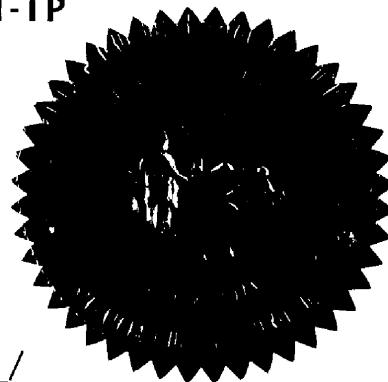


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 000121-TP

In the Matter of:

INVESTIGATION INTO THE
ESTABLISHMENT OF OPERATIONS
SUPPORT SYSTEMS PERMANENT
PERFORMANCE MEASURES FOR
INCUMBENT LOCAL EXCHANGE
TELECOMMUNICATIONS COMPANIES.



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VOLUME 3
PAGES 415 THROUGH 598

PROCEEDINGS: HEARING

BEFORE: CHAIRMAN E. LEON JACOBS, JR.
COMMISSIONER J. TERRY DEASON
COMMISSIONER LILA A. JABER
COMMISSIONER BRAULIO L. BAEZ
COMMISSIONER MICHAEL A. PALECKI

DATE: Thursday, April 26, 2001

TIME: Commenced at 9:30 a.m.

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

REPORTED BY: TRICIA DEMARTE
Official FPSC Reporter

APPEARANCES: (As heretofore noted.)

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NAME:

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25**EXHIBITS**

NUMBER:		ID.	ADMTD.
18	BST Unbundled ADSL/HDSL CLEC Information Package	419	535
19	EJM-1 and EJM-2	434	535
16			535
17	(Withdrawn)		

CERTIFICATE OF REPORTER 597

PROCEEDINGS

(Transcript continues in sequence from Volume 2.)

CHAIRMAN JACOBS: Morning. We'll go back on the record. I believe where we left off, Ms. Boone, you were going to inquire into a document.

MS. BOONE: Yes. Actually, I believe that we can now -- I can withdraw that exhibit, although I do understand BellSouth has also done an inquiry, and I appreciate that, but I have another exhibit I can use instead.

CHAIRMAN JACOBS: Very well. How nice.

MS. BOONE: Overnight miracle.

DAVID A. COON

resumed the stand as a witness on behalf of BellSouth Telecommunications, Inc., and, having been previously sworn, testified as follows:

CONTINUED CROSS EXAMINATION

BY MS. BOONE:

Q I would like to discuss with you, Mr. Coon, one clarification on P-7, the measure we talked about at some length yesterday regarding joint acceptance testing. I understand from counsel that you've further explored the nature of the cooperative testing; is that correct?

A Yes, we did.

Q Now, can you explain to me how BellSouth interprets P-7?

1 A The simple answer is, the P-7, which is cooperative
2 acceptance testing, a successful failure is not to be successful
3 unless the ALEC agrees that it has been successful.

4 Q And BellSouth would be willing to make adjustments to
5 its proposed SQM to ensure that it was clear that the loop had to
6 be successful from both the ALEC and the ILEC point of view?

7 A Yes. Yes, we would.

8 Q Now, would you agree with me, though, that,
9 nonetheless, BellSouth is not changing the fact that as proposed
10 BellSouth does not make that a Tier 1 penalty?

11 A That's correct.

12 MS. BOONE: I'd like to mark this exhibit. I think
13 we're on 18 now. Sorry. Mr. Chairman, what is the next exhibit
14 number.

15 CHAIRMAN JACOBS: The next exhibit will be Number 18.
16 (Exhibit 18 marked for identification.)

17 BY MS. BOONE:

18 Q Mr. Coon, do you recall yesterday we were discussing
19 loop conditioning and how BellSouth measured that?

20 A I believe that's where we left off. Yes, I do.

21 Q Would you please identify for me what Exhibit 18 is.

22 A Well, I can read the title.

23 Q Okay.

24 A It's an ADSL, HDSL CLEC information package that's
25 apparently produced by BellSouth.

1 Q Would you turn in this document to Page 12. I believe
2 your testimony yesterday was that BellSouth's order completion
3 interval accurately captured the time it takes BellSouth to
4 conduct loop makeup, I mean, excuse me, loop modification; is
5 that correct?

6 A Yes, that's the way the measurement is intended to be.

7 Q Now, as we've discussed before, when -- that measure
8 begins the clock when the FOC delivery date is delivered to the
9 ALEC, and the clock ends at the completion of the service order;
10 is that correct?

11 A That's the way -- yes, that's the way it's intended to
12 be.

13 Q Okay. Would you agree with me that if the actual
14 unbundled loop modification, the actual conditioning work, were
15 done by BellSouth before the FOC was issued, it would not be
16 captured by that measure?

17 A In the current measure using the current -- the old
18 processes, which is what this is based upon, it would not be
19 captured.

20 Q It would not be captured. Okay. You said with the old
21 processes, so is BellSouth now performing the unlooped loop
22 modification after the FOC date?

23 A We have a set of -- that's the direction we're moving
24 towards, yes. And let me clarify that a bit. This particular
25 document and the e-mail that you passed out yesterday are based

1 on a process or predicated on a process which we have been
2 following for about a year or two. And in that process, we had
3 held the order -- it was well-intentioned, but we held the order
4 from the ALEC until we could be certain that we could deliver
5 service on a certain date. So we wanted to not give the ALEC a
6 date that we were not relatively certain we could meet.

7 So we held the LSR until the job was done as this
8 process indicates and as your e-mail that you passed out
9 yesterday indicates. Then we submitted the LSR to the local
10 carrier service center to return an FOC when the job was
11 completed. The measurement that we're talking about, the 7 and
12 14 day order completion interval, went into effect the first of
13 March. And it is very clear to us after talking with a number of
14 people last night that we need to do a better job of
15 communicating to the line organizations that we've got some new
16 benchmarks and some new measurements and new objectives that
17 we've got to meet. And apparently, we have communicated several
18 times. It's not gotten to the people that it needs to get to in
19 all cases.

20 Q Okay. But I'd like to focus now on what the
21 measurements that BellSouth has proposed in this docket actually
22 measure. And my question is, you are aware that the CLECs have
23 proposed that loop conditioning be a separate metric entirely;
24 correct?

25 A Yes, I am.

1 Q And BellSouth is proposing that loop conditioning is
2 already being measured in its order completion interval; is that
3 correct?

4 A That's what this measurement will capture. It will
5 capture the -- everything associated from the time the FOC is
6 issued until the service is delivered, which would include loop
7 conditioning if it's required for the particular loop.

8 Q Okay. Well, let's walk through this order guide then,
9 if you will, with me on Page 12. If you look at the first step,
10 would you agree that -- start with the fourth step where the CLEC
11 sends the service inquiry and the LSR to its complex resale
12 services group, the CRSG; correct?

13 A That's right.

14 Q Then the next thing the CRSG does is to hold that local
15 service request and actually send a service inquiry to outside
16 plant engineering; is that correct?

17 A Yes.

18 Q Then the next step is, the outside engineering person
19 determines how long it's going to take to do these modifications;
20 right?

21 A Correct.

22 Q And then the next thing that happens is, the outside
23 plant engineer tells the CRSG how long it's going to take to do
24 the modifications; right?

25 A Right.

1 Q And then if you turn to the next page on Line 8, then
2 the CRSG tells the CLEC how long it's going to take to do the
3 modifications; is that correct?

4 A Correct.

5 Q Now, the next line number, 9, is the most important
6 one. When the unbundled loop modification is complete, to you,
7 does that mean that the actual modification of the loop, the
8 conditioning work, is complete at that point?

9 A Yes, it is.

10 Q Then you'll note that the outside plant engineer
11 notifies the CRSG who then notifies a CLEC; correct?

12 A That's correct.

13 Q Then the CRSG sends the entire package, that's the
14 service inquiry and the LSR, to the LCSC; correct?

15 A That's correct.

16 Q And it is at that point in the process that an FOC is
17 created; correct?

18 A That's what this process says, but again, this is not
19 the process we're going to be using in the future.

20 Q Okay. So BellSouth has changed its process entirely
21 about loop conditioning?

22 A We are going to change the process to meet the
23 benchmarks for these new measurements.

24 Q So you'll no longer be doing conditioning prior to
25 issuing the FOC. Conditioning will only be done after the FOC.

1 A That's the direction we're moving.

2 Q Well, when will that happen?

3 A It needs to happen very quickly; otherwise, we're going
4 to miss the measurements that we're already committed to make.

5 Q Actually, you'll make the measurements because you're
6 not going to be measuring anything with conditioning in your
7 current measure because there's no conditioning being done during
8 that time period.

9 A No. We'll miss, in fact, probably are missing the firm
10 order confirmation measurement because we have not issued a FOC
11 during this time.

12 Q But your firm order confirmation measurement is
13 targeted from when the LSR is sent to the LCSC, and if a CRSG is
14 holding the LSR, then the time clock on the FOC date does not
15 tick either.

16 A Well, actually -- no, that's not correct. The firm
17 order confirmation clock starts when the LSR is received.
18 Whether it's being held by the complex resale support group or
19 not, it doesn't make any difference. So to the extent that we're
20 holding the LSR during this time, using this process that
21 Ms. Boone passed out, which again is a process that is changing,
22 the FOC time continues to run until the firm order confirmation
23 is actually issued.

24 So to the extent that we're holding and have been
25 holding the LSR for loop modifications, we're missing the

1 benchmark requirement for the firm order confirmation interval.

2 Q Okay. I'm reading your firm order confirmation
3 interval, and that is O-9 to Coon-1, I guess. It says that the
4 interval for return of firm order confirmation is the average
5 response time from receipt of a valid LSR to distribution of a
6 firm order confirmation. Are you telling me that the way the
7 process works right now today, when Covad sends, pursuant to this
8 process in place today that was posted on the Web site, when
9 Covad sends an LSR together with a service inquiry asking for a
10 loop that needs modification, you're telling me that the moment
11 we send that LSR to the CRSG this firm order confirmation
12 timeliness clock starts to tick?

13 A That's exactly what I'm saying, yes.

14 Q Okay. And that's different from the other processes
15 BellSouth has used before, because the way you traditionally do
16 it is, when the LSR gets to the LCSC, which is the group that
17 actually produces the FOC.

18 A No. It's when the LSR is logged into our system.
19 Whether it's done by the CRSG or whether it's done by the LCSC,
20 the LSR receipt is logged into our systems, and the clock starts
21 running at that point.

22 Q So anytime Covad does a manual service inquiry process
23 with BellSouth using the CRSG, BellSouth is going to miss this
24 firm order confirmation date every time; is that correct?

25 A If there is an LSR associated with a service inquiry,

1 yes, that is correct.

2 Q And in the case of xDSL, do you happen to know if
3 that's the case or not?

4 A If there is a -- do I happen to know if what's the
5 case?

6 Q If you must submit both a service inquiry and an LSR
7 with each xDSL loop order.

8 A Well, the only reason you would -- yes, I think there
9 is because you said that you have to -- if you submit a loop
10 order, the order document is an LSR, it's not the service
11 inquiry. So if you are submitting an LSR with the service
12 inquiry, when the LSR is received the clock starts.

