

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into Pricing of)
Unbundled Network Elements)
_____)

Docket No. 990649-TP

REBUTTAL TESTIMONY OF
DENNIS B. TRIMBLE

ON BEHALF OF
GTE FLORIDA INCORPORATED

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1 **GTE FLORIDA INCORPORATED**

2 **REBUTTAL TESTIMONY OF DENNIS B. TRIMBLE**

3 **DOCKET NO. 990649-TP**

4

5 **Q. PLEASE STATE YOUR NAME, POSITION, AND BUSINESS**
6 **ADDRESS.**

7 A. My name is Dennis B. Trimble, and I am the Assistant Vice-President-
8 Pricing Strategy, for GTE Service Corporation. My business address
9 is 600 Hidden Ridge Drive, Irving, Texas.

10

11 **Q. ARE YOU THE SAME DENNIS TRIMBLE WHO FILED DIRECT**
12 **TESTIMONY IN THIS DOCKET?**

13 A. Yes.

14

15 **Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?**

16 A. I will respond to policy issues other parties raised in their direct
17 testimony. I will point out the areas of consensus among the parties,
18 as well as the differences in position between GTE and others. GTE
19 witness Tucek will respond to technical issues relative to specific
20 requirements and guidelines for the cost studies to be submitted in
21 the next phase of this docket. Witness Doane supports my testimony
22 as to the need for and means of achieving competitive neutrality.

23

24 **Q. DO THE PARTIES AGREE ON ANY FUNDAMENTAL UNE**
25 **DEAVERAGING PRINCIPLES?**

1 A. As I stated in my Direct Testimony, simultaneous deaveraging of
2 wholesale and retail rates is critical to my deaveraging proposal.
3 Assuming that condition is met, then GTE and others concur on a
4 number of issues. All the parties agree that deaveraging should occur
5 for those UNEs that exhibit significant cost variations across
6 geographical areas. (Ankum/AT&T and MCI Direct Testimony (DT)
7 at 46; Falvey/e.spire DT at 1-2; Murray/Covad DT at 3; Barta/FCTA
8 DT at 5-6; Gillan/FCCA DT at 4; Strow/ICI DT at 6; Hendrix/BellSouth
9 DT at 2; Sichter/Sprint DT at 4.) Under this standard, the loop is the
10 most obvious candidate for deaveraging; it is also appears to be the
11 most important element to the alternative local exchange carriers
12 (ALECs) at this time. (Ankum DT at 47; Falvey DT at 2; Barta DT at
13 5-6; Gillan DT at 3-4; Sichter DT at 4). Because the degree of
14 geographic cost variation differs among UNEs, uniform deaveraging
15 for all UNEs is not appropriate. (Murray DT at 3, 7; Sichter DT at 15-
16 16; Barta DT at 6.)

17
18 Most parties would agree that deaveraging is worthwhile only to the
19 extent that its benefits exceed its costs. (Murray DT at 3, 5; Barta DT
20 at 7; Sichter DT at 16.) The costs to the ILEC and ALEC of
21 administering a scheme that accounts for even minor cost variations
22 may be too high to yield any end user benefits. (Murray DT at 6;
23 Sichter DT at 15-16; Strow DT at 9.) In this regard, deaveraging to at
24 least the wire center level seems an acceptable approach to various
25 parties. (Ankum DT at 48; Falvey DT at 2-3; Dickerson DT at 22.)

1 FCCA, the ALECs' trade association, agrees with GTE's general
2 approach of grouping wire centers into zones with similar average
3 loop costs. (Gillan DT at 4.) Finally, there seems to be consensus
4 that any UNE combinations should reflect any deaveraged prices of
5 the underlying, individual UNEs. (Falvey DT at 2; Murray DT at 3;
6 Sichter DT at 13.)

7
8 **Q. MS. STROW SUGGESTS THAT ALL UNES THE FCC**
9 **EVENTUALLY DESIGNATES IN ITS NECESSARY AND IMPAIR**
10 **PROCEEDING SHOULD BE "PRESUMED SUBJECT TO**
11 **DEAVERAGING." DO YOU AGREE?**

12 **A.** No. ICI appears to be an outlier among the ALECs on this point. As
13 noted, there is general agreement that the loop displays significant
14 cost variations across geographic regions, while other potential
15 UNEs—such as the NID and OSS—do not exhibit the kind of cost
16 variations that would make it worthwhile to deaverage them. The
17 parties (and probably the Commission Staff) have a good idea of how
18 much particular UNEs' costs vary with geography. Thus, it would be
19 unduly burdensome for the ILECs to have to submit deaveraged
20 studies for all UNEs, as Ms. Strow seems to suggest. (Strow DT at
21 5.) The Commission would be better advised to accept Mr. Gillan's
22 recommendation to consider loop deaveraging first, then move on to
23 other elements in future proceedings, if necessary. (Gillan DT at 4.)

