening
6 comments, I share the concerns stated by Commissioner
7 Garcia and Commissioner Deason. And along those
8 lines, I thought Staff did an excellent job of
9 ferreting out the facts and putting before us what
10 they thought was met and what was not met, and what
11 was sufficient and what was not sufficient.

12 But I have the same feeling that
13 Commissioner Garcia expressed, and that was that this
14 was becoming a forum to handle complaints. My
15 reaction to that was twofold. One, it just reminded
16 me that as we open these markets, our role as a
17 Commission will change and we will have more and more
18 company disputes to resolve. And I know or I believe
19 that Mr. D'Haeseleer is already working with his group
20 to determine if we could have some type of expedited
21 process for reviewing complaints. And I think that's
22 something that we have to consider.

23 It is incumbent, of course, upon the
24 companies to come to the Commission to resolve any
25 disputes that might occur in implementing

1 interconnection agreements as opposed to waiting to
2 the 271 hearing to do that. But I really think that
3 we, as a Commission, need to be prepared to deal with
4 those issues as quickly as possible. And I do
5 understand that you all are looking for vehicles where
6 we can, indeed, address those company-by-company
7 complaints as expeditiously as possible.

8 The other side of it was this is a very
9 fluid process, and in a lot of ways some of the issues
10 that were raised were raised late in the proceedings
11 by some of the intervenors, and it wasn't necessarily
12 their fault. They were receiving letters and
13 negotiating in August, in July, so the process did
14 lend itself to some -- even in some cases where we
15 didn't have written testimony, but we had through
16 cross examination new information coming in.

17 I'm sympathetic to the intervenors and to
18 Bell in dealing with those kind of issues. So to the
19 extent we can come up with a forum where when we vote
20 it out this time, at least the parties are on notice
21 as to where we think issues are and when we think Bell
22 is compliant, you know, and they kind of know that --
23 the burden is going to be on them the next time around
24 to come back and demonstrate that there are changed
25 circumstances as opposed to -- and if they rely upon

1 the same arguments they made the last time, then they
2 know what the Commission's position is.

3 But it will be important for us to have a
4 very complete record from Bell in its initial filing.
5 It won't necessarily be necessary for us to go through
6 the detail that we had to go through in the first
7 instance. And I'm hopeful that a lot of these issues
8 were brought to us this time because it was the first
9 time around, because a lot of the interconnection
10 agreements and their implementation, the issues were
11 just starting to show themselves out, so it wasn't the
12 fault of Bell nor the fault of the intervenors. But I
13 agree that we need to find a way to tighten up the
14 process as as much as possible and expedite our
15 process for handling those complaints as we begin to
16 receive them.

17 **COMMISSIONER GARCIA:** Let me ask -- I guess
18 I would ask Staff this. There are certain issues here
19 -- going back to the complaints issue -- which clearly
20 the company has brought up a complaint, used this
21 forum for that complaint. How do we address that? I
22 mean, we can address it by not letting them in, but if
23 we, as a Commission, see that there's a problem, it
24 was specifically complained about, shouldn't we -- or
25 could we not take action here to address that specific

1 problem?

2 **MS. BARONE:** Commissioner Garcia, I think my
3 concern is that the proceeding here is to determine
4 whether 271 has been met. It's not a complaint
5 proceeding.

6 I think the complaints are evidence, or
7 companies' evidence regarding checklist items. But I
8 think that complaints should be dealt with separate
9 from the 271 proceeding --

10 **COMMISSIONER GARCIA:** But, Monica, here's my
11 problem that comes in, and Staff pointed it out in
12 here a few times. A company has a negotiated
13 agreement with BellSouth. There is a problem in that
14 agreement. I'm sorry, there is a problem, a complaint
15 which is derivative of that written agreement with
16 BellSouth, and yet no complaint has been filed before
17 us. And so in perpetuity that complaint will remain
18 there because this Commission can't address it unless
19 it's filed with us. And so, in essence, I could have
20 the same complaint ad infinitum at 271 proceedings,
21 because my complaint isn't going to be resolved
22 because I don't file it with the Commission. Am I
23 wrong in that?

24 **MS. BARONE:** I would think --

25 **COMMISSIONER DEASON:** Commissioner, let

1 me -- I think there is a simple cure to that, and it
2 may be a little extreme, I don't know. But that's
3 simply to say in future 271 proceedings we're not
4 going to hear any evidence on anything that's
5 perceived to be a problem with BellSouth's performance
6 or compliance unless there's a complaint filed. If
7 you have a problem, file your complaint and don't lay
8 in wait and wait until there's a 271 proceeding to
9 come through with this array of complaints showing
10 that BellSouth is not complying.

11 **MS. BARONE:** And, Commissioner Garcia, that
12 would probably be evidence of bad faith. If a party
13 complains about it here but then doesn't come in and
14 bring a complaint, then BellSouth may be able to
15 proceed under Track B in that situation.

16 **COMMISSIONER GARCIA:** One of the fears that
17 I have in this process -- and, again, I don't ascribe
18 that anyone is doing it specifically for that reason,
19 but I think we're all starting, and some of these
20 requests may not be real requests. They just want to
21 see how far BellSouth is going to go and they want to
22 see if it's there. And I understand that. You're not
23 going to get into a market until you feel comfortable
24 that that market and your investment is to some degree
25 protected and safe. But I think maybe your solution

1 may be a good one to simply say, "If you've got a
2 complaint, we're not going to hear it or it's not
3 going to be part of our 271 proceeding unless its
4 filed before this Commission."

5 **CHAIRMAN JOHNSON:** But we have to be very
6 careful because we also want to encourage the parties
7 to try to negotiate these things out. And we don't
8 want them in the first instance to always come to the
9 Commission before they've put forth the effort to try
10 to work it out themselves. I still suggest that the
11 parties, in the first instance, that they have a duty
12 and obligation to try to work those problems out. And
13 I don't know where the line is drawn. I don't know if
14 it's two months they run back to us or three months,
15 but we want to make sure to send the message that it
16 is their process, and that we want to encourage them
17 to negotiate out the problems and only when they can't
18 should they come to us.

19 **COMMISSIONER KIESLING:** I agree with the
20 proposal that Commissioner Deason made. I think that
21 that has a clear line of demarcation between the
22 proceeding that is in our consultative role with the
23 FCC and a proceeding that is part of our general
24 authority to adjudicate complaints. And so I think
25 it's very important that we keep that line being a

1 very bright line in order to keep from having any
2 procedural questions flowing back and forth across
3 that line that I don't think we have answers for right
4 now.

5 **COMMISSIONER DEASON:** Let me say that that
6 suggestion that I made is just that, a suggestion.

7 I share the Chairman's concern, though. I
8 don't want this Commission deluged with complaints
9 just because they feel like they have to have a
10 complaint on file. I think that if there can be
11 documented that there has been discussion and attempts
12 made, and that there have been meetings or whatever to
13 try to resolve, that that would be evidence enough,
14 then, that if there's a 271 filing, that it was
15 brought to Bell's attention, it was discussed, they
16 were put on notice that this was a perceived problem,
17 and if it was not resolved satisfactorily, even though
18 a complaint had not actually yet been filed with the
19 Commission, I think that could be evidence to show
20 that it is permissible, then, for this Commission to
21 consider that.

22 I don't want to try to prevent or put any
23 impediment or disincentive for intervenors and
24 BellSouth to sit down and hopefully, rationally and
25 amicably resolve some of these disputed matters and

1 not even bring it to our attention. That would be the
2 best scenario of all.

3 **COMMISSIONER KIESLING:** Well, I agree with
4 that, too. I'm not suggesting that there must be a
5 complaint filed of every instance. But what I am
6 suggesting is that we not give any of the parties or
7 the entities involved the impression that they are
8 going to be able to resolve complaints through a 271
9 proceeding.

10 **COMMISSIONER GARCIA:** Right. And I think
11 that -- more broadly, I think some of these concerns
12 that we may have or some of these complaints, I think
13 we're going to have a ton more when this process
14 begins. Even on issues that we may think are resolved
15 are still going to come back to us years from now,
16 because there's no way that this Commission --

17 **COMMISSIONER CLARK:** I don't --

18 **CHAIRMAN JOHNSON:** We hope not.

19 **COMMISSIONER GARCIA:** The truth is that this
20 Commission when they broke up AT&T was involved in
21 issues of that nature for years and years and years.
22 You're not -- and one of the fears I have is that, you
23 know, if we use this process to determine the first
24 flight, we'd say, "Well, the only way that we're going
25 to categorize a flight is if it's a Miami nonstop,

1 | peanuts must be served, drinks must be served." It's
2 | this huge thing. When flight is we need to get this
3 | thing moving, and that's what the Legislature asked
4 | us. That's what, I think, the federal government
5 | wanted. And I think we have to try to address as much
6 | of that as we can, realizing that we're not going to
7 | get it right all at once, and that there are going to
8 | be issues that are going to continue to come back to
9 | us and that we're going to be forced in many cases to
10 | tell BellSouth what it must do to correct certain
11 | inadequacies of the service it's providing
12 | competitors.

13 | **CHAIRMAN JOHNSON:** Any other comments? I
14 | think we're on issue --

15 | **COMMISSIONER CLARK:** Madam Chair, I'm not
16 | sure, and I'm just concerned that the case background
17 | may get moved into the order. And I think you have a
18 | date wrong on Page 14. You say, "Intervenor testimony
19 | was filed on the 17th of September," Page 14. You
20 | know, you just need to -- if that makes it to the
21 | order, make sure the date is correct.

22 | **MS. BARONE:** We will. Thank you.

23 | **COMMISSIONER CLARK:** I have another
24 | question. What is our process on late-filed exhibits?
25 | If it's objected to, it's automatically not part of

1 the record, or does the objection get ruled on?

2 MS. BARONE: It was my understanding that it
3 doesn't come into the record.

4 COMMISSIONER CLARK: Well, you know, I need
5 some clarification on that, because it seems to me
6 that unless it's a valid objection, it ought to come
7 into the record. I mean, anyone can say "I just
8 object to it."

9 MS. BARONE: The situation in this case,
10 even though the SGAT may have been filed and filed
11 subject to the objection, the SGAT also came in after
12 the record was closed. So procedurally --

13 COMMISSIONER CLARK: Well, I'm confused
14 about that because it was identified as Late-filed
15 Exhibit 125, so it was identified as being part of the
16 record. And it seems to me that late-filed objections
17 -- items do come into the record unless they are
18 objected to, but the objection has to be ruled on.
19 What particularly concerns me about this is I think --
20 is it correct that it was, in fact, the same version
21 that was filed on August 25th?

22 MS. BARONE: The second final version was
23 the exact same thing, yes, ma'am.

24 MR. GREER: The first document that was
25 filed as Late-filed 125 was not the same version as

1 the August 25th, and the Commission -- essentially,
2 the caveat the Commission gave to BellSouth is that it
3 will be the exact same thing, at least that's my
4 understanding when we said, "Okay. We'll do it as a
5 late-filed to the hearing." And that's what the
6 parties objected to, I think, that it was not the
7 exact same thing and then they refiled it later.

8 **COMMISSIONER CLARK:** Well, I just want to be
9 clear on our process on late-filed exhibits, because
10 if it wasn't the same thing, then it didn't bear up to
11 the representation made. Then it would be correct to
12 say 125 was properly objected to. Anything filed
13 after is not part of the record. But to simply not
14 allow it because it's objected to, I'm not sure that's
15 how we've handled them. before.

16 **MS. BARONE:** That was my understanding.

17 **COMMISSIONER CLARK:** Okay. I think it's
18 cured in the sense that we put it out as a -- we are
19 going to make a decision as proposed agency action,
20 but I just had some concerns about the procedure.

21 **MS. BARONE:** I think it's also cured because
22 what we've looked at in Issues 2 through 15 is the
23 exact same thing, and for purposes of a 271 proceeding
24 that's totally different from a 252. And since the
25 final version was filed outside the record, then we

1 can look at it under 252 as a separate item from the
2 checklist items.

3 **COMMISSIONER DEASON:** That brings me to
4 another question. Issue 18A is a PAA, as Commissioner
5 Clark just indicated. There's no indication in this
6 special agenda that parties are going to be able to
7 participate. Normally, in an agenda conference
8 something that's a PAA, we allow parties to
9 participate. What is the procedure we're going to
10 follow here today?

11 **MS. BARONE:** It was noticed as proposed
12 agency action and the parties are able to participate
13 today.

14 **COMMISSIONER DEASON:** The parties are here.

15 **MS. BARONE:** Yes.

16 **COMMISSIONER DEASON:** The room is
17 practically full. So they're on notice that they can
18 address the Commission on Issue 18A.

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

20 **CHAIRMAN JOHNSON:** Any other questions on
21 the case background?

22 Issue 1A.

23 **MS. SIRIANNI:** Commissioners, Issue 1A deals
24 with whether BellSouth has met the requirements of
25 Track A of the Act. Track A requires that BellSouth

1 has entered into one or more binding agreements
2 approved under Section 252 with unaffiliated competing
3 providers. Staff believes that BellSouth has
4 satisfied this portion of the Act.

5 In addition, Track A requires BellSouth to
6 provide access and interconnection to competing
7 providers of telephone exchange service who provide
8 service to business and residential subscribers.
9 Staff believes that BellSouth has satisfied this
10 requirement as it relates to business subscribers.
11 However, Staff does not believe that this requirement
12 has been met as it relates to residential subscribers.

13 Staff will address any questions you may
14 have at this time.

15 **COMMISSIONER DEASON:** I have a question.
16 First of all, as I understand Staff's position, which
17 I think is consistent with that of the FCC, is that an
18 applicant, a 271 applicant, can be found to be -- to
19 have met Track A and not necessarily meet all of the
20 checklist items that are subsequent issues.

21 **MS. SIRIANNI:** That's correct.

22 **COMMISSIONER DEASON:** Okay. And that is
23 Staff's position?

24 **MS. SIRIANNI:** Yes, it is.

25 **COMMISSIONER DEASON:** And that is the FCC's

1 position as well; is that correct?

2 MS. SIRIANNI: That's correct.

3 COMMISSIONER DEASON: And the only reason
4 that Staff is indicating a no recommendation to this
5 issue is the lack of evidence demonstrating
6 residential competition.

7 MS. SIRIANNI: That's correct, Commissioner
8 Deason.

9 COMMISSIONER DEASON: But you also indicate
10 in your recommendation somewhere that -- and I think
11 it's perhaps the FCC standard that I think that you do
12 not find fault with is that the actual number of
13 customers being served could be de minimis, and we
14 have no evidence of de minimis.

15 COMMISSIONER CLARK: No, I think it can't be
16 de minimis. It has to be more than a de minimis --

17 MS. SIRIANNI: More than a de minimis number
18 of --

19 COMMISSIONER CLARK: Whatever de minimis is,
20 by the way.

21 COMMISSIONER DEASON: But that is undefined

22 MS. SIRIANNI: I would point out that under
23 Staff requirements of this issue, since the de minimis
24 was never defined by the FCC, we said we did not
25 necessarily disagree with that, but, however, we do

1 not know what they meant by de minimis.

2 **COMMISSIONER DEASON:** I understand, and
3 you're correct and perhaps I mischaracterized it. But
4 my interpretation of that, without them even even
5 bringing up that terminology, it has to be more than.
6 If de minimis is one, does that mean that two then
7 passes because it's more than de minimis. I mean,
8 they didn't put any concrete standards in that it has
9 to be a certain percentage of the market or anything
10 like that. By using the term "de minimis," it's
11 almost like that that threshold is one that could be,
12 perhaps, easily met if it could be demonstrated that,
13 perhaps, there was any service being provided at all.
14 And as I understand Staff's recommendation, you do not
15 think there's any evidence that there's any
16 residential service being provided, at least for a
17 fee.

18 **MS. SIRIANNI:** What I said in Staff's
19 recommendation is that there's no evidence in this
20 record that shows concretely that residential
21 subscribers are being served for a fee. We have
22 testimony in the record that states that there are
23 companies that believe residential subscribers are
24 being served and that in some cases that they are
25 being served on a test basis. But there's no evidence

1 that actually shows the number of customers or if they
2 are actually paying for the service.

3 **COMMISSIONER DEASON:** And whose burden is it
4 to come show that information? Does Bell have access
5 to that information or is that confidential
6 information of the competitors?

7 **MS. SIRIANNI:** A lot of the information is
8 confidential. In some cases the competing providers
9 would come to BellSouth to get unbundled network
10 elements in order to provide subscribers. I realize
11 in some instances it is hard for BellSouth to know
12 that information.

13 I will say that one of the things that Staff
14 will do in the future is we would like to send out
15 interrogatories and questions to parties to try to get
16 some of that information from the competing providers
17 to see what services they are providing.

18 **MS. BROWN:** Commissioner Deason, if I might
19 just join in. It is my opinion that it is Bell's
20 responsibility to show that there is residential
21 service taking place in the state. And while some of
22 the information that the competitors may have they
23 want to keep confidential, there are means to do that
24 and still provide that information to the Commission
25 in order that the Commission can make a fully informed

1 decision. It is not the Staff's responsibility to go
2 and find out that information and put it in the
3 record. It is Bell's responsibility to bring it to
4 us.

5 **COMMISSIONER CLARK:** I had a sense that -- I
6 think when the ordering process is ironed out more
7 than it is, that we will not have trouble with this
8 element.

9 I got a sense that it would be difficult to
10 persuade residential customers to move until you could
11 get the same kind of fluidity in the ordering process.
12 And I really think if the elements that we have to
13 look at later on in the recommendation are addressed,
14 that this won't be a problem in terms of determining
15 whether or not there is facilities-based competition
16 to residents.

17 **COMMISSIONER GARCIA:** I think at this stage,
18 though, Commissioner Deason makes a good point that
19 it's not going to be any more than de minimis at this
20 stage. I mean, there's no reason to believe that
21 anything we find is going to be more than a few
22 because of the nature --

23 **COMMISSIONER CLARK:** I'm not sure -- I don't
24 think we should conclude at this point that it's going
25 to be de minimis, because I think that -- I'm not

1 comfortable that there was evidence in the record
2 showing that it was being provided to residents for a
3 fee.

4 **COMMISSIONER DEASON:** You think there is
5 evidence that shows that?

6 **COMMISSIONER CLARK:** Isn't.

7 **COMMISSIONER DEASON:** Oh, that there is not
8 evidence.

9 **COMMISSIONER CLARK:** Isn't sufficient
10 evidence that I would feel comfortable relying on
11 that. But I think we should not get into whether or
12 not -- what a de minimis amount would be at this
13 point.

14 **COMMISSIONER GARCIA:** See, I disagree with
15 you there, and the reason is that I just don't think
16 that there's the attractive nature of getting into
17 that business that we have. And it's a certain hurdle
18 that's out there. And I think, like some
19 Commissioners stated when we began the discussion, we
20 should give them some standard to reach. And
21 Commissioner Deason is absolutely right, what is de
22 minimis? Is it three? Is it two? Is it 64? Is it
23 1% or is it 10%? I don't know, but what I do know is
24 that to leave it out there I think puts an undue
25 burden on BellSouth.

1 There are customers, a very small portion of
2 customers, whose residential service is attractive and
3 people are going to go to get it, but that isn't, I
4 think, the overwhelming majority. That's nowhere near
5 probably a significant percentage of where the
6 business is right now. The business is in the
7 business lines.

8 **COMMISSIONER CLARK:** Let me ask a question.
9 Are you of the opinion that the STS can be considered
10 facilities-based competition when it's sold, say, by
11 Intermedia and then it's resold by somebody as STS?

12 **MS. SIRIANNI:** Yes. It was Staff's position
13 that the scenario laid out -- I think it was TCG --
14 that that scenario would satisfy the residential
15 subscribers.

16 **COMMISSIONER CLARK:** Yeah. I think that's
17 how we may get it, is it may be an apartment building
18 or something.

19 **MS. SIRIANNI:** I also want to point out that
20 what we're talking about here is the residential
21 service other than through resale.

22 **COMMISSIONER CLARK:** Right. It has to be
23 facilities-based.

24 **MS. SIRIANNI:** Facilities based, either
25 exclusively or predominantly over their on facilities.