13 Q And it doesn't matter if it's received by the CRSG or
14 received by the LCSC, the clock starts.

15 A No, it does not.

16 Q So every time Covad submits an LSR together with a
17 service inquiry and BellSouth takes any time over 48 hours during
18 that service inquiry process, it's your testimony that you are
19 going to miss this order --

20 A Yes.

21 Q -- this O-9.

22 A Yes, it is.

23 Q Okay. Now, getting back to the conditioning issue.

24 You mentioned that the process was changing. And how is the new
25 process going to work?

1 A Well, the new process is going to work basically -- the
2 CRSG will submit the LSR and the service inquiry -- they will
3 issue an FOC if the ALEC wants to have the loop conditioning, and
4 when the FOC is started or issued, the order completion interval
5 clock starts. So we're not going to hold the LSR until we can
6 complete the cable loop modifications required for the particular
7 service. We're going to issue the LSR -- we're going to issue
8 the FOC, and the clock for the order completion interval will
9 start at that point. If it requires a loop modification, we will
10 have 14 days to complete the loop modification and deliver the
11 service. If it doesn't require a loop modification, it will be
12 seven days to complete the order and deliver the service.

13 Q And did you say when this process was going to put in
14 place?

15 A The exact date, no, I don't know. It needs to be
16 done -- again, we have the incentive to do it because we're going
17 fo miss some benchmarks.

18 Q Well, for the purposes of this docket, don't you think
19 it wise for the Commission to adopt the ALEC measurement so we're
20 sure that we're capturing right now the time it takes BellSouth
21 to do conditioning?

22 A No, I don't think it's necessary because what we are
23 proposing will capture everything the ALEC wants. We have the
24 measurement in place for firm order confirmation. We have the
25 measurement in place for order completion interval. We have a

1 benchmark for firm order confirmation that says we must return
2 the FOC within a certain period of time depending on the type of
3 order. We have the benchmark for the order completion interval
4 which says if it's the case of xDSL, it's either 7 or 14 days.
5 We have the measurements. We need to simply emphasize the
6 importance of these benchmarks and make some necessary
7 organizational changes.

8 Q You are actually going to change the entire process of
9 the way you do this so that it meets the benchmark that you've
10 proposed. That's what you're saying.

11 A We're going to change this process to be consistent
12 with these new measurements.

13 Q Doesn't that sound a little backwards? I mean,
14 shouldn't you just change the measurement to meet the process?

15 A No, absolutely not. We have a new set of measurements;
16 we have a new set of benchmarks. You may have read we are
17 investing a tremendous amount of our capital in xDSL capability.
18 All of that is designed to ensure that we provide DSL service in
19 a more timely manner.

20 Q Now, if BellSouth, for whatever reason, is not able to
21 change its processes in the month or month and a half between now
22 and when this Commission issues this order on establishing what
23 the performance measures are in Florida, then you would agree
24 with me that the Commission will not be establishing a
25 measurement that accurately captures how long BellSouth takes to

1 condition a loop?

2 A If we don't change the processes, you're right. But if
3 we don't change the processes, we are going to be missing the
4 firm order confirmation benchmark.

5 Q Do you remember me discussing this same issue with you
6 last July in Georgia during the performance measures hearing?

7 A I remember talking about this -- around this issue. I
8 don't remember the specifics.

9 Q Do you remember at that time both attorneys for Covad
10 and attorneys for Mpower raised concerns about this measure
11 because we did not believe it would actually capture loop
12 conditioning? You don't recall that?

13 A No, I don't.

14 Q I'd like to show you portions of the transcript from
15 the Georgia hearing. If you don't mind, I'll just stand right
16 here so I can be near the microphone. Would you agree that --
17 take a look at that first, if you would. Okay. Would you read
18 the question that's in the record there?

19 A This one?

20 Q Yes.

21 A Okay. And we're sure this is my transcript?

22 Q Yes.

23 A Okay. All right. The CLEC -- the question is: The
24 CLEC will also submit a local service request form with the SI.
25 Once the requirements of the SI have been completed --

1 COMMISSIONER DEASON: You need to slow down when
2 you read that. Okay?

3 THE WITNESS: Yes, sir.

4 COMMISSIONER DEASON: Thank you.

5 A Let me start all over again. The CLEC will also submit
6 a local request form with the SI. Once the requirements of the
7 SI have been completed, the local carrier service center will
8 issue a service order to provision the requested service.

9 Doesn't that tell you that only after loop conditioning process
10 -- that after the loop conditioning process occurs that the CLEC
11 then obtains a firm order confirmation?

12 And the answer is: No, it does not tell me that at
13 all. The loop, the unbundled, the ULM, the removal of bridge
14 tap, load coils, et cetera, that is part of the provisioning
15 process which starts after the service order has been created and
16 issued.

17 Q That's fine. Thank you. So would you agree with me
18 that that testimony reflects a discussion last July in which we
19 raised the issue that the loop modification was not being
20 captured in the measure performed by BellSouth?

21 A Yes, and that was my understanding at that time.

22 Q And did you take steps at that time to ensure that the
23 process was changed so that it met the measurement that BellSouth
24 proposed?

25 A We thought we had. Obviously, we need to do it again.

1 Q So in the past year, that process has not been changed?

2 A I think it's been changed in several areas. Obviously,
3 we need to go back and reaffirm that we need to change that
4 process.

5 MS. BOONE: Thank you. I have no further questions.

6 COMMISSIONER DEASON: Mr. McGlothlin.

7 MR. MCGLOTHLIN: Thank you.

8 CROSS EXAMINATION

9 BY MR. MCGLOTHLIN:

10 Q Mr. Coon, first let me refer you to Page 33 of your
11 direct testimony. Beginning at Line 4, with respect to the value
12 for delta, you state, "Although the parties have proposed
13 different values for delta, there is little in the way of hard
14 information upon which this business judgment can be made." By
15 "hard information," do you mean the kind of economic data,
16 business-related data that would shed insight on the amount of
17 disparate treatment that is material?

18 A Yes, I do. I think as several parties have said in
19 this docket, the -- what you would really like to have in order
20 to determine an appropriate value for the statistical parameter
21 called delta is a series of studies that talk about, what is a --
22 how are the customers, the end users, as well as the ALECs
23 satisfied with different changes or different service levels
24 being provided to them.

25 I would call it a customer satisfaction study, and we

1 don't have that. And I don't think you'll get any disagreement
2 from any of the parties on BellSouth's side, including
3 Dr. Mulrow, that that information is not available. But we've
4 discussed this -- I'll stop right there.

5 Q So BellSouth's proposed delta of one is not based upon
6 the type of information that you believe is necessary to identify
7 that concept with any precision?

8 A No. It's not a --

9 Q That's all I needed, sir.

10 MR. LACKEY: Excuse me, Mr. Chairman. He's allowed to
11 explain his answer, I believe, unless the rules have changed.

12 MR. MCGLOTHLIN: Well, there's some questions that
13 really don't really lend themselves to an explanation.

14 COMMISSIONER DEASON: Let me do this. Mr. Coon,
15 obviously, you have the opportunity to expand your answer, but
16 please be mindful that we are under a short time frame here, and
17 so don't add unnecessary information. Okay? Just whatever is
18 relevant and to the point, that's what I ask that you do, but
19 fully complete the answer that you think provides us all the
20 necessary information.

21 THE WITNESS: Thank you, Commissioner Deason.

22 A No.

23 Q Thank you, sir. I have a few questions generally on
24 the topic of the appropriate level of disaggregation and
25 associated issues of like-to-like and potential maskings here.

1 Do I understand correctly that BellSouth plans to propose -- or
2 excuse me, the BellSouth plan proposes to disaggregate
3 performance data by time of day?

4 A Yes, that's part of the statistical process that was
5 developed in conjunction with the ALECs -- the CLECs, Dr. Mallows
6 representing the CLECS and several of the statisticians
7 representing BellSouth.

8 Q And to what degree will be disaggregated by time of
9 day? Is that hourly or some other basis?

10 A I'm sorry, if you said "time of day," I shouldn't have
11 agreed to that. It's time of the month. It's the first half and
12 second half, not time of day.

13 Q Okay. Time of month and into how many periods?

14 A You'll have to ask Dr. Mulrow that. I believe it's the
15 first half of the month and the second half of the month.

16 Q Okay. I believe yesterday in response to questions by
17 other counsel, you made the statement that BellSouth, in your
18 opinion, is providing parity of service presently. Do you recall
19 that statement?

20 A Yes, I do.

21 Q Would you agree with me that to determine whether
22 parity is being provided, it's necessary to compare BellSouth
23 performance data for its retail customers with BellSouth
24 performance data in the manner it provides service to ALECs?

25 A Where there is a retail analog, yes, that's the process

1 that one would take.

2 Q And it would also be necessary to apply a statistical
3 test to that data to determine whether parity, however that test
4 identifies it, is being achieved?

5 A For penalty purposes, I believe you could say that,
6 yes. I don't think it's always necessary to determine in every
7 instance that you have to apply a statistical test. In some
8 cases, the numbers are pretty clear.

9 MR. McGLOTHLIN: May I have a moment to distribute a
10 document? May I have an exhibit number assigned to this for
11 identification, please.

12 COMMISSIONER DEASON: Yes, Exhibit 19.
13 (Exhibit 19 marked for identification.)

14 MR. FUDGE: Mr. Chairman, since Exhibit 17 was
15 withdrawn earlier, I believe that the other exhibit that Covad
16 entered earlier could be Exhibit 17, and this one would now be
17 18.

18 COMMISSIONER DEASON: No, it will not. Seventeen was
19 identified; it will stay identified. It just has been withdrawn.
20 It will not become part of the record, but it will still have an
21 identification number on it.

22 MR. FUDGE: Okay.

23 COMMISSIONER DEASON: The next exhibit is 19.

24 BY MR. McGLOTHLIN:

25 Q Sir, we have handed to you a three-page document that's

1 been identified as Exhibit 19. Would you take a moment and
2 review that?

3 A I have.

4 Q The first page of that is Item Number 60 of the ALEC
5 Coalition's first set of interrogatories. In that item, the
6 request was to provide a SEEM report for AT&T data for
7 February 2001 results, including payment amounts that would be
8 due.

9 And BellSouth's answer was that BellSouth does not
10 currently produce SEEM reports for AT&T data, including payment
11 amounts that would be due, if any. The SEEM enforcement
12 mechanism proposed in this docket is under development.

13 The second of the three pages is Item Number 15 in
14 which the ALECs asked: For the months of December 2000,
15 January and February of 2001, what are the average ALEC and
16 BellSouth sample sizes for each service quality measurement
17 submeasure?

18 And the answer was -- well, I got these out of order,
19 I'm sorry -- to see Item Number 13, which is attached.

20 And in Item Number 13, the third of the pages,
21 BellSouth's response to that question was: Standard deviations
22 and sample sizes are not reported for the interim performance
23 measures.

24 Would it be fair to interpret from these responses that
25 BellSouth is not presently performing statistical tests to

1 determine whether the parity is being achieved between
2 BellSouth's retail customers and BellSouth's ALEC customers?

3 A Well, no, it wouldn't be fair to assume that. You're
4 really asking a two-part question. You're asking, do we perform
5 statistical tests, and secondly, you asked if we're determining
6 parity.

7 We are not currently performing a statistical test.
8 That's the purpose of what the -- one of the purposes of being
9 here in this docket. I don't think it's -- I absolutely do not
10 think it's necessary for the Commission, who's been monitoring
11 our results for about two years, to take in all the results as a
12 whole over time, as they have been doing for many, many years, to
13 determine whether we're providing parity of service, whether
14 we're providing service to the ALECs that's consistent with that
15 provided to retail.