1 As I noted in my Direct Testimony, while transport costs also vary,
2 interoffice transmission facility prices are already effectively
3 deaveraged because they reflect distance, traffic and volume
4 considerations.

5

6 **Q. SPRINT WITNESS SICHTER PROPOSES DEAVERAGING**
7 **SWITCHING RATES (SICHTER DT AT 12). WHY DOESN'T GTE**
8 **THINK THIS IS NECESSARY?**

9 A. The objective of deaveraging is to encourage efficient entry so that
10 the benefits of competition will flow through to end users. But the
11 characteristics that make switching costs vary on a geographic basis
12 (e.g., switch size) are not reflected in end user toll rates. While toll
13 rates may differ with factors such as time of day, distance covered
14 and jurisdiction, the size of the calling or called switch does not affect
15 end user rates. Thus, deaveraging switching costs would not likely
16 have the desired pro-consumer effect.

17

18 **Q. DO THE PARTIES AGREE THAT DEAVERAGING NEED NOT BE**
19 **UNIFORM ACROSS CARRIERS?**

20 A. I don't believe any party, even among the ALECs, would recommend
21 that the Commission mandate uniform deaveraging across ILECs at
22 this stage of the docket. While Ms. Murray, for example, believes that
23 uniform deaveraging across carriers may be "a reasonable long-term
24 goal," (Murray DT at 7), she allows that individual ILECs should be
25 permitted to submit studies justifying company-specific deaveraging

1 plans. Ms. Strow proposes a "presumption" that deaveraging be
2 uniform among ILECs, but at the same time recognizes that "the
3 Commission must first require the cost studies to be filed by the
4 ILECs to have the necessary information to determine the degree of
5 deaveraging warranted." (Strow DT at 10.)

6
7 Mr. Gillan aptly points out that a single approach for each ILEC would
8 be inappropriate at this time, and that each ILEC should have the
9 flexibility to propose its own zone methodology. (Gillan DT at 5.)
10 This is the best course because the extent to which deaveraging is
11 appropriate will depend on a carrier's costs of providing a particular
12 UNE. Requiring a uniform approach would defeat the purpose of
13 deaveraged pricing.

14
15 **Q. HAS ANY COMPANY BEEN ABLE TO SUBMIT A SPECIFIC**
16 **DEAVERAGING PLAN IN THIS PHASE OF THE PROCEEDING?**

17 **A.** No. As I and several other witnesses recognized, no one will know
18 what UNEs must be provided until the FCC issues its UNE list in its
19 ongoing "necessary and impair" proceeding (CC Docket 96-98). It is
20 impossible to determine which UNEs should be deaveraged without
21 knowing which UNEs must be offered in the first instance.
22 Additionally, as I noted earlier, everyone agrees that cost is the proper
23 basis for determining the appropriate degree of deaveraging (although
24 they may differ on the proper costing methodology). Because cost
25 studies have yet to be conducted and filed, there is no way to know

1 yet just how much a UNE's costs vary across an ILEC's serving area.
2 GTE, Sprint, and BellSouth have offered tentative deaveraging plans
3 based on illustrative cost figures, but more concrete proposals will
4 have to await review of the cost study results, as well as the outcome
5 of the FCC's necessary and impair docket. In the meantime, the
6 Commission can, nevertheless, determine fundamental deaveraging
7 concepts.

8
9 **Q. IN THAT REGARD, YOU HAVE MAINTAINED THAT COMPETITIVE**
10 **NEUTRALITY IS CRITICAL TO THE CONCEPTUAL FRAMEWORK**
11 **THE COMMISSION ESTABLISHES FOR UNE DEAVERAGING. DO**
12 **THE ALECS AGREE?**

13 A. Apparently not. None of the ALECs has taken a position consistent
14 with this objective. In fact, adopting the ALECs' recommendation of
15 deaveraging UNE prices without regard to retail rates will guarantee
16 that competitive neutrality will never govern the local marketplace.

17
18 **Q. WHY?**

19 A. As I explained in my Direct Testimony, competitive neutrality means
20 that no firm is either advantaged or disadvantaged in serving a
21 particular market segment. All compete on a level playing field,
22 solely on the basis of their own efficiencies and market know-how. If
23 the Commission wishes to foster competition for all segments of the
24 local market, then competitive neutrality must be the bulwark of its
25 deaveraging effort.

1 Competitive neutrality means that the Commission cannot ignore the
2 continuing presence of a retail rate structure riddled with
3 intercustomer and interservice support amounts that are above
4 market levels. The ALECs' deaveraging scheme will only increase
5 the arbitrage opportunities available today to the ALECs and thus
6 institutionalize the balkanization of the local market. Nothing I have
7 seen in the other parties' testimony persuades me otherwise.