1 **COMMISSIONER GARCIA:** And resale is
2 occurring.

3 **MS. SIRIANNI:** Resale for residential
4 subscribers is occurring.

5 **COMMISSIONER DEASON:** And part of the
6 concern that I have is that I think there is evidence
7 in this proceeding, as well as evidence in the various
8 arbitrations and interconnections and things that the
9 Commission has dealt with, that it is the business
10 plan of the competitors, when it comes to facilities
11 competition, to concentrate on the business market.
12 And that's not critical of the competitors. I mean,
13 they have made a business decision that that is what
14 make sense from a business standpoint. I don't argue
15 that. But I have difficulty then penalizing
16 BellSouth, if that's an appropriate term, to deny them
17 a finding that they meet Track A requirements because
18 it's the business plan of the competitors to
19 concentrate when it comes to the facilities
20 competition, to concentrate on the business market.
21 That seems to be a disparity there that I have
22 difficulty with.

23 **MS. SIRIANNI:** I understand your concern,
24 Commissioner Deason, but we believe it's the intent of
25 the Act that you serve business and residential

1 subscribers over your own facilities.

2 **COMMISSIONER DEASON:** I don't want to jump
3 ahead, and I know Issue 1 -- I think it's Issue 1C --
4 addresses the SGAT and its utilization under Track A
5 or Track B, or whatever. And I think -- is it 1C?

6 **MS. BARONE:** 1C.

7 **COMMISSIONER DEASON:** Okay. It's Staff's
8 recommendation that Track A and Track B are mutually
9 exclusive, but that an SGAT could be part of a Track A
10 filing. Am I reading that correctly or not?

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

12 **COMMISSIONER DEASON:** I am reading that
13 correctly.

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

15 **COMMISSIONER DEASON:** Okay. And that if the
16 policies and procedures that are contained in the SGAT
17 are found by this Commission to facilitate
18 facilities-based residential competition, that that
19 would be -- that would meet Track A even though we may
20 not find one single residential customer out there
21 being served from a facilities standpoint. Is that --
22 am I --

23 **MS. BARONE:** No, sir.

24 **COMMISSIONER DEASON:** Correct me. What has
25 been --

1 **MS. SIRIANNI:** The ability for the SGAT to
2 be used in conjunction with Track A described in 1C is
3 that the SGAT may be used to satisfy the competitive
4 checklist items in (c)(2)(B), which is Issues 2
5 through 15.

6 **COMMISSIONER DEASON:** So it has nothing to
7 do with the residential.

8 **MS. SIRIANNI:** It would have nothing to do
9 with whether --

10 **COMMISSIONER DEASON:** So what do we do if we
11 find in a subsequent 271 proceeding that -- I mean,
12 Bell has bent over double backwards and has
13 accommodated every complaint, but there's no
14 residential customer being served because no
15 competitor wants to serve a residential customer on a
16 facilities-based basis?

17 **MS. BARONE:** Commissioner Deason, I think
18 that in your consultative role you can let the FCC
19 know your concerns. Because if we look at the Act,
20 the overall intent of the Act, that's to open the
21 local exchange market. Well, has BellSouth put in
22 place everything that's necessary in order for there
23 to be residential customers? So we look at the entire
24 record. We look at what they have put in place. Do
25 they have these things functionally available? And

1 then you look at the competitors who say, "Yes, we're
2 going to get into the residential market; yes we have
3 plans to do this, but we can't do this because of A, B
4 and C."

5 And then you look at the record, "Well, are
6 A, B and C valid things that the competitor is
7 saying?" And then you -- then I believe you can
8 balance that and you can make a recommendation to the
9 FCC. Maybe there isn't any residential competition,
10 but you can tell the FCC, "Well, based on what we have
11 in our record, we think it's open and we think the
12 competitors have the ability to take on residential
13 customers." And I think that's one way you could
14 handle that.

15 **MR. GREER:** Commissioner.

16 **MS. BARONE:** I would also --

17 **CHAIRMAN JOHNSON:** Let me ask you a
18 question, Ms. Barone, on that point.

19 In the FCC's interpretation -- I think it
20 was in the Ameritech order -- when they defined the
21 word "providing" --

22 **MS. BARONE:** Yes.

23 **CHAIRMAN JOHNSON:** -- they use actual --
24 actually furnishing the item or making sure that the
25 item is --

1 **MS. BARONE:** Functionally available.

2 **CHAIRMAN JOHNSON:** Functionally available.

3 I was interpreting that to say that -- just what you
4 just said. If all of the necessary procedures are in
5 place, but there is no residential competition, that
6 you could still approve an RBOC under Track A. If
7 that's not what they meant, what did they mean when
8 they said making the item available, both as a legal
9 matter and just saying contractually through complete
10 terms in an interconnection agreement, and
11 practical -- as a practical matter the BOC stands
12 ready to fulfill the competitors's request on demand?

13 **MS. SIRIANNI:** I believe that's referring to
14 the competitive checklist.

15 **CHAIRMAN JOHNSON:** Oh, it's not --

16 **MS. SIRIANNI:** Yes.

17 **CHAIRMAN JOHNSON:** For Track A at all?

18 (Simultaneous conversation.)

19 **MS. SIRIANNI:** That's correct. That's our
20 interpretation. I would also point out that in the --

21 **CHAIRMAN JOHNSON:** Hold on one second.

22 When you talked about that, you said the FCC
23 also clarified five areas related to the requirements
24 of Section 271(c)(1)(A). But did you mean (c)(1)(B),
25 because you listed under (c)(1)(A) on Page 21? And at

1 the top of Page 22? So maybe that's what threw me
2 off.

3 **MS. SIRIANNI:** I believe that the number 5
4 should not be included as being under 271(c)(1)(A).
5 That was one of the areas that they clarified.
6 However, I don't believe that it directly should be --

7 **CHAIRMAN JOHNSON:** Oh, so it shouldn't have
8 been here.

9 **MS. SIRIANNI:** Yeah, under (c)(1)(A). I'm
10 sorry about that.

11 **CHAIRMAN JOHNSON:** No. That at least
12 clarified it, because putting that definition there
13 did seem to imply that you didn't have to have actual
14 residential competition, you just had to be -- stand
15 ready to fulfill a request, but you didn't have to
16 have the actual competition. But we can correct that
17 if it needs to be corrected.

18 **MS. SIRIANNI:** I was trying to lay out the
19 various clarifications they did make in their order,
20 and that actually came in their order after they made
21 the Track A.

22 **COMMISSIONER DEASON:** Well, then how is that
23 definition of providing, how is that relevant, then,
24 to Track A determination?

25 **MS. SIRIANNI:** The providing as it refers to

1 access and interconnection, under the portion of
2 271(c)(1)(A), its says, "Provide access and
3 interconnection to competing providers who provide to
4 residential and business subscribers," that verbiage.

5 I believe that they made it clear that the
6 Track A/Track B determination was mutually exclusive
7 from the competitive checklist items. And that they
8 made that very clear in the order. And that's why I
9 believe that that requirement is separate and apart
10 from the Track A requirement.

11 I did want to point out earlier, though,
12 when you were talking about, you know, if nobody ever
13 requests the residential, that in the SBC order the
14 FCC did point out that if a company appeared to, you
15 know, have a intent to provide residential service but
16 then they never went through with it, that the FCC may
17 go back and reevaluate the 271 application of a Bell
18 operating company, and may determine at that time
19 maybe the Track B would be the appropriate.

20 So they did, in addition to the two
21 exceptions in Track B which are not meeting the
22 implementation schedule or negotiating in bad faith,
23 they did speak in the SBC order about the idea that
24 they may be able to go back and reevaluate if it
25 doesn't appear that competitors are actually --

1 **COMMISSIONER DEASON:** I'm concerned about
2 the situation where the competitors -- it's no bad
3 faith on their own part. I mean, they just want to
4 concentrate on the business market, and it's not part
5 of their business plan. They choose not to serve
6 residential customers, not because Bell has any
7 impediments to serving that market, they just choose
8 not to. That's the situation that I'm concerned with.

9 **MS. SIRIANNI:** And I think what Ms. Barone
10 said to you earlier would be the appropriate way to
11 handle that is to let the FCC know what is happening
12 in Florida, and they very well may decide to look at
13 it differently. I mean, the Act says, you know,
14 business and residential, and that's what we believe
15 must happen.

16 **MR. GREER:** Commissioners, this issue ties
17 very closely to what -- the public interest issue that
18 we will have to address sometime down the road. And
19 the way we looked at it and one of the reasons de
20 minimis is not defined is that there wasn't any
21 evidence they were providing any residential service.
22 And the de minimis, I think, plays more into the
23 public interest of letting Bell into the intraLATA
24 market. The Commission decided to exclude that from
25 this proceeding. And so the way I always looked at it

1 was the requirements are what the requirements are,
2 and they have to meet those requirements. And if we
3 want to say, you know, "Provision of residential
4 service means one, that's okay, I guess." But once we
5 make the decision on the requirements, the FCC is
6 going to issue a NPRM on -- when BellSouth files with
7 the FCC -- an NPRM on the public interest issue. And
8 I would expect to see us to write comments, and we'll
9 file comments just like everybody else will on the
10 public interest issue.

11 **COMMISSIONER DEASON:** Now, you addressed, to
12 some extent, the public interest part in your
13 recommendation. I think on Page 33, from witness
14 Wood, there's a concern concerning public interest
15 standard, and then I think in a subsequent part of the
16 recommendation as well on this issue. But what I hear
17 you saying is that public interest concept comes in a
18 later stage. It's really not part of our
19 consideration here today.

20 **MR. GREER:** That's the way Staff looked at
21 it, as the requirements in A are the requirements in
22 A. It says, "Provide residential and business," and
23 if they do that, then they do that. And then the next
24 stage is, you know, is it in the public interest for
25 them to get into the long distance business. There's

1 various parties that think it's not because it's not
2 effectively competitive or whatever reason. And we
3 would deal with that in some kind of comments.

4 **COMMISSIONER DEASON:** I've found the passage
5 now. It's at the very top of Page 35, and you
6 identify that there's no specific issue in this
7 proceeding addressing public interest determination.
8 But you go on to say, "But that does not prohibit this
9 Commission providing comments regarding public
10 interest considerations, including the competitive
11 conditions in Florida."

12 **MR. GREER:** I don't think it does. I think
13 you can give some -- the FCC some concerns that you
14 have as far as the residential stuff, no doubt that
15 you can do just what Ms. Barone said. I just wanted
16 to let you know that I thought our official notice to
17 the FCC would be in whatever comments we filed to
18 their NPRM on the BellSouth interLATA filing whenever
19 that happened.

20 I think you can tell them, you know, we have
21 some concerns about what the requirements are in
22 Track A, and that you may get into this black hole, if
23 you will, and not be able to -- BellSouth to go one
24 way or the other. I think you can make that concern.
25 Whether they will pay any attention to it, you know,

1 that's --

2 **COMMISSIONER DEASON:** Well, another concern
3 that I have is under your recommendation -- and here
4 again, maybe I'm misreading it and don't hesitate to
5 correct me. But on Issue 1A and 1B, you're basically
6 saying, you know, not Track A not Track B. That means
7 if we don't have a track, we don't have a train to
8 even -- we don't have a way to move the train, so why
9 do we even bother with anything else in this
10 recommendation? The issue is decided.

11 **MS. SIRIANNI:** That's correct. They do not
12 qualify to Track B. And they, however, are not
13 satisfying completely Track A. And you very well
14 could stop at that point. But it falls out that way
15 because we believe that the intent of the Act is for
16 both residential and business subscribers, and we
17 don't believe they have met that requirement --

18 **COMMISSIONER DEASON:** Well, let me share
19 what my concern is. I think that we have got a very
20 comprehensive record here, and I think we need to go
21 through and address every one of these issues and
22 provide input.

23 I think that one little -- and I almost
24 consider it a technicalty which prevents Bell from
25 qualifying under Track A, is just that, and I think it

1 needs to be expressed to the FCC. And I have a
2 concern, and perhaps it's shared by other
3 Commissioners, that it's difficult to hold Bell
4 accountable if the situation is just that the
5 competitors choose not to serve residential customers
6 because it's not part of their business plan. And I'm
7 not saying that is the situation but perhaps that
8 could be the situation.

9 Your recommendation is that when you read
10 the words in the law very carefully and put a very
11 strict interpretation on that, they don't qualify for
12 Track A or Track B.

13 **MS. SIRIANNI:** That's correct.

14 **COMMISSIONER DEASON:** But I think they are
15 extremely close to qualifying under Track A, and the
16 only problem is that concern with more than a de
17 minimis amount of residential customers, whatever that
18 number is.

19 **MS. SIRIANNI:** And I would say that there's
20 evidence in this record that there are competing
21 providers who have intent to provide residential
22 subscribers and are doing that on a test basis now.
23 So the next time that they would file, those customers
24 may very well not be on a test basis anymore.

25 **COMMISSIONER DEASON:** Okay. And back to

1 Commissioner Garcia's concern, if we're going to have
2 another 271 filing, and Bell is going to file under
3 Track A and they are going to have to show -- under
4 Ms. Brown's interpretation it's Bell's burden to show
5 that there are residential customers being served for
6 a fee and it's more than a de minimis amount, how do
7 we get that information in the record? And I know
8 Ms. Brown has indicated that concerns with
9 confidentiality and proprietary information can be
10 overcome. Have you thought about that, how we're
11 going to do that?

12 **MS. BARONE:** Yes. We already have evidence
13 in the record that they say they are going to be
14 providing the service. What Staff will probably do is
15 continue to send out more interrogatories to fill in
16 those gaps. That's what we did before, and we'll do
17 it again.

18 **MS. SIRIANNI:** And I would also point out
19 that we have sufficient evidence in the record to
20 prove that there were business subscribers. And that
21 was through evidence provided by BellSouth and by the
22 competing providers, and it was all under
23 confidential. But it was enough to, you know, make
24 the record under business subscriber, so I believe
25 that the same thing could be done as it relates to

1 residential subscribers.

2 **COMMISSIONER DEASON:** Are we going to
3 attempt at this point to describe what we feel under
4 our interpretation of the Act, what constitutes more
5 than de minimis?

6 **MS. SIRIANNI:** I did not do that in this
7 recommendation, and I did not believe that this
8 Commission would define what the FCC meant.

9 **COMMISSIONER DEASON:** What did the FCC say?
10 Did they address this at all in the -- was it the
11 Ameritech order?

12 **MS. SIRIANNI:** That was where this came out,
13 in the Ameritech order.

14 **COMMISSIONER DEASON:** Concerning the de
15 minimis?

16 **MS. SIRIANNI:** The verbiage of de minimis.

17 **CHAIRMAN JOHNSON:** Let me ask a question on
18 one of the statements that Staff made regarding Media
19 One, and we went through the analysis that there was
20 not enough -- or that there wasn't sufficient
21 information in the record to determine whether or not
22 they were providing residential service, but there was
23 a qualifier that said even -- I read it to mean even
24 if they were providing residential service, that
25 wouldn't count towards Bell's 271 Track A application

1 because Media One's agreement was approved under state
2 law as opposed to federal law. Is that correct?

3 **MS. SIRIANNI:** Right. They have an
4 agreement -- if you remember back, I think it was
5 December of 1995, they were one of the companies who
6 entered into an agreement with BellSouth under the
7 state law. They have not to this date entered into a
8 negotiation or went through arbitration with BellSouth
9 under the 1996 Telecommunications Act.

10 **CHAIRMAN JOHNSON:** So let me be clear. If
11 they were providing residential service, we couldn't
12 use that?

13 **MS. BARONE:** Madam Chairman, the Act
14 provides that under (c)(1)(A), discusses
15 interconnection agreements approved under Section 252,
16 so I think that they would need to bring that
17 agreement here and have us approve it under the Act in
18 order to satisfy the requirements of (c)(1)(A).

19 **CHAIRMAN JOHNSON:** Doesn't that seem a
20 little odd? I mean -- and I just say that because if
21 we had found that Media One was offering residential
22 service all across the state pursuant to negotiations
23 under state law, that fortunate for Florida, we got
24 the ball rolling early. But Bell would still be
25 penalized? We would have to pretend that residential

1 service didn't exist?

2 **MS. BARONE:** Madam Chairman, I think that
3 the Act requires this, and I'll look for the other
4 section. The Act also required that interconnection
5 agreements entered into before the enactment of the
6 1996 Act would have to be approved under the
7 requirements of the Telecommunications Act. I think
8 it's important because they are different standards.
9 And since we're under federal law, and since 271 is
10 within the purview of the FCC and the Act does require
11 that these interconnection agreements be approved
12 under the Act, that's why I believe that the state
13 agreements would have to be approved in order to meet
14 the requirements of the Act. Because there are
15 specific standards within the Act that the state law
16 does not have but the Act does have.

17 **MS. SIRIANNI:** I would point out one of
18 those standards would be under 252(d). The pricing
19 standards of the Act differ from the standards in the
20 state proceedings.

21 **CHAIRMAN JOHNSON:** Yeah, but under Track A
22 pricing -- under Track A we could use a negotiated
23 pricing that, perhaps, wasn't cost based, could we
24 not, under Track A?

25 **MS. SIRIANNI:** No. Under Track A it

1 specifically says that interconnection agreements
2 approved pursuant to 252. And the pricing standard is
3 252(d) of the Act.

4 **CHAIRMAN JOHNSON:** I guess I was -- under
5 Track A if we had interim rates that were not
6 necessarily cost-based, wouldn't those still --
7 couldn't we rely upon that agreement to approve a
8 Track A filing? I know we couldn't under Track B, but
9 I thought we could under Track A.

10 **MS. SIRIANNI:** No.

11 **CHAIRMAN JOHNSON:** No?

12 **MR. GREER:** Commissioner, as far as the
13 Media One agreement, either company could file that
14 with the Commission for approval. So all BellSouth
15 would have to do is just send in a cover letter
16 saying, "Approve this pursuant to the federal act,"
17 and either company could do that.

18 **CHAIRMAN JOHNSON:** I was still back on that
19 that other thought. Could you --

20 **MR. GREER:** Either company, BellSouth or
21 Media One, could file that state-approved agreement
22 pursuant to the 252 requirements of the Act and ask
23 for approval of that agreement. So if that's --

24 **CHAIRMAN JOHNSON:** It's an administrative
25 kind of an act.

1 **MR. GREER:** Sure.

2 **CHAIRMAN JOHNSON:** Okay. But it is a
3 necessary one.

4 **MR. GREER:** I would say -- based on the 271A
5 requirements, I would say yes.

6 **MS. BARONE:** It says specifically that --
7 (c)(1)(A) says, "A Bell operating copy meets the
8 requirements of this subparagraph if it has entered
9 into one or more binding agreements that have been
10 approved under Section 252, specifying the terms and
11 conditions, et cetera.

12 **COMMISSIONER CLARK:** Let me ask a follow-up
13 to that.

14 Why does it matter, if they meet that with a
15 whole bunch of other agreements, why does it matter
16 that the one that is providing residential service
17 hasn't been approved?

18 **MS. BARONE:** Because --

19 **COMMISSIONER CLARK:** I don't see -- where
20 does it absolutely say that it has to be providing
21 service to residential customers under their own
22 facilities pursuant to an agreement that's been
23 approved under this section? I mean, the one section
24 says you've got to have agreements approved under it,
25 and you have that. Why can't you use one that hasn't

1 been approved if, in fact, they are providing service?

2 **MS. SIRIANNI:** Well, I would just say that
3 in the Media One case it still would not have
4 satisfied it because those customers were being served
5 on a test basis; they were not paying for the service.
6 So that would not have satisfied the requirement,
7 regardless.

8 **CHAIRMAN JOHNSON:** I was assuming that it
9 was a for-fee kind of an arrangement. You all seem to
10 take that next step to say, "Even if it was for fee,
11 and it was residential competition, it wouldn't count
12 because the agreement wasn't entered into pursuant to
13 federal law, but was entered into pursuant to state
14 law. And that seemed far-reaching to me or it seemed
15 to lead to disturbing results.