16 Q How else could they make that determination?

17 A By simply looking at the numbers, the numbers that we
18 are reporting to the Commission that are available to the
19 Commission. The numbers are available today. You don't -- I
20 don't believe you necessarily need to do statistical testing for
21 every single measurement.

22 If you've got an order completion interval, as an
23 example, for resale and it's running 20 days to provide a resale
24 residence line month after month after month and it provides five
25 days -- it takes five days to provide that same service to

1 retail, it's pretty clear that we're not providing equivalent
2 service. So I guess that a number of these things that one can
3 just look at and get a sense of whether the numbers tell you for
4 providing services at parity. With a benchmark, it's even
5 easier. You just look at the number. If the benchmark is
6 90 percent and we're performing at 89 percent or 88 percent
7 consistently month after month, then that would tell me that
8 we're not delivering service as we should.

9 COMMISSIONER JABER: Mr. Coon, can you help me put
10 something in perspective, please. Give me an example of a
11 BellSouth affiliate. Is BellSouth.net a BellSouth affiliate?

12 THE WITNESS: Yes, it is one of our affiliates.

13 COMMISSIONER JABER: Have you ever witnessed the
14 ordering of any UNE or any element by BellSouth.net through
15 BellSouth wholesale?

16 THE WITNESS: No, I haven't.

17 COMMISSIONER JABER: Have you ever witnessed any of
18 the reports being put together from BellSouth?

19 THE WITNESS: For BellSouth.net?

20 COMMISSIONER JABER: Yes.

21 THE WITNESS: No, I haven't.

22 COMMISSIONER JABER: Have you ever witnessed any of the
23 reports being put together that are submitted by BellSouth to the
24 Commission or to KPMG?

25 THE WITNESS: Yes, I have.

1 COMMISSIONER JABER: Explain that process to me. What
2 goes into the report?

3 THE WITNESS: For BellSouth.net?

4 COMMISSIONER JABER: Uh-huh.

5 THE WITNESS: I'm sorry. No, I have not witnessed that
6 particular facet of the reports that we provide.

7 COMMISSIONER JABER: Well, which ones would you have
8 direct knowledge of them? Give me an example of one that you
9 might have seen put together. Because your argument to us is, we
10 should accept BellSouth's word, basically. We should use
11 BellSouth's report and not look at parity between necessarily, as
12 an example, between BellSouth and BellSouth.net, for example,
13 versus any other ALEC relationship with BellSouth; right?

14 THE WITNESS: I don't think I'm saying that. If I
15 could clarify. We have provided to the Commission informally for
16 about a year and a half or two years a series of reports, some of
17 which are printed and many of which are available in our PMAP
18 reporting system, and they include a number of measurements, our
19 whole suite of measurements, all the way from ordering to
20 maintenance and provisioning and billing and so on, for the
21 retail services and comparisons in some cases to the ALECs.

22 BellSouth.net is an affiliate, but the services they
23 provide from us are provided at retail, and they are included in
24 that retail aggregate. Now, I haven't looked at the specific
25 makeup or the components of all of the data that goes into those

1 reports for retail for BellSouth.net or General Motors or
2 Whirlpool. It's just part of our retail service.

3 Am I answering your question, Commissioner?

4 COMMISSIONER JABER: You are. And my question goes to,
5 you want us to accept those numbers, but you yourself haven't
6 seen how those numbers are calculated or how the report is put
7 together; right?

8 THE WITNESS: No, I have not -- we have produced
9 probably about a million numbers a month. I have not been
10 involved in the validation of each and every one. I have been
11 responsible in some cases for the KPMG audit. They are the ones
12 who validated a lot of the stuff that's -- those numbers in
13 Georgia, they are doing the same thing here in Florida.

14 COMMISSIONER JABER: And in fact, a lot of your
15 testimony is based on what you've heard, what you've been told,
16 and what you understand is happening in BellSouth operations;
17 isn't that right?

18 THE WITNESS: Well, I think it's also -- that's
19 correct. But it's also been validated just -- if you're talking
20 about the accuracy of the numbers, they have been validated by
21 KPMG.

22 COMMISSIONER JABER: Okay.

23 BY MR. McGLOTHLIN:

24 Q Mr. Coon, the reports that you referred to earlier, to
25 your knowledge, do they include any data for retail analogs with

1 them?

2 A For resale, yes, they do.

3 Q Only for resale?

4 A For resale and for UNEs where the comparisons are
5 between residence and business, they also include that, but you'd
6 have to look at the residence and business retail reports to
7 derive retail analog.

8 Q Okay. In a calculation or comparisons, if I understand
9 your answer, you're suggesting that the Commission has those
10 numbers to work with, but that's not something that BellSouth has
11 done; is that right?

12 A No. We have produced the numbers. I'm not sure I'm
13 answering your question or understand your question.

14 Q I think in an earlier answer you said the Commission
15 can look at the numbers and see whether parity is being provided
16 or not. Are you asking the Commission to perform that
17 comparison?

18 A That's -- the determination of parity, the FCC has said
19 substantially same time and manner. They have never defined what
20 is substantial and what's the time and manner. A lot of that
21 interpretation is up to the commissions. What we're proposing
22 here in this proceeding, however, are the mechanisms and the
23 measurements and the analogs and benchmarks and the
24 enforcement necessary to ensure all of that. And all I'm saying
25 in response to the question yesterday is, I believe it was

1 Ms. Boone asked me, do we need enforcement -- is an enforcement
2 plan necessary to ensure parity?

3 And I think the Commission can make an independent
4 determination today about whether we're providing parity. And
5 there's no enforcement plan in place.

6 Q Okay. But when you make that statement, you're
7 suggesting that that determination or the presence or absence of
8 parity be made in the absence of any precise decision as to the
9 appropriate measures to be reviewed; correct?

10 A Yes.

11 Q And in the absence of any decision as to the
12 appropriate statistical test to be applied to data?

13 A That's correct.

14 Q And the absence of any determination of whether parity
15 means zero difference in means or some other measure of parity?

16 A Today, yes, I agree.

17 Q And if the Commission were to determine or to decide
18 that those parameters are essential to a determination of whether
19 ALECs are receiving parity of service, that has not been done to
20 this point; correct?

21 A Could you say your question a different way, please.

22 Q Yes. You're suggesting that the Commission can gauge
23 presence or absence of parity without these things. And that's
24 debatable, sir. And if the Commission were to decide that they
25 need that kind of information and that kind of showing before

1 they can determine whether parity exists or not, BellSouth has
2 not reached that point yet, have they?

3 A Well, I think that's arguable. I think the point of
4 this proceeding is to determine what's necessary to make that
5 kind of conclusion.

6 Q When you say "that's arguable," what do you mean?

7 A Well, I go back to the statement I made before. I
8 don't think you need to have a very high-powered statistical
9 calculation, 75,000 measurements, produced every month to
10 determine, are we providing good service. The Commission can
11 make an independent decision whether we are or not.

12 Q All right. But the assumption of my question is that
13 the Commission has determined that it needs that type of
14 parameter in place and applied. And if that is the Commission's
15 decision on your proposition, BellSouth isn't to that point yet;
16 correct?

17 A No, we're not to that point. If you go with the
18 caveats of your question, that's what we're here to decide.

19 Q Ms. Boone asked you some questions about line
20 conditioning. Would you agree that BellSouth has not provided
21 parity with respect to that one parameter?

22 A I don't know.

23 Q As to the time frame when any performance assessment
24 measure plan should go into effect, I understand your position to
25 be that it should be after BellSouth has received approval under

1 271 to enter the long distance business.

2 A No, I'm not saying that at all. I'm saying that the
3 performance measurement plan that we're advocating can go into
4 effect almost immediately. I think our position on the
5 enforcement part of that is that it become effective post-271.

6 Q How would you propose that the Commission use any plan
7 prior to the 271 determination that does not have an enforcement
8 mechanism part?

9 A Probably the same way that the Commission has been
10 monitoring our measurements and results for a number of years.

11 Q Would it be appropriate for the Commission to use the
12 results of the performance assessment plan to determine whether
13 in its view BellSouth has met the test for entry into the long
14 distance market?

15 A I'm not sure.

16 Q Well, I think in answer to another question yesterday
17 you said that, in your view, the purpose of the performance
18 assessment plan, and I think by that you meant the entire plan,
19 including enforcement, is to prevent BellSouth from backsliding
20 after it has received permission to enter the long distance
21 market. Do you recall that statement?

22 A I don't think I said it in that manner. I believe what
23 I said was, the purpose of the enforcement part of the
24 performance assessment plan would be one way of guaranteeing the
25 compliance with a 14-point checklist after 271 entry, after

1 interLATA entry. And, yes, that is backsliding.

2 Q Would you agree that before one can backslide, one
3 first has to get to the point one needs to be?

4 A Say that again, please.

5 Q Would you agree with me that before it's possible to
6 backslide, one first has to get to the point where one needs to
7 be?

8 A Well, I think we're going to have to demonstrate that
9 we have adequate performance and gain the Commission's and the
10 FCC's approval for 271, yes.

11 Q And part of that demonstration could be the application
12 of statistical tests to measurements such as the ones we're
13 talking about?

14 A That could be one manner, yes.

15 Q In earlier responses, you indicated that you believe
16 that BellSouth has provided reports containing data that would
17 enable the Commission to gauge whether a parity is being provided
18 or not. In your view, under that hypothesis, would you have the
19 Commission make that assessment at the cell level or at the
20 aggregate level of the data provided?

21 A Well, the data that we're providing today is not done
22 at the cell level. It's at the aggregate level, although there
23 is ALEC specificity available to the Commission should they
24 decide they need that information. So the data that is available
25 is -- that I would assume the Commission would want to use would

1 be at the aggregate state level.

2 Q So, in your view, it's not necessary to determine
3 parity at the cell level?

4 A I think we're talking about apples and oranges here.
5 The cell level is a tool or a mechanism that the statisticians
6 have developed to be used in an enforcement plan. I don't
7 believe we're talking about that when you say "parity."

8 COMMISSIONER JABER: Mr. McGlothlin, I know you're
9 losing your voice, but could you speak inside the microphone for
10 me, please.

11 MR. McGLOTHLIN: Certainly. I'm sorry.

12 BY MR. McGLOTHLIN:

13 Q Is it true that under the proposed methodology that
14 BellSouth has presented in this case, parity would be determined
15 at the cell level?

16 A No. The determination -- now we're off into the
17 statistical testing, I think, in the enforcement part of our
18 proposal?

19 Q Well, part of the overall program.

20 A Okay. No. The determination -- the decision point of
21 parity would be made at the aggregate test statistic level which
22 would be our measurements that we proposed for the enforcement
23 plan, SEEM.

24 Q In order to make that determination at the aggregate
25 level, though, you would first calculate the means difference at

1 the cell level, and then roll those back up into the aggregate;
2 is that correct?

3 A We have three statisticians in this proceeding,
4 Dr. Mulrow, Dr. Bell, and Dr. Taylor. I think they could
5 probably speak more eloquently about statistical testing than I.

6 Q Yes, sir. The problem is that you're testifying as to
7 your view of parity, and in order to explore that with you, I
8 need to have some understanding of what you're basing that on.

