

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into :
pricing of unbundled :
network elements. :

DOCKET NO. 990649-TP

PROCEEDINGS:

PREHEARING CONFERENCE

BEFORE:

COMMISSIONER E. LEON JACOBS, JR.

DATE:

July 6, 2000

TIME:

Commenced at 9:34 a.m.
Concluded at 11:15 a.m.

PLACE:

Betty Easley Conference Center
Room 148
4075 Esplanade way
Tallahassee, Florida

REPORTED BY:

MARY ALLEN NEEL, RPR

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FLORIDA PUBLIC SERVICE COMMISSION

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KIMBERLY CASWELL, ESQUIRE, One Tampa City Center, 201 North Franklin Street, Tampa, Florida 33601-0110, on behalf of GTE Florida, Incorporated.

JON FONS, ESQUIRE, Ausley & McMullen, 227 South Calhoun Street, Tallahassee, Florida 32301, and CHARLES J. REHWINKEL, ESQUIRE, 1313 Blair Stone Road, Tallahassee, Florida 32301-3021, on behalf of Sprint-Florida, Incorporated and Sprint Communications Company Limited Partnership.

JOSEPH A. MCGLOTHLIN, ESQUIRE, McWhirter, Reeves, McGlothlin, Davidson, Decker, Kaufman, Arnold & Steen, P.A., 117 South Gadsden Street, Tallahassee, Florida 32301, on behalf of Florida Competitive Carriers Association and Z-Tel Communications, Inc.

JAMES LAMOUREUX, ESQUIRE, 1200 Peachtree Street, Suite 1200, Atlanta, Georgia 32309, on behalf of AT&T Communications of the Southern States, Inc., participating telephonically.

ED PHILLIPS, ESQUIRE, c/o Scott Sapperstein, 3625 Queen Palm Drive, Tampa, Florida 33619, on behalf of Intermedia Communications, Inc., participating telephonically.

DONNA CANZANO MCNULTY, ESQUIRE, 325 John Knox Road, The Atrium Building, Suite 105, Tallahassee, Florida 32303, and RICHARD D. MELSON, ESQUIRE, Hopping Green Sams & Smith, P.A., Post Office Box 6256, Tallahassee, Florida 32308, on behalf of MCI worldCom, Inc.

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J. JEFFREY WAHLEN, ESQUIRE, Ausley & McMullen, 227 South Calhoun Street, Tallahassee, Florida 32301, on behalf of ALLTEL Communications, Inc.

APPEARANCES CONTINUED:

MICHAEL A. GROSS, 310 North Monroe Street, Tallahassee, Florida 32301, on behalf of Florida Cable Telecommunications Association, Inc.

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KELLY KESTER, 7708 Balboa Street, Sunrise, Florida 33351, on behalf of Supra Telecommunications and Information Systems, Inc.

KAREN CAMECHIS, ESQUIRE, and PETER M. DUNBAR, ESQUIRE, Pennington Law Firm, Post Office Box 10095, Tallahassee, Florida 32302, on behalf of Time Warner Telecom of Florida, L.P.

PATRICK WIGGINS, ESQUIRE, Wiggins & Villacorta, 2145 Delta Boulevard, Tallahassee, Florida 32303, on behalf of DIECA Communication, Inc., d/b/a Covad Communications Company, and BlueStar Networks, Inc.

BETH KEATING, ESQUIRE, WAYNE KNIGHT, ESQUIRE, and DIANA W. CALDWELL, ESQUIRE, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, on behalf of the Commission Staff.

P R O C E E D I N G S

1
2 COMMISSIONER JACOBS: We'll go on the
3 record. Counsel read the notice.

4 MS. KEATING: By notice issued June 27,
5 2000, this time and place have been set for a
6 prehearing conference in Docket No. 990649. The
7 purposes is as set forth in the notice.

8 COMMISSIONER JACOBS: Very well. We'll
9 take appearances.

10 MS. CASWELL: Kim Caswell, GTE Florida.

11 MR. ROSS: Bennett Ross on behalf of
12 BellSouth Telecommunications.

13 MR. FONS: John Fons with the Ausley law
14 firm on behalf of Sprint-Florida and Sprint
15 Communications Company Limited Partnership. Also
16 appearing will be Mr. Charles J. Rehwinkel.

17 MR. GROSS: Michael Gross on behalf of
18 FCTA.

19 MR. DUNBAR: Peter Dunbar on behalf of Time
20 Warner Telecom, also entering an appearance for Karen
21 Camechis on behalf of Time Warner Telecom.

22 MS. KESTER: Kelly Kester on behalf of
23 Supra Telecom.

24 MS. McNULTY: Donna McNulty on behalf of
25 MCI WorldCom.

1 MR. MELSON: Rick Melson on behalf of MCI
2 WorldCom and Rhythms Links, Inc.

3 MR. MCGLOTHLIN: Joe McGlothlin for the
4 FCCA.

5 MR. WAHLEN: Jeff wahlen of the Ausley &
6 McMullen law firm on behalf of ALLTEL Communications,
7 Inc.

8 MR. WIGGINS: Patrick Wiggins on behalf of
9 Covad.

10 MS. KEATING: And Beth Keating, Wayne
11 Knight, and Diana Caldwell on behalf of the Commission
12 Staff.

13 COMMISSIONER JACOBS: Very well. Staff,
14 are there any preliminary matters?

15 MS. KEATING: The only preliminary matters
16 that we're aware of at this time, there are a few
17 outstanding motions, and I would suggest that we go
18 ahead and take those up at this time.