8
9 **Q. BUT WON'T DEAVERAGING UNES FOSTER GREATER**
10 **COMPETITION IN RURAL AND RESIDENTIAL MARKETS?**

11 A. No. Deaveraging UNEs at TELRIC-based "economic cost," as the
12 ALECs recommend, while leaving support in retail rates, will do just
13 the opposite. It will guarantee that rural and residential markets will
14 never see meaningful competition.

15
16 Indeed, none of the ALECs claims that their plan will benefit the
17 average residential consumer. To the contrary, their testimony
18 mostly evidences a desire to enhance their ability to skim the support
19 where rates are highest and costs are lowest. E.spire, for example,
20 complains that statewide averaged UNE rates prevent it from
21 competing in "lower cost urban and suburban markets" and "dense
22 urban markets." (Falvey DT at 4-5.) As an initial matter, I don't see
23 any evidence that ALECs can't compete in these markets. As the
24 Commission well knows, ALECs typically target business customers
25 in metropolitan areas. In my Direct Testimony, I included market data

1 from GTE's Comments in the FCC's necessary and impair proceeding
2 that proves the ALECs are competing very successfully in Tampa's
3 dense urban market. That information shows, for example, that
4 e.spire's switch and fiber optic facilities serve the business districts in
5 and near downtown, as well as the more "suburban" areas of Sable
6 Park and Temple Terrace.

7
8 The business customers e.spire and other ALECs customarily target
9 provide the support flows that hold down the average consumer's
10 basic local rate. This business plan makes sense because the rates
11 for the large businesses in these markets are usually significantly
12 higher than the costs of serving them. So ALECs skim the "cream"
13 that is the gap between cost and retail rates--and that the ILECs
14 formerly used to support below-cost residential rates.

15
16 Deaveraging only wholesale rates will aggravate this situation,
17 because there will be an even bigger gap between rates and costs for
18 the typical ALEC customer. In other words, while deaveraging at
19 TELRIC will not benefit most consumers, it will help ALECs to make
20 even greater profits serving the markets which they have entered so
21 successfully. If some rates remain far above their relevant costs, but
22 the underlying UNE rates drop toward their costs (as will likely be the
23 case in dense urban areas, for instance), the ALECs' cream-skimming
24 opportunities increase. The average residential customer, whose
25 rates remain low relative to their costs, will be no more interesting to

1 the ALEC than he is now. In fact, because wholesale deaveraging
2 will likely produce higher UNE rates for rural and some residential
3 areas, there is almost no chance that customers there will be served
4 by any firm but the ILEC, the carrier of last resort. If this Commission
5 cares at all about competitive choice for rural and residential
6 customers, deaveraging wholesale rates in isolation of retail rates
7 should be inconceivable.

8
9 **Q. DOESN'T THE ARBITRAGE PROBLEM LEAVE THE ILECS**
10 **"HOLDING THE BAG" FOR UNIVERSAL SERVICE SUPPORT?**

11 **A.** That's exactly what the U.S. Supreme Court has observed. As the
12 Court explained:

13 Business customers, for whom the cost of service is
14 relatively low, are charged significantly above cost to
15 subsidize service to rural and residential customers, for
16 whom the cost of service is relatively high. Because
17 this universal-service subsidy is built into retail rates, it
18 is passed on to carriers who enter the market through
19 the resale provision. Carriers who purchase network
20 elements at cost, however, avoid the subsidy
21 altogether and can lure business customers away from
22 incumbents by offering rates closer to cost. This, of
23 course, would leave the incumbents holding the bag for
24 universal service.

25 (AT&T Corp. v. Iowa Util. Bd. et al., 119 S. Ct. 721, 737 (1999).)

1 Although the Court recognized the arbitrage concerns inherent in the
2 existing scheme, it commented that section 254 of the Act "requires
3 that universal-service subsidies be phased out, so whatever
4 possibility of arbitrage remains will only be temporary." (*Id.*)

5
6 Even though this Commission has recognized the substantial support
7 amounts in the ILECs' rates (*see* Report of the Fla. Pub. Serv.
8 Comm'n on the Relationships Among the Costs and Charges
9 Associated with Providing Basic Local Service, Intrastate Access, and
10 Other Services Provided by Local Exchange Companies, table II-8,
11 Feb. 15, 1999), and even though the Act requires the phasing out of
12 this support, no attempt has yet been made to satisfy this objective in
13 Florida. Indeed, if the ALECs have their way in this deaveraging
14 proceeding, the arbitrage concern the Court termed temporary will
15 become a lasting problem here in Florida.

