

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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In the Matter of
Petition by Metropolitan Fiber
Systems of Florida, Inc. for
arbitration with BellSouth
Telecommunications, Inc.
concerning interconnection, rates,
terms, and conditions, pursuant to
the Federal Telecommunications
Act of 1996.

DOCKET NO. 960757-TP

Petition by AT&T Communications
of the Southern States, Inc. for
arbitration of certain terms and
conditions of a proposed agreement:
with BellSouth Telecommunications
Inc. concerning interconnection
and resale under the
Telecommunications Act of 1996.

DOCKET NO. 960833-TP

Petition by MCI Telecommunications
Corporation and MCI Metro Access
Transmission Services, Inc. for
arbitration of certain terms and
conditions of a proposed agreement:
with BellSouth Telecommunications,
Inc. concerning interconnection
and resale under the
Telecommunications Act of 1996.

DOCKET NO. 960846-TP

PROCEEDINGS: MOTION HEARING



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BEFORE: COMMISSIONER SUSAN F. CLARK
Prehearing Officer

DATE: Tuesday, January 20, 1998

TIME: Commenced at 3:35 p.m.
Concluded at 4:20 p.m.

PLACE: Betty Easley Conference Center
Room 152
4075 Esplanade Way
Tallahassee, Florida

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

1 **APPEARANCES:**

2 **DOUGLAS LACKEY and NANCY B. WHITE**, BellSouth
3 Telecommunications, Inc., c/o Nancy Sims, 150 South
4 Monroe Street, Suite 400, Tallahassee, Florida
5 32399-0850, appearing on behalf of **BellSouth**
6 **Telecommunications, Inc.**

7 **FLOYD R. SELF**, Messer, Caparello, & Self,
8 215 South Monroe Street, Post Office Box 1876,
9 Tallahassee, Florida 32302-1876, appearing on behalf
10 of **WorldCom and Metropolitan Fiber Systems of Florida.**

11 **RICHARD D. MELSON**, Hopping Green Sams and
12 Smith, Post Office Box 6526, Tallahassee, Florida
13 32314, appearing on behalf of **MCI Telecommunications**
14 **Corporation.**

15 **TRACY HATCH**, AT&T Communications of the
16 Southern States, Inc., 101 East College Avenue,
17 Suite 700, Tallahassee, Florida 32301-1509, appearing
18 on behalf of **AT&T Communications of the Southern**
19 **States, Inc.**

20 **BETH KEATING and, CHARLIE PELLEGRINI**,
21 Florida Public Service Commission, Division of Legal
22 Services, 2540 Shumard Oak Boulevard, Tallahassee,
23 Florida 32399-0870, appearing on behalf of the
24 **Commission Staff.**

25 **P R O C E E D I N G S**

1 (Hearing convened at 3:35 p.m.)

2 COMMISSIONER CLARK: Let's call this
3 proceeding to order. I can't remember what it was.
4 What is it titled?

5 MR. PELLEGRINI: This is a motion hearing.

6 COMMISSIONER CLARK: Motion hearing. Please
7 read the notice.

8 MR. PELLEGRINI: Pursuant to notice dated
9 January 14, 1998, this time and place have been set
10 for a motion hearing in the consolidated dockets
11 960833-TP, 960846-TP, 960757-TP, the petitions
12 respectively for arbitration with BellSouth of AT&T,
13 MCI and MFS or WorldCom.

14 COMMISSIONER CLARK: We'll take appearances.

15 MS. WHITE: Nancy White and Doug Lackey for
16 BellSouth Telecommunications.

17 COMMISSIONER CLARK: Don't you want to come
18 up to the table, Mr. Lackey?

19 MR. LACKEY: Not until I see which way the
20 blood is going to flow. (Laughter)

21 MR. SELF: Floyd Self appearing on behalf of
22 WorldCom.

23 MR. HATCH: Tracy Hatch appearing on behalf
24 of AT&T of the Southern States, Inc.

25 MR. MELSON: Richard Melson appearing on

1 behalf of MCI Telecommunications Corporation.

2 **MR. PELLEGRINI:** Charles Pellegrini and Beth
3 Keating appearing for the Public Service Commission
4 Staff.

5 **COMMISSIONER CLARK:** Okay. Mr. Pellegrini,
6 what are we here on?

7 **MR. PELLEGRINI:** Commissioner Clark, we have
8 two motions to be ruled upon today. The first of
9 these is a Motion to Strike testimony, a Joint Motion
10 to Strike testimony filed by WorldCom.

11 **COMMISSIONER CLARK:** This is the OSS
12 testimony?

13 **MR. PELLEGRINI:** Yes.

14 **COMMISSIONER CLARK:** Okay.

15 **MR. PELLEGRINI:** And the second is a Motion
16 to Compel discovery, which was filed by Staff. And
17 they should be taken up in that order I think.

18 **COMMISSIONER CLARK:** It's your motion,
19 Mr. Self; is that correct?

20 **MR. SELF:** Yes.

21 **COMMISSIONER CLARK:** But who else has signed
22 on?

23 **MR. SELF:** AT&T and MCI.

24 **COMMISSIONER CLARK:** All right. Who am I
25 going to hear from?