19 COMMISSIONER JACOBS: Very good. As I
20 understand it, there is a motion for -- by Supra.
21 would you like to explain that one to us? For
22 extension of time to file rebuttal. As I understand
23 it, there's no discussion about that, is there?

24 MS. KEATING: There were no responses
25 filed.

1 COMMISSIONER JACOBS: None here? We'll
2 grant that.

3 The next one I have is BellSouth's motion
4 for a protective order. As I understand it, no
5 responses to that one either. Any discussion on that
6 here?

7 Okay. We'll go ahead and grant that.

8 Next we have a motion by Sprint to accept
9 supplemental direct. And I understand no responses to
10 that one either.

11 MR. FONS: No response to that.

12 COMMISSIONER JACOBS: Okay. None here?
13 That motion is granted.

14 And then lastly, a motion by Sprint for
15 extension of time to file cost studies. Any
16 discussion on that?

17 Okay. That motion is granted.

18 Before we move on, I just remembered that
19 there are parties participating by phone, and I don't
20 think we got their appearances. We may want to do
21 that now.

22 MR. LAMOUREUX: This is Jim Lamoureux
23 representing AT&T.

24 COMMISSIONER JACOBS: I'm sorry. The last
25 name? I'm sorry.

1 MR. LAMOUREUX: Lamoureux,
2 L-a-m-o-u-r-e-u-x.

3 COMMISSIONER JACOBS: Thank you.

4 MR. PHILLIPS: And this is Edward Phillips
5 on behalf of Intermedia Communications.

6 COMMISSIONER JACOBS: Great.

7 MR. FONS: Commissioner Jacobs, before we
8 go off of the pending motions, Sprint will be filing a
9 motion tomorrow to accept additional supplemental
10 direct testimony which will be correcting some of the
11 cost studies, so we'll just alert the parties to that
12 now.

13 COMMISSIONER JACOBS: Okay. We can do that
14 by order, by subsequent order, I assume.

15 MR. FONS: Thank you.

16 MR. MELSON: Commissioner Jacobs, could I
17 ask, that relates to Part II of this proceeding rather
18 than Part I?

19 MR. FONS: Yes, it relates to Phase II of
20 the proceeding.

21 COMMISSIONER JACOBS: Now, I also see that
22 there are several requests for confidentiality that
23 are outstanding. Unless there is a pressing need
24 presently to resolve those, we'll let those be
25 resolved by order, by subsequent order from staff.

1 Any concerns on that?

2 Great. It's moving along very well so
3 far.

4 For those parties who may be new, the
5 essence of what we would like to do today is to go
6 through the Draft Prehearing Order and ensure that it
7 comports with the parties' positions on the issues and
8 the order of witnesses is correct. So if there's no
9 other preliminary matters, we'll go ahead and do that
10 now.

11 MR. GROSS: Commissioner Jacobs, excuse me
12 a minute. It's likely that you would have gotten to
13 this issue, and I apologize if I'm disrupting the
14 order of events.

15 COMMISSIONER JACOBS: That's fine.

16 MR. GROSS: But there are several parties
17 who are not listed in the appearances section,
18 including FCTA and Time Warner. And significantly,
19 FCTA's witness, Bill Barta, is not listed on the
20 witness list. Neither his name nor his exhibits are
21 listed, so there's a significant omission in that
22 regard.

23 COMMISSIONER JACOBS: If they've entered an
24 appearance, we need to go ahead and get them on the
25 appearance list. It's Time Warner, and who was it?

1 FTCA? You're from FTCA.

2 MR. GROSS: Yes.

3 COMMISSIONER JACOBS: Okay.

4 MS. KEATING: We have made the appearances
5 corrections, but it looks like they haven't been
6 corrected yet on the witness list. But they are on
7 the appearance list for the version that was handed
8 out today.

9 MR. GROSS: Excuse me. Bill Barta is
10 omitted from the witness list.

11 MS. KEATING: That's what I just said.
12 We'll make those corrections.

13 MR. GROSS: Okay. Thank you.

14 COMMISSIONER JACOBS: Please give me your
15 name again.

16 MR. ROSS: Bennett Ross.

17 COMMISSIONER JACOBS: Bennett Ross. And
18 you'll be added with Ms. White for --

19 MR. ROSS: Yes, yes. Along with Kip
20 Edenfield.

21 COMMISSIONER JACOBS: Great. Any other
22 changes to the appearances?

23 Very well. And we'll deal with the order
24 of the testimony when we get to that section,
25 Mr. Gross.

1 Next we have the boilerplate language in
2 conduct of proceedings in Section I of the Prehearing
3 Order.

4 If there's no correction there, we'll move
5 to the case background in Section II. Any revisions
6 to that section?

7 Hearing none, we move to Section III,
8 procedure for handling confidential information, which
9 is pretty much standard language.

10 If there are no modifications, next is
11 Section IV, post-hearing procedures, again, standard.

12 MS. McNULTY: Commissioner Jacobs, this is
13 Donna McNulty.

14 COMMISSIONER JACOBS: Okay.

15 MS. McNULTY: The post-hearing procedures,
16 will that section be modified? Because it's my
17 understanding that we will be filing a brief after the
18 conclusion of Phase II and not after the July hearing.

19 COMMISSIONER JACOBS: That is true.

20 MS. KEATING: That's correct.

21 MS. McNULTY: Thank you.

22 COMMISSIONER JACOBS: So we'll -- staff,
23 we'll give them leeway to put language in, essentially
24 stating that briefs are not due until the conclusion
25 of the hearings in September.