16 **MS. SIRIANNI:** One of the reasons I would
17 state is say that those prices that were in the Media
18 One agreement say -- I don't know. I have not looked
19 at the agreement recently, and I'm -- this is just
20 maybe -- that the prices that they were charging their
21 customers so that they may not be cost-based prices,
22 so then they would be violating the 252(d) of the Act.

23 **COMMISSIONER CLARK:** I guess what I'm
24 suggesting is if you have agreements that are based on
25 cost and they have been approved, what does it matter

1 if a company chooses not to use that? They are
2 perfectly happy with what they have and they are
3 providing residential service. Why can't that be used
4 to demonstrate that they've met -- I guess it is C.

5 **MS. BARONE:** Commissioner Clark, I want to
6 go ahead and finish that sentence in this paragraph
7 and then go ahead on with your question.

8 The interconnection agreements have to be
9 approved pursuant to 252, and it states, "which
10 specify the terms and conditions under which the Bell
11 operating company is providing access interconnection
12 to its network facilities," et cetera et cetera, "to
13 residential and business subscribers."

14 I think the agreements have to be approved,
15 but the FCC also made it clear that you could combine
16 interconnection agreements so one interconnection
17 agreement would not have to deal with both residential
18 and business subscribers. So we have that, but I
19 still think that the Act requires that those
20 interconnection agreements dealing with residential
21 and business subscribers have to be approved pursuant
22 to the federal law.

23 **COMMISSIONER CLARK:** Well, I guess I'm
24 uncomfortable at this point just saying that because
25 it was approved under prior state law, you can't count

1 it.

2 **MS. BARONE:** I guess we would have to go
3 back and look at that agreement. My concern is if we
4 don't approve it under federal law, then -- again, I
5 would have to look at it. I don't know all of the
6 terms and conditions, and I think that this paragraph
7 requires that.

8 **CHAIRMAN JOHNSON:** Any other questions on
9 issue 1A?

10 **COMMISSIONER DEASON:** Did the FCC find that
11 Ameritech met the requirements under Track A?

12 **MS. SIRIANNI:** Yes, they did.

13 **COMMISSIONER DEASON:** For consideration
14 under Track A?

15 **MS. SIRIANNI:** Yes.

16 **COMMISSIONER DEASON:** But they did not
17 receive authority, I understand.

18 **MS. SIRIANNI:** No.

19 **COMMISSIONER DEASON:** So that was the order
20 that contained the de minimis language concerning
21 residential subscribership. What was the evidence in
22 that record as to the number of residential
23 subscribers?

24 **MS. SIRIANNI:** Just one second. (Pause)

25 **COMMISSIONER DEASON:** And is that

1 information that's in evidence in this proceeding?

2 **MS. SIRIANNI:** Yes. There was --

3 **MS. BARONE:** We took official recognition of
4 this, but, again, we would have to go by the facts in
5 this case.

6 **COMMISSIONER DEASON:** I'm just trying to get
7 a feel for what guidance we need to provide because,
8 hopefully, we won't have this problem with the next
9 filing, that there will be some residential customers
10 being served and, hopefully, it's going to be more
11 than de minimis. I just don't want to get caught up
12 again on what I consider to be some technicalities
13 here about whether it is state or federal and how much
14 is de minimis and how much -- I just want to try to
15 get a feel for where we are and put the parties on
16 notice as to where we, so we can get this train on the
17 track and get it moving.

18 **MS. SIRIANNI:** Commissioner Deason, in the
19 SBC order -- it's on Page 35 -- the order, it's
20 talking about Brooks Fiber. And it states that it has
21 over 21,000 access lines in Grand Rapids, and over
22 15,000 of those lines are business, and almost 6,000
23 of them are residential lines. And it also states
24 that they serve 61% of its business lines,
25 approximately -- over 9,000 lines, and 90% of its

1 residential lines, approximately 5,300 lines. So they
2 do provide some numbers.

3 **CHAIRMAN JOHNSON:** They were serving on a
4 facilities basis 5300 residential customers?

5 **COMMISSIONER DEASON:** That's correct. It
6 says, "Through its switch alone with the purchase of
7 unbundled loops from Ameritech." So it does lay out,
8 you know, in the Ameritech case what Brooks Fiber was
9 doing. They did not come out --

10 **COMMISSIONER GARCIA:** That's it, right?
11 That's it?

12 **MS. SIRIANNI:** Right. They did not come out
13 and say, you know, though, that when they said -- when
14 they laid out the de minimis standard, they didn't
15 say, "Oh, but, however, we think that only three of
16 those or 5,000" or -- you know, they laid these
17 numbers out and then said that it needs to be more
18 than a de minimis, yes, they've satisfied it.

19 **COMMISSIONER DEASON:** So they are satisfied
20 with the state -- this is Michigan; is that correct?

21 **MS. SIRIANNI:** That's correct.

22 **COMMISSIONER DEASON:** 5,300 residential
23 customers is more than de minimis for a state the size
24 of Michigan?

25 **MS. SIRIANNI:** That's correct.

1 **COMMISSIONER DEASON:** I mean, we can
2 conclude that.

3 **MS. SIRIANNI:** That's correct. Right. And
4 they also -- in the FCC's eyes that satisfied Track A
5 in the state of Michigan for Ameritech.

6 **COMMISSIONER GARCIA:** And that was all that
7 was needed?

8 **MS. SIRIANNI:** That's all that they looked
9 at, because Brooks Fiber alone satisfied that, so
10 there were several other agreements. They said, "We
11 don't need to look at those because this one satisfies
12 it." So they stopped there. The other carriers may
13 also have been providing --

14 **COMMISSIONER CLARK:** So we know it's not
15 more than 5,300 in the state of Michigan?

16 **MS. SIRIANNI:** Right.

17 **MR. GREER:** Commissioners, we didn't really
18 look at de minimis in this -- what would be considered
19 de minimis. We can do that and be prepared for the
20 next 271 proceeding if there is one, if you want us
21 to.

22 **COMMISSIONER CLARK:** There's an indication
23 in the standard.

24 **COMMISSIONER GARCIA:** Right. I think we
25 have got an indication of a standard. I don't know if

1 that may be applicable to Florida in its totality, but
2 certainly it gives something for people to understand.
3 It's something we should try to address, nonetheless.

4 **MR. GREER:** Sure.

5 **COMMISSIONER CLARK:** And it's really not our
6 call.

7 **COMMISSIONER GARCIA:** Exactly.

8 **COMMISSIONER CLARK:** And what we need to
9 look at is what the Ameritech order says. And if it
10 says that's the amount, when we look at what's
11 provided to us, you know, we'll say here it goes and,
12 you know, we can say whether we think it complies with
13 Ameritech or not.

14 **COMMISSIONER DEASON:** Well, I was just
15 trying to get a feel for what the FCC -- because they
16 are ones that came out with the de minimis language.
17 I think this Commission is free to interpret the law
18 the way we interpret it, because we're giving them --
19 we're consulting with the FCC, giving them our input
20 into this very important process. And, I mean, we may
21 have evidence that shows 2,000, and we may consider
22 that more than de minimis. Or we may have evidence
23 of 5,300 and say, "For the state the size of Florida
24 that maybe is not enough." But I think that -- and
25 perhaps it's premature at this point -- I think that

1 we need to give as much guidance, not only to
2 BellSouth, but to all of the intervenors as to what we
3 think is an appropriate standard if we think we are
4 able at this point to give that.

5 I think that some of these issues that
6 follow, hopefully, we are going to be able to narrowly
7 focus on what the true problems are and what it's
8 going to take to get those problems resolved to get a
9 satisfactory determination from this Commission. Here
10 again, assuming that other things stay equal.

11 What I hear Stan saying, though, is that
12 Staff has really not given any thought whatsoever to
13 what would be an appropriate interpretation of more
14 than de minimis as it applies to the situation in
15 Florida.

16 **MR. GREER:** As far as an actual number, I
17 don't think so. I mean, we've talked about, well,
18 it's more than one, and then where does it fall? You
19 know, somewhere between 5,000, and in the Ameritech
20 order, and one. I mean, we haven't really sat down
21 and spent a lot of time, because we didn't have any,
22 in our opinion, and spent a lot of time on what we
23 thought de minimis was.

24 **COMMISSIONER DEASON:** Well just let me make
25 a request, and I hope it's not too premature, that --

1 I mean, we're going to have another 271 filing, I
2 think. I mean, I'm not trying to prejudge the issues,
3 but I think we're going to have another 271 filing. I
4 think, and perhaps it's incumbent upon our Staff to
5 make sure there is whatever evidence is needed in the
6 record to clearly determine whether there is
7 residential service being provided and if it is more
8 than de minimis.

9 I don't want to be hung up again, perhaps,
10 in another 271 filing where maybe all 14 checklist
11 items are met, but we don't have a track to put the
12 train on.

13 **COMMISSIONER CLARK:** I think to sort of give
14 an overall view of what you're saying is we're not
15 just a neutral observer in this process because we
16 have an obligation to promote competition. And in the
17 sense that you're suggesting, Commissioner Deason,
18 that we need to go out there and find out about what
19 competition has taken place, I agree that it's
20 BellSouth's burden to do that. But I want to make it
21 clear that we're just not going to sit idly by and
22 wait until all of this information comes in, because
23 we have an interest in promoting competition. I think
24 that's what 364 tells us we're supposed to do.

25 **MR. GREER:** Commissioner, I don't want it to

1 sound like that we didn't go out and look, because we
2 did send discovery to every certified ALEC in the
3 state of Florida and asked specifically for that
4 information. And the information we got back, you
5 know, some of it we were able to put in the record
6 because they were parties and some of it we had to
7 aggregate and put in some other forms. So we did go
8 look at it and Just did not find any. Probably the
9 one category that maybe we did not send folks
10 information to was the STS, that maybe we should have,
11 but we did not send discovery to the STS folks.

12 **COMMISSIONER CLARK:** Does it appear that STS
13 qualifies?

14 **MS. SIRIANNI:** In Staff's recommendation we
15 believe that that would qualify.

16 **COMMISSIONER CLARK:** Okay.

17 **MS. BROWN:** Commissioners, if I just
18 might -- I want to make sure that everyone is clear
19 that the next time we come to this proceeding it is
20 not Staff's responsibility to go out and find this
21 evidence.

22 There was some news reports from Bell that
23 Staff had not done enough searching for residential
24 customers in this record. And I take issue with that.

25 It is really Bell's responsibility to bring

1 that evidence and put it in the record, and I don't
2 want to be left with the impression here today that
3 Staff next time is going to have to go out and ferret
4 out this information. It's not Staff's role in this
5 proceeding.

6 **COMMISSIONER GARCIA:** To some degree,
7 Martha, I think the recommendation that Staff -- well,
8 to a high degree -- has addressed specific issues of
9 concern to Staff and to this Commission, I think, very
10 directly. And clearly the one who wants to get in is
11 BellSouth, not the PSC. Although we want to make sure
12 that competition comes to Florida, I think the
13 standards that are created, and I think what
14 Commissioner Deason is trying to do and Commissioner
15 Clark are absolutely right.

16 I don't know if we can give them a target,
17 but we can certainly say this is important to us and
18 obviously it's a requirement, and the standard to some
19 degree is created by an Ameritech order. I don't know
20 if we need to get to 5,000. I don't know if de
21 minimis is three residential customers in Miami Beach.
22 But somewhere in between there I think they hit, and
23 if they can come in with that, you know, all the power
24 to them then. That's off. And we go to the next
25 issue.

1 **CHAIRMAN JOHNSON:** I agree with you that
2 it's not Staff's burden to bring forth that
3 information. Although, it does get a little
4 difficult, because I don't know if the companies,
5 particularly those that are not parties that may be
6 providing the service, if they have the incentive to
7 bring forth that information. I know that you all did
8 send out quite a bit of discovery to try to ferret out
9 as much of this as you could. And there's just going
10 to be a balance.

11 I know Bell has a big burden here, and I
12 don't -- I guess, perhaps, it's been a difficult
13 process for them to get the information from the
14 parties, too. But I would agree with you that, you
15 know, we are not the ones that have the initial
16 burden. But to the extent that we can help facilitate
17 the process and can get that information that perhaps
18 companies deem confidential and wouldn't provide to
19 Bell and help facilitate that process, I think we
20 should. But facilitating more so than having the
21 obligation.

22 **MS. BROWN:** Yes.

23 **COMMISSIONER DEASON:** Let me make a comment
24 here. I'm the one that suggested that we try to
25 ensure that the record be as complete as possible in a

1 future 271 proceeding. I did not mean to indicate
2 that Staff has not done a more than adequate job in
3 this proceeding. And, Ms. Brown, if you're wearing
4 your feelings on your sleeve, I apologize, that was
5 not the intent. I understand there's been some
6 criticisms of Staff's recommendation and perhaps your
7 reaction can be explained by that. I think this
8 Commission has a responsibility to make sure that the
9 record is complete. That if we just stand idly by and
10 say, "Well, the participants in this proceeding, one
11 wants this and one wants that, so we are going to have
12 a complete record and be satisfied with that," I don't
13 think we can do that. And I'm not saying that Staff
14 has even -- has done that in this proceeding. The
15 only thing I'm saying is that I want to try to prevent
16 in the future 271 proceeding being in a similar
17 proceedings as we are here right now and not having a
18 track to go ahead and consider all of the checklist
19 items and, hopefully, come up with some type of a
20 resolution. That's my only concern.

21 **MR. GREER:** And, Commissioner, we will
22 continue to try to get that information, just as we
23 did in this proceeding.

24 **MS. BROWN:** Commissioners, Staff did that in
25 this proceeding and will, indeed, continue to do it in

1 the next one. I just want to make sure that the roles
2 are clear.

3 **CHAIRMAN JOHNSON:** Any other questions on
4 1A?

5 **COMMISSIONER CLARK:** I don't think I have
6 any more questions, but I want to make it clear that I
7 don't think we should make the conclusion that the
8 Media One agreement can't qualify. I think we should
9 say something like, "It's not clear that it would
10 qualify, and in order for us to rely on it, it makes
11 better sense that it be resubmitted," so that that's
12 not an issue whether or not we can rely on it. I just
13 wouldn't draw that conclusion now.

14 **COMMISSIONER DEASON:** I don't have a problem
15 with that, and I think that it is important for us to
16 specify that the reason that -- that if we approve
17 Staff's recommendation, which I think is probably what
18 we're going to do, is that -- that the only reason it
19 is not compliant with the requirements of Track A is
20 because of the residential customer situation. And I
21 think the order needs to specify that. And while I
22 agree we can't at this point specify what an exact
23 number is which constitutes more than de minimis, I
24 think we need to clarify that this was the only
25 drawback from us making a determination that BellSouth

1 met the requirements to proceed under Track A, and I
2 think that's what Staff's recommendation is saying.

3 **COMMISSIONER CLARK:** With that
4 clarification, I can move Staff on 1A.

5 **CHAIRMAN JOHNSON:** There's a motion on 1A,
6 is there a second?

7 **COMMISSIONER DEASON:** Second.

8 **CHAIRMAN JOHNSON:** There's a motion and a
9 second, any further discussion? All those in favor
10 signify by saying aye.

11 **CHAIRMAN JOHNSON:** Show it approved
12 unanimously. Thank you. Oh, you have the next one,
13 to, don't you?

14 **MS. SIRIANNI:** Yes.

15 **CHAIRMAN JOHNSON:** 1B.

16 **MS. SIRIANNI:** Issue 1B, deals with whether
17 BellSouth has met the requirements of Track B.
18 Track B is met if no competing provider has requested
19 the access and interconnection described under
20 Track A.

21 Under Track B, BellSouth must also have a
22 statement of terms and conditions that it generally
23 offers to provide access and interconnection approved
24 or permitted to take effect under Section 252(f).

25 Staff does not believe BellSouth has met the

1 requirements under Track B since BellSouth has
2 received requests for access and interconnection and
3 does not have a SGAT approved under 252(f) at this
4 time.

5 **COMMISSIONER DEASON:** Let me ask a question.
6 I'm looking at Page 45 of the recommendation under
7 Section 271 requirements, and there are two exceptions
8 mentioned there. One is bad faith and the other is a
9 failure to abide by an implementation schedule.

10 We have no evidence in this record
11 concerning either bad faith or failure to abide by an
12 implementation schedule, do we?

13 **MS. SIRIANNI:** No, we do not.

14 **COMMISSIONER DEASON:** What -- here again, I
15 guess this question more pertains to perhaps some
16 future filing. What -- has Staff given any thought to
17 what is meant by the exception "failed to abide by an
18 implementation schedule," and how that would fit into
19 a consideration in a Track B determination?

20 **MS. SIRIANNI:** If the negotiations or
21 arbitrated agreements that are submitted in Florida
22 with BellSouth have some type of schedule in them as
23 to when they are going to --

24 **COMMISSIONER DEASON:** None of our agreements
25 have those, do they?

1 **MS. SIRIANNI:** No, they do not. But if they
2 did have a implementation schedule in them and they
3 were not being met, then I believe that you could go
4 back and reevaluate. Right. There is testimony in
5 this proceeding that says that the agreements in
6 Florida do not have implementation schedules in them.

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

8 **COMMISSIONER CLARK:** I can move Staff unless
9 we need to -- do we need to provide any further
10 guidance on this than Staff has provided? The SGAT
11 will be taken care of later, and if we approve it, we
12 can indicate that we now have it.

13 **MS. SIRIANNI:** Yes.

14 **COMMISSIONER CLARK:** I can move Staff.

15 **COMMISSIONER DEASON:** Let me -- just one
16 further question before we get to the actual vote. On
17 Page 49 of the recommendation, I'm looking at the
18 first full paragraph. And there is -- I think there's
19 a recitation to the records from Witness Karoupas, and
20 then it follows up, it says, "As discussed in Issue
21 1A, several competitors assert that they intend to
22 serve residential customers in Florida through their
23 own facilities or in combination with unbundled
24 elements." Is Staff presenting that as an indication
25 that BellSouth does not qualify under Track B?

1 MS. SIRIANNI: Yes. Because one of the --

2 COMMISSIONER DEASON: Okay. For that
3 reason, they don't qualify under Track B, but that's
4 not enough for them to qualify under Track A, even an
5 intention to provide service to residential customers
6 through facilities or purchased elements.

7 MS. SIRIANNI: That's correct.

8 COMMISSIONER DEASON: That seems to be a
9 double standard.

10 MS. SIRIANNI: It appears that they could --

11 COMMISSIONER DEASON: I mean, if you don't
12 qualify here because they say they're going to do, but
13 you don't get it over here, because they actually
14 haven't done it.

15 MS. SIRIANNI: I agree that it appears that
16 they could end up in that black hole scenario, and I
17 believe that that's why the FCC in one of their orders
18 stated that if a company does show intent to provide,
19 but then does that not follow through with it, that we
20 may go back and reevaluate the situation. Maybe that
21 intent was not really there.

22 CHAIRMAN JOHNSON: Could you say that again?
23 FCC said --

24 MS. SIRIANNI: In order -- the FCC defined a
25 qualifying request as access and interconnection that,

1 if provided, would qualify or satisfy Track A. And we
2 believe that there are competing providers who have
3 shown evidence in the record that they intend to
4 provide service to residential and business
5 subscribers. And what Commissioner Deason was saying,
6 then that puts them kind of in that in-between stage
7 where they don't satisfy Track B nor do they satisfy
8 under Track A. And what I said is I believe that the
9 FCC saw that as maybe an apparent problem when they
10 stated in one of their orders that if a company who
11 showed intent to provide, then did not follow through,
12 that they may go back and reevaluate the situation,
13 and that they may qualify under Track B in a future
14 filing. So we saw it as a concern, as a problem that
15 may arise.

16 **COMMISSIONER DEASON:** Are we saying then
17 here in this proceeding that under Staff's
18 recommendation, they don't qualify under B, but we're
19 maintaining the flexibility that if we get into a
20 subsequent 271 filing and we still don't have
21 residential customers being served, but we have got
22 numerous entities indicating that that was their
23 intent, but they never did, that then -- that perhaps
24 the Company would qualify under Track B?