1 MR. SELF: Me.

2 COMMISSIONER CLARK: And then --

3 MS. WHITE: Me.

4 COMMISSIONER CLARK: -- BellSouth will
5 respond. Okay. Mr. Self, how long do you need?

6 MR. SELF: Just a couple of minutes.

7 COMMISSIONER CLARK: Great.

8 MR. SELF: I worry, Commissioner Clark, this
9 strikes me as something that's pretty simple and
10 straightforward, and I worry even more when after
11 previously losing a motion, I then have the
12 opportunity to argue that against someone else, but
13 that's what I'm going to do for today.

14 Basically there's three points I'd like to
15 make here. First, if you look at the issues list in
16 the procedural prehearing order, you don't find an
17 issue in there that specifically addresses OSS.

18 Secondly, I think it's not on that issues
19 list because the Commission has previously issued an
20 order that expressly ordered all parties to recover
21 their own OSS costs, and that's Order
22 No. PSC-96-1579-FOF-TP at Page 87. And I have copies
23 of these if you would like them.

24 And if you look at this Order, Commissioner
25 Clark, at Page 87, the third paragraph, I've

1 highlighted on the copies that I've passed out, it
2 says "Based on the forgoing, each party shall bear its
3 own cost of developing and implementing electronic
4 interface systems because those systems will benefit
5 all carriers. If a system or process is developed
6 exclusively for a certain carrier, however, those
7 costs should be recovered from the carrier who is
8 requesting the customized services."

9 That last sentence is not applicable in the
10 proceeding that we're currently having. And I think
11 it's very clear from this order, which is from the
12 BellSouth, AT&T and MCI arbitration, makes it very
13 clear that, in fact, there should not be any
14 discussion in this current proceeding about OSS costs.

15 Finally, the third point I'd like to make is
16 when we were in the preliminary stages of this case,
17 WorldCom specifically requested the inclusion of an
18 issue regarding deaveraged loops. And you denied that
19 request in the Order Consolidating Dockets
20 Establishing Procedure, et cetera, which is Order
21 No. PSC-971303 that was issued on October 21. And the
22 discussion recording WorldCom's request is at Pages 6
23 and 7, which is the copy I provided.

24 But specifically if you look at Page 7 you
25 ordered that this proceeding is designed to set

1 permanent rates for those elements for which the
2 Commission ordered BellSouth to file cost studies in
3 the arbitration proceeding.

4 If you look back at the WorldCom/MFS
5 arbitration, the AT&T/MCI, nowhere in any of those
6 orders do you see that BellSouth should file OSS cost
7 studies. In fact, if you look at the filings
8 BellSouth made back in February or March of 1997 to
9 comply with the MCI, AT&T and MFS arbitration orders,
10 there were, in fact, no cost studies in there with
11 respect to OSS.

12 Now, with respect to BellSouth's response to
13 our Motion to Strike, I think I've discussed the
14 merits of the claims, but Bell also raises a second
15 issue, which it seems to be that Bell is concerned
16 with the fact that we've requested that BellSouth
17 strike its testimony with respect to OSS, whereas all
18 of the AT&T, WorldCom, and MCI testimony on OSS would
19 still stay in the record.

20 Obviously, because of the procedure -- of
21 the posture of the case at the time the testimony was
22 filed, the parties responded to what they saw in the
23 direct testimony. And I guess to make it simple I
24 would propose that if you grant our request, that all
25 of the parties should be directed to identify and

1 ultimately remove any OSS-related testimony that
2 appears in the prefiled testimony.

3 I'll be happy to answer any questions that
4 you may have.

5 **COMMISSIONER CLARK:** Mr. Hatch, do you
6 disagree with the notion of if OSS is to be stricken
7 with respect to BellSouth, should it also be stricken
8 with respect to the other parties?

9 **MR. HATCH:** There's a distinction to be made
10 here.

11 There's a general proposition as to OSS
12 costs being embedded in nonrecurring rates. And
13 that's essentially the testimony that AT&T has
14 proffered in this case.

15 There's an entirely separate issue with
16 respect to how BellSouth's cost for electronic
17 interfaces was presented in this case. It was not
18 presented early on with respect to its direct case.
19 It was tacked into this case as part of its
20 supplemental filing. In its motion to accept that
21 supplemental filing in no way mentions the fact that
22 they are also including electronic OSS costs in this
23 proceeding, in a sense -- so it came in after direct
24 as part of the supplemental filing. Nobody got direct
25 notice that those costs were coming in. And we

1 discovered them in examining their supplemental
2 filing. So when you say OSS, you have to be a little
3 more discreet in describing what it is you are
4 objecting to.

5 **COMMISSIONER CLARK:** Yes, you do. So tell
6 me.

7 **MR. HATCH:** It's those electronic OSS costs
8 that came in as part of their supplemental direct
9 filing when they filed their rebuttal case.

10 **COMMISSIONER CLARK:** Do you agree with that,
11 Mr. Self?

12 **MR. SELF:** Yes.

13 **COMMISSIONER CLARK:** Okay.

14 (Ms. White and Ms. Sims confer.)

15 **MS. WHITE:** Sorry. Thank you, Commissioner.
16 Nancy White for BellSouth.