16
17 **Q. HAVE AT&T AND MCI RECOGNIZED ELSEWHERE THAT THE**
18 **ACT PROHIBITS RETENTION OF IMPLICIT SUPPORT IN RATES?**

19 A. Yes. In their reply brief in support of their motion to block the FCC's
20 stay of its deaveraging rule, AT&T and MCI state that "averaged rates
21 represent precisely the type of urban-to-rural implicit subsidy that the
22 Act expressly prohibits." (AT&T and MCI Reply Brief, filed July 12,
23 1999, in MCI WorldCom Inc. v. FCC, Nos. 99-1182 *et al.* (D.C. Cir.;
24 case later transferred to the 8th Cir., Nos. 99-3139 *et al.*) at 4 n. 3,
25 citing Act sec. 254(e).) While their argument was aimed at averaged

1 UNE rates, it necessarily means that averaged retail rates violate the
2 Act's section 254, as well.

3

4 **Q. WON'T ALIGNING WHOLESALE RATES AND COSTS**
5 **ENCOURAGE EFFICIENT ENTRY, AS SOME ALECS CLAIM**
6 **(MURRAY DT AT 5; ANKUM DT AT 5)?**

7 A. No. Simply aligning wholesale costs and rates will not prompt ALECs
8 to build their own facilities, even where they are more efficient than
9 the ILEC. Despite greater efficiencies, the ALEC will not rationally
10 serve a residential subscriber whose rates remain below the costs of
11 the underlying UNEs. It is not artificially high UNE rates that "force
12 ALECs to target larger customers," as Ms. Strow puts it. (Strow DT
13 at 8.) The problem—or, from the ALEC's perspective, the irresistible
14 opportunity—is that these larger customers' rates contain the support
15 flows keeping the smaller customers' rates low. The ALECs' profit
16 motive "forces" them to serve these customers, just as it "forces" them
17 to avoid residential customers. Mr. Doane expands on this response
18 to the ALECs' efficiency claim in his Rebuttal Testimony.

19

20

21 **Q. WHAT IS YOUR REMEDY FOR THIS SITUATION ?**

22 A. As I discussed in my Direct Testimony, the best solution would be to
23 simultaneously deaverage wholesale and retail rates, together with
24 the establishment of a universal service fund if the resulting retail
25 rates are deemed unaffordable for some customers. This is the best

1 approach, as it would produce efficient rate structures, as well as
2 efficient competition.

3
4 If this comprehensive solution cannot be attained now because of
5 statutory or other constraints, then the Commission should seek a
6 waiver of the FCC's deaveraging rule until wholesale and retail rates
7 can be addressed at the same time. There is no drawback to the
8 delay; indeed, it will prevent an already bad situation from becoming
9 worse. As I explained in my Direct Testimony, the FCC has stayed its
10 deaveraging rule until six months after the conclusion of its universal
11 service proceeding. It did so to allow states to consider deaveraging
12 issues in differing contexts "in a coordinated manner"—exactly what
13 I'm suggesting here. (Stay Order, CC Docket 96-98 (May 7, 1999).)

14
15 Finally, if the Commission instead decides to pursue a piecemeal
16 approach, it still can (and, if it cares about competitive neutrality,
17 must) adjust deaveraged UNE prices to account for the implicit
18 support in retail rates. Mr. Doane detailed this approach—the
19 deaveraging adjustment charge (DAC)—in his Direct Testimony. The
20 DAC will ensure that all competitors have an equal opportunity to
21 serve all markets until the Commission and/or the Legislature can
22 rationalize retail rates and establish an explicit universal service fund.

23
24 **Q. DO ANY OTHER PARTIES RECOGNIZE THAT IT WOULD BE A**
25 **MISTAKE TO UNDERTAKE UNE DEAVERAGING IN ISOLATION?**

1 A. Yes. Sprint witness Sichter agrees that retail rates should be
2 restructured to "bring them into consistency with unbundled network
3 prices." (Sichter DT at 24.) BellSouth's Mr. Varner cautions that
4 wholesale deaveraging must not occur before an universal service
5 fund is established. He states that "it is imperative that an appropriate
6 universal service funding mechanism be implemented in Florida at
7 least coincident with the implementation of deaveraging," and that
8 BellSouth should be permitted to accomplish some level of
9 rebalancing of basic local rates. (Varner DT at 27.) He agrees that
10 deaveraging without regard to retail rates will just "increase ALECs'
11 profit margins in urban areas without increasing the level of
12 competition in urban or other areas of Florida." (Varner DT at 30.)
13 Likewise, Dr. Emmerson testifies that deaveraging UNE rates while
14 leaving intact existing retail rates is not "consistent with a competitive
15 result" and recommends simultaneous deaveraging of retail rates and
16 establishment of a universal service fund. (Emmerson DT at 32-33.)
17 As a way of accommodating this comprehensive solution, Mr. Varner,
18 as I do, presents the option of petitioning the FCC for a waiver of its
19 deaveraging rule until the Legislature can establish the universal
20 service fund. (Varner DT at 31.)