25 **MS. SIRIANNI:** I believe that -- I mean,

1 that was the FCC saying that they would hold that
2 standard, that they would go back and reevaluate it if
3 this Commission felt that that was appropriate and
4 they wanted to do that, that's fine. And just
5 remember we're, you know, a consultant to the FCC for
6 that, so we could in our order or whatnot, you know,
7 give them our thoughts.

8 **COMMISSIONER CLARK:** Well, that goes back to
9 the concern we had with 1A, the notion that it isn't
10 Bell that's holding up the works, it's somebody else.
11 And I think at that point we can say -- what we do
12 today does not foreclose a pursuit of 271(b) in the
13 future. It's just based on this record, it's a
14 Track A filed -- we believe it's a Track A filing.

15 **MS. SIRIANNI:** That's correct.

16 **COMMISSIONER DEASON:** And I think that
17 clarification --

18 **COMMISSIONER GARCIA:** Let me ask a question.
19 Aren't we voting on the SGAT later on in --

20 **MS. SIRIANNI:** Issue 18A.

21 **COMMISSIONER GARCIA:** Shouldn't we just TP
22 this until we get -- do that one and come back -- I
23 don't know how that's going to go.

24 **MR. GREER:** Commissioner, the reason we set
25 it up as 18A, is because, you know, people can

1 participate in the 18A and provide their arguments.
2 And we thought it was best for you to make a decision
3 on the things that's been to hearing prior to getting
4 to 18A.

5 **COMMISSIONER CLARK:** It may be appropriate
6 once we have that discussion to come back and we can
7 just move to reconsider the vote.

8 **COMMISSIONER GARCIA:** I'm fine either way,
9 yeah.

10 **CHAIRMAN JOHNSON:** Do you have a motion?

11 **COMMISSIONER CLARK:** I move Staff on issue
12 1B.

13 **CHAIRMAN JOHNSON:** There is a motion and a
14 second. Any further discussion? All those in favor
15 signify by saying aye.

16 **CHAIRMAN JOHNSON:** Show it approved
17 unanimously.

18 Issue 1C.

19 **MS. BARONE:** Commissioners, in Issue 1C, the
20 Staff recommends that BellSouth cannot meet the
21 requirements of Section 271(c) through a combination
22 of Track A and Track B.

23 Staff also recommends that BellSouth should
24 be permitted to use a state-approved SGAT to show that
25 checklist items are available. However, BellSouth is

1 not eligible to do so at this time.

2 **COMMISSIONER GARCIA:** I move Staff.

3 **COMMISSIONER DEASON:** Second.

4 **CHAIRMAN JOHNSON:** A motion and a second.

5 Any further discussion? Seeing none, show it approved
6 unanimately.

7 **CHAIRMAN JOHNSON:** Issue 2.

8 **MS. NORTON:** Commissioners, Issue 2 is the
9 first checklist item, and it addresses
10 facilities-based interconnection. The requirements of
11 the Act state that BellSouth must provide
12 facilities-based interconnection at any technically
13 feasible point on its network; that the quality of
14 such interconnection must be at least equal to that
15 which it provides itself, its affiliates or any other
16 party. And, finally, that the terms must be
17 provided -- it must be provided at rates, terms and
18 conditions that are just, reasonable and
19 nondiscriminatory as specified in the Act.

20 Staff has recommended that while Bell is
21 providing some facilities-based interconnection, it
22 has not done so in full compliance with all of the
23 requirements of the Act.

24 **CHAIRMAN JOHNSON:** Commissioners, questions?

25 **COMMISSIONER GARCIA:** I guess we could

1 address collocation first. And here again, it's the
2 same problem that I guess I addressed at the
3 beginning, which is the one of a series of complaints
4 by the competitors, in particular MCI and AT&T. And
5 in neither of those cases did we have a filed
6 complaint with this Commission.

7 **MS. NORTON:** Commissioner, I'd like to
8 address that. I was going to earlier since a lot of
9 that was in my issue.

10 I think it's important to sort through what
11 testimony is provided, and we have done so in these
12 recommendations. We've addressed every point raised.
13 I hope that we have also given you guidance as to what
14 constitutes legitimate 271 consideration and what is
15 of a complaint nature that is not appropriate for 271,
16 and what are things that just could be problems that
17 may occur in the future once this is implemented.

18 I think it's also important to recognize
19 that BellSouth plays a role in this in their timing of
20 when they filed their 271 application here, or filing
21 with this state. That, as you know these --
22 implementation of these agreements, putting all of the
23 terms and putting all of the provisions in, is a time
24 consuming process.

25 It is Staff's conclusion, and it's my

1 conclusion with respect to collocation, that Bell
2 simply filed at a point in time before everything had
3 been worked out. We did ask people in deposition as
4 to whether or not complaints had been filed, and it
5 was their statements then that they were still working
6 with Bell.

7 There are also dispute resolution provisions
8 in their agreements that state there must be a certain
9 period of time that they must attempt to work them out
10 before they file with this Commission.

11 So there are provisions to handle it. And
12 the evidence in this record states that Bell has --
13 this Commission has ordered collocation provisioning
14 intervals, those collocation provisioning intervals
15 have not been met. The fact that parties didn't
16 immediately file a complaint shows me, at least, that
17 they were still working with Bell to try to get this
18 in. Physical collocation is not implemented. It is
19 in the agreements, and it has been requested. So I
20 think that Bell has not complied with the requirements
21 of the Act there or those agreements.

22 Parties have -- I think it's a legitimate
23 thing to address in the context of a 271 filing,
24 saying it's not done yet. There are also Commission
25 Orders that say, "You will provide physical

1 collocation in three months or come and tell us why
2 that's not workable." That was not done either.

3 So I think that as far as collocation, that
4 the parties have acted appropriately here, and the
5 evidence is relevant to a 271 consideration.

6 **COMMISSIONER GARCIA:** Well, I'm not saying
7 that Staff is wrong. I can see the Staff's logic, but
8 I have a problem in the fact that we can't address the
9 problem. In other words, how do we correct -- this is
10 a problem we have to correct, regardless of 271. We
11 want to address it so that competition can get on or
12 so that we can begin to break these barriers. So how
13 do we address this issue if we don't get a complaint
14 before us?

15 **MS. NORTON:** I don't know that it's
16 necessarily something that is -- would be resolved by
17 a complaint. I think Bell needs more time to work
18 out the -- and install the necessary things for
19 physical collocation. There are space arrangements in
20 the central office. They have to put up their
21 physical construction that is required. There are
22 permits that are required to be obtained and then the
23 actual construction. I just takes some time. I don't
24 know that that's a complaint situation. It's just
25 taken more time than has been provided for by our

1 orders or under the Act -- I mean, under the
2 agreements. And, I mean, they could -- the carriers
3 could come in and say -- could file a complaint with
4 us and say, "Bell blew the three months," but I think
5 what they have been doing is working with Bell. The
6 fact that Bell choose to then file its 271 before it
7 had gotten that worked out was Bell's option.

8 I guess the answer to your question is I
9 don't know that it needs to be a complaint. Bell has
10 simply not met it yet. We expect that they will.

11 **COMMISSIONER CLARK:** Providing collocation
12 is part of the requirement of interconnection,
13 correct?

14 **MS. NORTON:** That's correct. It's a
15 technically feasible point of interconnection.

16 **COMMISSIONER CLARK:** All right. And what is
17 the problem with collocation? Is it both the length
18 of time and the price?

19 **MS. NORTON:** The prices have not been set.
20 We have interim rates in --

21 **COMMISSIONER CLARK:** Well, don't you
22 somewhere say interim rates are not sufficient to meet
23 a criteria?

24 **MS. NORTON:** Yes, they -- well, the rates
25 that are in there that we have approved were approved

1 pursuant to the --

2 **COMMISSIONER CLARK:** The handbook?

3 **MS. NORTON:** Right, the handbook, and set
4 very specifically as interim rates. So those still
5 need to be sent through.

6 **COMMISSIONER CLARK:** All right. Let me just
7 ask, would you state again your concern with respect
8 to collocation so I understand it?

9 **MS. NORTON:** Yes. It is not yet -- physical
10 collocation requests have not been met.

11 **COMMISSIONER CLARK:** They haven't provided
12 it?

13 **MS. NORTON:** They haven't provided physical
14 collocation, and there have been requests in and --

15 **COMMISSIONER CLARK:** And they have not taken
16 the position that it's not available because of space?

17 **MS. NORTON:** That's correct.

18 **COMMISSIONER DEASON:** You also indicated a
19 problem with time intervals.

20 **MS. NORTON:** Yes. This Commission issued
21 orders saying three months. Those time intervals have
22 not been met. Physical collocation is --

23 **COMMISSIONER DEASON:** And Bell did not come
24 forward indicating that that was not a reasonable time
25 interval? It was your understanding that they were

1 happy with three months and they were trying to abide
2 by that?

3 **MS. NORTON:** That's correct. Both this
4 Commission and the Act, required -- we required three
5 months. The Act said if -- they must provide physical
6 unless they made a showing before this Commission that
7 there were space constraints.

8 **COMMISSIONER CLARK:** And they have had
9 requests for physical collocation?

10 **MS. NORTON:** That's correct. (Pause)
11 Commissioner, I understood you to say they
12 have had requests, and that's what I was answering.
13 Is that what you said?

14 **COMMISSIONER CLARK:** Yes.

15 **MS. NORTON:** Okay.

16 **COMMISSIONER DEASON:** You also indicated on
17 Page 77 of the recommendation -- I'm at the end of the
18 last full paragraph -- you indicated that BellSouth
19 needs to provide ALECs with more frequent and better
20 data on their traffic.

21 It needs to be better and more frequent.
22 First of all, what traffic are we talking about? And
23 can we offer BellSouth as to exactly what type and the
24 frequency that should be provided? What information
25 should be provided and how frequent to be able to

1 overcome problems with meeting this checklist item?

2 **MS. NORTON:** I didn't put a lot of very
3 specific types of data in there. It was difficult to
4 know from the record as to what would or would not
5 satisfy it. But on the basis that it would be Bell's
6 responsibility to show that network blockage is not
7 occurring on its end of the network and that it needed
8 to provide that information to the carriers who
9 requested it to satisfy them, that is a requirement.

10 **COMMISSIONER DEASON:** Data to demonstrate to
11 the ALECs that there is not an inordinate amount of
12 blockage; is that correct?

13 **MS. NORTON:** That's correct. I believe that
14 the burden is that Bell must show that it is providing
15 the routing at parity with itself, the way it provides
16 itself.

17 **COMMISSIONER DEASON:** In other words, the
18 ALECs aren't experiencing any more blockage than
19 BellSouth?

20 **MS. NORTON:** Than BellSouth, right.

21 **COMMISSIONER DEASON:** Now, as I recall, we
22 had testimony from witnesses who went through that
23 type data, and there was much cross examination on
24 what the data meant and what the numbers were, and
25 there was numbers from -- was it ARMIS reports and

1 things of that nature?

2 **MS. NORTON:** And traffic studies.

3 **COMMISSIONER DEASON:** And traffic studies.

4 Okay. And Bell provided much of that information.

5 What was deficient in that information?

6 **MS. NORTON:** Bell provided nothing
7 initially. It provided nothing with its filing. What
8 was provided was pursuant to discovery. Staff asked
9 Bell whether or not this proved one way or another
10 whether or not there was blockage within it's network,
11 and it said no. What it said was that it provided
12 what was asked. It was frustrating to try to build
13 that record.

14 **COMMISSIONER DEASON:** So you're saying the
15 real problem is there's not data available to show, so
16 one could sit down and compare blockage rates, to show
17 whether there are parity or not?

18 **MS. NORTON:** That's right. And over time.

19 **COMMISSIONER DEASON:** And what is the
20 sufficient time frame for that?

21 **MS. NORTON:** I did not put a time frame in
22 the recommendation. There was -- six months was
23 discussed in the performance standards issue. I would
24 suggest that this Commission want -- it would want to
25 see in the next filing sufficient data to show that

1 the blockage problems do not exist over a sufficient
2 period of time that we can go to the FCC and say this
3 is being provided at -- Bell is providing this as
4 parity with the way in which it provides
5 interconnection to itself.

6 **COMMISSIONER DEASON:** But you're not in a
7 position to say what you think would be an adequate
8 time period? You mentioned six months. Is that --

9 **MS. NORTON:** In the performance standards
10 issue that is more specifically discussed.

11 **MR. GREER:** Commissioners, it's hard to give
12 a specific time, you know, because six months for one
13 thing may be appropriate, but six months for blockage
14 rates may not be by the time you -- if they don't get
15 any information within six months, as you probably
16 recall from the proceeding, you saw weekly updates on
17 blockage rates. And, you know, six months may be so
18 far out in advance that that's not the appropriate
19 time frame for that, but it may be appropriate for
20 collocation. We need more time to put in cages or
21 whatever, so --

22 **COMMISSIONER DEASON:** You're talking about
23 historic blockage rates, right, not projected?

24 **MS. NORTON:** That's correct. I mean, the
25 trunking requirements are initially forecasted and

1 then they are tested over time to see what blockage
2 exists. And as traffic grows, which is what we would
3 expect to see, we would want to see data that would
4 show how, as the traffic over trunks increases, how
5 quickly Bell can address that, what kind of blockage
6 rates do exist.

7 We would also want to know -- and it's
8 something we discussed -- it is incumbent upon ALECs
9 and Bell as well to provide sufficient information to
10 each other so that Bell can upgrade the trunking.

11 **COMMISSIONER DEASON:** That, I guess, was
12 going to be my next question. You're wanting some
13 historical data, but you have got to have forecasted
14 data to understand whether there's going to be an
15 unacceptable blockage rate. And if Bell doesn't have
16 the information from the ALECs to make a reliable
17 forecast to correct a problem before it happens, then
18 it's kind of hard to hold them to that standard if
19 they weren't given the information to put the
20 necessary facilities into place to avoid the blockage.

21 **MS. NORTON:** Absolutely, Commissioner. And
22 I would say that the evidence in the record was -- I
23 can't point a finger to one bad guy. I mean, they
24 pointed fingers at each other. But I think that there
25 were things -- procedures that need to continue to be

1 fine-tuned and resolved on both sides before this
2 starts to run smoothly. I think Bell could have done
3 more, and I think that we can probably say that some
4 ALECs might have done more. But that definitely needs
5 to be improved.

6 **COMMISSIONER GARCIA:** Give me something to
7 hit on, because I don't get that feeling that we have
8 something -- you say things need to be improved. And
9 we'll go back to collocation. What exactly needs to
10 be -- because I read, for example, MCI's complaints on
11 71 on collocation, Worldcom and its problem. What
12 solution do we find for that? How do we solve that?
13 Because these are things that have to be met,
14 regardless.

15 **MS. NORTON:** Commissioner, I don't think
16 anybody has made any statement in this record, Bell or
17 anybody, they don't believe Bell can do it. It's just
18 taking longer than was required.

19 I believe that's the solution in this case,
20 that Bell just simply has to get the physical
21 collocation arrangements made. We have no evidence
22 they are unwilling; that they have stonewalled; it's
23 just taking time.

24 **COMMISSIONER GARCIA:** We have no evidence
25 certainly that there's no complaint filed before us.

1 We have only what we got from the companies at this
2 hearing, that these things were going on, correct?

3 **MS. NORTON:** That's right. And Bell's own
4 data shows that -- shows, you know, the status of the
5 physical collocation arrangements that are being
6 requested.

7 **COMMISSIONER GARCIA:** When we're talking
8 about they need more time, what is an appropriate
9 time? And the reason I'm asking that is because I
10 want to have an idea of the time frame that we should
11 be trying to sort of --

12 **MS. NORTON:** Commissioner, this Commission
13 has taken evidence and made a ruling as to what the
14 time interval was. It has also stated that if Bell
15 had a problem with it, Bell should come and tell us
16 what the problem was.

17 **COMMISSIONER DEASON:** Which for virtual and
18 physical, is two months for virtual and three months
19 for physical.

20 **MS. NORTON:** That's correct.

21 **COMMISSIONER GARCIA:** And they haven't met
22 those time frames with any --

23 **MS. NORTON:** Yes, sir. In Staff's opinion,
24 the ball is in Bell's court there. If they need some
25 more time, they should make that showing. We could

1 issue an additional ruling. They just simply haven't
2 done that. They are doing a lot. I think they are
3 trying to get it done. But we can't say they are yet
4 in compliance until they have been done.

5 **CHAIRMAN JOHNSON:** Ms. Norton, this is on a
6 different issue. Joe, are you --

7 **COMMISSIONER GARCIA:** Yeah, yeah, go ahead.

8 **CHAIRMAN JOHNSON:** The local tandem
9 interconnection.

10 **MS. NORTON:** Yes, ma'am.

11 **CHAIRMAN JOHNSON:** Could you walk me through
12 what happened there with respect to MCI -- the MCI
13 situation? They thought they had an agreement and
14 then they -- I was very confused even during the
15 testimony as to actually what transpired there, and --
16 walk me through that process, if you could.

17 **MS. NORTON:** It appeared to change during
18 the course of the case as well.

19 MCI initially filed testimony saying that
20 Bell would not provide local tandem interconnection to
21 them, although they had requested it. At deposition
22 information was provided saying they thought they had
23 it resolved. And then at hearing it seemed to -- by
24 the time we got to hearing it appeared to have come
25 unresolved again.

1 What MCI's agreement says, to the best of my
2 recollection, is that Bell will provide
3 interconnection at the tandems. It doesn't specify
4 local or access. MCI says it's requested it at the
5 local tandem. We have evidence in the record of Bell
6 saying that it's not an efficient form of
7 interconnection. And it's Staff's conclusion that --
8 if Bell thinks it's not efficient, it's not a reason
9 not to provide it; they must do it. And the evidence
10 in our record says that they haven't done so, and it's
11 taking an inordinately long time. So under the
12 requirements for this checklist item, they haven't
13 provided it at any technically -- technically feasible
14 point of interconnection.

15 Local tandem interconnection, based on the
16 record, is usually where other LECs and where Bell
17 itself will focus traffic. That's where EAS traffic
18 goes from one network to another. And Bell, when it
19 is routing its traffic doing the network design, will
20 often run traffic into a local tandem, and some of the
21 ALECs are saying they want that point of
22 interconnection, as well.

23 **CHAIRMAN JOHNSON:** But Bell was saying that
24 it wasn't an efficient structure or design or process.

25 **MS. NORTON:** One witness stated that in

1 deposition, that it wasn't -- it wasn't the best
2 network design for ALECs.

3 **CHAIRMAN JOHNSON:** And what did they
4 suggest?

5 **MS. NORTON:** The primary point of
6 interconnection for ALECs is at the access tandem.
7 That's my understanding, said most of them are taking
8 interconnection at the access tandem. Some want it at
9 the end office, some want it at the local tandem. It
10 appears to be different between ALECs as to who is
11 getting it at the end office, and there's different
12 points of contention there.

13 **COMMISSIONER CLARK:** Let me ask a question.
14 Is the issue it wasn't clear whether or not it was the
15 access tandem or the local tandem and that's why they
16 weren't providing it? It's clear that the agreements
17 call for interconnection at a tandem and/or end
18 office.

19 **MS. NORTON:** That's correct.

20 **COMMISSIONER CLARK:** And apparently
21 BellSouth objected to providing it at the local
22 tandem?

23 **MS. NORTON:** They are not saying they won't
24 do it. It hasn't happened yet. What I can glean from
25 the record --

1 **COMMISSIONER GARCIA:** We weren't specific,
2 right?

3 **MS. NORTON:** Pardon me?

4 **COMMISSIONER GARCIA:** We weren't specific
5 enough.

6 **MS. NORTON:** Well, no, this is business, not
7 so -- I mean, our orders said tandem and end office
8 and the agreements say tandem and end office. They
9 don't distinguish between an access tandem and a local
10 tandem.

11 What I believe is happening here is based on
12 the testimony of the Bell witnesses is that, I think,
13 measuring or recording capabilities at the local
14 tandem are not the same as those at the tandem -- at
15 the access tandem or end office to be able to
16 distinguish local and toll traffic.

17 And then you're getting into the PLU factor.
18 They need to develop a factor to be able to know which
19 minutes to bill local and which minutes to bill toll.
20 We didn't get a lot of detail, but my conclusion from
21 that was get the PLU factor decided and implement it.