17 I guess I'll take this in a little bit
18 different order.

19 As to WorldCom's argument that because they
20 lost their motion on trying to get the issue of the
21 pricing of deaveraged loops in there, I don't know
22 what that has to do with anything. The Commission in
23 the arbitration order specifically denied WorldCom's
24 request to have deaveraged loops and to geographically
25 deaverage unbundled loops and to price them

1 accordingly. So I'm not quite sure what that has to
2 do with anything.

3 **COMMISSIONER CLARK:** Well, Ms. White, I took
4 that to mean that the Commission has been careful in
5 confining this case to set permanent rates for those
6 elements for which the Commission ordered BellSouth to
7 file the cost studies in the arbitration proceedings.
8 And it's a reminder to us that that's the scope of it,
9 and we denied their request on that basis. And I take
10 it they are simply suggesting that that is the basis
11 we should deny yours on also. Is that correct,
12 Mr. Self?

13 **MR. SELF:** That's part of it, yes.

14 **COMMISSIONER CLARK:** Okay. That's the way
15 I'm looking at it. I don't take it to mean because
16 they won one, you didn't --

17 **MS. WHITE:** I wasn't quite sure. It's late
18 in the day, and I've been since 5:00 in the morning so
19 maybe I'm just getting paranoid.

20 We do think their motion should be denied
21 for two other reasons. The first is the purpose of
22 the docket is to determine the recurring and
23 nonrecurring prices for certain unbundled network
24 elements. To do that, this Commission has to look at
25 the costs. One of the nonrecurring costs is the

1 operations support systems. There's an expense
2 incurred --

3 **COMMISSIONER CLARK:** Go slower. Go ahead.

4 **MS. WHITE:** I'm sorry. There's an expense
5 incurred in electronically ordering an unbundled
6 network or in manually ordering an unbundled network,
7 usage and maintenance. The OSS plays a definite role
8 in the cost of ordering and provisioning unbundled
9 network elements.

10 **COMMISSIONER CLARK:** Let me stop you there
11 for a moment. Have we set the price -- I suppose it
12 is -- for OSS? Have we done that?

13 **MS. WHITE:** Have you taken a system and said
14 this is the price of ordering through this system?
15 No. Have you said, like, the LENS system or the EDI,
16 system? No, you have not done that.

17 **COMMISSIONER CLARK:** Okay.

18 **MS. WHITE:** But the elements that we have
19 costs for -- the costs that we provided for the
20 elements in the original dockets were separate and
21 apart. OSS wasn't even looked at. Since that time
22 there have been electronic interfaces, there are still
23 orders that are placed manually. And what we have
24 done in this docket is to develop the nonrecurring
25 costs for the unbundled network elements without

1 reflecting the interfaces. And then what we've said
2 is if you order it manually, here's the increment that
3 you'd have to pay for ordering it manually, and if you
4 ordered it electronically, here's the increment you'd
5 pay for ordering electronically.

6 **COMMISSIONER CLARK:** Let me stop you. When
7 you say ordering electronically or ordering manually,
8 those are the OSS costs we're talking about?

9 **MS. WHITE:** Right. OSS in the terms of what
10 we have been used to looking at it is probably
11 electronic -- probably refers more so to the
12 electronic interfaces, but there are also manual. If
13 a company doesn't want to use an electronic interface,
14 or if there's some unbundled network elements for
15 which electronic interfaces are not available, then
16 you order it on a manual basis. But that's a type of
17 OSS too.

18 One of the items brought up by Mr. Hatch --
19 I really am confused on -- he stated that our OSS
20 costs were not provided in the direct case but in some
21 supplemental testimony, and I really believe that's
22 wrong. It was in Mr. Varner's direct testimony. It
23 was in the cost studies that were filed with our
24 direct testimony. As far as I can recall -- and
25 that's what I had Ms. Sims up here asking if she knew

1 any differently -- so I just don't think that is
2 correct.

3 The other issue is that we're going to
4 hearing on this case on Monday, the 26th. This Motion
5 to Strike was not filed until January 9th. Direct
6 testimony had been filed in mid November, rebuttal in
7 December. I believe it's too late in the proceeding
8 to raise this argument.

9 They have -- MCI and AT&T have submitted a
10 nonrecurring cost model which assumes electronic
11 operation support systems. Mr. Selwyn, one of their
12 witnesses, has a white paper attached to his testimony
13 which talks about the regulatory treatment of
14 operation support system costs. It's definitely an
15 issue for this Commission to decide. I don't think it
16 should be thrown out of this docket and not looked at
17 by the Commission.

18 **COMMISSIONER CLARK:** Let me see a copy of
19 the Prehearing Order, the issues. (Hands document to
20 Commissioner.) Go ahead, Ms. White.

21 **MS. WHITE:** I think I'm just about done -- I
22 believe I'm done, but I'd say once again, that in
23 looking at placing an order for an element, which is a
24 recurring cost, you have to look at how it is going to
25 be ordered and what costs are associated with how you

1 place that order. And that is part and parcel of
2 nonrecurring costs for unbundled network elements, and
3 we feel it's relevant to this docket.