9 Let me just ask you a question that compares
10 BellSouth's proposed methodology in this case, and I'm talking
11 about the entire performance assessment plan, with sort of an
12 overview comparison with the ALECs' plan.

13 Now, as I understand it, the ALECs' plan would perform
14 calculations at what is regarded as a submeasure level. Whereas,
15 BellSouth would disaggregate its performance data into what it
16 refers to as a cell level. Both will use the modified Z
17 calculation. But then BellSouth would aggregate its cell
18 information into the overall truncated Z statistic; is that
19 correct?

20 A The parity determination would be made at the aggregate
21 level, that's correct.

22 Q Yes, sir. But the modified Z calculation itself, the
23 ALECs would perform at the submeasure level, whereas BellSouth
24 performs it at the cell level; correct?

25 A Performs what at the cell level?

1 Q The modified Z calculation.

2 A Again, you'd probably -- it would be better asking
3 Dr. Mulrow that question.

4 COMMISSIONER DEASON: Mr. Coon, how do you define
5 "cell level"?

6 THE WITNESS: Commissioner Deason, the statistical
7 testing methodology that our plan uses, and Dr. Mulrow will talk
8 much more about this than I, was developed by the CLECs and
9 BellSouth a year or so ago in conjunction with a Louisiana
10 workshop. In order to get to the comparison where the
11 characteristics are similar between service provided to ALECs
12 versus CLECs provided to the retail, we define -- we compare the
13 product type. We compare the -- there's geography where we
14 compare at the wire center level to get around the masking issue
15 that I believe Chairman Jacobs mentioned yesterday. We compare
16 time of month, and we also compare the dispatch type. Those
17 three or four dimensions define a cell.

18 COMMISSIONER DEASON: So it's just for comparability.
19 You put everything at a cell level that you think is at a
20 comparable basis? Is that -- I'm just trying to put it in simple
21 terms.

22 THE WITNESS: Yes, that's correct.

23 BY MR. McGLOTHLIN:

24 Q Sir, I believe in response to one of the Z-Tel
25 interrogatories, you provided an answer that provided information

1 as to how certain calculations were performed using the Z
2 methodology. I want to show you the same chart that Mr. Prescott
3 held up yesterday, and see if you recall -- we asked some
4 questions about some illustrative data that accompanied the
5 Strawman proposal which in turn was provided by BellSouth, and
6 the questions related to a chart showing the type of information
7 that BellSouth would include in calculating the so-called parity
8 gap as part of its proposal. Do you recall that interrogatory
9 and response?

10 A Yes, I do.

11 Q And do you recognize this chart as containing the same
12 type of breakdown of information that accompanied the Strawman
13 proposal?

14 A Yes, I do.

15 Q And would you agree with me that this illustrates, for
16 instance, that BellSouth would collect the information such as
17 the mean for its own customers and the mean for the ALEC value in
18 order to make that calculation?

19 A I don't know about the terms "the mean." Again, that's
20 a question that Dr. Mulrow can address.

21 Q All right. Well, I'm referring to the caption MIA.

22 A Missed installation appointments.

23 Q And there's an entry that quantifies a value assigned
24 to the performance for missed installation appointments for both
25 BellSouth's own customers and ALECs'; correct?

1 A Yes, that's correct.

2 Q And you also need sample size for each; correct?

3 A Yes.

4 Q And you would calculate the Z score for the -- at the
5 cell level for the CLEC; correct?

6 A Correct.

7 Q And based upon the balancing critical value, you would
8 determine whether there's a parity gap or not; correct?

9 A Yes. And in that case, the parity gap was 1.71.

10 Q And you would need all of that information for each
11 measurement at the cell level; correct?

12 A When you say "all of that information," can you
13 clarify?

14 Q Yes, sir. Sample size for the ALEC, sample size for
15 BellSouth, performance data for the ALEC, performance data for
16 BellSouth, the Z score, and the calculation of the critical
17 value, balancing critical value.

18 A I'm not sure how the statistical testing methodology
19 works. I believe that's correct, but Dr. Mulrow can answer that.

20 Q All right.

21 A Could you leave that chart up there for just a minute?
22 I'd like to, if I can -- this is not a question you asked, but
23 there was a misconception that was made yesterday using this
24 particular chart, if I could respond to it.

25 Q Well, I'm in the middle of my cross examination, sir,

1 so maybe there's another opportunity, but I would like to follow
2 up on my questions first.

3 A Certainly. I'm sorry.

4 Q To your knowledge, are the numbers on that particular
5 chart correct?

6 A From -- the point where the balancing critical value --
7 do you want to put it back up again? I can tell you which ones
8 are correct.

9 Q All right.

10 A I've always wanted to use this. The statistical test
11 in this area right here -- if the Commissioners can see this --
12 they were put there -- and there's one entry missing up at the
13 top of the chart, and it basically says statistical testing, or
14 statistical entries or something to that effect, were
15 illustrative only. The intent of this chart was simply to
16 determine or to help people understand once you determine that
17 there's a parity gap, and in this case the parity gap was 1.71,
18 that number right there, which is the difference of that number
19 minus the balancing critical value of .21, that's an indication
20 of disparate treatment.

21 And the parity gap, in simple terms, is based on the
22 fact that the ILEC in this case in this illustration had
23 9 percent missed installation appointments. The CLEC in this
24 particular case had 16 percent missed installation appointments.
25 All of these numbers here are contrived. They are simply put

1 there to illustrate, how do we get to this 29 measurements
2 remedied.

3 So from the determination of the parity gap, the
4 calculation of the volume proportion, the determination of the
5 affected volume, those are all correct, and they are based on
6 remedying a portion of this column right here, which adds up to
7 the 96, that is missed that is different, and I'm really
8 simplifying things a great deal, from the number of missed
9 installation appointments that pertain to the ILEC in this
10 particular example.

11 That's a long answer to your simple question, but some
12 of the numbers there are just simply there for illustrative
13 purposes.

14 Q Yes, sir. Another example in which the information was
15 not provided on actual statistical tests to real information;
16 correct?

17 A Say that again, please.

18 Q Another instance in which the information is not
19 derived from an actual statistical test.

20 A Yes, and it was clearly marked that the numbers there
21 were simply to illustrate the calculation of the volume
22 proportion and the affected volume.

23 Q You do agree with me, sir, that these calculations
24 under BellSouth's proposed methodology would be made for each
25 cell identified by BellSouth?

1 A No, I wouldn't agree with that. You wouldn't have
2 determined a parity gap, you wouldn't determine a volume
3 proportion, wouldn't determine the affected volume for each cell.
4 You would do the statistical testing. And again, Dr. Mulrow can
5 talk about that.

6 Q Okay. But statistical testing includes the information
7 for sample size, the information for performance measurements,
8 the calculation of the balancing critical value, and any parity
9 gap; correct?

10 A Again, I'm not a statistician. I'd suggest you defer
11 your questions to Dr. Mulrow.

12 Q Okay. But there is a Z score on this cell; correct?

13 A Ask Dr. Mulrow.

14 Q Sir, is this your exhibit?

15 A Yes, I supplied that exhibit.

16 Q Are you in a position to say that this represents the
17 information that would be -- correspond to other cells in
18 BellSouth's methodology?

19 A It illustrates the calculation of the volume proportion
20 after a statistical test has been done.

21 Q And you did say that for each cell, the statistical
22 test would be performed; correct?

23 A That's my understanding. Again, Dr. Mulrow can talk
24 about statistical testing.

25 Q Okay. You indicated that BellSouth disaggregates by

1 time of month. Does BellSouth also disaggregate by wire center?

2 A Yes, we do. For this test, that's one of the
3 dimensions of the cell.

4 Q How many wire centers does BellSouth have in Florida?

5 A I don't know. I would guess it's in excess of 200.

6 Q Okay. Turn to Page 9 of your direct testimony, please.

7 A Okay. I'm there.

8 Q At Page 9, you describe one of the measures, P-4, which
9 is attached as part of one of your exhibits. And you state,
10 "There are a total of 20 lines or products on the SQM level of
11 disaggregation, meaning that there are approximately 20 times 8
12 or approximately 160 measurements for the single category, P-4,
13 order completion interval." Do you see that?

14 A Yes, I do.

15 Q Now, those 160 measurements relate only to the
16 different products included in P-4; correct?

17 A Well, no, that's not correct. They pertain to the
18 different products, the dispatch type, the volume less than,
19 greater than 10, and they also include in this particular case
20 the comparison to retail.

21 Q But with respect to the 160 measurements, that does not
22 take into account that BellSouth disaggregates by type of month;
23 correct?

24 A We're talking -- we're kind of mixing and matching
25 here. No, it doesn't take into account that we disaggregate by

1 time of month. You're talking about the statistical testing
2 that's done using that chart again. This is talking about the
3 measurements which will be available to monitor compliance.

4 Q All right, sir. I want to talk about the measurements
5 that are made for purposes of statistical testing. Are you with
6 me?

7 A Yes, I am.

8 Q And with respect to measure P-4, I want to determine
9 the total number of measurements that would be made for purposes
10 of statistical testing. All right?

11 A Okay.

12 Q And to calculate that, in addition to the 160 number
13 that you have here, one would have to take into account that for
14 statistical purposes BellSouth disaggregates by time of month;
15 correct?

16 A Yes, but we would not use 160 disaggregations by time
17 of month for the statistical testing.

18 Q How would you do it?

19 A Let's go back to the measurement P-4, and you don't --
20 we're grouping products. We're grouping similar products for
21 purposes of statistical testing or parity determination. And we
22 have about eight product groups that are similar. Those would be
23 the type of products which would be tested by the statistical
24 testing methodology. And they would have the time of month
25 first half, second half of the month and so on applied to them.

1 Q Looking at Page 9, again, with respect to P-4.
2 Beginning at Line 1, you say, "However, the single comparison is
3 further broken down into categories of: Dispatch, circuits" --
4 I'm sorry, how would that read?

5 A Dispatch less than 10 circuits, dispatch greater than
6 or equal to 10.

7 Q Nondispatch less than 10 circuits, nondispatch greater
8 or equal to 10 circuits. Now, would that breakdown be involved
9 in the statistical analysis?

10 A I don't know. Dr. Mulrow can talk about the specifics
11 of the statistical testing. These are the measurements that we
12 are producing for the Commission to monitor compliance. This is
13 part of the 1,200 or so measurements that we have in our SQM.
14 This is one facet of it.

15 Q Do you plan to report this information that's broken
16 down as described on Page 9 in conjunction with the performance
17 assessment plan?

18 A Yes, we do.

19 Q Would it follow then that there's 160 submeasures for
20 which you are going to be reporting information?

21 A That's part of the 1,200 that we talked about, or that
22 I just mentioned. Yes, that is true.

23 Q Okay. And --

24 A Let me retract that. This 160 includes the retail
25 comparisons, and the 1,200 measurements that I mentioned earlier,

1 that would only be the CLEC aggregate. So of that 1,200
2 measurements that we would produce as a result of our SQM,
3 roughly 80 of them would be from this particular single
4 measurement of order completion interval.

5 Q Let me make sure I understand your last response. Are
6 you saying that there are 160 measurements, but those are used to
7 make 80 comparisons?

8 A No. We have -- in our SQM -- well, let's just go look
9 at it here for a minute. And I'm reading from my Exhibit DAC-1.
10 The measurement is P-4, which is on Page 3-9. If you look at the
11 product level disaggregation, there are roughly 20 lines there.
12 It starts with resale residence, resale business, resale design
13 and so on. This would be compared against the 40 or 50 that was
14 offered or proposed by the ALEC Coalition. These are also
15 reported for SQM purposes in categories of dispatch, nondispatch,
16 greater than or less than 10.