1 MS. KEATING: Is there any concern about
2 the page length?

3 MS. McNULTY: Probably at the -- yes, for
4 the conclusion of Phase II. I suspect we'll probably
5 all want a little bit -- we'll probably want more than
6 50 words and probably want more than 40 pages.

7 Perhaps we should address that at the next
8 prehearing conference for Phase II.

9 COMMISSIONER JACOBS: I don't see any need
10 to do it now. It probably will be better -- I guess
11 at that time we'll have a fuller appreciation for what
12 the issues are, the contested issues are.

13 MS. McNULTY: And also at that time, the
14 parties will have taken their positions on those other
15 issues, and it might be more clear.

16 COMMISSIONER JACOBS: Okay.

17 MS. McNULTY: Thank you.

18 MS. KEATING: If you would like, we can
19 just completely eliminate this section.

20 COMMISSIONER JACOBS: From this Prehearing
21 Order?

22 MS. KEATING: Yes.

23 COMMISSIONER JACOBS: Yes, I guess we can
24 do that. I don't think it will be a problem.

25 MR. FONTS: Commissioner Jacobs, again,

1 would it be appropriate that this Prehearing Order
2 specifically state that it addresses only the
3 prehearing matters concerned with Phase I of this
4 proceeding?

5 COMMISSIONER JACOBS: Given that we're
6 going to remove this section, I would like to do
7 that. I think that's a good idea.

8 Okay. Section V, prefiled testimony and
9 exhibits and witnesses, the procedure. Any changes
10 there?

11 Then Section VI, order of witnesses.

12 Okay. We heard that there is at least one
13 new witness, but let's look at the order as we have it
14 now. Any revisions or modifications?

15 MR. ROSS: Mr. Commissioner, this is
16 Bennett Ross on behalf of BellSouth. It would be our
17 intent to have Mr. James Stegeman testify on behalf of
18 BellSouth in Phase II of this proceeding after Daonne
19 Caldwell. Since Mr. Stegeman is really the sponsor of
20 BellSouth's loop model, it would probably make sense
21 to have that testimony earlier in the presentation
22 rather than at the end.

23 MR. MELSON: Commissioner Jacobs?

24 COMMISSIONER JACOBS: Yes.

25 MR. MELSON: I guess I was a little

1 confused. There are a number of witnesses I think
2 indicated by asterisks who have both Phase I and Phase
3 II testimony. And as Mr. Ross pointed out, I guess
4 there are some witnesses with only Phase II testimony.
5 Is the intent to put all of that testimony into the
6 record at this time or only the portions that deal
7 with the Phase I issues?

8 COMMISSIONER JACOBS: I would love for it
9 all to go in, but I don't know if that's agreeable.
10 If you're not going to want to modify or revise
11 testimony from now until the time of our second
12 hearing, then I think the more time it's in the
13 record, the better. I mean, the least bit of time we
14 can have to deal with that at the second hearing, the
15 better.

16 MR. MELSON: Commissioner Jacobs --

17 MS. KEATING: I'm sorry. I was just going
18 to explain. It would be helpful for us, I think, to
19 clarify how you prefer to have these in there, because
20 some parties filed prehearing statements that included
21 every witness that they had filed testimony for.
22 Others only filed prehearing statements with the
23 witnesses that they thought would be in this phase of
24 the proceeding. So the way we put together the Draft
25 Prehearing Order was based on the various prehearing

1 statements. But it would probably be better to take
2 out the witnesses that aren't going to be testifying
3 at all in Phase I.

4 COMMISSIONER JACOBS: Here's what we can
5 do. Particularly since we're going to expressly state
6 that this order has to do with the first hearing, I
7 think that's probably a wise course to do. However,
8 if the parties can stipulate to testimony from the
9 second phase now, I would highly encourage that.
10 we'll leave that at your discretion. Or if you want
11 to put your testimony in now for the second hearing,
12 again, I would encourage that. But that would be by
13 your express request. I wouldn't want that to happen
14 outside of that.

15 MR. FONS: Commissioner Jacobs, does that
16 mean that if we're going to put all the testimony in
17 in Phase I that we'll have to bring our witnesses to
18 Tallahassee for that purpose?

19 COMMISSIONER JACOBS: I would think that we
20 would only want to do that for stipulated testimony.
21 In other words, if someone is going to want to cross
22 examine your witness from Phase II, I would want that
23 probably all to happen in context. I would think it
24 would be a problem for a party trying to arrange their
25 cross examination from one phase to the other. That's

1 why I suggest if it's stipulated testimony, it would
2 be wise to do that.

3 But if you guys can agree on a process that
4 will get that done, I think I'm -- my first priority
5 is that we make sure that we can conclude the
6 hearings, and what I see now is great time pressure on
7 the second phase, so that's why my caveats. If we can
8 do things now that will help us to conserve time when
9 we come back in September, I'm all in favor of that.
10 But outside of that, I don't want to interject more
11 confusion than need be.

12 MR. MELSON: Commissioner Jacobs, since
13 neither the ALEC testimony for second hearing nor the
14 ILEC rebuttal testimony for the second hearing has
15 been filed, at least on behalf of my clients, I think
16 it would be premature to stipulate to any witnesses
17 that deal with Phase II issues. So I'm not sure,
18 unfortunately, there's any way to avoid --

19 COMMISSIONER JACOBS: You can do that.

20 MR. FONTS: May I make a suggestion? This
21 will probably be the most difficult part of the
22 prehearing conference that we have to deal with.
23 Could we have about ten minutes so the parties could
24 get together and see how we might work this out rather
25 than debating it one at a time?