4 **COMMISSIONER CLARK:** Ms. White, tell me why
5 then we haven't listed that as an item in Issue 1?

6 **MS. WHITE:** Issue 1 is what are the
7 recurring and nonrecurring prices, I believe, for a
8 list of ten or 12 unbundled network elements. Well,
9 we don't have a issue in there that says what are the
10 costs of providing these elements, but that's part and
11 parcel of what is the price. You can't look at what
12 the price is going to be without looking at what it's
13 going to cost you. And part of the cost, part of the
14 nonrecurring cost for these unbundled network elements
15 are the costs of ordering them; costs of ordering and
16 provisioning, which differs depending on whether you
17 order them manually or you order them all on an
18 electronic interface.

19 **COMMISSIONER CLARK:** Let me ask you,
20 Mr. Self, have we set the price for the ordering
21 manually or ordering electronically in some other
22 proceeding?

23 **MR. SELF:** Not that I'm aware of,
24 Commissioner Clark. And I think you have not because
25 specifically in the AT&T/MCI arbitration with

1 BellSouth, at Page 87 of this Order, the Order
2 references the fact that BellSouth had testified that
3 there were costs that were associated with these
4 things, and you ultimately concluded that each carrier
5 should recover its own costs.

6 **COMMISSIONER CLARK:** Why isn't that
7 dispositive of this, Ms. White?

8 **MS. WHITE:** I will agree that the
9 development costs are pretty much covered by the
10 arbitration order but that's not the sole thing that's
11 in the study that BellSouth provided. It also includes
12 maintenance cost and usage cost. Usage in what it
13 costs you every time you use the interface. That
14 doesn't have anything to do with development costs.

15 **COMMISSIONER CLARK:** Why isn't it
16 implementation costs?

17 **MS. WHITE:** Implementation cost to me would
18 mean actually putting it into -- development would
19 mean creating the system. Implementation cost to me
20 means actually putting it into place. I doesn't mean
21 what it costs you every time somebody places an order.

22 **COMMISSIONER CLARK:** Anything else?

23 **MS. WHITE:** No. Thank you.

24 **COMMISSIONER CLARK:** Staff, do you have a
25 position on this?

1 **MS. KEATING:** Actually, Commissioner, we do.
2 Staff recommends that the Joint Motion to
3 Strike be granted in part and denied in part.

4 Staff recommends that the motion be granted
5 with respect to all testimony and exhibits that relate
6 to establishing rates for electronic access to OSSs.
7 We think that that is more in line with Order
8 PSC-971303 and PSC-961579 since such rates were not
9 specifically identified to be determined in this
10 proceeding. In addition, we think it's more
11 consistent with PSC-971303 wherein WorldCom's request
12 to include the issue recurring rates for
13 geographically deaveraged loops was denied. We think
14 that that is relevant.

15 This proceeding has been limited to setting
16 permanent rates for those network elements for which
17 interim rates were set in arbitration proceedings.

18 I think it's important to note here that
19 this Commission has never specifically said that OSS
20 is an unbundled element. It has been identified by
21 the Eighth Circuit as an unbundled element. And since
22 it wasn't identified in the list of issues to be
23 addressed here, an element for which a rate would be
24 set, we don't think that specific issue should be
25 addressed here.

1 But we recommend that it be denied with
2 respect to testimony and exhibits that relate to cost
3 recovery for BellSouth LEGACY systems. BellSouth has
4 proposed to recover its cost for these so-called
5 LEGACY system OSSs through shared and common costs,
6 and apparently there is testimony from AT&T and MCI
7 witnesses regarding that point. And we think that
8 whether or not BellSouth can recover its cost for its
9 LEGACY systems, through shared and common costs, is an
10 issue that can be addressed within the context of a
11 rate determination on each of these unbundled network
12 elements.

13 Staff, therefore, recommends that joint
14 motion be denied with relation this specific testimony
15 and exhibits related to recovery of costs associated
16 with BellSouth LEGACY systems. And we also agree that
17 the intervenor testimony with relation to rate setting
18 for electronic access to OSS should be stricken as
19 well.

20 **COMMISSIONER CLARK:** Now, let me ask a
21 question: Is it going to be clear what testimony is
22 allowed and what is not? I mean, can you clearly say
23 that this is testimony that goes to the LEGACY system
24 and its inclusion as a joint and common cost and,
25 therefore, included in the rates you develop for the

1 unbundled network elements listed on Issue 1?

2 **MS. KEATING:** Staff does believe that those
3 are things that can be clearly identified by the
4 parties.

5 **COMMISSIONER CLARK:** Just so I'm clear, it
6 seems to me the position of the moving parties is that
7 the rates for the OSS service are supposed to be --
8 each party is to bear its own cost and in effect
9 you've set a rate; it's their costs.

10 All right. I'm going to grant the motion
11 along the lines that Staff has recommended. I would
12 point out, Ms. White, that to the extent you believe
13 that that's not clear in this order, you know, I don't
14 know -- I don't know how you appropriately address
15 that. Maybe it's a motion for clarification. But it
16 doesn't appear to me that it was intended to be part
17 of this proceeding.

18 If there is difficulty sorting it out,
19 please let me know.

20 **MS. WHITE:** May I have one clarification?