21

22 **Q. DO ANY OF THE ALECS RECOGNIZE THE NEED FOR PARITY**
23 **BETWEEN WHOLESALE AND RETAIL RATES?**

24 A. The ALECs can be expected to ask the Commission to consider retail
25 rates in the specific instances where they believe it would benefit

1 them. Covad witness Murray, for instance, complains that BellSouth
2 is squeezing competitive DSL providers out of the market because
3 BellSouth is allegedly setting its retail prices for DSL-based services
4 too low in relation to the costs of their underlying UNEs. She thus
5 urges “parity” between retail and wholesale rates. (Murray DT at 8,
6 11-12.) I don’t have any knowledge or opinion about Ms. Murray’s
7 specific claims about BellSouth’s DSL pricing, but I do support the
8 parity concept she espouses. In fact, it is exactly what I’m
9 recommending in this docket. As Ms. Murray seems to understand,
10 it is a mistake to consider deaveraging wholesale rates without regard
11 to retail rate levels. This is true for all retail rates and all markets—not
12 just particular market segments Covad or other ALECs wish to serve.

13
14 **Q. DO YOU AGREE WITH THE ALECS THAT THE COMMISSION**
15 **SHOULD SET PRICES AT “ECONOMIC COST”?**

16 **A.** No. Pricing at economic cost (which the ALECs define as TELRIC
17 plus some allocation of shared and common costs (Ankum DT at 3))
18 is inappropriate whether or not UNEs are deaveraged at this time.
19 TELRIC (or TSLRIC) studies do not define prices. They are useful
20 only as starting points in the rate design process. The prices for the
21 features the ILEC sells—whether they are wholesale or retail
22 services—must allow the ILECs an opportunity to recover their total
23 actual costs. Setting rates equal to actual costs ensures that the
24 ILECs do not subsidize their competitors—which would contravene the
25 goal of competitive neutrality. Mr. Doane discusses the problems with

1 TELRIC pricing in more depth in his Rebuttal Testimony.

2

3 **Q. DR. ANKUM SEEMS TO BELIEVE THAT THE ILECS ARE TRYING**
4 **TO FRUSTRATE THE PRO-COMPETITIVE INTENT OF THE**
5 **TELECOMMUNICATIONS ACT OF 1996. IS THIS TRUE?**

6 A. No; in fact, it's just the opposite. I agree with the principle that "free
7 and competitive markets" can best produce maximum consumer
8 benefits, (Ankum at 28), and I understand that the 1996 Act actively
9 endorses and promotes competition (Ankum at 29). But pricing UNEs
10 at economic cost, especially while subsidies still exist in the ILECs'
11 rates, is not the way to achieve the Act's objectives. What Dr. Ankum
12 ignores is the Act's mandate to remove all implicit support from rates.
13 That requirement is a linchpin of the Act's framework for fostering
14 local competition. The Fifth Circuit recently reminded us of its critical
15 importance when it told the FCC it could not continue to require ILECs
16 to recover universal service contributions from their access charges,
17 "in violation of a plain, direct statutory command." (Texas Office of
18 Pub. Util. Counsel v. FCC, Case No. 97-60421.) In short, Congress
19 recognized that a system of implicit social subsidies was incompatible
20 with a competitive market.

21

22 If AT&T and MCI truly believe that this Commission should faithfully
23 implement the Act, then Dr. Ankum would not recommend for the
24 Commission to "leave the ILECs' current retail rates in place."
25 (Ankum at 32.) Dr. Ankum allows that there may be "regulatory-

1 imposed costs” in the ILEC’s rate structure. But his cavalier
2 suggestion that the Commission should “figure out how to deal with
3 them” (Ankum DT at 33) in a separate proceeding shows how little
4 regard AT&T has for promoting true competition—as opposed to
5 promoting the interest of certain competitors operating in certain
6 market segments. Implementing only parts of the Act—opening
7 markets while maintaining an anachronistic system of implicit
8 supports—will never produce efficient competition for all customers—
9 rural and urban, residential and business.

10

11 **Q. IS GTE PREPARED TO DEMONSTRATE THE LEVEL OF ITS**
12 **“REGULATORY-IMPOSED COSTS,” AS DR. ANKUM SUGGESTS?**

13 A. Yes. In fact, in my Direct Testimony, I proposed that the ILECs submit
14 information reflecting the costs they incurred in exchange for the
15 opportunity to earn a fair rate of return on their investment.

16

17 **Q. HAVE THE ILECS MAINTAINED AVERAGE UNE RATES AS SOME**
18 **KIND OF ANTICOMPETITIVE TACTIC?**

19 A. No, they have not, contrary to what some ALECs claim. Mr. Falvey,
20 for example, states that ILECs have sought to disadvantage ALECs
21 in “lower cost urban and suburban markets” by failing to offer
22 geographically deaveraged loop rates. (Falvey DT at 4.) It is, he
23 asserts, “difficult or impossible for e.spire and other CLECs to
24 compete in the low-end business or residential markets on a facilities
25 basis.” (Falvey DT at 5.)