1 COMMISSIONER JACOBS: Do you think that
2 would be worthwhile? I'm not pressed for time at all.
3 we can do that. we'll go off the record then.

4 (Short recess.)

5 COMMISSIONER JACOBS: Counsel, would you
6 like to explain to us or walk us through the process?

7 MS. KEATING: If I can. The parties have
8 agreed to combine direct and rebuttal, and the order
9 of witnesses will be BellSouth's witnesses first, with
10 Varner, then Caldwell, Billingsley, Cunningham,
11 Milner; then GTE's witnesses will follow with Trimble,
12 Sovereign, Jacobson, Norris; and then Sprint's
13 witnesses, Dickerson, Sichter, Quackenbush, Holmes;
14 AT&T and MCI WorldCom's witness Hirshleifer will.
15 Follow, then King, Majoris; Supra's witnesses Nelson
16 and Bentley; then Z-Tel's witness Ford; then the Data
17 ALECs' witness Murray; then FCTA's witness Barta.

18 COMMISSIONER JACOBS: The witness's name
19 again?

20 MS. KEATING: Barta.

21 COMMISSIONER JACOBS: B-a-r-t-a?

22 MS. KEATING: Uh-huh.

23 we're going to take out any witnesses that
24 only have testimony applicable to Phase II.

25 COMMISSIONER JACOBS: Okay.

1 MS. KEATING: And then the parties are also
2 going to get back to me on striking or making a clear
3 indication as to the issues in Phase I that the
4 witnesses are going to testify, for those that are
5 going to be appearing for this phase.

6 COMMISSIONER JACOBS: Great.

7 MS. KEATING: They've also asked for an
8 indication in the order that while Phase II testimony
9 may be entered into the record, any objections
10 regarding Phase II testimony will be reserved until
11 the Phase II prehearing conference.

12 COMMISSIONER JACOBS: Okay.

13 MR. FONTS: As well as cross examination.

14 MS. KEATING: As well as cross examination
15 at the hearing.

16 COMMISSIONER JACOBS: Okay. Good. That is
17 agreeable to all the parties? Great. That works.
18 Okay.

19 MS. McNULTY: Commissioner Jacobs?

20 COMMISSIONER JACOBS: Yes.

21 MS. McNULTY: Hi. This is Donna McNulty.
22 I would like to request that our witness, John
23 Hirshleifer, since he's flying in from California, if
24 he could be taken on a day certain, perhaps Tuesday,
25 we sure would appreciate that.

1 COMMISSIONER JACOBS: Well, that's
2 difficult to tell. I think he will be at least the
3 third day. That seems --

4 MS. McNULTY: So Tuesday or Thursday -- I
5 mean Tuesday or Wednesday?

6 COMMISSIONER JACOBS: Yes.

7 MS. McNULTY: Okay. But just not Monday.
8 We sure do appreciate that.

9 COMMISSIONER JACOBS: That's no problem.
10 So we can expressly excuse him for Monday. And
11 Tuesday?

12 MS. McNULTY: Well, we were hoping he
13 would be here for Tuesday.

14 COMMISSIONER JACOBS: Tuesday and
15 Wednesday, or just Tuesday?

16 MS. McNULTY: Tuesday will be preferable.

17 COMMISSIONER JACOBS: Okay. If that's
18 agreeable, then we'll -- if we haven't gotten to him
19 by the afternoon on Tuesday, then we'll just bring him
20 up out of order if that's okay with the parties.
21 Okay.

22 MS. McNULTY: Thank you very much.

23 MR. McGLOTHLIN: Commissioner, just for the
24 sake of completeness, during the discussion off the
25 record, we also agreed that for Phase II testimony,

1 the witness's summary, as well as objections and
2 cross, would be deferred until the second hearing.

3 COMMISSIONER JACOBS: The witness summary?

4 MR. MCGLOTHLIN: Yes.

5 COMMISSIONER JACOBS: So for all those
6 witnesses testifying in Phase I, they're not going to
7 give a summary of their testimony?

8 MR. MCGLOTHLIN: Those witnesses that have
9 testimony prefiled for Phase II --

10 COMMISSIONER JACOBS: Oh, I'm sorry.

11 MR. MCGLOTHLIN: They'll summarize that
12 portion of it in the second hearing.

13 COMMISSIONER JACOBS: I understand. Okay.
14 Very well.

15 So that takes care of, it sounds like, all
16 the issues regarding order of testimony, and we're
17 going to -- in the final Prehearing Order, we'll have
18 listed the specific issues in Phase I that witnesses
19 will testify to. Great.

20 That takes us to Section VII, basic
21 positions. And I'll just ask any of the parties if
22 there are any modifications to your respective
23 positions.

24 Hearing none, we go now to Section VIII,
25 which is --

1 MS. KEATING: Actually, Commissioner, I
2 believe ALLTEL filed revised positions.

3 MR. WAHLEN: Yes. This is Jeff Wahlen. We
4 did not change our basic position. We did submit -- I
5 have not filed these. I will if you wish. But I have
6 revised positions for Section VIII, and rather than
7 going through them individually issue by issue, I
8 would just like to have those reflected in the
9 Prehearing Order when it's issued.