21 **COMMISSIONER CLARK:** Yes.

22 **MS. WHITE:** The intervenors will have to --

23 **COMMISSIONER CLARK:** Absolutely.

24 **MS. WHITE:** -- delete their testimony as
25 well?

1 **COMMISSIONER CLARK:** It applies to you and
2 it applies to intervenors' testimony.

3 **MS. WHITE:** Thank you.

4 **COMMISSIONER CLARK:** The Motion to Compel
5 Discovery. I believe this is Staff's motion.

6 **MR. PELLEGRINI:** Yes, it is, Commissioner
7 Clark.

8 BellSouth has, to some extent, been
9 responsive in the wake of the Motion to Compel.
10 However, it hasn't been entirely responsive.

11 It has responded, we think, adequately to
12 Interrogatories 36 and 37. It has responded partially
13 to Interrogatories 38, 39 and 42, and not at all to
14 Interrogatory 41. And with respect to production of
15 documents, 41 and 42, it has offered to make those
16 documents available at its local office. The problem
17 that BellSouth has raised is that access to that
18 information makes one an insider under SEC rules. To
19 the extent that may be true, but there are
20 restrictions on the capacity of Staff people to become
21 investors in regulated companies and to use
22 information which they may have access to improperly
23 in that context, so -- we don't have a problem with
24 inspecting those documents at BellSouth's local --

25 **COMMISSIONER CLARK:** Charlie, so I don't

1 have to make a decision on 36 or 37. You've gotten
2 the information you feel you need?

3 **MR. PELLEGRINI:** Right. And furthermore, we
4 don't think there really is enough at stake in this
5 instance to warrant pitching a fight over those items
6 to which BellSouth has not fully responded.

7 We don't accept their contention that those
8 documents -- that they do not have possession, control
9 or custody over those documents, and neither do we
10 accept their contention that that information is
11 irrelevant. However -- and the case law, I think, is
12 unsettled in that respect. As a matter of fact --

13 **COMMISSIONER CLARK:** Let me stop you right
14 there. It sounds like you're saying we're not going
15 to pursue this but we don't concede that we don't have
16 a valid legal basis on which to pursue it.

17 **MR. PELLEGRINI:** That's correct. That's
18 correct.

19 **COMMISSIONER CLARK:** Sounds fine to me.
20 What do I have to decide? What is still at issue?

21 **MR. PELLEGRINI:** There is nothing still at
22 issue. (Laughter)

23 **MR. LACKEY:** Yes, there's nothing still at
24 issue. Can we have the record show that I did move to
25 the table this time for all of you out there in

1 telephoneland. (Laughter)

2 MR. PELLEGRINI: Can you give me just a
3 second?

4 COMMISSIONER CLARK: Sure.

5 MR. LACKEY: While he's looking at that, may
6 I say something about the production of documents,
7 No. 41 and 42?

8 I brought the documents with me today. They
9 are in our office and we've filed a request -- a
10 Notice of Intent today on those documents. I simply
11 want to make it clear on the record that reading those
12 documents, as I understand it, makes one an insider
13 for SEC purposes.

14 Now, I understand what Mr. Pellegrini said
15 about your rules and everything, and that's fine. And
16 I don't think it's going to be a problem, but I need
17 to make sure on the record that everybody knows those
18 books have forecasted revenues in them and that sort
19 of thing. And so it's my understanding from what the
20 SEC lawyers tell me that just reading it makes you an
21 insider. But they are here and available.

22 COMMISSIONER CLARK: Would our
23 confidentiality, and the way we treat confidential
24 documents, cure any concern about disclosure?

25 MR. LACKEY: No. The confidentiality that

1 you afford the records is fine and that keeps them
2 from being disclosed. What the insider trading
3 does -- and I don't think this is a problem -- but as
4 I understand it, what we want to do is hope that
5 whoever goes and looks at these doesn't have a
6 brother, a cousin, an uncle, an aunt, a son who trades
7 in any stock any time soon.

8 **COMMISSIONER CLARK:** If it's granted
9 confidential status there's an obligation to keep it
10 confidential. And that ought to cure, in my view, any
11 concern with insider information; that our rules
12 require it not to be disclosed.

13 **MR. LACKEY:** And I agree with you. Like I
14 said, we brought it; we filed the notice. It's
15 available to be reviewed. I just want to make sure
16 that even -- notwithstanding your rules -- if someone
17 were to violate your rules, there would be a problem
18 with you. But I'm telling you that if someone were to
19 violate the rules regarding this information, there
20 would be problems with other agencies besides the
21 Commission. That's the only point.

22 **COMMISSIONER CLARK:** Okay. We're
23 forewarned. Thank you very much.

24 **MR. PELLEGRINI:** Commissioner Clark, the
25 question that arises with respect to production of

1 documents 41 and 42 is whether it's responsive in
2 respect to BellSouth Corporation as well as BellSouth
3 Telecommunications.

4 **MR. LACKEY:** The answer to that is no. The
5 only thing we had were the documents that BellSouth
6 Telecommunications, Inc. took to the rating agencies
7 Standard & Poor's and Moody's. (Pause)

8 **MR. PELLEGRINI:** This one is particularly a
9 problem.