22 **COMMISSIONER CLARK:** So in order -- what we
23 should clarify here is that we believe the agreements
24 called for access at tandem?

25 **MS. NORTON:** Interconnection at the tandems,

1 because they are technically -- it is technically
2 feasibility to do so.

3 COMMISSIONER CLARK: Okay.

4 CHAIRMAN JOHNSON: To do what?

5 MS. NORTON: To provide interconnection.

6 CHAIRMAN JOHNSON: At?

7 MS. NORTON: At the access tandem, end
8 office, local tandem, in a collocation facility;
9 anywhere it's technically feasible.

10 CHAIRMAN JOHNSON: And where do they not
11 want to provide?

12 MS. NORTON: Local tandem.

13 CHAIRMAN JOHNSON: And we're saying they
14 should provide it at local tandem and access tandem
15 and --

16 MS. NORTON: That's correct.

17 CHAIRMAN JOHNSON: But their point on not
18 providing it at the local tandem was that they didn't
19 think it was the most -- I was trying to better
20 understand their argument, because I was wondering if
21 it had any merit in whether or not they should have
22 that kind of discretion. I need you to better explain
23 it to me

24 MS. NORTON: Understood. Let me state that
25 Bell has not said they wouldn't do it, okay?

1 **CHAIRMAN JOHNSON:** Okay. Okay.

2 **MS. NORTON:** It is just not being done.
3 They want a bona fide request process. There's some
4 debate over whether that should be required, because
5 the term -- the bona fide request process is set up so
6 that anything that is not part of an agreement, an
7 ALEC can order it and they must go through the bona
8 fide request process and pay an additional amount for
9 that.

10 **COMMISSIONER CLARK:** Let me ask a question.
11 Is there a danger that this won't be used? Well, I
12 guess there should be -- I understand that it doesn't
13 have to be efficient; it has to be technically
14 feasible. Is there any concern they go to all of this
15 trouble to allow access at the local tandem and then
16 it's not used?

17 **MS. NORTON:** Commissioner, there would
18 always be that question. Bell did not raise any
19 information on that point in the hearing in its
20 arguments.

21 **CHAIRMAN JOHNSON:** And they are already
22 providing access to other incumbent LECs at the local
23 tandem.

24 **MS. NORTON:** That's correct, and itself.

25 **CHAIRMAN JOHNSON:** It just struck me, I

1 guess, through the testimony in reading some of the
2 transcripts, that Bell was kind of saying not that
3 they couldn't do it, but it was almost a waste of time
4 because there wasn't much of an advantage to doing so.

5 **MS. NORTON:** That's what they said. And
6 Staff didn't consider that as addressing the issue.

7 **CHAIRMAN JOHNSON:** You're saying if there
8 was -- they should have come forth with more rationale
9 if, indeed, they did not want to provide access at the
10 local tandem?

11 **MS. NORTON:** Yes. They never said really
12 that they didn't. One witness was making those
13 arguments. They never said they wouldn't. They said
14 they were working on it. They have to develop the
15 PLU. They have to do all of this, and it just hasn't
16 been accomplished yet. They want a BFR process. It's
17 technically feasible.

18 **CHAIRMAN JOHNSON:** How do you feel about the
19 BFR process?

20 **MS. NORTON:** I think it has a place. I
21 would sincerely hope that its use -- that Bell would
22 apply it judiciously; that where it is very
23 straightforward to provide something that wasn't very
24 specific in an agreement, that Bell would go forward
25 and provide it and not use the BFR process to slow

1 down the ability of ALECs to get into operation. I
2 think there is that possibility with the BFR process.
3 But I do think it has -- it has a definite role. It
4 should be there.

5 **COMMISSIONER DEASON:** Have there been any
6 requests for local tandem interconnection?

7 **MS. NORTON:** According to the record, yes.

8 **COMMISSIONER DEASON:** And the entities
9 requesting that type of interconnection were told that
10 they would have to go through a BFR?

11 **MS. NORTON:** Yes. And my understanding, I
12 think, is that it's the measuring changes that need to
13 be made to make local tandem -- make it possible at
14 local tandem interconnection. And it's my
15 understanding that that involves the PLU factor. And
16 I know that this Commission has approved tariffs and
17 has held hearings approving surrogate factors to take
18 local and toll -- you know, to account for local and
19 toll. We've done it in mobile interconnection. Some
20 of the negotiated agreements have PLU factors
21 established. We asked other ALECs whether PLU factors
22 had been agreed upon, and we were told they were. But
23 the evidence says that that's what is being held --
24 that's what is slowing down local tandem
25 interconnection. And Staff didn't think -- I don't

1 know that that's absolutely all there is to it, but
2 that's what our record says.

3 **CHAIRMAN JOHNSON:** For MCI they made a
4 formal request?

5 **MS. NORTON:** They said they did.

6 **CHAIRMAN JOHNSON:** And you said one other
7 statement. You said to the extent that the only
8 limitation in the development of the PLU factor, local
9 tandem interconnection should definitely -- to the
10 extent that that is the only limitation is the
11 development of the PLU factor, local tandem
12 interconnection should definitely be provided and no
13 BFR process should be required.

14 **MS. NORTON:** It's my opinion that it
15 shouldn't be in that case, because I don't think they
16 need to have that for that.

17 To the extent that Bell must add recording
18 and measuring equipment to a local tandem, which I
19 don't know that they need to, but to the extent they
20 have to, then I think that they can reasonably expect
21 the costs to be recovered on that. And perhaps that
22 way that would be a BFR process. But they didn't say
23 that that was absolutely required. They weren't clear
24 on that or definitive, at least. And I don't think it
25 takes a BFR process to set up a PLU factor,

1 particularly an interim one.

2 **COMMISSIONER DEASON:** Was that the only
3 problem indicated by Bell as to -- the reluctance to
4 provide local tandem interconnection was the
5 determination of an appropriate PLU factor?

6 **MS. NORTON:** As I recall, that was -- that
7 was the most specific statement, you know, that was at
8 hearing, was the most specific statement made about
9 it. Generally the response was, "Well, we're doing
10 it. We're getting it. We're working on it." So as
11 you recall, nobody said they -- Bell didn't say they
12 wouldn't do it. I believe that they were -- they did
13 state that there is no provision for it in the SGAT,
14 that local tandem interconnection. It was raised a
15 party, and Bell agreed that you can't get local tandem
16 interconnection through the SGAT. And when asked why
17 not, they just said, "Well, parties could ask for it
18 and get it through a BFR process.

19 **COMMISSIONER DEASON:** And you think the BFR
20 process is not appropriate for local tandem
21 interconnection because why?

22 **MS. NORTON:** Based on the information that
23 was given me in the record, the PLU, the development
24 of the PLU was the prime obstacle to providing it.
25 And if that is the case, then I don't believe the BFR

1 process is necessary or appropriate.

2 **COMMISSIONER DEASON:** There was no evidence
3 indicating that local tandem interconnection was not
4 really an efficient means of interconnection and that
5 it created special or inordinate amounts of cost on
6 BellSouth to provide?

7 **MS. NORTON:** They did not state that it
8 caused them any hardship. They just said it provided
9 no particular advantage. It was typically used
10 between -- you know, Bell itself uses it, also
11 interconnection with other ILECs for EAS type traffic.

12 **COMMISSIONER GARCIA:** If Bell itself uses
13 it, isn't that enough? Isn't parity enough?

14 **MS. NORTON:** Are you asking me whether or
15 not -- if Bell has interconnection itself at the local
16 tandem, parity would require that it provide it to
17 ALECs, too. I would agree with that.

18 **COMMISSIONER CLARK:** With respect to two-way
19 trunking, the hold-up there is simply developing the
20 percentage local use factor?

21 **MS. NORTON:** That's my understanding.

22 **COMMISSIONER CLARK:** And with respect to
23 confirmation of -- what is it, Signal 7?

24 **MS. NORTON:** The SS7 code?

25 **COMMISSIONER CLARK:** Yeah. The concern

1 there is that they should have responded to a request
2 of confirmation that it had been accomplished?

3 **MS. NORTON:** Yes. I don't know that that's
4 a point on which I would say Bell fails, but to the
5 extent that -- if agreements didn't require specific
6 confirmation of a SS7 point code along with everything
7 else, I don't know that I would fail Bell on that
8 point. But what did concern me is there was evidence
9 produced that there were written letters to Bell which
10 were ignored in deposition. There was discussion that
11 the ALEC asked -- verbally asked the BellSouth --
12 BellSouth representative why his letters hadn't been
13 answered. They said they would check on it. It just
14 seemed to me that if there are letters in writing from
15 ALECs, that they need to be dealt with.

16 **COMMISSIONER CLARK:** And the carrier
17 identification codes, that they were specifically
18 requested, that the information -- the agreement
19 covers it, and they haven't been providing the data?

20 **MS. NORTON:** Yes. And in a deposition -- I
21 mean, I don't know why Bell would agree to it in its
22 agreements if it says that the ACNA codes, the
23 A-C-N-A, ACNA codes are better. And that was the
24 impression I got at deposition was that, "Well, the
25 ACNA codes are preferable. Bell says ut uses it

1 themselves, and why did they say they would provide
2 CIC codes in their agreement?

3 **COMMISSIONER CLARK:** Okay.

4 **COMMISSIONER DEASON:** So you're just saying
5 that if it's in the agreement, that's what -- they
6 should provide what is in the agreement.

7 **MS. NORTON:** They should provide what is in
8 the agreement. If it turns out that's something a
9 carrier doesn't want, that's the carrier's problem.

10 **COMMISSIONER GARCIA:** If it's in the
11 agreement, how do they have it addressed before us?
12 In other words, if they have something in an agreement
13 that Southern Bell is not providing, what recourse
14 does that company have?

15 **MS. NORTON:** Well, if they have a dispute
16 resolution clause in their agreement, they have to
17 wait -- they have to work it out for a specified
18 amount of time, and if it's something that warrants
19 it, then Bell -- if the parties have been unable to
20 resolve it in that given period of time, they can
21 bring it before us.

22 **COMMISSIONER GARCIA:** I say that because I
23 get these unanswered letters and things of that nature
24 which I think are day-to-day relationships the company
25 should have and, clearly, Staff points it out that

1 that should be something that is addressed. But it's
2 something that can be addressed as an ongoing matter
3 because, clearly, entering letters is not a central
4 issue here to competition. I don't think Staff would
5 have held them up on that.

6 **MS. NORTON:** That's correct.

7 **COMMISSIONER CLARK:** I think it's a
8 suggestion that Staff makes. So I don't necessarily
9 think it's one of the sticking points to addressing
10 this. It's simply something that -- the relationship
11 between the companies has to improve to some degree.
12 And I think to some degree we have to help that along,
13 and I think Staff pointing it out, while significant,
14 I don't think it's significant in the denial.

15 **MS. NORTON:** That's exactly what I tried to
16 articulate in the recommendation.

17 **COMMISSIONER GARCIA:** This one in
18 particular, Issue 2 is one that I think Staff
19 addresses a lot of things, but it addresses a lot of
20 things in a lot of different ways. You know, you've
21 got sort of the company complaints, then you've got
22 what Staff found from the record, and then what was --

23 **MS. NORTON:** There's also things that we're
24 not even going to attempt to address until it's being
25 implemented, and we don't know what we'll meet at that

1 point. I mean, parties presented testimony saying
2 "Well, we're concerned about what may happen in the
3 future."

4 **COMMISSIONER GARCIA:** Which --

5 **MS. NORTON:** And we noted it, but we're not
6 going to give you a recommendation on anything like
7 that.

8 **MS. NORTON:** I think this brings up a good
9 point, though, that Commissioner Deason pointed out
10 early on, is leaving -- making sure that when we leave
11 this here, we have -- again, I think you called it
12 tracks, so we can put the train on when they come
13 back, and so that they know exactly where it is that
14 we need -- we found them deficient. And so we've sort
15 of got to separate what we think is important as
16 opposed to what complaints brought up to us but
17 weren't necessarily central. I don't think BellSouth
18 answering letters is one of the key issues for
19 answering this, and I think you've agreed with me.
20 But what I'd like Staff to do, I guess, and this would
21 probably come out from what we finish up doing here,
22 is that we specifically address the things that must
23 be met for our satisfaction. And that means it's not
24 necessarily the complaints, it's not necessarily this,
25 but this is what Staff found. And whether they be

1 six, seven, eight or ten, that we have those
2 delineated so that the company can address them
3 directly.

4 **CHAIRMAN JOHNSON:** Any other questions on
5 Issue 2?

6 **COMMISSIONER DEASON:** Well, I have been kind
7 of making notes as we have gone through Issue 2 to
8 address the very thing that Commissioner Garcia has
9 raised and trying to get to the very relevant
10 pertinent points as to why Staff is recommending that
11 there be a no vote on Issue 2. And the reason I'm
12 doing that is to try to focus those issues and perhaps
13 give guidance to all of the parties as to what really
14 were the reasons why there's -- assuming there's a no
15 vote on Issue 2, why there was a no vote on Issue 2.

16 We talked about collocation, that the fact
17 that requests for physical collocation have not been
18 met, and that there was no indication from Bell that
19 three months was not an acceptable time period, and
20 there was no showing on Bell's part that there was
21 space constraints.

22 There needs to be traffic data provided to
23 ALECs to show that the blockage that is being
24 experienced is not excessive in comparison to the
25 blockage experienced by BellSouth. We can't specify

1 an exact time period, but six months was mentioned
2 as -- at least six months was mentioned when we were
3 looking at performance standards.

4 BellSouth needs to provide local tandem
5 interconnection if it is requested, and that the BFR
6 is not appropriate when the only problem with
7 providing local tandem interconnection appeared to be
8 the utilization of the PLU factor and that there was
9 not one established. Staff believes that BellSouth
10 should allow the use of surrogate PLUs in that
11 situation.

12 And that if it is within an interconnection
13 agreement to provide CIC codes, BellSouth should also
14 provide CIC codes. And that if it is in an
15 interconnection agreement to provide meet-point
16 billing data, that data should be provided.

17 And I think Staff -- those are the reasons
18 why -- because BellSouth did not meet all of those
19 obligations, if you want to determine them as such,
20 that's the reason that Staff is recommending a no vote
21 on Issue 2.

22 **MS. NORTON:** That's correct, all of those
23 points, and that Bell's response when confronted by
24 parties saying they haven't provided it, Staff
25 believes Bell needs to do more than say, "Well, we

1 shouldn't have to."

2 **COMMISSIONER GARCIA:** I think we go from
3 here without that response, clearly.

4 **COMMISSIONER CLARK:** Well --

5 **COMMISSIONER GARCIA:** Go ahead.

6 **COMMISSIONER CLARK:** No, I want to move on.

7 **COMMISSIONER GARCIA:** Okay. But I think
8 that -- thank you, Commissioner Deason, because that's
9 what I was looking for Staff to do, and maybe we can
10 do that with the rest of the issues, because it's
11 tough, you know, you guys probably know the issues
12 much more intricately than we do. But to have these
13 addressed that way so that we know exactly what we're
14 talking about, so that the parties, not only
15 BellSouth, but the parties who participate in this are
16 able to make their arguments even more precisely if
17 Staff is wrong, and they have the opportunity to do
18 that specifically on these issues, or if BellSouth is
19 wrong when we come back on these issues.

20 **COMMISSIONER CLARK:** Yeah. And your point
21 on the confirmation of SS7 is just that they need to
22 cooperate so that they can assure that interconnection
23 is is, in fact, working. We note -- in passing, we
24 note they didn't respond to it and they need to --

25 **MS. NORTON:** Even if they respond saying

1 we're not going to provide you -- if there's all these
2 functions that have to occur, we don't want to have to
3 tell you when one of them has been done. If they even
4 answer that way at least, you know, they have provided
5 some guidance. They say, we will tell you when you're
6 ready to turn it up.

7 **COMMISSIONER GARCIA:** Did I read that wrong?
8 The SS7 was pretty much complied with in the end,
9 right? I mean they agreed to do it, right, that
10 there's not a problem anymore, or did I misread it?

11 **MS. NORTON:** What Bell said was they didn't
12 know -- they didn't, you know, didn't plan on -- they
13 didn't know, it was a problem. They -- it was not
14 in -- we went back and looked at the agreements
15 themselves, and it did not appear that the provision
16 of -- if I'm not getting it confused with some of
17 these others -- confirmation, right.

18 **COMMISSIONER CLARK:** What was your concern
19 about the SGAT, just that there was -- there was some
20 conflict in the SGAT as opposed to agreements or
21 within the SGAT itself? And is that -- you list that
22 simply as an additional concern, and it's not a
23 reason -- it's not one of the things we should point
24 out that they need to do in order to be compliant with
25 this issue?

1 **MS. NORTON:** Yes. I noted some of the
2 problems articulated by the parties in the SGAT here
3 because they did raise them in the context of this
4 issue, but 18A has --

5 **COMMISSIONER CLARK:** All right. We'll take
6 that up in 18A. Okay. Well, I can move, then,
7 issue -- this issue with the understanding that the
8 order will set out, as enumerated by Commissioner
9 Deason, what we believe needs to be done to be
10 compliant with the requirements that are listed in
11 Issue 2.

12 **MS. NORTON:** Commissioners, we will do that.
13 I would like -- I would be concerned if we said, "If
14 you meet exactly these things, we will raise no
15 other" --

16 **COMMISSIONER CLARK:** No, we're not saying
17 that. We're telling them this is where -- the
18 concerns, and they certainly have to come in and show
19 that. I mean --

20 **COMMISSIONER DEASON:** They know where they
21 are deficient, and when they come with the next
22 filing, they know they have got to address these
23 things. They've either got to correct them or show us
24 where we were wrong saying this is what they should
25 do. That's the very first threshold they have got to

1 meet. They know that, and that's not to say that no
2 other issues can be raised.

3 But I do think consistent with our previous
4 discussion, that if the other intervenors are going to
5 be raising new issues, they either have to have a
6 complaint filed or else they are going to have to
7 document to the Commission where they have identified
8 a problem to Bell, they wrote them letters, they tried
9 to have meetings with them, they put them on notice
10 that this is a problem, and BellSouth still did not
11 address the problem, and that's why they're bringing
12 it to our attention in a subsequent --

13 (Simultaneous conversation.)

14 **COMMISSIONER GARCIA:** -- patterns and the
15 whole like. And, again, even in those cases, I hope
16 that -- and I guess I should speak to Walter when I
17 say this, that I hope that we're trying to address
18 those issues as we go through this. In other words,
19 that any of the smaller conflicts that are going
20 through this, that we try to be helpful in addressing
21 those things, that this is not the forum for that. It
22 may not be a complete complaint process that you need,
23 but just trying to make sure that we mesh along this
24 way, because I think we do this on a daily basis. I
25 mean, I think our complaints department does just

1 that. I mean, there are rules, and the company
2 doesn't live up to those rules for X reason -- it may
3 be, you know, a line repairman or someone else, but
4 somewhere along the line someone -- and if we can be
5 helpful in those, we don't necessarily hav to hash out
6 non-answered letters in the 271 process.

7 **COMMISSIONER DEASON:** Did the Staff have a
8 concern with that process as we've laid it out?
9 Because if you do, please air it out, because I want
10 to make sure we have a process that hopefully we can
11 all live with, because let's face it, Staff is going
12 to be 99% of the work, as always is the case. So I
13 want to make sure that Staff is in agreement this is
14 the way to proceed, and if not, speak up because we
15 need to get it hashed out now.

16 **MS. NORTON:** I think so. I mean, as far as
17 this order is concerned, I have no problem in
18 delineating what is a point of failure and what isn't,
19 as long as we also don't limit it to just this record.
20 Because there is so much that has to be implemented
21 and I think parties need to feel free. I do also -- I
22 know I'm pleased with what we're doing with respect to
23 trying to develop more streamlined procedures for
24 handling complaints because that is what we will be
25 doing.