10 COMMISSIONER JACOBS: If there's no
11 objection, then we can grant that.

12 MR. ROSS: Commissioner Jacobs?

13 COMMISSIONER JACOBS: Yes.

14 MR. ROSS: BellSouth has one change to its
15 position on Issue 7.

16 COMMISSIONER JACOBS: Now, are we -- I had
17 anticipated going issue by issue, but if --

18 MS. CASWELL: I do have a change on Issue
19 5.

20 COMMISSIONER JACOBS: Okay. If you would,
21 defer that until we get to that.

22 okay. Let's go to Issue 5, then. Any
23 modifications to the parties' positions?

24 MS. CASWELL: Yes. For GTE, Commissioner,
25 GTE would like to delete the last sentence of its

1 position on Issue 5, beginning with, "If the
2 Commission wishes to set rates." That whole sentence
3 would go.

4 COMMISSIONER JACOBS: Okay.

5 MS. CASWELL: Thank you.

6 MR. MELSON: Commission Jacobs?

7 COMMISSIONER JACOBS: Yes.

8 MR. MELSON: On Issue 5, the Data ALECs'
9 position, where we say, "Adopt FCCA position," since
10 it's now being called the FCCA Group, I would ask that
11 we change it to, "Adopt FCCA Group position." And I
12 would have the same request on two or three other
13 items where we adopted FCCA.

14 COMMISSIONER JACOBS: Okay. Those were
15 changes on Issue 5.

16 Issue 6.

17 And we'll note the same change -- well, we
18 don't have that here, do we? Okay.

19 No changes to Issue 6.

20 Issue 7.

21 MR. ROSS: BellSouth has a change to its
22 position on Issue 7b, and the change would be to
23 strike the word "rate" on the first line and insert
24 the following, "inputs to the BellSouth cost study."
25 So the sentence would now read, "The appropriate

1 depreciation inputs to the BellSouth cost study are
2 those contained in BellSouth's 2000 Florida
3 depreciation study."

4 COMMISSIONER JACOBS: Okay. Any other
5 changes in Issue 7?

6 Issue 8. I'm sorry. It's Issue 9, Issue
7 9b.

8 MR. MELSON: Commissioner Jacobs, Rick
9 Melson. I'm not sure if this is the appropriate time
10 to raise it, but our position on Rhythms -- the Data
11 ALECs' position on Issue 9b is that line sharing,
12 although BellSouth has filed some cost studies on line
13 sharing, by virtue of the earlier stipulation between
14 the parties that was approved by your order last
15 December that line sharing is not part of this
16 proceeding, it's really a Phase II issue rather than a
17 Phase I issue. But we need some clarification, we
18 believe, at this point as to whether it is in or out,
19 because as it's presently structured, we understand
20 that issue is not in this proceeding at all and don't
21 intend to file testimony on that issue on July 24th.
22 But if we are under a mistaken impression, we need to
23 know it now.

24 COMMISSIONER JACOBS: What procedural
25 posture are we in regarding line sharing?

1 MS. KEATING: Well, Staff agrees that line
2 sharing was not indicated to be a part of Phase I of
3 this proceeding, but Mr. Melson is correct that
4 BellSouth has included some line sharing items in its
5 cost study.

6 MS. CASWELL: Commissioner, for the record,
7 GTE agrees that line sharing is not part of this
8 proceeding.

9 COMMISSIONER JACOBS: What --

10 MR. ROSS: Commissioner Jacobs --

11 COMMISSIONER JACOBS: Go ahead.

12 MR. ROSS: The stipulation clearly provides
13 that line sharing is not part of this proceeding.
14 However, that was before we bifurcated this proceeding
15 and established the second phase in September. And
16 I've already talked to Mr. Melson about this. It was
17 my understanding that the Data CLECs were anxious to
18 resolve line sharing issues and were more than
19 prepared and more than willing to address line sharing
20 in Phase II if that's the collective desire of the
21 industry. If that's not the collective desire of the
22 industry, that's fine. We can have another proceeding
23 sometime next year to deal with line sharing.

24 However, some of the cost studies that
25 BellSouth has submitted are relevant to general access

1 to unbundled network elements, putting aside line
2 sharing. We have submitted, for example, cost studies
3 for splitters, which it's my understanding that a CLEC
4 that wants to collocate a DSLAM, for example, at one
5 of our remote terminals would need a splitter in order
6 to make use of its DSLAM. Well, we need to have the
7 cost of the splitter, so we've submitted cost
8 studies.

9 So whether or not the Commission makes any
10 final determinations about line sharing, there are
11 still some costs that need to be established that may
12 overlap with line sharing that I think are still
13 germane to what we're doing in Phase II.

14 COMMISSIONER JACOBS: Okay. Do you have
15 something, Staff?

16 MS. KEATING: Well, I do want to point out
17 that line sharing wasn't in the stipulation for either
18 phase. I don't know if the parties have discussed
19 that or are looking at altering their stipulation.

20 COMMISSIONER JACOBS: I think we're in
21 agreement that our order won't address prices or the
22 bundling status of line sharing. The fact that the
23 cost information has been filed, I think the only
24 question would be does it bias, and probably the only
25 one it might bias would be if they were held to those

1 dollars.

2 Mr. Fons?

3 MR. FONNS: Sprint has not filed a cost
4 study for line sharing, so there would be no cost
5 study on which to base any rates for line sharing for
6 Sprint in either Phase I or Phase II of this
7 proceeding.