10 **COMMISSIONER CLARK:** Let Mr. Maurey come to
11 the table. Your concern is you're getting information
12 about BellSouth Telecommunications and not the parent
13 company?

14 **MR. PELLEGRINI:** That's correct.

15 **COMMISSIONER CLARK:** And you believe you're
16 entitled to that, and, in fact, you need it to
17 determine whether or not their cost of equity is
18 appropriate in terms of using it in the rate --
19 developing the rates.

20 **MR. PELLEGRINI:** Yes. This involves
21 information that BellSouth Corporation has supplied to
22 the rating agency such as Standard & Poor's and
23 Moody's.

24 **COMMISSIONER CLARK:** Mr. Maurey, when we're
25 looking at the appropriate cost of equity, do we use

1 the corporation, parent corporation, or do we use
2 BellSouth Telecommunications? What is the appropriate
3 equity?

4 **MR. MAUREY:** For purposes of this proceeding
5 we're estimating the cost of equity of BellSouth
6 Telecommunications and providing these unbundled
7 elements. They do not have traded equity so both
8 witnesses are using holding companies or proxies for
9 BellSouth Telecommunications for estimating cost of
10 equity.

11 Staff's interest in the information for
12 BellSouth Corporation is to verify that
13 representations that are made before the Commission
14 are consistent with representations made before these
15 rating agencies and investment communities, and to see
16 how the impact of the Telecommunications Act of 1996
17 impacts the riskiness, if you will, of the provision
18 of unbundled network elements relative to the
19 provision of any other services they might provide.

20 **COMMISSIONER CLARK:** Okay. Mr. Lackey or
21 Ms. White, do you want to respond why it's not
22 appropriate to have the information relative to the
23 parent corporation?

24 **MR. LACKEY:** Well, I think there's two
25 issues here. Number one is the relevancy question;

1 that is whether the material that's being sought is
2 relevant or reasonably calculated to lead to the
3 discovery of admissible evidence. You're familiar
4 with the standard, of course.

5 Our position is, is that it is not. Let me
6 give you a couple of illustrations, and I guess we're
7 okay on 46 -- I'm sorry, 36 and 37.

8 MR. PELLEGRINI: Yes.

9 COMMISSIONER CLARK: Let me ask that
10 question. What about 38 and 39? Are you going to
11 pursue that?

12 MR. PELLEGRINI: No, we're not at this time.

13 COMMISSIONER CLARK: What about 35?

14 MR. PELLEGRINI: 35, the response was
15 responsive. It wasn't the subject of the Motion to
16 Compel anyway.

17 COMMISSIONER CLARK: I'll sorry. I have
18 107.

19 MR. PELLEGRINI: And that's been adequately
20 provided. I talked with Mr. Lackey prior to this
21 meeting convening on some deficiencies.

22 COMMISSIONER CLARK: We're only talking
23 about 41 and 42.

24 MR. LACKEY: Now we're talking about, I
25 suppose, just the PODs. And what the PODs requested

1 was all of the information that Standard & Poor's in
2 one POD, and Moody's in another, had given to us, and
3 all of the material that we had given to them. And I
4 suppose that the best way to describe that is that we
5 prepare BST materials that we take to the rating
6 agencies when we make presentations to them for the
7 purposes of getting our debt graded. As you know our
8 debt is AAA. Go up once or twice a year -- once a
9 year, I think it is, and make presentations to these
10 folks. And we have briefing notebooks that go with us
11 to those briefings. Those are what I have brought
12 down here. I have brought down '95, '96 and '97, the
13 briefing books.

14 Now, BellSouth Corporation or BellSouth
15 Capital Funding has publically issued debt as well. I
16 think it's got two debt issues that it's issued. So I
17 presume that they go and talk to the rating agencies
18 as well. And I say I presume because I don't know
19 that for a fact. But even if they did, what they told
20 the rating agencies regarding the riskiness of BMI, or
21 BAPCO, doesn't seem to me to be relevant to the
22 question of what the cost of equity ought to be in
23 this cost proceeding. We're talking about using the
24 cost of equity of BellSouth Telecommunications. In
25 reality what we're doing, if we're going to stick to

1 the story that what we're doing is making a
2 determination of a TELRIC calculation, or even a
3 TSLRIC calculation, is we're supposed to be looking at
4 the cost that would be incurred by a efficient company
5 using the most modern forward-looking technology to
6 create these unbundled network elements. That's what
7 we're supposed to be looking at. So what we would be
8 looking at is the cost of capital for such a company.
9 And what the two witnesses in this proceeding have
10 done is they have assumed that BellSouth
11 Telecommunications would be such a company, and they
12 have looked for the forward-looking cost of equity and
13 the forward-looking cost of debt for BST using
14 surrogates. One witness uses a group of 20
15 surrogates, another witness uses the RBOCs and what
16 have you.

17 Now, the question of what the risk might be
18 of BellSouth Corporation's unregulated companies is
19 wholly irrelevant to that inquiry. It has nothing to
20 do with what the cost of equity would be for a
21 forward-looking company in this industry providing
22 these unbundled network elements. It has no
23 relevance.