17 So if you multiply that out, 20 products times
18 dispatch, nondispatch, which is 40, times greater than, less than
19 10, which is 80, that's the comparison for the ALECs. You would
20 then compare that to a similar breakdown for the retail analog,
21 which is in the right-hand column of this particular page.
22 That's how we get 160.

23 Q When you disaggregate or break down that information,
24 you would break that same information down into cells; correct?

25 A No. The statistical -- the testing that's done at the

1 cell level is done for enforcement purposes. It uses a slightly
2 different -- it uses a different breakdown than what we're
3 proposing here for SQM for the compliance monitoring. And
4 again --

5 Q What is that difference?

6 A What is the difference?

7 Q Yes.

8 A The difference is that you're attempting to determine
9 and assess penalties on this particular measurement. And the way
10 that the statisticians that developed a methodology in order to
11 make sure that we're comparing like-to-like, as we've talked here
12 several times, it was determined that it was necessary to do it
13 at the wire center level, it was necessary to do it by time of
14 month, it was necessary to do it by dispatch and nondispatch and
15 by product. That's the statistical testing methodology that
16 we're proposing here for enforcement purposes.

17 Q So in terms of those measures that are disaggregated
18 and calculated at the cell level, those would include by wire
19 center; correct?

20 A One of the dimensions of the cell is the wire center,
21 that's correct.

22 Q And they would include time of month?

23 A Yes, it would.

24 Q It would include dispatch or nondispatch?

25 A I believe it is. Dr. Mulrow can answer that question.

1 Q It's in your testimony, isn't it, sir?

2 A Not the statistical testing. It's not in my testimony,
3 no.

4 Q And the disaggregation at the cell level would include
5 the 20 different product --

6 A No, sir. It would include the products that are listed
7 back in this particular measurement 3-10, which is a grouping of
8 some of the products.

9 Q Would you look at 3-10, and tell me how many?

10 A Eight.

11 Q Reviewing 3-10 -- excuse me. Are there eight different
12 product categories that are aggregated at the cell level for P-4?

13 A At the cell level, Dr. Mulrow can answer that question.
14 That's how they are presented for SEEM purposes. The statistical
15 testing, again, you would need to ask Dr. Mulrow.

16 MR. McGLOTHLIN: If I could have just a moment in
17 place, we can wrap up pretty quickly after that.

18 CHAIRMAN JACOBS: Very well.

19 BY MR. McGLOTHLIN:

20 Q Sir, I understand that you've referred several of my
21 inquiries to Dr. Mulrow, and we will follow up with him, but
22 based on your testimony and the things we have talked about so
23 far, I believe, conservatively speaking, it's safe to say at a
24 minimum that with respect to P-4 at least eight product
25 categories are disaggregated to the cell level; correct?

1 A Yes.

2 Q And you stated earlier that you also disaggregate by
3 wire centers of which there are at least 200; correct?

4 A Correct.

5 Q And that you disaggregate by time of month between the
6 early part of the month and the later part of the month; correct?

7 A Yes.

8 Q So in terms of calculating the number of measurements
9 that must be made for purposes of performing statistical tests,
10 we would take those eight product categories, multiply them by a
11 minimum of 200 wire centers, and then multiply by the two
12 portions of the month; correct?

13 A No, that's not correct. In order to conduct a
14 statistical testing, you would make those number of comparisons.
15 I wouldn't call them measurements.

16 Q All right. Comparisons. But the arithmetic would be
17 the appropriate calculation to make to calculate the minimum --
18 at a minimum the number of comparisons that would be made?

19 A At the cell level, that's correct.

20 Q If you want to check me on this, it appears that
21 8 times 200 times 2 would be 3,088. And then it's necessary to
22 multiply by four to capture the dispatch versus nondispatch; is
23 that correct?

24 A I'm not sure why you'd multiply by four if you've got
25 two categories.

1 Q Well, I'm looking at Page 9, and it appears that you
2 have four categories there, Lines 1 through 3.

3 A I think you're talking about the dispatch, nondispatch,
4 greater than or less than 10. I don't know whether the volume --
5 I don't know whether that's a part of the cell testing. Again,
6 Dr. Mulrow can answer that. I will concede that you're talking
7 about -- for that particular measurement, you are probably
8 talking about several thousand comparisons which are aggregated
9 up to a statistic to an aggregate level to determine -- at an
10 aggregate level to make the determination or the decision about
11 whether we are in parity or out of parity.

12 Q Assuming for purposes of this question that it would be
13 appropriate to multiply by four based on those categories of
14 dispatch and nondispatch, would you accept, subject to check,
15 that that turns into 12,800 comparisons for statistical purposes?

16 A Well, we can go through the math. I will say I would
17 agree that there's several thousand. I'm not sure it's 12,000 or
18 120,000. I don't know.

19 Q And for each of those comparisons, the Z test score
20 would be calculated?

21 A At the cell level, yes.

22 Q And we're talking about only P-4?

23 A That's correct. And we make the determination, unlike
24 the ALEC plan where you are making 75,000 or at least
25 determinations of whether we're in parity. We would make a

1 determination about whether we're in compliance at the aggregate
2 test statistic level, which for this case would be these eight
3 measurements at this particular product level.

4 Q Yes, you refer to the 75,000 number. And would you
5 agree there's some debate as to whether that's precisely the
6 right number or not?

7 A I think the only debate is that's low. It's probably
8 much higher than that.

9 Q But that's for the entire ALEC plan; correct?

10 A At least, yes, the entire ALEC plan.

11 Q Whereas, the 12,800 we're discussing -- the 12,800 Z
12 test we're discussing is for a single measure in BellSouth's
13 plan?

14 A Yes, I would agree with that. Although, we're talking
15 apples and oranges. I'm not even sure we're talking fruit here.
16 The ALEC plan would ask this Commission to look at least, as
17 Ms. Kinard talked about yesterday, it may be in the hundreds of
18 thousands, make a determination of whether parity is being
19 provided for each one of those measurements, and then calculate a
20 penalty irrespective of the number -- whether there was one
21 transaction or a hundred transactions for each of those 75,000,
22 750,000, however many there happen to be, measurements.

23 What we're talking about is, we do a statistical test
24 at a low level -- Dr. Mulrow can talk about that at length --
25 because we're trying to compare similar characteristics, similar

1 transactions, but we make the determination of a parity, whether
2 parity was provided or not, at the higher level, to aggregate
3 level. We have 75 determinations of parity because that's the
4 number of measurements we have in our SEEM plan.

5 One reason we do the statistical testing is in order to
6 allocate back to the number of transactions that need to be
7 remedied. We do do that at the cell level, unlike the ALEC plan
8 which, again, is a flat rate whether there is one or whether
9 there's a hundred of transactions.

10 Q Yes, sir. I want to bring you back to apples and
11 apples. One of the things that you were complaining about was
12 the sheer number of calculations that would have to be made under
13 the ALEC program; correct?

14 A No, I don't think that it was the calculations as much
15 as it's the numbers of decision points.

16 Q Well, one aspect of the conversation yesterday had to
17 do with the computer memory involved and the capacity involved
18 and that type of thing; correct?

19 A That certainly is an implementation question.

20 Q So apples to apples, in terms of measuring the number
21 of Z tests that would be performed under the ALEC plan versus the
22 number of Z tests that would be performed under the BellSouth
23 plan, it's appropriate to consider the comparisons made at the
24 cell level under BellSouth with the number of submeasures of the
25 ALEC test. Is that apples to apples?

1 A It kind of is, but you also need to consider the number
2 of reports that you'd have to produce for the ALEC plan, which
3 would be, let's say, 75,000 minimum versus 75 for our plan. How
4 would you interpret that? How would you assess whether we're
5 providing parity? How could you even digest 75,000 reports?

6 Q I'm, again, on the subject of the capacity of the
7 computer and the ability of a program to encompass the number of
8 calculations. For that purpose, is it fair to compare the number
9 of Z tests under the ALEC plan with the number of Z tests under
10 the BellSouth plan?

11 A At the cell level, yes. That's part of the computer
12 capacity problem. The bigger part, again, is all the data
13 associated with it, the reports you've got to produce, making it
14 available to all the ALECs on the Internet. That's the larger
15 piece, that's the larger issue.

16 Q Several times counsel for BellSouth has asked witnesses
17 for the ALECs how many submeasures are because that corresponds
18 to the number of Z tests that would have to be calculated;
19 correct?

20 A The number of Z tests that the ALECs would have under
21 the ALEC plan?

22 Q Yes.

23 A No, I don't think so, because I don't believe -- well,
24 you don't have that many that require statistical testing. Some
25 of them are benchmarks where you don't have to do retail analog.

1 Q Under BellSouth's proposed program, how many cells do
2 you have?

3 A I don't know.

4 Q Would you need to know that before you could tell me
5 how many Z tests that BellSouth would calculate?

6 A When you're talking Z test, are you talking about the
7 cell level comparisons?

8 Q Yes, sir.

9 A Probably. Yes, you would.

10 Q Based upon your familiarity with the BellSouth proposal
11 and the level of disaggregation, would it be safe to say there
12 are hundreds of thousands of cells?

13 A That's a possibility. We're not making hundreds of
14 thousands of determinations of parity, however. We are making it
15 75 in comparison to the ALECs' 75,000 at a minimum.

16 Q Obviously, having proposed this program, BellSouth is
17 not concerned about the capacity of its computers to handle these
18 hundreds of thousands of Z tests; correct?

19 A Yes, we are.

20 Q Well, it's your proposal, is it not, sir?

21 A Yes, it's our proposal. And yes, we're concerned about
22 the capacity of the computer programs. And we're taking action
23 to try to enhance that capability.

24 Q In an earlier answer, did you indicate that BellSouth
25 can implement this program immediately?

1 A We can implement it this year.

2 MR. MCGLOTHLIN: Those are all my questions.

3 COMMISSIONER DEASON: Let me ask a quick question.

4 CHAIRMAN JACOBS: Go right ahead.

5 COMMISSIONER DEASON: Mr. Coon, I believe in the
6 discussion you had with Mr. McGlothlin, you indicated that you
7 believe that there was a minimum of 200 wire centers in Florida?

8 THE WITNESS: Commissioner Deason, yes, I did. That's
9 my estimate.

10 COMMISSIONER DEASON: Perhaps we need to confirm that
11 by someone in the record because I'm not sure that's the correct
12 number. I may be wrong. I thought it was somewhere in the
13 neighborhood of 160-something. But here again, my memory fails
14 me too. But at some point, we can confirm that.

15 MR. LACKEY: We will be happy to supply that number for
16 the record.

17 CHAIRMAN JACOBS: Mr. Prescott.

18 MR. PRESCOTT: I might be a while.

19 CHAIRMAN JACOBS: Very well. Why don't we take a break
20 for ten minutes? And we'll come back.

21 MR. PRESCOTT: Okay.

22 (Brief recess.)

23 CHAIRMAN JACOBS: Go back on the record. Mr. Prescott,
24 I believe you are going to cross.

25 MR. PRESCOTT: Thank you.

CROSS EXAMINATION

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BY MR. PRESCOTT:

Q Mr. Coon, I've got a few questions I'd like to ask you on varying topics, and I'm going to start with the disaggregation issue. Mr. Coon, wouldn't you agree that it is appropriate where possible to make like-to-like comparisons in doing your disaggregation?