1 **MR. GREER:** Commissioners, I think the
2 process you have laid out is pretty good. Originally
3 I was a little concerned with the fact that they had
4 to have an actual complaint filed. And since we have
5 modified that, then I think that's fine. Because I
6 was concerned about all of a sudden Bell filed a 271,
7 or the word get out that Bell is going to file a 271
8 and then all of a sudden we have 200 complaints in
9 here on various topics.

10 **COMMISSIONER DEASON:** Let me reiterate. I
11 want to stress that the process out there of two
12 business entities trying to work out problems so they
13 both can effectively work together, even though they
14 are competitors, they are going to have to work
15 together, and only when all of those avenues have been
16 pursued and failed should a complaint be filed.

17 But I do think, though, when a 271 filing is
18 made, that there needs to be, on the intervenor's
19 part -- they need to demonstrate to the Commission,
20 look, this is an issue. We talked to Bell about it;
21 met with them on this date and we told them what our
22 problems were. They ignored us, or they said this is
23 something you are going to have to file a dispute with
24 and we just hadn't had time to file the dispute with
25 the Commission or whatever.

1 But I think it is not fair to Bell and not
2 fair to this Commission, and certainly not fair to
3 Staff to just horde all of these complaints and don't
4 tell anybody about them and when the next 271 filing
5 comes in, come up with the 200 complaints and nobody
6 knew they were even problems.

7 **COMMISSIONER GARCIA:** I think we can begin
8 to address the problem if we have complaints, to some
9 degree. I don't want to rehash this, because I -- I
10 know we have -- and maybe some of us have to move on.
11 But what is important -- and I don't take it the way
12 you do, Stan. I'd like to see some of them filed.
13 I'd like us to be able to get involved on some of
14 these complaints. I'd like us to be able to order the
15 companies to correct what they are doing wrong. And
16 this process isn't going to allow for it.

17 I understand the Company wants to cross this
18 hurdle for other reasons. But those things that this
19 Commission has ordered and have not been corrected, we
20 should be able to resolve.

21 **MR. GREER:** And we have numerous complaints
22 that are here. I'm aware of a few others that are --
23 you know, they're trying to work them out. If they
24 can't work them out, then they will bring them to us.

25 **COMMISSIONER CLARK:** Madam Chair, I think we

1 should give Commissioner Garcia his own 1-800 number.

2 (Laughter)

3 **COMMISSIONER GARCIA:** Let me tell you,
4 Commissioner, I had the opportunity to sit there last
5 week and I enjoyed it tremendously. I couldn't sleep
6 that night, but I enjoyed it tremendously.

7 **COMMISSIONER CLARK:** The night before or the
8 night after?

9 **COMMISSIONER GARCIA:** The night after. The
10 night after.

11 I'll second your motion.

12 **CHAIRMAN JOHNSON:** There's a motion and a
13 second. All those in favor signify by saying "aye."

14 **COMMISSIONER DEASON:** Aye.

15 **COMMISSIONER CLARK:** Aye.

16 **COMMISSIONER KIESLING:** Aye.

17 **CHAIRMAN JOHNSON:** Show it approved
18 unanimously.

19 We're going to take a 15-minute break.

20 (Brief recess taken.)

21 - - - - -

22 **CHAIRMAN JOHNSON:** We'll go back on the
23 record. Issue 3.

24 **MR. STAVANJA:** Commissioners, Issue 3
25 concerns whether or not BellSouth has provided

1 nondiscriminatory access to unbundled network
2 elements, including operation support system
3 functions, pursuant to the ACT and the FCC rules.
4 This issue corresponds with Checklist Item 2.

5 Staff recommends that the Commission find
6 that BellSouth has not met the requirements of the Act
7 or the FCC's rules regarding access to unbundled
8 network elements and operation support system
9 functions.

10 Madam Chairman, a great deal of this issue
11 focuses on operation support system functions.
12 Issue 15, also, as you read the issue, also deals with
13 OSS, and just as a matter of efficiency, Staff was
14 just going to suggest that -- perhaps running these
15 two together, these issues, instead of coming back
16 with an OSS question this afternoon when it's fresh on
17 your mind right now.

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

19 **MR. MUSSELWHITE:** Commissioners, Issue 15
20 concerns whether or not BellSouth has made available
21 telecommunications services for resale in accordance
22 with requirements of Sections 251(c)(4) and 252(d)(3)
23 of the Act.

24 Based on the evidence in the record, Staff
25 felt that BellSouth has not made telecommunications

1 services available for resale in accordance with the
2 requirements of the Act, the FCC's rules and orders,
3 and this Commission's orders, because BellSouth has
4 failed to demonstrate that access to operation support
5 system functions that it provides to competing
6 carriers is equivalent to the access it provides to
7 itself.

8 Staff is prepared to answer any questions.

9 **CHAIRMAN JOHNSON:** Commissioners?

10 **COMMISSIONER DEASON:** Well, I guess we can
11 attempt to go through. I can say up front that I
12 agree with Staff's final bottom line recommendation
13 and that is that there needs to be a no vote, Issue 3.

14 The question is, how much time do we want to
15 spend going through these items. While I would like
16 to finish as quickly as anybody else in this room, I
17 think it's vitally important that we address issues
18 that we feel do not meet compliance so that we can
19 here again make sure that the order is complete and
20 gives the guidance where we think it's necessary.

21 So with that, I think we probably need to go
22 through each one of these. I guess we can begin with
23 Problem 1, which begins on Page 101; and I think that
24 can pretty much be summarized to say that interim
25 rates are not necessarily cost-based, and until there

1 are cost-based rates established you cannot meet the
2 checklist compliance for this item. Am I summarizing
3 that correctly?

4 **MR. STAVANJA:** Yes. And the FCC said
5 that -- just to add, that they didn't believe that it
6 would be proper to allow an RBOC into the long
7 distance market when its competitors, you know, the
8 other carriers, would be using rates that were not
9 permanent. They labeled them as unfair rates. And
10 so, you know, that's just what the FCC said. And we
11 believe that temporary rates or interim rates just do
12 not comply with the Act.

13 **COMMISSIONER DEASON:** Now, in the Ameritec
14 order, the FCC indicated that interim rates were
15 acceptable?

16 **MR. STAVANJA:** No. They said interim rates
17 were acceptable for -- you know, if you're saying that
18 an agreement is a binding agreement. They never said
19 that interim rates were okay for checklist compliance
20 or, you know, for the SGAT.

21 **CHAIRMAN JOHNSON:** That's where I was
22 getting confused. Make that distinction; what were
23 they distinguishing? They were saying to approve an
24 agreement -- an agreement would be binding even though
25 it included interim rates?

1 **MR. STAVANJA:** Right. Yes.

2 **CHAIRMAN JOHNSON:** But those interim rates
3 aren't good enough to -- under Track B interim rates
4 can't be used?

5 **MR. STAVANJA:** Yeah. Not only Track B, I
6 mean, as far as the SGAT, but for checklist
7 compliance. The checklist is specific in mentioning
8 252(d), which is the cost-based portion or the
9 requirement, and it's specific that cost-based rates,
10 you know, must be approved; and that's not the case
11 here. We do not have all rates that are, you know,
12 permanent cost based rates.

13 **COMMISSIONER DEASON:** Well, that's all the
14 questions I have on that problem, on Problem 1. On
15 Problem 2 it says this is addressed in Issue 5. Do
16 you want to address it here or at Issue 5?

17 **CHAIRMAN JOHNSON:** I think I had some more
18 questions --

19 **COMMISSIONER GARCIA:** I think we're better
20 off --

21 **COMMISSIONER DEASON:** Oh, I'm sorry.

22 **CHAIRMAN JOHNSON:** -- on 1, I think. I
23 can't really -- going back to, I think it was AT&T and
24 MCI's Witness Woods, when we talked about the UNE
25 problem, they raised a couple of things. They said

1 that -- first, of course, they said you had to have
2 permanent rates, and then that those rates that the --
3 even though we had permanent rates, where we did have
4 permanent rates, those rates weren't sufficient under
5 the Act or -- I guess -- and I don't know if they were
6 saying Act and FCC rule -- because we should have
7 deaveraged. Is that in this issue, Problem 1 where
8 they talk --

9 **MR. STAVANJA:** Yes.

10 **CHAIRMAN JOHNSON:** -- about -- they talk
11 about deaveraging, also about the costing methodology
12 that we used, that we should have used; TELRIC, and of
13 course you explained that out with the 8th Circuit.

14 But on the issue of we need to deaverage the
15 wholesale rates even if we kept the retail rates the
16 same -- and I think it was in this problem that Staff
17 kind of laid that out, and Bell said, too, yeah, well,
18 certainly we recognize that there's a difference, but
19 if you're going to address that difference, you need
20 to look at it in the context of universal service.

21 And Staff had a sentence, I think in this
22 issue, that said you don't necessarily disagree that
23 we need to deaverage these things, but we don't have
24 to address it.

25 **MR. STAVANJA:** Yeah. In the arbitration

1 proceeding with AT&T, MCI, BellSouth, we didn't
2 address geographic deaveraging of the rates. We
3 didn't have cost studies. We didn't have cost
4 information to do that, and what we -- what Staff
5 recommended then was that the Act says, you know, it
6 could allow a geographic deaveraging, but it doesn't
7 mandate that geographic deaveraging of rates must
8 occur.

9 And certainly if an issue, a direct issue,
10 was raised saying, you know, we want geographic
11 deaveraged rates, and the information is there for us
12 to do so, Staff doesn't have a problem with that. And
13 all we're saying is, is it wasn't brought -- you know,
14 all that information wasn't brought to us back then,
15 and so it's not necessarily -- doesn't necessarily
16 mean that our rates are not good.

17 **CHAIRMAN JOHNSON:** Because the law doesn't
18 require --

19 **MR. STAVANJA:** Right. It doesn't
20 specifically require it.

21 **CHAIRMAN JOHNSON:** Now, in those arbitration
22 proceedings did the parties request deaveraged rates,
23 but -- that's the question. I'll start one at a time.
24 Did they request them?

25 **MR. STAVANJA:** I don't recall that they

1 actually asked for them. I believe that that was part
2 of the Hatfield results that they said the Hatfield
3 can come with geographically deaveraged rates, or can
4 produce them; but I don't recall --

5 **MR. GREER:** Commissioners, the issue in the
6 arbitration proceeding was essentially what should be
7 the price of each of the items considered to be
8 network elements, capabilities or functions. It
9 didn't specifically address the geographical
10 deaveraging.

11 **CHAIRMAN JOHNSON:** And I guess this is sort
12 of an aside, but it may be an issue that we'll have to
13 deal with; and I was just kind of trying to get some
14 feedback as to how Staff is kind of thinking through
15 that issue, because Bell made it clear that if we do
16 go down that road, that we should look at this in the
17 context of universal service and that it could have
18 some severe ramifications on the company.

19 And given the fact that Staff said that, you
20 know, perhaps deaveraging should be considered, I was
21 wondering if we had been thinking of that issue in the
22 context of the broader impact in the universal service
23 issues. I just think it's going to come back to us.

24 **MR. GREER:** I think essentially it's
25 probably going to have to go hand in hand with that.

1 **CHAIRMAN JOHNSON:** Okay.

2 **MR. GREER:** Because that is going to be a --
3 what I have seen as far as rates, you know, there's
4 considerable difference in the range; and so I think
5 that's going to probably have to go together with
6 universal service.

7 **CHAIRMAN JOHNSON:** Okay. So we aren't -- to
8 the extent -- I think Staff had said earlier that if
9 we got a request, we'd handle it on a case-by-case
10 basis. If someone requested that the rates be
11 deaveraged, Staff thought that perhaps that may not be
12 a bad idea. But would we look at it on a case-by-case
13 basis, or how would we deal with that issue?

14 **MR. GREER:** Well, we're -- you know, the
15 arbitration proceeding we'd made the decision that we
16 weren't going to deal with it because we didn't have
17 the information to deaverage at that time. So, I
18 mean, the way we look at that type arbitration
19 proceedings is if you can't negotiate rates, then you
20 come in and file some kind of request, and then we
21 deal with that via that request.

22 **CHAIRMAN JOHNSON:** Now, don't we have -- and
23 this I just need, again, clarification. We have some
24 outstanding rates -- we have some interim rates in
25 place that we have petitions that have been filed for

1 permanent rates.

2 **MR. GREER:** We have proceedings scheduled
3 for January to set permanent rates for the interim
4 rates that we set in the arbitration proceedings.

5 **CHAIRMAN JOHNSON:** Now, will this issue come
6 up in that context?

7 **MR. GREER:** Probably not, because they're
8 not -- unbundled loop element is not a specific rate
9 outside of a combination, if I recall right. My folks
10 down here can correct me if I'm wrong.

11 **CHAIRMAN JOHNSON:** Okay.

12 **COMMISSIONER DEASON:** What is the time frame
13 we're looking at in those filings to get cost-based
14 rates in lieu of interim?

15 **MS. BARONE:** The hearing is January 26th.
16 I'm trying to recall when the -- do you know when
17 the --

18 **MR. GREER:** I think the -- April, March.
19 March-April, somewhere around in there.

20 **MS. BARONE:** I think it's March.

21 **COMMISSIONER DEASON:** So we're moving along
22 fairly rapidly with that.

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

24 **MS. SIRIANNI:** Testimony is due
25 November 13th, which is just next week.

1 **CHAIRMAN JOHNSON:** And we would have to have
2 all of those permanent rates in place before this
3 checklist could be met?

4 **MR. STAVANJA:** I believe so, Commissioner.
5 That's our recommendation.

6 **COMMISSIONER DEASON:** Well, let me ask this
7 question. I guess it's kind of theoretical. What if
8 a situation like this, or maybe some other situation,
9 where a regulatory process has to take place to
10 actually define something or specify a rate. If it's
11 Bell's intention that they're going to comply with
12 whatever rate we set, why is it that they would not be
13 considered compliant?

14 **COMMISSIONER GARCIA:** It almost brings up
15 the question why we took all this time. If we're
16 not -- if we're not going to have that done until
17 March, what are we doing with all this process?

18 I mean, Commissioner Deason brings a very
19 valid point in the sense that if that's what they're
20 going to take, why do we have -- why can't we just
21 approve the --

22 **MR. GREER:** The 271 proceeding is a snapshot
23 in time and, you know, unfortunately as far as costs
24 are concerned, or the rates are concerned, they're
25 still interim. They're not a snap -- they're not cost

1 based as per requirements of 252(d)(1), which says
2 they have to be cost based, and that's -- I mean, yeah
3 you're right. I mean, Bell has a choice of when they
4 file this thing. We don't govern that.

5 **COMMISSIONER GARCIA:** Oh, but we are
6 going --

7 **COMMISSIONER DEASON:** I guess my concern is
8 that for the next 271 filing, I don't know what time
9 frame folks would be looking at. I would not want to
10 be the cause of the delay of a filing for us to make a
11 regulatory decision. And it could be that, I mean, if
12 a decision is imminent, it could be in their filing,
13 they simply say, we're going to charge whatever
14 cost-based rates the Florida Public Service Commission
15 authorizes us to charge. And why would that not be
16 compliant?

17 **MR. GREER:** Because we specifically said in
18 the arbitration proceedings "These rates are not cost
19 based, they're interim rates." Now, the other option
20 that we could have done in the interim -- in the
21 arbitration proceedings was essentially don't put a
22 rate; don't set a rate at all. And then the
23 competitors couldn't get that service until we finally
24 got to the point of setting a firm rate. We didn't
25 want to do that. We set interim rates and we said,

1 this is what they are, but make clear that they're not
2 cost based.

3 **COMMISSIONER DEASON:** And I think we all
4 accepted that. That's where we are, and it's no fault
5 of anybody. That's just where we are. Those
6 cost-based rates have not yet been determined. And
7 what I'm indicating is that we have to go through a
8 regulatory process, testimony, hearings, briefs, all
9 the due process.

10 I guess the difficulty I'm having is the
11 time it takes to go through that process by the way
12 we're defining the position on this issue is that we
13 would be saying that there could be no 271 filing
14 until that process is complete, and that perhaps is
15 unnecessarily delaying final approval of a 271 filing;
16 and that's the difficulty I'm having.

17 **MR. GREER:** Right. And I guess, you know,
18 where we're at essentially is the Act says they have
19 to be cost based and, you know, we're moving as
20 quickly as we can to get those interim rates that we
21 set in those arbitration proceedings cost based.

22 Now, If somebody files another arbitration
23 and they haven't set rates and we're in the process of
24 setting rates, would that preclude BellSouth from
25 filing a 271 filing? Right off the top of my head, I

1 would say no, because we haven't finished the
2 proceeding, arbitration proceeding.

3 **COMMISSIONER DEASON:** What about our legal
4 Staff? You understand my question is --

5 **MS. BARONE:** Yes.

6 **COMMISSIONER DEASON:** -- that if they have
7 no choice but to charge the cost-based rates that we
8 say they're authorized to charge, would they be
9 precluded from making a 271 filing, and say --

10 **MS. BARONE:** Commissioner --

11 **COMMISSIONER DEASON:** -- right now we're
12 charging interim, but we know that in a matter of
13 three weeks there's going to be an order out telling
14 us these are the rates, and we're going to charge
15 whatever rates the Commission tells us to charge.

16 **MS. BARONE:** Commissioner Deason, I don't
17 think -- first of all, we've got several problems with
18 the UNEs, so we are not recommending that the
19 Commission fail this checklist item just because we
20 don't have cost-based rates for a couple of elements.
21 What --

22 **COMMISSIONER GARCIA:** I know, but I think
23 what Commissioner Deason is trying to do is -- as we
24 go through this is narrow these down so that we can
25 deal with them.

1 **MS. BARONE:** Correct. Yes, sir, I
2 understand. And what I was going to say is that what
3 we can say in the order is what you just said. Again,
4 you're consulting. We don't think that they should
5 fail on this. We don't think that we're going to
6 have -- we have a proceeding in place. We're going to
7 be setting cost-based rates, and we don't think
8 BellSouth should fail because of this, because we are
9 going to have those rates in place soon.

10 **COMMISSIONER DEASON:** So you're saying in a
11 subsequent 271, that we would have the latitude to
12 express that in our consultative role to the FCC?

13 **MS. BARONE:** You can say that right here in
14 this order.

15 **COMMISSIONER DEASON:** In this order.

16 **MS. BARONE:** In this recommendation. You
17 can say -- lay it out; we have a proceeding, we've
18 taken official recognition of the arbitration
19 proceedings. We can state that we have proceedings in
20 place in January and that the Commission will be
21 setting permanent cost-based rates at that, and then
22 the FCC will have that information before them, and by
23 the time -- and if BellSouth were to file after today
24 or sometime in January or February, then they will
25 have the information. If we have any other subsequent

1 orders, they will have that information available at
2 that time.

3 **CHAIRMAN JOHNSON:** But all that we could say
4 is that we would be setting the rates. Bell would
5 always have the option, if they did not agree, to
6 appeal or petition -- they may not be willing to just
7 accept in the first instance what we come up with.

8 **MS. BARONE:** That's true, and they can ask
9 for reconsideration here if they want to.

10 **CHAIRMAN JOHNSON:** I don't have any more
11 questions on Problem 1. Problem 2?

12 **COMMISSIONER DEASON:** The question I had on
13 Problem 2 was that apparently the provisioning of the
14 requested loops, there was a problem there, and it was
15 said that it's being addressed in Issue 5. And my
16 question is, do you want to address it here or
17 Issue 5?

18 **MR. STAVANJA:** I think it's probably more
19 complete in Issue 5. That's the reason why I kept it
20 short here. If you want to just do that, that's fine.

21 **COMMISSIONER DEASON:** I have no problem
22 addressing it in Issue 5.

23 **CHAIRMAN JOHNSON:** Problem 3?

24 **COMMISSIONER DEASON:** The question I have on
25 Problem 3, the problem, as stated at the bottom of

1 Page 104, says that BellSouth cannot provide
2 mechanically -- or has not demonstrated that it can
3 provide mechanically generated billing statements for
4 all UNEs.

5 Is that the standard? All UNEs have to be
6 billed on a mechanical basis to be able to be
7 checklist compliant?

8 **MR. STAVANJA:** Yes, if BellSouth provides
9 mechanically generated bills for itself, it must
10 provide it to other carriers.