24 We satisfied, over our objection, for
25 instance, the equity ratio. The Staff wanted to know

1 what the equity ratio was for the nonregulated
2 companies. We have provided that. It's not an
3 interrogatory that's at issue now but it still makes
4 my point, and that point is what difference does it
5 make what the equity ratio is of BAPCO, or BMI or one
6 of those companies when we're trying to decide what
7 the forward-looking cost of equity ought to be for
8 this forward-looking efficient company who is
9 providing these elements that are under consideration
10 in this docket.

11 **COMMISSIONER CLARK:** Mr. Pellegrini or
12 Mr. Maurey, will you please answer that question?

13 **MR. MAUREY:** We are looking at the cost of
14 capital for the provision of these unbundled network
15 elements, but all of the representations that are made
16 about how risky that line of business is have been
17 made by the witness for BellSouth.

18 What we like to see is if those are the same
19 types of representations that are being made to the
20 rating agencies in the investment community. Is that
21 line of business really as risky as they are
22 representing it to us?

23 **COMMISSIONER CLARK:** But you haven't
24 answered the question. As I understand it, they are
25 willing to give you the information, what they have

1 presented with respect to BellSouth
2 Telecommunications. They have objected to the notion
3 of you getting information on what the riskiness of
4 BMI is or BAPCO, and saying it has no relevance to
5 determining what the riskiness of BST is.

6 **MR. MAUREY:** And our impression, we were
7 interested in seeing how the company evaluates that
8 line of business relative to its other lines of
9 business.

10 **COMMISSIONER CLARK:** I guess -- okay. So we
11 look at that. I don't see it as being dispositive
12 with the respect that what we ought to be looking at
13 is anything similar to BST. What should it be,
14 regardless of what it is for something else they own
15 that may have a different risk? I mean, you have to
16 demonstrate it has the same risk and it is appropriate
17 to look at it.

18 **MR. MAUREY:** Well, for BellSouth
19 Corporation, they are a very diversified company in
20 respect to the different services they offer and each
21 of those different services has a different cost of
22 capital. The relevant riskiness of each of those
23 services would be assigned a higher or lower cost of
24 capital.

25 It's the position of the other cost of

1 capital witness in this case that a provision of
2 unbundled network elements is one of the lower risk
3 businesses they are in. If we were to look and find
4 out that BellSouth Corporation's cost of capital is as
5 high or -- high as or, say, lower than what is
6 proposed in this proceeding, then that would draw into
7 question whether that is the company's true cost of
8 capital for the provision of unbundled network
9 elements. Because it's somewhat generally accepted
10 that nonregulated businesses that these companies
11 engage in are riskier than leasing network elements.

12 **COMMISSIONER CLARK:** Okay, Mr. Lackey. I
13 think what he's saying is that we would look at BMI or
14 BAPCO return on equity to determine whether or not
15 your representations are correct. Do the facts bear
16 out your representation that those are riskier and,
17 therefore, should and do get a higher rate of return
18 than BellSouth Telecommunications?

19 **MR. LACKEY:** I understand that's their
20 position, but you see the difficulty with that
21 position is you have the same problem with BMI and
22 BAPCO and the rest of these companies as you have with
23 BST. None of them are publically traded either. For
24 instance, we were talking about the equity ratio a
25 moment ago. Well, the equity ratio for these

1 companies is decided by BellSouth Corporation. They
2 decide how much of an equity investment they want to
3 make. It's not like you can go out in the market and
4 make a judgment about the market return on these
5 investments and, therefore, determine how risky they
6 are. What you're seeing -- if you got this
7 information, what you would be seeing is the book
8 return on these investments. And what would it tell
9 you, for instance, if the book return on --

10 **COMMISSIONER CLARK:** Let me just answer
11 that. It seems to me it might tell you that it is, in
12 fact, not as risky as you have indicated, or it is
13 more risky.

14 I guess I see -- the suggestion is it's a
15 way of testing the hypothesis to see what, in fact, is
16 the reality of the return you get.

17 **MR. LACKEY:** Let me go back to your
18 argument. What do you have then? Let's just suppose
19 hypothetically that the unregulated businesses of
20 BellSouth Corporation were less risky than leasing
21 unbundled network elements.

22 **COMMISSIONER CLARK:** Let me stop you. I
23 think it's your position or it's generally held that
24 the unregulated businesses, such as BellSouth Mobility
25 and BAPCO, would be a more risky enterprise.

1 **MR. LACKEY:** That's what Staff said. I did
2 not agree with that and that's not the position we
3 advanced. Let me tell you why.

4 We haven't used BellSouth Corporation or the
5 RBOCs as a surrogate for BST. Dr. Billingsly, who is
6 testifying about the cost of capital for us, is using
7 a group of 20 companies when he says when taken as a
8 portfolio are comparable to BST. We're not using BSC
9 as a surrogate for BST in this proceeding. I can give
10 you an example of why that's the case. It's not a
11 very complicated one.

12 But let's assume that the stock price was
13 \$20, we had a dollar in dividends and growth rate of
14 7%. Using a DCF method that gives you a cost of
15 capital of 12%; just 1 divided by 20 gives us 5% plus
16 7 gives you 12. That's the way the DCF method works.