A Yes, I would agree.

Q And wouldn't you agree that performance data must be disaggregated into specific categories so as not to mask discrimination?

A I agree. I think there needs to be a practical consideration about how far down you take that, but to the extent that it's practicable, yes, it should be like-to-like.

Q Let me ask you to turn to Page 9 of your Exhibit DAC-1. That's the average completion interval measure that Mr. McGlothlin was going through with you.

A I'm sorry. Page?

Q I think it's 3-9.

A 3-9.

Q 3-9, 3-10.

A I'm there.

Q Okay. In your SQM disaggregation, you've listed 20 different products; is that correct?

A Yes, we did.

1 Q But with the aggregation for your SEEM and
2 self-executing enforcement mechanism, you've only listed eight
3 levels of disaggregation; is that correct?

4 A That's correct. The eight levels of disaggregation are
5 at a higher level. They include a number of those that are in
6 the previous page.

7 Q And under UNE loop in the SEEM disaggregation, you've
8 combined quite a few different products; is that correct?

9 A We have combined, if I'm not mistaken, three categories
10 of UNE loops.

11 Q Okay. And that would be the two-W analog loop design
12 and nondesign, UNE digital loop greater than DS1, less than
13 DS1 -- greater than, less than DS1, and the UNE loop/port
14 combinations?

15 A No. The UNE loops in the SEEM disaggregation, we're
16 combining the two-wire analog loop design and nondesign and the
17 digital loops. The loop/port combination has its own category.

18 Q And so the products that you've indicated that you've
19 combined, don't they have different intervals, different
20 provisioning intervals?

21 A No, not necessarily. The UNE loop is typically a
22 substitute for a retail residence and business, and the
23 comparison that we're making back in SEEM is to retail residence
24 and business. And the intervals are not that dissimilar
25 between --

1 Q Isn't there a five-day interval for a two-W analog loop
2 design, nondesign?

3 A I don't know. You're talking about the product and
4 services interval guide. I don't know.

5 Q You don't know. So if it was 23 days for the DS1 and 5
6 days for the loop design, you wouldn't consider those to be
7 similar products, would you?

8 A No, I wouldn't. And we're not advocating in this
9 comparison that they are. I think the intent here is to compare
10 products which have similar characteristics. And in our
11 enforcement proposal, we would take a UNE loop, a two-wire analog
12 loop, which again is typically a substitute for a residence or
13 business line in retail, and compare that against retail
14 residence and business.

15 Q What I'm talking about is the way you aggregate these
16 back up in your SEEM plan. You combine your performance results
17 for the two-W analog loop and the DS1 all together, don't you?

18 A No, we don't.

19 Q You don't?

20 A I'm sorry. Yes, we do.

21 Q And doing that allows for some masking of
22 discrimination possibly; right?

23 A I think in the way that we combine them, I believe that
24 would be minimal.

25 Q It's possible, though, isn't it, Mr. Coon?

1 A It could be possible. It could mask it either way.
2 When we talk about masking that sometimes is a two-way street.

3 Q Didn't you tell me in your deposition that it did mask?
4 Isn't that what you told me?

5 A I don't recall.

6 Q Do you have your deposition?

7 A No, I don't.

8 Q Let me show it to you. It's on page 105. And my
9 question, let me ask it the way I asked it in this deposition.
10 My question was: Does the fact that the loops have different
11 completion intervals distort the data?

12 And your response was: It would distort it.

13 MR. LACKEY: Before you do that, I can't find it. Can
14 you tell me where you are?

15 MR. PRESCOTT: Page -- well, let me see because --

16 BY MR. PRESCOTT:

17 Q Again, I said my question was: Does the fact that --
18 and this is referring to the loops -- that they have different
19 completion intervals distort the data?

20 And your response was: It would distort the data.

21 Is that correct?

22 MR. LACKEY: That's not a complete answer,
23 Mr. Chairman. If he's going to put the answer in, we need the
24 complete answer.

25 MR. PRESCOTT: Well, he can read it.

1 CHAIRMAN JACOBS: Yes. Why don't we just have -- if
2 you would like your witness to read the whole answer into the
3 record, that would be fine.

4 MR. LACKEY: Yes.

5 A Where would you like me to start?

6 Q Start right here.

7 A Okay. Let's go up one.

8 Q No, let's stay with my question.

9 A Okay. "Does the fact that they have different
10 completion intervals distort the data?"

11 And the answer is: Yes, it would distort it, but if
12 anything, I think it would distort it in favor of the CLEC.

13 Q And isn't it also possible to distort it in favor of
14 BellSouth?

15 A It could.

16 Q And therefore, it would be masking discrimination; is
17 that correct?

18 A It's possible. And let me --

19 Q But in spite of that fact, in your SEEM disaggregation
20 you put these products together.

21 A Well, yes, you're right. And let me clarify, if I
22 might. The purpose of the enforcement plan that we're proposing
23 here is a reasonable deterrence to backsliding post-271. That's
24 been our intent all along. That's been what the FCC has decreed
25 is appropriate in at least five states thus far that they have

1 approved for long distance --

2 Q Mr. Coon --

3 A Can I finish, please. And it is not necessary, and the
4 FCC has agreed with us, to measure each product and every
5 process. We think we have got the appropriate number of
6 measurements and the appropriate products where most of the
7 activity is.

8 Q It's appropriate for BellSouth not to discriminate
9 against the ALECs in provision of service, isn't it?

10 A Yes, it is.

11 Q And so for this Commission to make that determination,
12 wouldn't it be appropriate for the disaggregation to compare
13 like-to-like products?

14 A And if you were to flip back to Page 3-9, it does do
15 that.

16 Q It doesn't do that for the enforcement mechanism,
17 though, does it?

18 A It may not in all cases. But your question was, is it
19 appropriate for the Commission to assess discrimination, and they
20 have the tools to do that.

21 Q And they cannot do that accurately if you combine
22 products and allow for the masking of discrimination, can they?

23 A No, it can't. But again, I would refer you to Page
24 3-9 where we are separately reporting two-wire analog loop
25 design, nondesign, UNE digital loop separately.

1 Q They're not subject to remedy, though, are they,
2 Mr. Coon?

3 MR. LACKEY: Mr. Chairman, could I ask that
4 Mr. Prescott let Mr. Coon finish his answer before he starts his
5 next question?

6 MR. PRESCOTT: I thought he was finished. I'm sorry.

7 CHAIRMAN JACOBS: Very well. I think the agreement is
8 that he'll make that effort.

9 BY MR. PRESCOTT:

10 Q There is no -- you report them separately, but you
11 don't report them separately for purposes of the remedy plan, do
12 you?

13 A No, we don't report them in a separate category for the
14 remedy plan for the reasons I cited earlier about it. The
15 purpose of the remedy plan is to be a reasonable deterrence.

16 Q Couldn't the remedy plan also be -- provide an
17 incentive for BellSouth to provide parity service?

18 A That's the intent of it, yes.

19 Q Okay. Mr. Coon, wouldn't you agree, BellSouth has a
20 financial incentive to limit the remedies under any plan this
21 Commission adopts?

22 A Well, I think certainly -- yes, I would agree that
23 there is a financial incentive. I think there are other
24 incentives that are nonfinancial as well.

25 Q And there is also an incentive for BellSouth to have as

1 few measures as possible in the remedy plan; isn't that correct?

2 A I don't know that I would agree with that. And the
3 reason is that I think we understand that we have to have an
4 enforcement plan. I think we all understand that it needs to be
5 one that reasonably captures all of the relevant activity, the
6 important activity, processes, and products. Beyond that -- so I
7 think there is a certain threshold below which we realize we're
8 not going to be able to go to limit the amount of measurement
9 subject to remedy. However, I think we would object to having a
10 number of measurements that measure every process and every
11 product at the lowest level, which is essentially what the ALEC
12 plan does.

13 Q And so you want as few measures in the plan as you can
14 get away with.

15 A I think that's a mischaracterization.

16 Q Well, isn't that what you just said, Mr. Coon? You've
17 realized that you have to have a certain number of measures under
18 which you cannot go.

19 A Well, we don't have to offer up anything here. We have
20 offered up a number of measurements. So I think you are
21 distorting our proposal.

22 Q And the CLECs have -- the ALECs have offered a number
23 of measures that you have rejected; is that correct?

24 A Quite a few, yes.

25 Q Okay. Mr. Coon, isn't it true that under any plan the

1 Commission adopts, whether BellSouth pays any remedies is
2 depended on BellSouth's performance?

3 A Yes, I would generally agree with that statement. I
4 generally believe that to the extent that we have the majority of
5 control over what we pay, yes. But I also -- if you look -- the
6 devil is in the details, as they say. And if you look at some of
7 these measurements and the way they are constructed, there is
8 also some responsibility that the ALECs will have.

9 Q Not if you meet the measure.

10 A Well, again, there are some of the measurements in here
11 that the ALECs can cause to fail -- cause us to fail and pay
12 remedies on due to no fault of our own.

13 Q Mr. Coon, earlier you testified that you believe
14 BellSouth was providing parity service now; is that correct?

15 A Yes, I do.

16 Q Then why are you concerned about whether you would
17 have to pay anything under any remedy plan if you're already at
18 parity?

19 A Well, the definition of parity that I would apply to --
20 is that we provide service in substantially the same time and
21 manner. And I think that definition -- my connotation of that
22 is, if you take all of the measurements for all of the things
23 that we are reporting on and consider them over a period of time
24 and determine whether BellSouth is generally providing service to
25 the ALECs in substantially the same time and manner.

1 The penalty plan, however, it looks at a number of
2 measurements, and it looks at them every month. It doesn't
3 consider in all cases whether there is a pattern of good
4 performance one month and bad performance the next month in
5 some measures. If there is bad performance in one month, there's
6 remedy assessed and paid. So I think the reality is, even though
7 we think we are providing service in substantially the same time
8 and manner, the likelihood that we will be writing some checks,
9 hopefully they are relatively small, but we'll be writing some
10 checks to the ALECs if this plan is adopted.

11 Q And if this plan is adopted at least under Tier 2 of
12 your plan, if there is one month of bad service or even two
13 months of bad service on a particular measure, there would be no
14 remedy paid unless there is a third month of bad performance;
15 isn't that correct?

16 A That's correct.

17 Q So you could provide the ALEC community in the
18 aggregate with subpar performance for January and February, meet
19 your goal in March, and pay nothing for any of the performance
20 that was subpar?

21 A For the Tier 2, yes, that's correct. However, the
22 Tier 1 would still be operating independently of Tier 2. And
23 presumably, if we had bad performance for the first two months,
24 even though it may not have kicked in or qualified for Tier 2,
25 the Tier 1 penalties, if they are appropriate, would still apply

1 and be paid.

2 Q But all of your measures aren't in Tier 1; isn't that
3 correct?

4 A That's correct.

5 Q And all of your measures aren't in Tier 2. They have
6 differing measures; right?

7 A That's also correct. We think we have concluded the
8 key measurements in Tier 1 and Tier 2.

9 Q Would you consider firm order confirmation timeliness
10 to be a key measure?

11 A Yes, part of it.

12 Q And that's what ALECs use to provide their customers
13 with dates that their service is going to be completed or
14 connected; is that correct?