8 COMMISSIONER JACOBS: Okay.

9 MR. FONNS: So the only --

10 MS. CASWELL: And -- I'm sorry. Go ahead.

11 MR. FONNS: The only ILEC that has filed
12 anything on line sharing is BellSouth.

13 COMMISSIONER JACOBS: To Mr. Melson's
14 point, I think we are clear that in neither phase of
15 this proceeding are we anticipating issuing an order
16 addressing line sharing. And unless there's some
17 party who perceives that they're biased by the
18 testimony that has been filed, we won't strike it.
19 We'll leave it in. Is that reasonable?

20 MR. MELSON: Commissioner Jacobs, Mr. Ross
21 has made a new point today that I don't fully
22 understand the technical implications of about line
23 sharing splitters. We'll be prepared by the time of
24 the next prehearing conference, if we think that is
25 related only to line sharing, to raise that in a

1 motion to strike, and if we think it's properly in, to
2 not make an objection. But I would think we would
3 deal with those probably at the next prehearing
4 conference. But just -- if I understand your ruling,
5 it is that the line sharing issues per se are not in
6 either phase of this proceeding.

7 COMMISSIONER JACOBS: Correct, correct.
8 Okay. With that clarification, there's
9 still no modifications to Issue 9b? We can leave it
10 as it stands.

11 Very well. Then we'll move to Issue 13.
12 Any changes to Issue 13?

13 Very well. That takes care of all the
14 issues.

15 Issue 9, or Section IX, rather, the exhibit
16 list. I assume that there will be some changes here,
17 because we took some testimony out; right?

18 MR. ROSS: Commissioner Jacobs, I think the
19 understanding of the parties was that, at least with
20 respect to BellSouth, that all of the testimony and
21 all the exhibits, even as they relate to Phase II
22 issues, would come in in Phase I subject to objection,
23 cross examination, and the like in Phase II for Phase
24 II issues.

25 COMMISSIONER JACOBS: That's fine. If

1 there's no objection to that, that will work.

2 MR. MCGLOTHLIN: And that's for witnesses
3 who have overlapping testimony, not for just Phase II
4 witnesses; correct?

5 MR. ROSS: I'm sorry? I'm sorry. I didn't
6 hear that.

7 MR. MCGLOTHLIN: Your statement refers to
8 those witnesses who have testimony in Phase I and
9 Phase II?

10 MR. ROSS: Yes.

11 MR. MCGLOTHLIN: And does not relate to
12 witnesses who have testimony only in Phase II.

13 MR. ROSS: That's correct. We will strike
14 the witnesses that we've already removed from the
15 witness list in the original section, and obviously
16 remove their exhibits as well. Mr. Page,
17 Mr. Stegeman, and Mr. Reid would not appear in
18 Phase I.

19 COMMISSIONER JACOBS: All right. That
20 should be a fairly easy process to follow.

21 So with that clarification, any other
22 revisions to the exhibit list?

23 Great. We have no stipulations pending at
24 this time. Staff?

25 MS. KEATING: Can I ask one question of

1 Mr. Gross? Did Mr. Barta have any exhibits?

2 MR. GROSS: Yes, he had exhibits, and they
3 were attached to his prefiled testimony.

4 COMMISSIONER JACOBS: Do you have the -- do
5 you want to just go ahead and identify those here, and
6 you can give the descriptions later. Do you have the
7 ID number for those available to you?

8 MR. GROSS: Yes, I do.

9 MS. CASWELL: Commissioner Jacobs?

10 COMMISSIONER JACOBS: Yes.

11 MS. CASWELL: I wonder if the parties might
12 be agreeable to again taking about 10 or 15 minutes.
13 I think there are a couple of issues that might be
14 resolved by stipulation, and one or two witnesses'
15 testimonies that might be stipulated into the record.
16 And if we could have that time, maybe we could save
17 some time later.

18 COMMISSIONER JACOBS: I think that would be
19 reasonable. If I may, since we're about done with
20 this, why don't we go ahead and finish out these last
21 couple of sections, and then we'll go off the record,
22 and I'll just be available when you're done.

23 MR. GROSS: Commissioner Jacobs,
24 Mr. Barta's exhibits are WJB-1 through WJB-5.

25 COMMISSIONER JACOBS: Okay. And you'll

1 prepare the descriptions. We already have the
2 Prehearing Order -- I'm sorry, the prehearing
3 statement. And we discussed the motions,
4 confidentiality. Great.

5 Are there any other matters on the Draft
6 Prehearing Order that need to be brought up outside of
7 the discussion on those potential stipulations?

8 Great. Then we'll go off the record for --
9 I'm flexible. We can say up to 30 minutes. And you
10 can just call me back.

11 (Short recess.)

12 COMMISSIONER JACOBS: All right. We're on
13 the record. You want to walk us through what -- now,
14 as I understand it, we were going to address the
15 proposed stipulations. Is that where we are?

16 MS. KEATING: That's correct. And I think
17 the parties actually have a better understanding of
18 where they're at, so I would like to turn it over to
19 Mr. Ross.

20 MR. ROSS: Commissioner Jacobs, we've made
21 some progress, and hopefully by the end of the day
22 we'll make considerably more.

23 COMMISSIONER JACOBS: Fine. Good news.

24 MR. ROSS: As of right now, the parties
25 have agreed to stipulate into the record the prefiled

1 testimony of the following witnesses: For BellSouth,
2 Dr. Randall Billingsley; for GTE Florida, Mr. Gregory
3 Jacobson.

4 COMMISSIONER JACOBS: Give me just a
5 moment. I'm sorry. Okay. So for BellSouth,
6 Mr. Billingsley.

7 MR. ROSS: Right. For GTE, Mr. Jacobson;
8 for Sprint, Mr. Quackenbush; and for AT&T and MCI
9 WorldCom, Mr. Hirshleifer.