1 First, as the Commission knows, it—and not the ILECs—set the ILECs’
2 UNE rates that exist today. The Commission deliberately decided not
3 to deaverage UNE rates at that time.

4
5 Second, I agree that it is difficult or impossible for the ALECs to
6 compete for residential and some low-end business customers. But
7 that is not the ILEC’s fault, and just deaveraging wholesale rates will
8 not solve the problem. Unless retail and wholesale rates are
9 deaveraged at the same time (or the DAC is implemented as as
10 interim measure), the existing market segmentation will only become
11 more pronounced. That is, residential markets, where rates are below
12 cost, will be foreclosed to the ALECs.

13

14 **Q. IS IT TRUE, AS DR. ANKUM CLAIMS, THAT LEAVING RETAIL**
15 **RATES INTACT MEANS THAT PRICING UNES AT ECONOMIC**
16 **COST WILL HAVE NO IMPACT ON THE ILECS’ REVENUE**
17 **STREAM (DT AT 33)?**

18 **A.** No. As I explained, if retail rates are left as they are, the gap between
19 the deaveraged UNE rate and the retail rate will grow larger,
20 increasing the ALECs’ arbitrage opportunities. Any rational ALEC will
21 take full advantage of this opportunity to take these customers from
22 the ILEC, regardless of whether they are more efficient. The only way
23 that misaligned retail and wholesale rates could fail to affect the
24 ILECs’ revenues would be if the ALECs were wholly inept
25 competitors—which, in my experience, has not been the case.

1 **Q. DO YOU STILL BELIEVE IT IS INAPPROPRIATE TO MAKE ANY**
2 **DECISIONS ABOUT NONRECURRING CHARGES IN THIS**
3 **DOCKET?**

4 A. Yes, and I believe the direct testimony bears out my assessment that
5 it will be impossible to consider nonrecurring charges without a
6 thorough inquiry into performance measures and other requirements
7 for operations support systems. Ms. Murray, for example, states that
8 "[a]ll cost studies should...reflect non-discriminatory access to the
9 incumbent's operations support systems and associated databases,
10 so that there will be parity between what the incumbent has available
11 to itself for retail operations and what it makes available to its
12 competitors through unbundled network elements." (Murray DT at
13 10.) Dr. Ankum claims that various kinds of "inefficiencies" in the
14 ILECs' OSS drive up their NRC cost studies. (Ankum DT at 44-45.)
15 A substantive response to these kinds of statements is beyond the
16 scope of this proceeding. I mention them here to make the point that
17 the matter of NRCs is inextricably linked to OSS, which, as Staff made
18 clear at the issues identification meeting, is not within the context of
19 this docket. OSS issues are instead the subject of other, more specific
20 proceedings. The ALECs' testimony underscores the
21 contentiousness of OSS issues, and the inherent link between OSS
22 and NRCs. Without knowing OSS requirements and performance
23 measures—indeed, without knowing which specific OSS functions
24 each ILEC offers—ILECs cannot be expected to be able to submit
25 NRC cost studies or to address specific study requirements.

1 **Q. DO YOU AGREE WITH THE ALECS' VIEW THAT THE ILECS**
2 **HAVE A BROAD MANDATE TO OFFER COMBINATIONS?**

3 A. No. The ALECs argue that the ILECs should be required to provide
4 without restriction any combination that the ILEC uses anywhere in its
5 network to provide service to any carrier or customer. (See, e.g.,
6 Falvey DT at 7.). Ms. Strow believes that the Commission "is fully
7 empowered to require ILECs to provide UNE combinations in any
8 manner it sees fit," whether or not they are currently combined.
9 (Strow, DT at 14-16.) Mr. Gillan, likewise, would seem to require the
10 ILECs to provide combinations that are not actually combined within
11 the network, but that could be. (Gillan DT at 6.)

12
13 GTE's lawyers advise me that the ALECs misperceive the existing
14 state of the law. Even though they seem to understand that the list
15 of UNEs remains unknown at this point, they advocate all kinds of
16 combinations. It is, of course, impossible to designate UNE
17 combinations until we know what UNEs are on the FCC's list. Even
18 when that issue is settled, there is nothing requiring the ILECs to
19 combine them in any manner the ALEC wishes.