15 A That's the indication that an LSR was received and it
16 was accurate and that we rendered an FOC with the data on it,
17 that's correct.

18 Q And if they don't have that, they can't provision the
19 service for their customer. They can't tell their customer when
20 the service is going to be on.

21 A That's correct.

22 Q And if that's a key measure, it ought to be in
23 Tier 1 and Tier 2, shouldn't it?

24 A And it is in Tier 2.

25 Q But it's not in Tier 1.

1 A It's not in Tier 1 because to the extent that -- we
2 can't discriminate against an individual ALEC without
3 discriminating against all ALECs on a firm order confirmation.

4 Q Why is that?

5 A It's just the way that the processes work. The
6 electronically submitted LSRs, when they are submitted by the
7 ALECs, we don't have a way of treating one ALEC different from
8 another. All the orders are just processed one right after the
9 other as they are processed through the systems. So to the
10 extent that we have a problem in the firm order confirmation
11 process, if it affects an ALEC, it would affect all ALECs.

12 Q And if you had that problem for two months in a row but
13 you fixed it on the third, there would be no remedies paid.

14 A Correct.

15 Q So this critical key measure for ALECs would go
16 unremedied.

17 A That's true.

18 Q And if you could continue to do that, after -- you
19 know, you got January and February are bad, March is good, April
20 and May are bad, June is good, and you continue that out through
21 the rest of the year, you'd never pay any remedies the whole
22 year.

23 A For this particular measurement, the way it's
24 structured, you're correct.

25 Q For any of the measures that are in Tier 2 but not in

1 Tier 1.

2 A That's true.

3 Q So there's a possibility that you would never pay a two
4 tier remedy at all.

5 A If we're that good and we could do real bad in January
6 and February and real good in March, then, yes, you're correct.

7 Q So Tier 2 is just a wish list as far as the ALECs are
8 concerned because you're not -- probably not going to have three
9 months of poor performance in a row, are you?

10 MR. LACKEY: I object to that question. I mean, there
11 is no basis in the world for that question or the assumption
12 that's in that question that we can manipulate the data or
13 manipulate the results to have two good -- bad -- two good months
14 and one bad month every three months during the year.

15 MR. PRESCOTT: I didn't suggest that you could. I'm
16 simply stating the fact that if that happens, the result would be
17 that no moneys would be paid. That's all I'm doing.

18 MR. LACKEY: If he wants to ask that as a hypothetical,
19 that's fine, but that's not what his question said.

20 CHAIRMAN JACOBS: Rephrase your question.

21 BY MR. PRESCOTT:

22 Q Hypothetically, Mr. Coon, if you had two bad months of
23 performance, a good month, two bad months, a good month
24 throughout the year, carry that out throughout the year, you
25 would never pay any remedies under Tier 2.

1 A Hypothetically, yes, you're correct. However, again,
2 if we're that good, I'm getting back to practicals here, if we're
3 that good, I think you're probably giving us a little bit too
4 much credit that we can manipulate things that much.

5 Q And isn't also true that under the ALEC plan if a
6 particular submeasure is not touched by an ALEC's operations,
7 then no remedies would be paid on that particular submeasure for
8 that ALEC?

9 A Yes, that's my understanding. If the ALEC has no
10 activity in a particular submetric, there would be no remedies
11 paid. However, if the ALEC has one transaction or a hundred
12 transactions, the remedies would be paid disproportion to the
13 number of activities.

14 Q So it is your position that if there's only one
15 transaction, no remedy should be paid?

16 A No, I'm not saying that at all.

17 Q Okay. The illustration that I took from your
18 exhibits -- and I apologize for missing that line that you
19 indicated earlier that should have been on there. For the
20 purposes of demonstrating how your calculation works, or
21 potentially works, that illustration is accurate, isn't it? I'm
22 not asking about the numbers, just the way it works.

23 A Yes, it is.

24 Q And the parity gap that you have on there is really
25 just an estimate of the number of transactions that you feel were

1 provided disparate service?

2 A No, I don't believe the parity gap would be considered
3 an estimate of the number of transactions. It's something that
4 Dr. Mulrow can probably speak about a little better than I. But
5 it's the difference between the aggregated Z test and the
6 balancing critical value. The number of transactions is derived
7 from the parity gap.

8 Q The parity gap is not an accurate measurement of the
9 number of transactions that receive noncompliant service, is it?

10 A An accurate --

11 Q Right. It's not an accurate determination.

12 A The only way you could get -- I'm not sure how you
13 could get a precise number about how many transactions receive
14 disparate service.

15 Q No. My question was, it's not accurate, is it? It's
16 an estimate.

17 A Well, I think everything we're doing here is an
18 estimate, whether we're using the CLECs' plan, ALECs' plan, or
19 any of it. It's a question of, is this a reasonable way to
20 estimate the number of transactions that need to be remedied for
21 this particular measurement.

22 Q So I guess the final answer is, it's an estimate.

23 A Yes.

24 Q Okay. With respect to the fee schedule that you have
25 attached to your exhibits, I think it's DAC-6, Section A, the

1 liquidated damages table.

2 A I'm there.

3 Q On Page 34 of your rebuttal testimony, you state that
4 the BellSouth plan ties penalty payments to the economic severity
5 of a performance disparity. And my question is, what factors did
6 BellSouth consider in determining the economic severity of a
7 particular performance disparity?

8 A Well, it was a -- we considered a number of things.
9 And these fees have evolved over the last couple of years, but
10 the factors that we considered -- I'll use a couple of examples
11 here. The fee schedule for preordering is \$20 -- I'm just going
12 to use the first month -- \$20 per affected item the first month.

13 Preordering is a measure of the response time that an
14 ALEC would receive when they submit a query to get an address
15 validation, to reserve a telephone number, just to give you two
16 examples. And the penalty would be paid associated with the
17 difference in the response time from a benchmark, and we're
18 talking about differences of a couple of seconds.

19 So if the response time were -- the benchmark, let's
20 say, were four seconds and the response time was ten seconds on
21 the average, then you've got a disparate treatment and a penalty
22 would apply.

23 Let's go down to another example, four lines down, a
24 provisioning UNE. And this typically -- well, the entire
25 provisioning category, the third line down, would include missed

1 appointments, order completion intervals that are noncompliant,
2 and you'll see the fee schedule there is \$100, and the relative
3 importance, getting back to Mr. Prescott's question, the relative
4 importance we think is probably -- it's more important that we
5 meet the commitment to the customer in terms of the due date and
6 then we provision the service within a reasonable time frame
7 probably has more economic value and more economic importance to
8 the end user and to the ALEC than if we were off the response
9 time by five or six seconds. That's one example.

10 Q Let's go back to the provisioning. You have \$100 if
11 you have a miss in the first month. And my real question is, how
12 did you determine that \$100 was enough to remedy the economic
13 severity or the economic value?

14 A It evolved over time. There was not a precise study
15 done that says, all right, if we miss an appointment one day,
16 it's worth \$100.

17 Q So what was the evolution?

18 A It started out with the penalty plans that have been
19 approved by the FCC in New York. It was influenced by some of
20 the Texas remedy calculations. It was based on some discussions
21 and input we had with the Federal Communications Commission.

22 Q It's not based on any discussions with the ALEC
23 community, though, is it?

24 A Well, yes, as a matter of fact, it was. We have talked
25 about this in the Louisiana and the Georgia proceeding. These

1 are the fees that were ordered by the Georgia Commission, and
2 after everybody -- all parties presented their views, this is
3 what was ordered.

4 Q But the ALECs did not agree that those amounts were
5 appropriate, did they?

6 A No. I don't think the ALECs would agree to much of
7 what we're proposing here.

8 Q And the amounts that you are proposing may or may not
9 remedy the economic loss to an ALEC of a missed appointment?

10 A That's true. But I guess the question in front of the
11 Commission, though, is, is it an adequate and a reasonable
12 incentive against backsliding?

13 Q Isn't it supposed to be whether it's an adequate
14 incentive to BellSouth to provide parity service?

15 A Yes, which is backsliding.

16 Q And wouldn't you agree that there is a difference in
17 how a particular ALEC would be affected or could be affected by a
18 miss for BellSouth?

19 A Yes, I would agree. I guess I would -- if you're
20 asking -- your line of questioning says -- it basically goes to
21 the heart of, do we have a specific study that says a maintenance
22 and repair miss is worth \$100, and a maintenance and repair on a
23 UNE is worth \$400, no, we don't.

24 I think the question that's probably more appropriate
25 is, does this constitute a reasonable approach to incent against

1 disparate performance? I'd turn that very question around and
2 say, all right, if I look at the ALECs' proposal, I believe the
3 minimum payment is \$2,500. Was there any study done that on? I
4 don't know.

5 Q I didn't ask you if there was a study done. I asked
6 you if there was a difference in how an ALEC could be affected by
7 a miss by BellSouth.

8 A Yes, there is.

9 Q Okay. And so you have not provided in here any
10 consideration for that fact, have you?

11 A No. No, we haven't, nor has anything I've seen by the
12 ALEC proposal either.

13 COMMISSIONER PALECKI: Mr. Coon, I'm concerned about a
14 service failure of the type that would cause an existing customer
15 of the ALEC to lose service which would mean the customer would
16 look for other service providers causing the ALEC to lose the
17 customer. Is there any kind of methodology that could be
18 employed that could recognize a service failure that would cause
19 an ALEC to actually lose a customer?

20 THE WITNESS: Commissioner Palecki, I believe there is
21 a -- I think that there's a possible way of doing that. I'm not
22 qualified to render an opinion about how it might be done;
23 Dr. Taylor probably could. I think it's theoretically possible.
24 I don't know how -- I wouldn't know how to go about doing it.

25 COMMISSIONER PALECKI: Because it would seem to me

1 that those type of service failures are the type that should
2 receive the greatest penalty provision.

3 THE WITNESS: And I would agree with you. And that's
4 one reason why the fee schedule on maintenance issues is higher
5 than some of the others.

6 COMMISSIONER PALECKI: Thank you.

7 BY MR. PRESCOTT:

8 Q Following up on the Commissioner's question. If a
9 customer were to lose service for two or three days and then
10 change from an ALEC to BellSouth as its provider out of
11 frustration, does this take into account -- your fee schedule
12 take into account the loss of the revenue stream to the ALEC?

13 A No, it doesn't. Again, the premise behind this is to
14 weight some measurements and some transactions more heavily than
15 others, unlike the ALEC plan which basically says all
16 measurements are created equal in terms of penalties. I would
17 tend to think that if an end user of an ALEC should decide that
18 they want to move from one ALEC to another or one ALEC to
19 BellSouth as a result of our missing a repair appointment by a
20 couple of days, there's probably some other issues associated
21 with the account that may not have a whole lot to do with the
22 performance on repair.

23 CHAIRMAN JACOBS: Can I ask you to look at measure
24 P-8 on Page 3-24?

25 THE WITNESS: I'm there.

1 CHAIRMAN JACOBS: From general reading of this, it's
2 intended to look at the trouble reports that occur after the
3 order is completed; is that correct?

4 THE WITNESS: Yes, Mr. Chairman, that's correct.

5 CHAIRMAN JACOBS: So if we were addressing
6 Commissioner Palecki's question, what this measure hopefully is
7 intended to get at is a tracking of problems that occur once an
8 order has been completed and cutover has occurred for the CLEC?