10 COMMISSIONER JACOBS: Okay.

11 MR. ROSS: All of those four witnesses deal
12 with the issue of cost of capital.

13 COMMISSIONER JACOBS: Okay.

14 MR. ROSS: Most of the other parties are
15 prepared to stipulate into the record all of the
16 testimony, with the exception of the witnesses who
17 deal with the issue of depreciation, which would be
18 Mr. Cunningham, Mr. Sovereign, Mr. Dickerson, and
19 Mr. Majoros.

20 MR. GROSS: That should include Mr. Barta
21 also.

22 MR. ROSS: Well, BellSouth is willing to
23 stipulate to Mr. Barta in any event, but if the
24 Association wants to bring Mr. Barta to appear, that's
25 fine.

1 MR. GROSS: On the condition of the waiver
2 of cross, we would agree to stipulate his testimony
3 in.

4 MR. ROSS: Okay. So the hope is that by
5 the end of day, all the parties will agree that those
6 will be the only four witnesses who will have to
7 appear live in person a week from Monday.

8 COMMISSIONER JACOBS: Wow.

9 MR. ROSS: The hangup here is that Supra
10 and Z-Tel have not been able to get in touch with the
11 decision-makers who can approve that proposal. So
12 we're kind of in limbo right now, but hopefully we'll
13 get that approval and be able to streamline the
14 proceeding.

15 COMMISSIONER JACOBS: Okay. But we can --
16 for today's purposes, we can finalize the stipulation
17 as to Mr. Billingsley, Jacobson, Quackenbush, and
18 Hirshleifer?

19 MR. ROSS: That's correct.

20 COMMISSIONER JACOBS: And then we'll leave
21 the other one pending, but we can get that finalized,
22 and it will be included in the final order.

23 MR. ROSS: I believe both Z-Tel and Supra
24 have indicated that they will have an answer by the
25 end of day.

1 COMMISSIONER JACOBS: Great, great.

2 MR. MCGLOTHLIN: Commissioner?

3 COMMISSIONER JACOBS: Yes.

4 MR. MCGLOTHLIN: Just a bit of
5 housekeeping. I've been authorized to enter an
6 appearance on behalf of Z-Tel, Joe McGlothlin. I made
7 an appearance earlier. Let me enter the appearance
8 also of Michael Hazzard of the Kelly Drye & Warren law
9 firm for Z-Tel. Z-Tel participated with the FCCA and
10 others in a joint prehearing statement, so their
11 positions have been discussed. And I will undertake
12 to confer with Mr. Hazzard before the day is over as
13 to whether Z-Tel is in a position to participate and
14 defer to the stipulation.

15 COMMISSIONER JACOBS: Okay. That sounds
16 reasonable.

17 MR. MELSON: Commissioner Jacobs?

18 COMMISSIONER JACOBS: Yes.

19 MR. MELSON: Rick Melson. Just so we're
20 perfectly clear, the stipulation to Dr. Billingsley's
21 testimony includes an agreement by BellSouth to make
22 some very minor cross-reference changes and wording
23 changes that they will make when they enter that
24 testimony at the hearing. But the stipulation does
25 come with a couple of minor changes.

1 COMMISSIONER JACOBS: Okay. You want to
2 reserve until the testimony is entered?

3 MR. MELSON: I expect when Mr. Ross
4 sponsors the testimony that he will call out the
5 changes that we've agreed to.

6 COMMISSIONER JACOBS: Okay.

7 MR. ROSS: That's correct.

8 COMMISSIONER JACOBS: I missed the name of
9 the fourth witness that we will be bringing to
10 testify. I have Mr. Cunningham, Sovereign, Dickerson,
11 and who was the fourth one?

12 MR. ROSS: Mr. Majoros on behalf of AT&T
13 and MCI WorldCom.

14 COMMISSIONER JACOBS: Very well.

15 MR. ROSS: As far as Mr. Dickerson is
16 concerned, I'm not sure that any of the parties have
17 any cross examination for Mr. Dickerson. That's
18 Sprint's witness, and I'll leave that to Mr. Fons. It
19 may not be necessary for him to appear, but
20 depreciation as an issue I think will require live
21 testimony.

22 COMMISSIONER JACOBS: Okay. Very well.
23 Very well.

24 MR. WIGGINS: Commissioner? Over here.

25 COMMISSIONER JACOBS: Yes.

1 MR. WIGGINS: I would like to enter an
2 appearance for BlueStar Networks, Inc. Covad,
3 BlueStar, and Rhythms are jointly sponsoring a
4 witness. It would probably have been more useful if I
5 had done that earlier. I apologize.

6 COMMISSIONER JACOBS: Okay.

7 MR. WIGGINS: Thank you.

8 MS. KEATING: Commissioner?

9 COMMISSIONER JACOBS: Yes.

10 MS. KEATING: Could I just make sure that
11 staff's position is understood? with regard to any
12 witness's testimony that's going to be stipulated into
13 the record and any witnesses that are going to be
14 excused, staff would want an agreement that all the
15 deposition transcripts for those witnesses could go
16 in, as well as any discovery responses to
17 interrogatories and PODs that may be relevant to that
18 testimony and to the issues that are addressed.

19 Also, there is still some outstanding
20 discovery, so staff is going to have to go back and
21 check for some of these witnesses as to whether or not
22 we might have cross for some of them.