20
21 The ILECs have only two types of obligations relevant to
22 combinations. First, they must provide UNEs in a way that "allows
23 requesting telecommunications carriers to combine such network
24 elements in order to provide a telecommunications service." (FCC
25 Rule 51.315.) This does not mean that the ILECs themselves are

1 required to combine the UNEs for the other carriers. As the Eighth
2 Circuit noted, "the plain language of the Act indicates that the
3 requesting carriers will combine the unbundled elements themselves."
4 (*Iowa Utils. Bd. V. F.C.C.*, 120 F.3d 753, 813 (8th Cir. 1997).) Second,
5 the ILECs "shall not separate requested network elements that the
6 incumbent LEC currently combines." (FCC Rule 51.315(b).) As the
7 U.S. Supreme Court has made clear, this Rule is intended to prevent
8 the ILECs from disconnecting previously connected elements for no
9 reason other than imposing wasteful reconnection costs on the
10 ALECs. (*Iowa Utils. Bd.*, 119 S.Ct. 721, 737; 142 L.Ed. 2d 834, 858.)

11
12 The ALECs' attempts to impose obligations beyond these ignore the
13 fact that the Eighth Circuit vacated the FCC's more extensive
14 combination prescriptions in Rules 51.315(c)-(f). I understand that
15 this aspect of the Eighth Circuit's decision was not appealed to the
16 Supreme Court, so the vacated rules are not relevant to this
17 proceeding.

18
19 **Q. DO YOU AGREE THAT XDSL LOOPS AND OTHER ADVANCED**
20 **FEATURES SHOULD BE REQUIRED UNES OR UNE**
21 **COMBINATIONS?**

22 **A.** No. The ALECs recommend unbundling a variety of elements used
23 in the provision of advanced services, including high speed loops and
24 transport, Bit-Stream Links, Extended Links, and xDSL equipped and
25 compatible loops (See, e.g., Falvey DT at 9-10, 14-16; Gillan DT at 3-

1 4). Neither this Commission nor the FCC designated these features
2 as UNEs in their original UNE lists, and there is, if anything, even less
3 reason to do so now.

4
5 Mr. Falvey is mistaken that the FCC has “affirmed that ILECs must
6 unbundle all network elements used in provisioning advanced
7 services.” (Falvey at 16.) Rather, under the Act’s necessary and
8 impair standard, an element must be unbundled only where it is
9 essential to competition and there is convincing evidence that ALECs
10 cannot effectively compete using substitutes for the element available
11 from alternative sources. Without a doubt, CLECs will not be impaired
12 in their ability to provide advanced services without access to
13 DSLAMs, packet switches, high-speed transport and the like. The
14 only network element that ALECs may require access to in order to
15 provide advanced services is the loop, and this access will be
16 necessary only where ALECs need access to ILEC loops generally.

17
18
19 Unlike basic telephone services, advanced services have always
20 been provided in a competitive and dynamic market. They are being
21 introduced by ALECs, cable companies, and ILECs simultaneously.
22 As Covad’s witness Murray aptly states, “[t]he market for DSL-based
23 services is unusual in that the incumbents do not already dominate it,
24 and aggressive new competitors, such as Covad, are poised to enter
25 the market offering a wide range of services and options.” (Murray DT

1 at 14.) The FCC has confirmed that there is no incumbent
2 dominating the market. (See Inquiry Concerning the Deployment of
3 Advanced Telecomm. Capability, Report, CC Docket No. 98-146, at
4 para. 48 (Feb. 2, 1999).) Indeed, cable company and ALEC
5 deployment of advanced services dwarfs the availability of these
6 services from the ILECs. ALEC xDSL and cable modem service are
7 available in many more cities than ILEC xDSL service. ALECs have
8 deployed more advanced service equipment than ILECs over ILEC
9 loops than ILECs have themselves. (FCC Advanced Services Report
10 at paras. 53, 56, 58.) ALECs have installed more digital subscriber
11 line access multiplexers (DSLAMs) than ILECs have. (Hendrix DT at
12 7.) The ALECs' own national trade association claims that they have
13 surpassed ILECs in providing advanced services over ILEC loops and
14 the ALECs are "driving the deployment of cutting-edge technology."
15 (GTE's FCC Comments in Docket 96-98 at 75, citing Press Release,
16 ALTS' Fall Education Seminar Proves Success of Telecom Act in
17 Stimulating Broadband Data and Competitive Providers (Sept. 18,
18 1998).) Moreover, as the National Cable Telephone Association has
19 pointed out, cable providers have an advantage over ILECs because
20 cable has superior bandwidth and doesn't interfere with normal
21 telephone usage. Thus, cable companies expect to have a million
22 cable modem subscribers this year, as compared with only 300,000
23 xDSL subscribers for the ILECs. (GTE's FCC Comments in Docket
24 96-98 at 75.)

25

1 In the face of statistics like these, it defies reason to suggest, as Ms.
2 Murray does, that ILECs have some kind of special advantage in the
3 advanced services market (Murray DT at 14) or, as Ms. Strow does,
4 that ILECs will have an “unfettered ability” to impair ALEC provisioning
5 of advanced services if they don’t offer certain UNE combinations
6 (Strow DT at 14.) With access to ILEC loops, where necessary, the
7 wide availability of advanced services equipment, and the ability to
8 collocate (which got easier with the FCC’s recent collocation ruling),
9 the ALECs are easily able to offer advanced services and have done
10 so more aggressively than the ILECs.