11 **COMMISSIONER CLARK:** The issue is parity,
12 right?

13 **MR. STAVANJA:** Yes.

14 **COMMISSIONER DEASON:** And that is
15 irregardless of the fact that perhaps there are some
16 UNEs out there that are going to be requested so
17 infrequently that it would be more economic just to
18 write out a manual bill for the few that there may be?
19 I don't know that there are any like that, but I'm
20 just saying what if.

21 **MR. STAVANJA:** That hasn't been --

22 **COMMISSIONER DEASON:** The law is the law.
23 It says parity. If they do it mechanically for
24 themselves, they have to do it mechanically -- of
25 course, they don't provision themselves the UNEs. I

1 mean, that's just part of their network.

2 **MR. STAVANJA:** Right. They --

3 **COMMISSIONER DEASON:** They don't bill
4 themselves for UNEs. So I guess -- what is the parity
5 standard?

6 **MR. STAVANJA:** Well, but if you look at
7 usage, especially usage-sensitive UNEs, like the
8 switching component or their recording the minutes
9 that they go across the switch, Bell records that
10 information for itself. It has to. And since it
11 does, it needs to provide it to the ALECs, and that's
12 a situation where they do provide it in a sense.

13 I mean, they provide all UNEs to themselves.
14 They don't order a UNE for themselves, except there
15 are certain -- you know, when a new building is built,
16 for example, and they have to run whatever facilities
17 out to that building and they order that, they put out
18 an order for that. So in a sense they do provide
19 themselves UNEs, but it's not the same in all respects
20 as an ALEC orders UNEs.

21 All I can say is that the FCC has said
22 that -- you know, the parity standard. They provide
23 mechanically, you know, generated bills.

24 **COMMISSIONER DEASON:** So the problem is that
25 it's not -- it's all -- and they're not putting in the

1 correct format, the ones that they are billing
2 mechanically?

3 **MR. STAVANJA:** There's a national --

4 **COMMISSIONER DEASON:** They're not doing
5 it -- I'm sorry. Is it CABS?

6 **MR. STAVANJA:** Right.

7 **COMMISSIONER DEASON:** Is that correct?

8 **MR. STAVANJA:** CABS is the national
9 standard. A great deal of that was discussed in the
10 arbitration proceeding, also. There has been no
11 evidence that BellSouth can provide CABS-formatted
12 billing. The bills that were provided in this
13 proceeding were CLUBs, which -- or CLUB format which,
14 to my understanding, is kind of a CRIS type bill,
15 generated or formatted bill. It's not a CABS
16 formatted bill, and --

17 **COMMISSIONER DEASON:** So you're simply
18 saying that to be checklist compliant, they will have
19 to provide CABS-formatted bills for all UNES?

20 **MR. STAVANJA:** Yes, sir.

21 **COMMISSIONER DEASON:** That's all the
22 questions I have on Problem 3.

23 **CHAIRMAN JOHNSON:** Problem 4?

24 **MR. STAVANJA:** I guess I kind of hit on
25 Problem 4 already. This is the -- some more of the

1 usage situation, that they haven't billed for usage.

2 **COMMISSIONER DEASON:** But it was Staff's --
3 I mean, it was BellSouth's position that providing
4 that billing detail that is the usage part of that,
5 that it's really not part of the unbundled switching,
6 it's not part of the rate, the cost rate for unbundled
7 switching as it was determined.

8 **MR. STAVANJA:** That's their position; yeah,
9 that --

10 **COMMISSIONER DEASON:** Do you agree or
11 disagree with that?

12 **MR. STAVANJA:** I would have to look at a
13 cost study to really see if that's true.

14 **COMMISSIONER DEASON:** They're not saying
15 they won't provide it. Aren't they just saying they
16 want to be compensated for providing --

17 **MR. STAVANJA:** Right. That's what they've
18 said, and -- but the parties have asked for it. They
19 requested it, you know, that they get it. Now,
20 nobody -- nobody said -- the intervenors didn't say,
21 well, the issue has been -- the reason why Bell didn't
22 give it to us is because they say we have to pay a
23 different rate. They never said that. They just said
24 they asked for it. They didn't receive it.

25 This is the first time here at this

1 proceeding that I ever heard anything that -- you
2 know, and it came from BellSouth saying, well, if they
3 think they're going -- if the intervenors or the
4 carriers think that they're going to get -- you know,
5 have us do this recording, you know, for free or for
6 the price that we're going to do for switching, but
7 they're not going to do that, there's a separate rate
8 and we'll do it, but it's going to be for a separate
9 rate, well, that's the first I heard of that.

10 **COMMISSIONER DEASON:** Well, it appears this
11 is something that needs to be worked out between the
12 parties, and if can't be worked out, a dispute filed.

13 **MR. STAVANJA:** Exactly, sir.

14 **COMMISSIONER DEASON:** Would you agree
15 with --

16 **MR. STAVANJA:** I do.

17 **CHAIRMAN JOHNSON:** Problem 5.

18 **COMMISSIONER CLARK:** I'm not sure what we're
19 supposed to do with this. I sense that --

20 **COMMISSIONER DEASON:** I guess that the
21 problem I'm having is that I'm having difficulty
22 saying that BellSouth is not checklist compliant for
23 this reason, because we haven't addressed whether --
24 BellSouth's position may be right.

25 It may be the fair thing to do is if they're

1 willing to provide it, provide it and charge a
2 cost-based rate for providing usage information. Or
3 it may be that that is already somehow included in the
4 rate for unbundled switching and there's no need to
5 have an additional rate for the billing usage.

6 **COMMISSIONER CLARK:** I was on Issue 5. I
7 was talking Issue 5.

8 **COMMISSIONER DEASON:** Oh, I'm sorry. I
9 thought we were still on issue -- Problem 4. I'm,
10 sorry.

11 **CHAIRMAN JOHNSON:** Do you want to go back to
12 4, then?

13 **COMMISSIONER DEASON:** No, I just think that
14 we were -- I guess we were saying that it needs to be
15 worked out between the parties, and if it can't be, a
16 dispute needs to be filed.

17 **MR. STAVANJA:** Yes. As I said, this is --
18 to me, this is new. We never set a rate. It was
19 never split out whenever an unbundled switching rate
20 was developed. And I can't tell you that it should be
21 included or should not be; you know, that there's a
22 separate rate that needs to be for recording and
23 providing that usage detail.

24 **COMMISSIONER DEASON:** If we're on Problem 5,
25 I guess the question I have is how do we know that

1 BellSouth's position is contrary to the law?

2 **COMMISSIONER CLARK:** Because your point
3 being that it's unsettled at this --

4 **COMMISSIONER DEASON:** It's an unsettled
5 problem, and I don't -- I can't sit here today and say
6 that, yeah, their position is contrary to the law. I
7 don't know that.

8 **MS. BARONE:** We agree, Commissioner Deason,
9 and I think it's -- the best thing to do is not to
10 include that kind of language and just to state the
11 positions at this point because it isn't -- well, as
12 of the record of this proceeding, it was unsettled.

13 **COMMISSIONER DEASON:** But then that raises
14 the question, then, because as an unsettled matter,
15 then does that mean they're not checklist compliant?

16 **MS. BARONE:** I would note, Commissioner
17 Deason, that we do have one complaint that we will be
18 bringing before you that will deal with this
19 situation -- or two complaints, actually, which we
20 will resolve this issue.

21 And to answer your question, then, no, we
22 can't fail them for this particular segment; no, sir.

23 **CHAIRMAN JOHNSON:** Well, how are we going to
24 resolve it if the law is unsettled?

25 **MS. BARONE:** There is another case that has

1 come out that we'll be able to use in our
2 recommendation to you.

3 **CHAIRMAN JOHNSON:** There is a case that's
4 come out?

5 **MS. BARONE:** Yes. After the record was
6 closed here, the 8th Circuit did come out with another
7 decision, and we'll be bringing that before you.

8 **COMMISSIONER CLARK:** What was the decision?
9 Can you clue us in?

10 **MS. BARONE:** It's the 8th Circuit's
11 decision.

12 **COMMISSIONER CLARK:** What did they say?

13 **MS. BARONE:** They stated that -- well,
14 actually, they vacated a couple of the FCC's rules and
15 said that -- they vacated Rule 501.315(b) through (f),
16 and they also stated quite clearly that
17 Section 252(c)(3) requires an incumbent LEC to provide
18 access to the elements of its network only on an
19 unbundled basis.

20 **COMMISSIONER CLARK:** So that they aren't
21 required to rebundle it. And it appears that if they
22 are required to rebundle it, that they can charge a
23 glue charge.

24 **MR. STAVANJA:** Well, what the 8th Circuit
25 came out with is an RBOC does not have to put the

1 elements together. However, an ALEC can order all the
2 network elements it wants. It can put them together
3 any way it wants. It can recreate a service. And,
4 yes, if BellSouth is going to put them together for an
5 ALEC, they can charge a glue charge.

6 **COMMISSIONER CLARK:** Well, you know, I guess
7 it seems to me -- I have concerns about where you
8 have -- I guess I want to phrase this in such a way
9 that it seems to me that they should have to provide
10 all the unbundled elements. And the question to me
11 is, is it appropriate to say that when you order what
12 is, in fact, a complete service, that you can't use
13 unbundled elements but you have to use resale. Isn't
14 that what it boils down to? I mean, that's the real
15 issue is the pricing.

16 **MR. STAVANJA:** The pricing, yeah.
17 BellSouth's position is if it's going to re-create a
18 service, they should get -- they have to pay resale
19 for it, the resale price.

20 The 8th Circuit Court order doesn't say
21 that. I mean, because if you take each element apart
22 and put it together, that is different than getting
23 all of them together at one time already connected.

24 I mean, if you get a service -- let's say an
25 ALEC orders service to an end user that already has

1 service, you know, already connected, and they say,
2 well, we just want that line or that -- you know, to
3 the end user as it is, it's already connected, don't
4 take it apart. You know. It sounds a lot like resale
5 because they're not doing anything different. It's
6 just a billing change.

7 But if they had to order each individual
8 piece that was taken apart, had to pay to put them
9 back together, that's not the same thing. The reason
10 why is because they had to pay the glue charge.
11 There's an additional cost associated with it that the
12 ALEC has to recover, and that's where the risk comes
13 in.

14 **COMMISSIONER CLARK:** You mean the ILEC has
15 to recover.

16 **MR. STAVANJA:** No. The ILEC will be paid
17 for putting -- I mean, if the ILEC puts it back
18 together, then they'll be compensated for it. But
19 it's up to the ALEC to hopefully get their money out
20 of the end user is what I'm trying to get at.

21 **COMMISSIONER CLARK:** I guess -- what are you
22 trying to say with respect to Problem 5? Just that
23 it's an issue that has to be resolved, and our
24 anticipation is it will be -- whatever way it is
25 resolved will -- BellSouth will have to comply with it

1 to be checklist compliant? Is that what you're
2 saying?

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

4 **COMMISSIONER GARCIA:** I think that's similar
5 to the other issue we discussed. In that manner
6 whatever we decide sort of rules on that issue, but I
7 don't think you could put it at something to achieve
8 when we haven't decided ourselves.

9 **CHAIRMAN JOHNSON:** When are we set to hear
10 the cases?

11 **MS. BARONE:** Actually, one complaint was
12 just -- or another motion to compel was just filed.
13 So we're waiting on the response time on that, which I
14 believe is November 17th. We hope to get a rec to you
15 within the next month.

16 **COMMISSIONER CLARK:** But it may not be our
17 call on this issue.

18 **MS. BARONE:** I think what we're going to do
19 is we'll be presenting the issue to you, and we will
20 be presenting -- we had complaints on the original
21 arbitration proceedings that have to do with
22 recombining UNEs. What we're going to do is bring
23 those -- or motions to compel -- what we're going to
24 do is bring that before you, bring the law before you.
25 You'll have both sides of the argument, and then you

1 can make a determination on that and if -- I think
2 you'll be able to do that based on the law. And the
3 parties, if they disagree with you, can take your
4 decision and appeal it to federal court.

5 **CHAIRMAN JOHNSON:** Are there two different
6 issues here? And perhaps clarify this for me, because
7 maybe they're not separate issues. But the glue
8 charge versus the unbundled/rebundled charging the
9 resale rate as opposed to the unbundled rates, they
10 seem to be in my mind making different arguments as to
11 the circumstances under which a glue charge would
12 apply and circumstances under which they would be able
13 to charge the resale rate.

14 **MR. STAVANJA:** During the proceeding, the
15 problem was that the 8th Circuit Court did not vacate
16 subsection (b) of 51.513, and that's the subsection
17 that states that the ILEC cannot separate currently
18 combined elements. And so what the intervenors were
19 saying is that, well, if we order these elements,
20 Bell, you can't take them apart and then charge us a
21 glue charge; that's against the law. That's what this
22 issue -- that Problem 5 is about.

23 **CHAIRMAN JOHNSON:** Now, which provision were
24 they relying upon, the ALECs, saying that you can't
25 separate these things out?

1 **MR. STAVANJA:** 513 dot B, FCC rules.

2 **CHAIRMAN JOHNSON:** And that's in here
3 somewhere, isn't it?

4 **MR. STAVANJA:** Yeah, it's in the summary. I
5 think it's on -- well, briefly mentioned on Page 90 of
6 the Staff rec.

7 **CHAIRMAN JOHNSON:** So Bell -- a service that
8 would have been -- that is generally provided in a
9 bundled way, Bell was saying, no, we're going to
10 unbundle those and sell them to you on an unbundled --
11 in an unbundled manner, but we will charge you a glue
12 charge to put them back together.

13 **MR. STAVANJA:** Right. And the FCC -- or, I
14 mean, the 8th Circuit Court didn't vacate this rule at
15 the time of the hearing, and so the intervenors were
16 saying, well, wait a minute; this rule still applies.
17 You can't take them apart and charge us a glue charge
18 because this rule right here says you can't do that.

19 **CHAIRMAN JOHNSON:** And now that one was
20 vacated by the last order?

21 **MR. STAVANJA:** Yes.

22 **CHAIRMAN JOHNSON:** But that still is --
23 okay.

24 **MR. STAVANJA:** And that was the reason why
25 in Staff's recommendation we said there's a conflict,

1 and we didn't want to rule on combination. We didn't
2 want to offer a recommendation on combinations, and it
3 was for that very reason. You know, the 8th Circuit
4 Court said, we believe all network elements will be
5 provided on an unbundled basis, yet they didn't
6 vacate, you know, subsection B, which said they had to
7 keep them all together, which was a big conflict. And
8 then the 8th Circuit Court went back again and
9 reviewed this, and now they've vacated subpart B.

10 **CHAIRMAN JOHNSON:** So now the glue charge is
11 an open issue and -- but a separate issue is the
12 unbundling and -- ordering parts, that could be
13 bundled back together to constitute an R-1 and B-1.
14 That's separate from the glue charge, isn't it?

15 **MR. STAVANJA:** Yes.

16 **CHAIRMAN JOHNSON:** Okay. And what did the
17 8th Circuit say about that particular argument?

18 **MR. STAVANJA:** I'm trying to put my finger
19 on it, because if I remember, I thought they said
20 that -- well, let me see if I can find it.

21 **COMMISSIONER CLARK:** Madam Chairman, I think
22 the way to deal with this issue, though, is to simply
23 say that we take -- with regard to whether or not
24 BellSouth can be required to rebundle without charging
25 a glue charge, we note that the law is not yet settled

1 in that area, and we would expect that in order to be
2 checklist compliant, whatever decision is made on that
3 issue they would have to comply with.

4 **CHAIRMAN JOHNSON:** But my only question is,
5 is the law now settled. And the law may say they can
6 do this -- or it -- but it didn't happen in the
7 context of an open record. But if the law -- if
8 there's an opinion out there now saying they can do
9 this, is the law settled, and if it is, how do we
10 address that.

11 **MS. BARONE:** Well, I guess the 8th
12 Circuit -- I mean, you can always appeal, so it may
13 not be settled, but at this point it looks to be
14 settled. And what we're saying is that we are going
15 to deal with this issue in the context of motion to
16 compel compliance with the arbitration orders, and we
17 are going to bring that decision before you so that
18 you can make a policy decision in the context of those
19 motions to compel, not a policy decision, but a legal
20 determination.

21 **CHAIRMAN JOHNSON:** That the appropriate
22 forum would be that --

23 **MS. BARONE:** Yes.

24 **CHAIRMAN JOHNSON:** -- handling those
25 complaints --

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

2 **CHAIRMAN JOHNSON:** -- or whatever they are?

3 **MS. BARONE:** Yes, ma'am, and that gives the
4 parties an opportunity to present their sides. Here
5 this decision came out after the record was closed,
6 after the parties had an opportunity to brief the
7 issue. So this will give them the opportunity to
8 brief that issue.

9 **COMMISSIONER GARCIA:** I think just leaving
10 it as something we're going to look at is more than
11 enough, because I don't think we can ask them to
12 address what we don't know or how we're going to
13 address it. I mean, it's an impossible standard we're
14 creating.

15 There's a hurdle out there. That's all I
16 think we can do. But we can't necessarily say what
17 exactly it is they have to do and we can't -- and even
18 what you're saying, Monica, is we're basically going
19 to be making policy as we go along through complaints.

20 **MS. BARONE:** Well, as we go -- it's very
21 interesting looking at some of the complaints, because
22 in reality when you look at some of them, it's because
23 parties have a different view of what their agreements
24 mean. I mean, it's this process -- parties may go
25 back and think, oh, that's not what I meant. So

1 there's going to be all the kinds of different, I
2 think, issues before you that you'll have to decide.

3 There may be pricing issues. There may be
4 other issues that parties are going to bring before
5 you that may not be policy. It may be, no, we meant
6 this, no, we meant this; and you're going to have to
7 decide what you meant by your order.

8 So you're going to have a lot of things
9 before you, but I think the cleanest way to deal with
10 this situation is I think you're right, Commissioner
11 Garcia. You don't know what your decision is going to
12 be until you actually see what the parties' arguments
13 are, and so it would be better to wait until we come
14 before you with those recommendations.

15 **CHAIRMAN JOHNSON:** And that will be fine.
16 And, Monica, then will those -- or do those complaints
17 address both the glue charge and the rebundling of a
18 service that would constitute R-1 in allowing the
19 resale rate to be charged? Because those are sort of
20 two different issues. I want to make sure we have a
21 forum that we're to be addressing them in total.

22 **MS. BARONE:** Okay. And this is my
23 understanding of all that's going on with respect to
24 those. We've got motions to compel that are asking
25 this Commission to compel compliance with the

1 arbitration agreements. The parties disagree as to
2 what those arbitration agreements mean.

3 I think what what's going to happen is
4 you're going to determine whether combinations can
5 occur, and you'll be applying the law to those motions
6 to compel. Then in January you're going to be looking
7 at the recurring and nonrecurring charges for certain
8 UNEs that were interim.

9 One of the issues in the cost study
10 proceeding, the second issue is what are the
11 nonrecurring and recurring charges for combinations of
12 UNEs. What Staff is attempting to do is to bring to
13 you the issue on combinations before we go into
14 January.

15 For example, if you decide that combinations
16 are appropriate, then in January we will determine the
17 rates, nonrecurring and recurring, and whatever issues
18 may fall from there.

19 If you determine that they are not
20 appropriate, that issue is moot and we will not
21 address that in January. And that's the process that
22 Staff is considering at this time.

23 **CHAIRMAN JOHNSON:** When you say the issue
24 will be whether or not combinations are appropriate or
25 not, I thought we decided that combinations were

1 appropriate; it's what price you would charge.

2 **MS. BARONE:** Yes, ma'am. I'll go back on
3 that. The subject of the motion to compel in the AT&T
4 BellSouth arbitration agreement is AT&T is asking
5 this -- or stating that BellSouth should provide UNE
6 rates for unbundled UNEs. Okay. I believe BellSouth
7 is saying we're not going to -- BellSouth is saying,
8 no, we're not going to unbundle those, you're going to
9 get those at resale. So that's the issue that's
10 before you.

11 **CHAIRMAN JOHNSON:** Now, how does that relate
12 to the glue issue?