17 You know, if \$10 of that \$20 stock price was
18 attributable to cellular, but there wasn't a dime in
19 the dividend for cellular, you end up -- if you want
20 just the telephone operations, you end up with a
21 dollar over \$10, 10% plus some growth rate, and you
22 end up with more than 12. So you can't just take
23 these numbers, these constituent parts of a whole and
24 hope to make any market sense out of them because none
25 of them have a market value.

1 Again, what I need to do is go back to your
2 position. If you want to see what the cost of capital
3 for BST -- if we're going to assume that BST is that
4 surrogate -- you need to be looking at companies that
5 fairly represent BST; not the other businesses that
6 BSC, BellSouth Corporation, happen to be in.

7 Even Dr. Cornell in his testimony
8 acknowledges that internal hurdle rates for
9 nonregulated companies have nothing to do with
10 determining the cost of equity for BST in this case.

11 **COMMISSIONER CLARK:** Internal hurdle rates.

12 **MR. LACKEY:** Interrogatory 41 asks for
13 internal discount rates.

14 **COMMISSIONER CLARK:** Okay. Do any of the
15 other parties have anything to add?

16 **MR. HATCH:** No, ma'am.

17 **COMMISSIONER CLARK:** And you all haven't
18 asked for this information?

19 **MR. HATCH:** No, ma'am.

20 **COMMISSIONER CLARK:** Charlie, do you want to
21 close?

22 **MR. PELLEGRINI:** Yeah. There's considerable
23 disagreement in this proceeding as to the riskiness of
24 leasing unbundled network elements. And BellSouth's
25 contention that -- contention is that the risk has

1 increased and the associated cost of capital has
2 increased. The AT&T/MCI witness, Cornell, makes the
3 point that the riskiness of BellSouth Corporation's
4 business increases to the extent they become -- to the
5 extent they are involved in nonregulated businesses
6 and hence their cost of capital increases.

7 I think the point here is that Staff can
8 make the most professionally responsible and
9 sustainable recommendation as to the cost of capital
10 if it's able to assess BellSouth's situation in light
11 of BellSouth Corporation's situation. And that's the
12 point I think that underscores the need for this
13 information.

14 COMMISSIONER CLARK: I'll tell you what,
15 they are providing you some information that you need
16 anyway. You don't think it's wholly responsive to it.
17 I'm going to suggest that you go ahead and look at
18 that. I will reserve ruling on it until tomorrow.

19 I understand that it may be -- it may
20 provide sort of what I would call suggestions about
21 riskiness. And my concern is that we should be
22 concerned with that which is regulated and what the
23 appropriate equity component is to set rates for these
24 elements. And I don't think it is appropriate to be
25 sort of seduced into an idea, well, the equity they

1 are getting is much higher or much lower and,
2 therefore, something has got to be wrong with the
3 equity you are using, rather than looking at other
4 companies of similar risk.

5 If I can state it another way, it may be
6 somewhat relevant. It may produce somewhat -- it may
7 lead to information that may be somewhat relevant but
8 perhaps not materially relevant. And it's appropriate
9 to weigh granting the Motion to Compel against that
10 kind of analysis.

11 I would suggest to you, for Staff to go look
12 at that information. I will make a final ruling on
13 whether or not the information on BellSouth -- what is
14 the parent --

15 **MR. LACKEY:** Corporation.

16 **COMMISSIONER CLARK:** Corporation information
17 should be produced by tomorrow.

18 **MR. LACKEY:** Before you close this, there is
19 a second issue and a second argument that we have in
20 our response, which I would be happy to go through
21 again here.

22 **COMMISSIONER CLARK:** Go ahead.

23 **MR. LACKEY:** It would be okay -- you could
24 read it. I wouldn't have to go through it, if you'd
25 like. It's the one about who's got possession,

1 STATE OF FLORIDA)
2 COUNTY OF LEON)

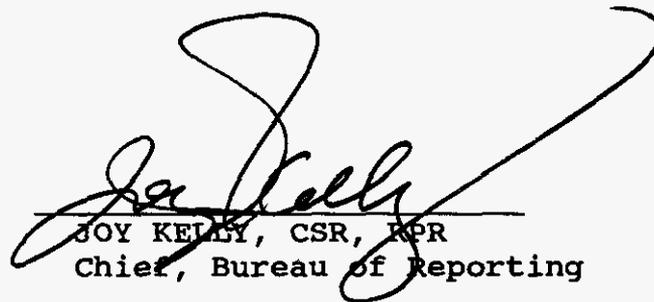
CERTIFICATE OF REPORTER

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

5 DO HEREBY CERTIFY that the Motion Hearing in
6 Docket Nos. 960388, 960757 and 960846-TP was heard by
7 the Prehearing Officer at the time and place herein
8 stated; it is further

9 CERTIFIED that I stenographically reported
10 the said proceedings; that the same has been
11 transcribed by me; and that this transcript,
12 consisting of 37 pages, constitutes a true
13 transcription of my notes of said proceedings.

14 DATED this 22nd day of January, 1998.

15 
16 JOY KELLY, CSR, RPR
17 Chief, Bureau of Reporting

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