11

12 **Q. SOME OF THE ALECS WOULD RECOMMEND UNBUNDLING OF**
13 **SUB-LOOP ELEMENTS. (STROW DT AT 9; FALVEY DT AT 16.)**
14 **DO YOU AGREE WITH THIS PROPOSAL?**

15 A. No. Sub-loop unbundling does not meet the “impair” standard of
16 section 251(d)(2) of the Act. As an initial matter, in areas where
17 access to unbundled loops does not meet the statutory standard, then
18 it follows that no sub-loop unbundling can be ordered either.
19 Likewise, in areas where the ALECs require access to unbundled
20 loops, mandatory sub-loop unbundling is unnecessary because
21 ALECs can take the whole loop and will not be impeded from
22 providing competitive service.

23

24 In addition, even if sub-loops met the Act’s impairment standard, sub-
25 loop unbundling raises complex technical, administrative, and

1 operational issues. Indeed, the FCC declined to require sub-loop in
2 its original UNE list because of the practical implications for network
3 reliability and service integrity. (First Report and Order in Docket 96-
4 98 at para. 391.) There are dozens of loop configurations, each with
5 a distinct combination of network elements and technologies.
6 Because of this, access at the sub-loop level must be evaluated on a
7 case-by-case basis to determine whether access is feasible and
8 whether the requesting carrier is willing to compensate the ILEC for
9 the required work. GTE currently uses a bona fide request process
10 for sub-loop unbundling and will continue to do so.

11
12 **Q. SHOULD THE COMMISSION MANDATE ACCESS TO DARK**
13 **FIBER, AS SOME ALECS SUGGEST (FALVEY DT AT 14)?**

14 **A.** No. The Commission may not require ILECs to provide dark fiber on
15 an unbundled basis because the Act's plain language excludes dark
16 fiber from the definition of "network element." Section 3(45) of the Act
17 defines a "network element" as a "facility or equipment used in the
18 provision of a telecommunications service." The very nature of dark
19 fiber, however—the reason it is "dark"—is that it is not used in providing
20 service. Rather, dark fiber consists of strands of glass in the ground
21 that are unattached to the requisite electronics and carry no signals.
22 Even if dark fiber did meet the definition of "network element," it is
23 widely available in the market and thus fails to satisfy the Act's
24 "impair" test. Numerous carriers are laying fiber throughout the United
25 States. Indeed, ALECs are laying it at a faster rate than ILECs.

1 There is also a wholesale market for dark fiber. Companies such as
2 Frontier, GST, IXC, Level 3, Metropolitan Fiber Networks ("MFN"),
3 Qwest, and Williams lease their excess capacity. Likewise, utility
4 companies are deploying fiber, both in partnership with ALECs and on
5 their own.

6
7 Finally, requiring ILECs to provide a dark fiber UNE could undermine
8 their carrier of last resort obligations. By having dark fiber in reserve,
9 ILECs can respond to increases in consumer demand. If the facilities
10 are not available to satisfy these needs, ILECs will be forced to
11 construct new facilities swiftly and on short notice, which will increase
12 both the costs of construction and the length of time customers will
13 wait for service. Moreover, if ILECs construct facilities that a
14 competitor may take at will, they will be discouraged from engaging
15 in necessary long-term business planning because they cannot enjoy
16 the fruits of their investments. With ample numbers of firms installing
17 fiber, there is no reason to force ILECs to serve as construction
18 companies for ALECs.

19
20 **Q. HAVE THE ALECS PROPOSED A REASONABLE PERIOD FOR**
21 **THE FILING OF COST STUDIES?**

22 A. No. It is easy for the ALECs to recommend periods as short as 30
23 days (Murray DT at 15) for filing cost studies, because the ILECs will
24 need to do all the work. Substantial effort and resources must be
25 dedicated to collecting and assembling the underlying demand data,

1 developing the inputs for material and labor costs and for developing
2 the inputs related to the modeling of operating expenses. The
3 commencement of this last activity depends on the availability of
4 GTE's ARMIS data. As a general rule, these data are not available
5 until May. This means that if a cost study were to use 1999's ARMIS
6 reports as a starting point for expenses and common costs, work
7 could not begin until May, 2000. Further, I expect the Commission
8 will ask for rate design proposals, as well as cost studies, in Phase II.
9 These are just a few of the reasons that make the 120-day timeframe
10 proposed by GTE and BellSouth more realistic.

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Q. DOES THAT CONCLUDE YOUR REBUTTAL TESTIMONY?

A. Yes.