13 **COMMISSIONER CLARK:** It's all just pricing.
14 (Simultaneous conversation.)

15 **MS. BARONE:** It's pricing.

16 **COMMISSIONER CLARK:** I mean, they're not
17 really objecting to rebundling the UNEs. What the
18 issue is at what price. Do you provide it --

19 **MS. BARONE:** Exactly.

20 **COMMISSIONER CLARK:** -- at the resale, or
21 when you ask for them to be rebundled can you do it at
22 the UNEs. And I presume it's because the UNEs add up
23 to less --

24 **MS. BARONE:** And we don't know that. And
25 that was your decision back in the arbitration

1 proceedings. You said that you didn't have the
2 information here to determine whether --

3 **COMMISSIONER CLARK:** And that they could
4 bring to us the exact factual situation that shows us
5 that, in fact, rebundling the UNEs results in the same
6 service, but they're paying less than the resale.

7 **MS. BARONE:** Right. And I'm not sure --

8 **COMMISSIONER DEASON:** Well, let me interrupt
9 for a second. Isn't there also a relevant issue out
10 there as to whether if they say they're getting UNEs
11 when really all they are, are just getting everything
12 and reselling it as to whether who gets access
13 charges? Is that an issue? In other words, UNEs --

14 **MR. GREER:** I don't think so, Commissioner,
15 because the FCC, I think, has said essentially, you
16 purchase UNEs, then those are your facilities, and --

17 **COMMISSIONER DEASON:** Those are your
18 facilities, and you're entitled to access charges --

19 **MR. GREER:** Exactly.

20 **MS. BARONE:** Right --

21 **COMMISSIONER DEASON:** Whereas resale you're
22 not.

23 **MR. GREER:** Exactly.

24 **COMMISSIONER DEASON:** So if you order all of
25 the UNEs that really would constitute resale, isn't

1 there an issue, then, as to whether they're
2 circumventing the fact they're really just reselling,
3 and that's what the rates they should be paying is
4 reselling and they forego access charges?

5 **MR. GREER:** With the caveat that the
6 incumbent LEC is not required to put those back
7 together. They either pay a glue charge or they pay
8 whatever -- the incumbent LEC provides access to put
9 those things back together. You know, those rates may
10 be well in excess to cover the access charges --

11 **COMMISSIONER DEASON:** That what I'm saying.
12 You could have a situation where the sum total of all
13 of the unbundled UNEs may be more than the resale, but
14 it's attractive because by doing that you get access
15 charges.

16 **MR. GREER:** Sure.

17 **CHAIRMAN JOHNSON:** I just wanted to make
18 sure we had a forum to address all of those --

19 **COMMISSIONER CLARK:** Where did we determine
20 that when you're just reselling it that you get
21 access -- that you don't get access charges?

22 **MR. GREER:** That's a requirement in the
23 FCC's interconnection order, I believe, that if you
24 resell --

25 (Simultaneous conversation.)

1 **MR. GREER:** -- that the reselling incumbent
2 LEC still collects access charges.

3 **COMMISSIONER CLARK:** What is the logic in
4 that?

5 **MR. GREER:** I guess you're reselling the
6 residential service, and the residential services --
7 you know, access charges are paid to transport and
8 termination. You're just reselling the residential
9 service, the service of the company and not the
10 specific unbundled elements.

11 **COMMISSIONER CLARK:** Chairman Johnson, I
12 think with respect to that issue, we should just note
13 that with respect to recombining UNEs and the
14 appropriate price for that, that is a matter that we
15 will be settling.

16 We note under this issue that it will be a
17 factor in whether nondiscriminatory access is being
18 provided, but we expect to resolve it, and whatever
19 resolution is reached is what will be required to show
20 that there is nondiscriminatory access. Can we do
21 that?

22 **COMMISSIONER GARCIA:** Why don't we just say
23 it in a broader sense. In other words, that this is
24 an issue that we will be looking at next time that
25 this is filed. Because we don't know where that's

1 going to be at --

2 **COMMISSIONER CLARK:** Oh, I see.

3 **COMMISSIONER GARCIA:** And I don't want to
4 put the cart before the horse, because it almost --
5 when you read Staff's analysis, it almost seems like
6 we've created a standard that's impossible to meet,
7 and if we -- we may do it again by saying --

8 **COMMISSIONER CLARK:** Yeah. What you're
9 saying is that --

10 **COMMISSIONER GARCIA:** We're going to look at
11 this -- one of the issues that's important to get past
12 Issue --

13 **COMMISSIONER CLARK:** Three.

14 **COMMISSIONER GARCIA:** Right, 3. That this
15 issue will be addressed in Issue 3. And wherever we
16 are at that level, that that's all we can -- that's
17 all that can be asked of the company. We can't ask
18 them to predict the future, but we certainly can't ask
19 them to file something when we don't have the standard
20 for them to file on yet.

21 **COMMISSIONER CLARK:** Just so I'm clear,
22 you're simply saying that this -- the next time how --
23 the combination of UNES will be an element that we
24 look at in order to determine nondiscriminatory
25 access, and whatever has been decided at that point

1 will be the standard?

2 **COMMISSIONER GARCIA:** Yeah.

3 **MS. BARONE:** That's --

4 **COMMISSIONER DEASON:** But by saying that,
5 are you saying, then, that we cannot find here today
6 that this is a reason to find noncompliance?

7 **COMMISSIONER CLARK:** Well, I think it is a
8 reason for noncompliance in the sense that it's not --
9 that has to be settled in order to be determined if
10 they're in compliance.

11 **COMMISSIONER DEASON:** Well, see, that's the
12 difficulty I'm having. How can you say they're
13 noncompliant when you don't know even what the
14 standard is? You don't know whose position is right
15 or wrong.

16 **COMMISSIONER CLARK:** Well, I guess that gets
17 back to the timing of the whole 271. There are lots
18 of things that had to occur, and this one has not yet
19 occurred.

20 **COMMISSIONER DEASON:** That goes back to like
21 the first problem we talked about in the UNes, and
22 that is the interim rates and them not being cost
23 based. I don't think we need to say they're not
24 compliant, because we're in the process of doing that,
25 and they're going to charge the rates when we do it.

1 I don't know that -- necessarily say that that is a
2 reason to find --

3 (Simultaneous conversation.)

4 **COMMISSIONER GARCIA:** We'll determine --
5 exactly. I don't necessarily think that if Staff was
6 deciding on this issue only on this question, I don't
7 think -- I don't think it would have decided against
8 Southern Bell.

9 **MR. STAVANJA:** Well, Commissioner, there's
10 the two problems in this Problem No. 5, and the one is
11 that the intervenors were saying, you know, if we
12 order a series of elements and they're already
13 connected, you can't take them apart, and -- because
14 BellSouth was saying, well, we're going to take them
15 apart, we're going to charge you a glue charge.
16 That's problem one.

17 The other problem is if we are going to give
18 you all the elements put together and not take them
19 apart, then you're going to get it at resale. Okay.

20 So, the part about the glue charge, I mean,
21 I don't know how to expand on that with the second
22 8th Circuit Court order that vacated, you know,
23 subsection B.

24 But let's focus on the other problem about
25 whether it should be resale or not. And let me just

1 read to you a short little bit about what the
2 8th Circuit said about this. It says: "Although a
3 competing carrier may obtain the capability of
4 providing local telephone service at cost-based rates
5 under unbundled access as opposed to wholesale rates
6 under resale, unbundled access has several
7 disadvantages that preserve resale as a meaningful
8 alternative."

9 It sure sounds like to me what they're
10 saying is, is that unbundled elements are going to be
11 at unbundled rates, all of them. And I don't think --
12 I think there's a difference between getting unbundled
13 elements at unbundled rates and resale. So whether
14 you want to decide that --

15 **COMMISSIONER CLARK:** If they make that
16 decision, there you go; it's settled.

17 **COMMISSIONER DEASON:** I'm sorry. I don't
18 follow your logic. What is clear in the court's
19 language?

20 **MR. STAVANJA:** Well, to me the court is
21 saying that if they order unbundled elements, they're
22 going to pay unbundled element rates, whether they buy
23 one or they buy all of them and combine them together,
24 and --

25 **COMMISSIONER DEASON:** And you're saying that

1 BellSouth is saying that if you order all of the
2 unbundled elements that constitute a service,
3 you're -- we're going to consider that resale; that's
4 in violation.

5 **COMMISSIONER CLARK:** And what I'm saying --

6 **COMMISSIONER GARCIA:** Specifically --

7 (Simultaneous conversation.)

8 **MR. STAVANJA:** Right that's the violation.

9 **COMMISSIONER CLARK:** And what I'm saying is
10 if that's, in fact, what develops out of that
11 complaint process, then that will be what is relevant
12 to determining whether or not this is
13 nondiscriminatory access.

14 **COMMISSIONER GARCIA:** Because I don't think
15 we as a Commission decided that; and, in fact, I think
16 we avoided specifically -- that was one of the issues
17 that we didn't decide.

18 **MR. GREER:** Well, that's true. That's very
19 true, but this didn't exist at that time either, and
20 I'm just pointing out what the 8th Circuit order says
21 right now.

22 **MS. SIRIANNI:** I just wanted to bring one
23 thing out. Chairman Johnson had asked if in the
24 proceedings coming up if the -- both the glue charge
25 and the interim rates and the nonrecurring -- the

1 pricing, all that was included in this, I would say
2 that what that proceeding is is exactly what
3 Commissioner Clark said. It's a matter of pricing as
4 to whether they should be unbundled elements or resale
5 and how that falls out.

6 But as to specific separate glue charges for
7 putting those back together, that is not a part of
8 that proceeding, and that was not a part of the
9 original arbitration proceeding. I just wanted to --

10 (Simultaneous conversation.)

11 **COMMISSIONER DEASON:** But in the record of
12 this proceeding, didn't BellSouth testify that if an
13 entity requested unbundled elements, all of those that
14 constitute a service, they will provide -- they will
15 unbundle them and provide them and charge the
16 unbundled rates, but then they're also going to charge
17 a glue charge?

18 **MS. SIRIANNI:** That was Bell's position.
19 That is --

20 **COMMISSIONER DEASON:** And as a result --

21 **MS. SIRIANNI:** -- my understanding.

22 **COMMISSIONER DEASON:** And as a result of the
23 second order from the 8th Circuit?

24 **COMMISSIONER CLARK:** It wasn't out then.

25 **COMMISSIONER DEASON:** It wasn't out then?

1 **MS. SIRIANNI:** It was not issued at the --
2 (Simultaneous conversation.)

3 **MS. SIRIANNI:** -- closing of this
4 proceeding.

5 **COMMISSIONER DEASON:** Well, regardless,
6 if --

7 **COMMISSIONER GARCIA:** Then --
8 (Simultaneous conversation.)

9 **COMMISSIONER DEASON:** -- they're willing to
10 do that -- if BellSouth is willing to do that, how is
11 it they're not compliant? I mean, the question is if
12 they do that, they're going to charge a glue charge,
13 and the question of whether the glue charge is or is
14 not appropriate or legal, that's not been resolved.

15 So how is it that their decision to unbundle
16 and charge the unbundled elements -- but if it
17 constitutes all of the services, then they're going to
18 put a glue charge on that to recombine them, how is
19 that noncompliant?

20 **MR. STAVANJA:** Commissioner Deason, at the
21 time of the proceeding that subsection B -- we didn't
22 have the second 8th Circuit Court order that vacated
23 subsection B. That's why we were seeing this in
24 violation, that BellSouth was going to take apart
25 something that subsection B said they can't do; they

1 cannot do that. That's why we were saying it was in
2 violation.

3 **COMMISSIONER DEASON:** But they now they said
4 that they can take it apart.

5 **MR. STAVANJA:** Right. And we weren't saying
6 anything because it wasn't part of the proceeding.
7 Okay. This was just brought up. You're made aware of
8 it now. And that's why it kind of changes what's
9 here. You know, can you recognize that or not. I
10 don't know.

11 **MS. SIRIANNI:** I think if you were to, you
12 know, say that this --

13 **COMMISSIONER GARCIA:** Well, let me --

14 **MS. SIRIANNI:** -- proceeding is closing --
15 (Simultaneous conversation.)

16 **COMMISSIONER GARCIA:** Let me understand
17 where you are, because now I'm really confused. Are
18 you saying we were in a vacuum or we are in a vacuum?
19 What exactly -- are they contrary to law as it was
20 when we began deciding this --

21 **UNIDENTIFIED SPEAKER:** Yes.

22 **COMMISSIONER GARCIA:** -- or are they in
23 compliance of the law in today's -- with today's
24 ruling -- I'm sorry. Are they in compliance with what
25 we found out later?

1 **MS. BARONE:** Commissioner Garcia, the
2 recommendation was that they were out of compliance
3 during the term of the recommendation and at the close
4 of the proceeding.

5 What we're saying now is that we have new
6 information that we will be able to bring before you
7 so that you can revisit this. So they're not -- right
8 now it's like they were, but now we need to revisit
9 this and we --

10 **COMMISSIONER GARCIA:** Are you saying they
11 were? Not --

12 **MS. BARONE:** They were out of --

13 (Simultaneous conversation.)

14 **MS. BARONE:** They were out of compliance.
15 Now we have the information, but the parties haven't
16 had an opportunity to file briefs on this and discuss
17 this. So --

18 **COMMISSIONER GARCIA:** Go back to --

19 **COMMISSIONER CLARK:** I understand --

20 (Simultaneous conversation.)

21 **COMMISSIONER CLARK:** I understand that the
22 8th Circuit -- have not looked at it, but I understand
23 it's not all that clear to everybody just exactly what
24 they mean, because they hit it tangentially, but they
25 didn't hit it straight on and as to what can be done

1 and what can't.

2 **MR. GREER:** Commissioners, there's a section
3 in the 8th Circuit order that says "Obtaining finished
4 services through unbundled access," and the provision
5 in that says, "We believe that the FCC's determination
6 a competing carrier may obtain the ability to provide
7 telecommunications services entirely through an
8 incumbent LEC's unbundled network elements is
9 reasonable, especially in light of our decision
10 regarding the validity of other specific FCC rules."

11 And what that's meaning is, you can use the
12 unbundled elements, but, you know, the incumbent LEC
13 first doesn't have to put them back together for you.
14 And I would say that that gives you two options: You
15 either pay a glue charge or the incumbent LEC has to
16 provide access so you, the ALEC, can put the unbundled
17 elements back together themselves --

18 (Simultaneous conversation.)

19 **MR. GREER:** And that's a choice that the
20 incumbent LEC has -- or the competitor has to make; do
21 I want to pay the glue charge, or do I want to pay
22 collocation or whatever to hook the unbundled elements
23 together.

24 **CHAIRMAN JOHNSON:** Stan, let me ask you one
25 question -- and no matter how we frame this particular

1 issue -- there is a hint of a jurisdictional issue
2 here. Is this an issue for the FCC to decide, or is
3 it a pricing issue that we need to articulate very
4 clearly that it's a pricing issue that we'll be
5 addressing?

6 **MR. GREER:** I --

7 **CHAIRMAN JOHNSON:** -- a pricing issue or
8 bundling/unbundling issue.

9 **MR. GREER:** We're kind of stuck in a problem
10 in that we have some arbitrated agreements that say,
11 you know, "BellSouth, you will recombine unbundled
12 elements." It doesn't say whether or not what the
13 price would be. So there is that pricing issue
14 that -- for the agreements concerned.

15 The other is, say, the pricing is at resale.
16 Is that an appropriate -- or should Bell give access
17 to an ALEC to provide -- to bundle the unbundled
18 elements themselves? That's an issue I don't think we
19 have dealt with yet that would --

20 **CHAIRMAN JOHNSON:** Should we deal with it?

21 **MR. GREER:** Well, and it may come out in our
22 January proceeding because it essentially is, you
23 know, what -- well, maybe not either, because it says,
24 you know, what are the combination rates. And I guess
25 you could throw in a glue charge or unbundled element,

1 you know, a mechanism to combine unbundled elements,
2 and whatever you're going to charge for that. I guess
3 that's how it could play out. Whether or not that's
4 what we intended when we set up the January hearings,
5 I'm sure it's not.

6 And so I'm not sure where we need to be to
7 address the two issues that I think we have. You
8 know, the glue charge is one, and then what kind of
9 access is necessary to allow competitors to bundle the
10 elements back together themselves. You know, from an
11 engineering perspective, that's kind of hard to
12 envision Bell giving access to go hook a loop and a
13 port together.

14 It would make sense to me that the glue
15 charge would be somewhat -- somewhat low enough that
16 that would give incentive to the competitor to do that
17 and, you know, let Bell -- pay Bell that and let them
18 do it versus trying to figure out how to fit those two
19 together.

20 But I don't think we've addressed them. And
21 our intent in this issue specifically was, there
22 appears to be a conflict, and since we didn't have the
23 second 8th Circuit order in the record, we preferred
24 to say, "There appears to be a conflict, we have some
25 proceedings that we're going to bring to you; let's

1 not make a call on this one way or the other."

2 **CHAIRMAN JOHNSON:** Do we say there appears
3 to be a pricing conflict? And I raise this, and I'm
4 being retentive about it, because when we had the
5 original discussion, one of the things we were saying,
6 sure, FCC, they've determined what can be unbundled,
7 and we deferred to them on that. But the way
8 BellSouth raised the argument when they came back for
9 reconsideration was, like, wait a minute Commission,
10 this is about pricing, this isn't about bundling and
11 unbundling, and you should have the authority to set
12 the pricing.

13 And I don't know. Do we send that message
14 to the FCC that we are dealing with this issue in
15 terms of what the glue -- if there is a glue charge,
16 what the glue charge should be, and on the issue of
17 what the charge should be for rebundling, that that's
18 within our jurisdiction? Do we send that kind of
19 message to them on this issue or do we leave it open?

20 **MR. GREER:** When we originally dealt with
21 it, we said that we had not arbitrated the pricing
22 issue, and -- but I think it's split now into a couple
23 of issues. You know, one is the pricing issue. Does
24 BellSouth -- can they charge whatever they want to to
25 the glue charge? That hasn't been determined yet. Is

1 that something that has to be based on cost? I think
2 that's a fight that we're going to have to fight.

3 And then the other is, okay, say they -- say
4 somebody doesn't want Bell to put them back together;
5 they want to put them back together. Then what kind
6 of access is going to be required? So it's a pricing
7 issue and it's also not a pricing issue.

8 **CHAIRMAN JOHNSON:** Okay. Well, I think
9 however we draft it -- I know we aren't going to
10 resolve it today -- but we need to be careful to
11 delineate what the issues are and what we think we'll
12 be addressing in the next several months.

13 **COMMISSIONER GARCIA:** I don't know if we
14 have to do that here, Madam Chairman. I --

15 **CHAIRMAN JOHNSON:** I think we should,
16 though, because if we don't, the FCC -- and we have
17 the authority to do that, then the FCC might do it for
18 us.

19 **COMMISSIONER GARCIA:** You're saying to
20 simply protect what jurisdictionally is --

21 **CHAIRMAN JOHNSON:** Yeah, at least on the
22 jurisdictional issue. If we believe that resolving
23 this may -- that we should resolve this because it
24 will be a pricing issue, then we need to say that. We
25 don't have to say what the price is going to be, but

1 at least put them on notice, if that's what we think.

2 If we think it's something they can resolve,
3 then, fine. But I think we need to at least determine
4 amongst ourselves how we think this should play out.

5 **MR. GREER:** Commissioners, I think both
6 issues fall within our jurisdiction, you know, maybe
7 as bad as I hate to say that; but I think they do.
8 And the pricing issue clearly has been kicked back to
9 us from the 8th Circuit, and I think the terms and
10 conditions of an unbundled element is also with us if
11 a party can't negotiate those terms and conditions via
12 arbitration proceeding or something else.

13 **MS. BARONE:** Madam Chairman?

14 **CHAIRMAN JOHNSON:** We're going to go ahead
15 and take a lunch break until 1:30.

16 (Thereupon, lunch recess was taken at 12:40
17 p.m.)

18 (Transcript follows in sequence in
19 Volume 2.)

20 - - - - -

21

22

23

24

25