23 COMMISSIONER JACOBS: Okay.

24 MS. KEATING: But we are going to be
25 checking on that, and hopefully we'll be able to

1 discuss this further tomorrow with the parties.

2 COMMISSIONER JACOBS: Okay. And then if
3 there's any need to expedite that, I'll be happy to
4 work with you on that.

5 I think it's important to acknowledge that
6 this is very helpful, and I congratulate the parties
7 on working to come up with these stipulations.

8 With that, are there any other matters to
9 come before us today?

10 MR. ROSS: Commissioner Jacobs, just two
11 matters. One is relatively minor.

12 BellSouth is continuing to experience a
13 problem with getting service of some of the pleadings
14 that are being filed by the parties. My recollection
15 is that the scheduling order requires that substantive
16 pleadings be filed by Federal Express or served via
17 Federal Express. We're getting about half of the
18 stuff that's actually being filed with the
19 Commission. I would just ask all the parties to try
20 to be a little more diligent in making sure that
21 BellSouth is served with pleadings, particularly
22 objections to our discovery requests, the vast
23 majority of which we never received.

24 The other issue, Commissioner Jacobs,
25 concerns discovery. We served discovery several weeks

1 ago dealing with depreciation issues primarily, the
2 responses to which are due today and tomorrow.

3 Based upon the preliminary objections, it
4 is my belief, although I hope this is not the case,
5 that the parties have little, if any, intent to
6 actually answer the questions that are being asked of
7 them. And it's also my expectation that BellSouth is
8 going to have to file a motion to compel. We would
9 like to go ahead and at least make some arrangements
10 for filing that motion for setting a time frame by
11 which the ALECs would have to respond to that motion
12 and then have an opportunity to get that motion
13 resolved prior to the hearing, ideally.

14 If that's not possible, we would like the
15 opportunity, even though the issues are going to be
16 addressed in Phase I, to be able to supplement the
17 record either at Phase II or some other time, if a
18 motion to compel is granted, to allow us to introduce
19 any discovery responses into the record.

20 COMMISSIONER JACOBS: Okay. So the essence
21 of it would be -- your remedy would be to finalize
22 your discovery and then enter that into the record in
23 Phase II.

24 MR. ROSS: That's correct. If the motion
25 to compel is granted, and let's just take AT&T, has to

1 actually give us the depreciation lives that they're
2 using, then we would be able to introduce that
3 discovery response into the record in Phase II, even
4 though the issue of depreciation was heard in Phase I.

5 COMMISSIONER JACOBS: Now, that's going to
6 be associated with your witness's testimony, or will
7 the witness -- the witness for which you would
8 introduce that, will they have appeared in Phase I?

9 MR. ROSS: It's possible that the witness
10 would have appeared, but it may very well be possible
11 that no witness would appear. For example,
12 Mr. Majoros, it's my recollection, is AT&T and MCI's
13 depreciation witness. I don't believe he's an
14 employee of either AT&T or MCI, so he may technically
15 not be even answering the discovery that we have
16 asked, which is what lives is AT&T actually using. So
17 it may be there's no witness necessarily who's going
18 to appear.

19 COMMISSIONER JACOBS: And support that.

20 MR. ROSS: But these are parties, and these
21 are sworn discovery responses, and they should be
22 considered in the record as evidence, we believe.

23 MS. KEATING: Could I point out, frankly,
24 staff may be in the same position with some of our
25 discovery as well. We have received objections to

1 some our discovery. We're working through, or we have
2 worked through a number of them with the parties. But
3 we could be in the same situation that BellSouth finds
4 itself in.

5 MS. CASWELL: And GTE is in the same
6 situation as well. We've served discovery on
7 depreciation issues on almost all the other parties in
8 the proceeding, and we've received almost nothing, so
9 we may also have to file motions to compel.

10 COMMISSIONER JACOBS: Sounds like we may be
11 a bit premature in concluding what we may find
12 ourselves. I guess what I would like to do, though,
13 is to encourage the parties to be very diligent. I
14 know you will anyway. And to the extent that we can
15 avoid the procedural issues that will arise in the
16 event that we can't get this resolved, it would be
17 much appreciated, and I think it would be much to your
18 interest to resolve these as early as possible.

19 I'll say this. If there's a need to do any
20 kind of emergency proceeding to deal with any motion
21 to compel and that sort of thing, I'll be fairly
22 flexible next week to do that. So having said that,
23 I'll leave that to your good discretion.

24 MR. ROSS: Thank you, Mr. Commissioner.

25 COMMISSIONER JACOBS: Any other matters to

1 come before us today?

2 well, great. Again, I thank you. I think
3 this is indicative of a very cooperative effort, and I
4 look forward to us going through these hearings in the
5 same manner.

6 Thank you. This prehearing is adjourned.

7 (Proceedings concluded at 11:15 a.m.)

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1 CERTIFICATE OF REPORTER

2
3 STATE OF FLORIDA)

4 COUNTY OF LEON)

5
6 I, MARY ALLEN NEEL, do hereby certify that the
7 foregoing proceedings were taken before me at the time
8 and place therein designated; that my shorthand notes
9 were thereafter transcribed under my supervision; and
10 that the foregoing pages numbered 1 through 39 are a
11 true and correct transcription of my stenographic
12 notes.13 I FURTHER CERTIFY that I am not a relative,
14 employee, attorney or counsel of any of the parties,
15 or relative or employee of such attorney or counsel,
16 or financially interested in the action.17 DATED THIS 11th day of July, 2000.
18
1920
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