9 THE WITNESS: That's correct, for the 30-day period
10 after the order has been completed.

11 CHAIRMAN JACOBS: How likely is it that problems will
12 occur beyond the 30 days?

13 THE WITNESS: Well, it's probable that we will have
14 problems after the 30 days, and we do have a measurement that
15 captures that. It's back in our maintenance and repair section.

16 CHAIRMAN JACOBS: Okay. And maybe that was the
17 specific measure that we were talking about a moment ago. So
18 if -- and this is Tier 1 and Tier 2; right?

19 THE WITNESS: Yes, Mr. Chairman, it is.

20 CHAIRMAN JACOBS: So for a CLEC, they would get a
21 remedy per every transaction here? So that every trouble
22 ticket -- I'm sorry. What's the benchmark -- I mean, what's the
23 measurement on this? I don't see that. Can you tell me what the
24 measurement is on this measure?

25 THE WITNESS: The percent provisioning troubles within

1 30 days, if you go back to Page 3-25 and look down at the bottom
2 of the page and take an example where you've got a resale
3 residence customer, to the extent that the provisioning trouble
4 report rate for that customer or group of customers for that ALEC
5 is different from the retail, the service provided the retail, in
6 other words, it's not substantially the same time and manner,
7 then a remedy would be paid to the particular -- to the affected
8 CLEC.

9 CHAIRMAN JACOBS: Okay. If you were to demonstrate
10 that you were generating as many trouble tickets to your retail
11 customer, then there would be no remedy to the ALEC for your
12 missing this one.

13 THE WITNESS: Yes. Stated a slightly different way, if
14 the trouble report rate for provisioning for retail is the same
15 for the ALEC, there would be no penalty paid, generally speaking.

16 CHAIRMAN JACOBS: Is that the same scenario for the
17 maintenance measure as well?

18 THE WITNESS: Yes, sir, it is. If you were to go back
19 to Page 4-3, there's a measurement called customer trouble report
20 rate, and just to clarify the difference between these two
21 measurements. We've had a customer trouble report rate
22 measurement and a percent provisioning troubles within 30 days
23 that's been reported on for years and years.

24 And what we're attempting to do is, for those troubles,
25 we're trying to categorize those that are related to poor

1 installation quality from those that are related to lightning,
2 storms, cut cables, things that we mess up as we're conducting
3 our daily business. And the way that we have traditionally
4 separated those is, we've said, well, troubles associated with a
5 service order with an installation typically occur within "X"
6 number of days after the service has been completed or delivered,
7 and that delineation has typically been 30 days. We've talked
8 about a seven-day measurement. We've talked about even some that
9 are shorter than that.

10 But if there is a trouble that's reported within 30
11 days of a service order, two things happen. One is, it shows up
12 in the percent provisioning troubles in 30 days, which is the one
13 that you asked me about to begin with. It will also show up as a
14 trouble back in this maintenance and repair measurement of
15 customer trouble report rate. So you've got two different
16 effects of that one trouble report rate.

17 CHAIRMAN JACOBS: Who originates the trouble ticket
18 here? Is it the CLEC or the customer, generally?

19 THE WITNESS: Well, the trouble comes to BellSouth from
20 the ALEC. And I would assume that the trouble would come to the
21 ALEC from their end user, from their customer.

22 CHAIRMAN JACOBS: Okay. Thank you.

23 COMMISSIONER PALECKI: Mr. Coon, as I stated before, my
24 concern and I guess what I've heard from the ALECs is that they
25 are most concerned about service failures that result in loss of

1 existing service causing that existing customer to either go back
2 to the ILEC or to search for other means of obtaining service.

3 Is there another possibility in addition to the penalty
4 provision that we have a requirement that BellSouth in that sort
5 of situation contact the customer in order to inform the customer
6 that the service failure was on the part of BellSouth and not the
7 ALEC?

8 I'm trying to think in terms of a customer. And I
9 think the customers generally would hold their own company, the
10 ALEC, accountable if they are an ALEC customer. And in those
11 cases, it seems that the customer should receive notice that the
12 problem was not one of the ALEC's failure but failure on the part
13 of BellSouth.

14 THE WITNESS: That's an interesting proposition,
15 Commissioner. Our customer, BellSouth's customer, is not the end
16 user, unfortunately; it's the ALEC. I don't know about the
17 legalities of us contacting an ALEC's end user and saying, well,
18 the reason you had a service outage is because of something we
19 did, if I'm understanding your proposal.

20 COMMISSIONER PALECKI: I suppose it could be something
21 that would go through the ALEC, but it just seems to me important
22 for an ALEC that's doing business to be able to inform their
23 customer when there is a problem that is of the fault of
24 BellSouth. And I guess that's -- of most of the concerns that
25 I've heard from the ALECs in my short time on the Commission,

1 it's been those types of problems that actually cause a customer
2 who has been an existing customer of the ALEC to leave their
3 system because of service failures.

4 THE WITNESS: Well, I guess the -- I would assume that
5 the ALEC has adequate information that they could communicate the
6 source of the trouble: It was a BellSouth cable, or it was a
7 switch problem, or it was something in perhaps the ALEC switch.
8 It seems like they would have that information to communicate to
9 their end user.

10 COMMISSIONER PALECKI: I understand that. It's just
11 from a customer viewpoint, when you hear it, you know, you just
12 think of it as an excuse coming from your provider. You know,
13 you don't really know how much veracity you can give to the
14 statement that you're receiving that, hey, it's not our fault,
15 it's BellSouth. Well, if they receive an actual notice from
16 BellSouth that it was their service failure, it might make that
17 customer more reluctant to go and search for another provider or
18 to leave the ALEC that is his existing provider. And that's what
19 my concern is.

20 THE WITNESS: I understand.

21 COMMISSIONER PALECKI: Thank you.

22 BY MR. PRESCOTT:

23 Q Mr. Coon, don't you agree that it would be appropriate
24 in setting penalty amounts to take into consideration the affect
25 that, say, for a provisioning miss could have on the ALEC?

1 A Yes, I would agree with you. I think that's an
2 idealized situation. On the provisioning miss, if we miss it a
3 day or a week, one could argue that there's probably different
4 economic value or economic harm associated with that. I don't
5 know how you could crank in something that's dependent upon so
6 many variables into a plan that you want to put into production
7 that would be manageable.

8 Q Well, couldn't you just set a number, just like you set
9 a number for the rest of this?

10 A Say --

11 Q Couldn't you just say, okay, instead of setting a
12 provisioning miss at \$100, you could say, okay, \$100, the loss to
13 the ALEC, potential problem to the ALEC, add in \$300 for that
14 consideration?

15 A Or why not \$10? I mean, we're talking --

16 Q Or why not 1,000? I'm just asking --

17 A Or 2,500.

18 Q Right. It could be done.

19 A It's possible.

20 Q Because as you testify, there's no precise formula to
21 set any of this.

22 A That's true.

23 Q But you didn't do that in your calculation, did you?

24 A No. We didn't go out and conduct studies that says the
25 loss of a provisioning -- the miss of a provisioning installation

1 commitment by a day is worth "X" dollars, and if we miss it two
2 days, it's worth two "X."

3 Again, a lot of it was dependent upon the fact that we
4 believe there are certain processes and certain transactions
5 which are more heavily -- more weighted or should be more
6 important to the ALEC than others. I'll go back to the example I
7 used before about the six-second response interval versus missing
8 a provisioning commitment. And in that, there was a lot of
9 discussion -- well, the FCC and others had looked at some of the
10 numbers that have been proposed by other ALECs, and said, well,
11 this is reasonable, this is a reasonable deterrence.

12 Q So you didn't look at anything specific to BellSouth in
13 making these determinations?

14 A No, we didn't.

15 Q And so you can't say that these amounts are sufficient
16 to deter BellSouth from providing discriminatory service?

17 A Well, I can say that similar amounts have been approved
18 in other jurisdictions by the FCC, and they were deemed to be
19 sufficient to deter backsliding.

20 Q For those ILECs; correct?

21 A For those ILECs, that's correct. And this issue has
22 been debated for our ILEC in Louisiana and Georgia, and I believe
23 they also concluded that these are sufficient.

24 Q Mr. Coon, isn't it true that a parameter delta of one
25 for Tier 1 measures and a parameter delta of .50 for Tier 2

1 measures allows for greater discrimination to exist against ALECs
2 before a materiality determination is made than if the value is
3 set at .25?

4 A If you're talking about the difference in materiality,
5 yes, I would agree with that. By how much, I don't know.

6 Q All right. And since that is true, wouldn't it be more
7 consistent with the purpose of the Act, i.e., to provide parity
8 in the market and ensure ALECs have a meaningful opportunity to
9 compete, to set the parameter delta at the level that allows the
10 least amount of discrimination before a determination of
11 materiality is made?

12 A Well, I think you'd have to define -- I don't know how
13 to answer your question, but I think you'd have to define what's
14 material and how does that relate to discrimination.

15 Q Let me go back at this again. A parameter delta of .25
16 would allow for less discrimination before a determination of
17 materiality is made than a parameter delta of 1; correct?

18 A Yes, I think that's probably true. It depends on how
19 it's applied. In the formulas, I believe you would advocate that
20 we are taking the delta and dividing by two, and I believe you
21 are using delta, just add whatever the value is without dividing
22 by two.

23 Q It wouldn't matter, though, would it? It would still
24 be less for .25 than for .10.

25 A I think that's correct.

1 Q I mean, rather, for .10 -- 1.0, rather. And therefore,
2 wouldn't it suit the purposes of the Act, which is for BellSouth
3 to provide parity service to CLECs, or ALECs, to set the
4 parameter delta at a point where it would allow the least amount
5 of discrimination?

6 A Well, again, I'm not an expert on how delta is applied.
7 I think -- it, like the fee schedule, there's not a precise
8 determination of whether it should be 1 or whether it should be
9 .25 or whether it should be somewhere in between. I think we've
10 discussed this in a couple of different venues, spent a number
11 of -- probably a year, year and a half talking about it in
12 Louisiana, came to the conclusion, let's try it and see what
13 happens. We don't have a precise determination of what's
14 material.

15 Q Okay. Shouldn't this Commission seek to do what it can
16 to prevent or to lessen the amount of discrimination that exists
17 against ALECs by BellSouth?

18 A Yes, I think that's the purpose of this proceeding.

19 Q And in Georgia, the Commission rejected the delta of 1,
20 didn't it, for Tier 1 measures?

21 A Yes.

22 Q And in Louisiana where they accepted the 1., they gave
23 no rationale for accepting it; is that correct?

24 A Well, no, I think there was a considerable amount of
25 rationale for accepting it, and it was based on the fact that

1 there had been a number of studies -- well, there had been a lot
2 of discussion about delta in Louisiana. There was recognition by
3 all parties that there is not a precise determination of what
4 that statistical parameter should be. The way that they
5 concluded is, given that there's an absence of information about
6 a precise definition or determination of what it should be, they
7 ordered that it should be one for a period of I believe it was
8 six months.

9 Q So what they actually said was, let's just try one, and
10 see what happens in six months.

11 A That's essentially what they said, yes.

12 Q Okay. And this Commission could say, let's try .25,
13 and see what happens; isn't that correct?

14 A Certainly could.

15 Q And if the Commission did that, then we'd know how 1
16 and .25 would react, wouldn't we?

17 A Well --

18 Q We could take the 1 from Louisiana and the .25 from
19 Florida, and then we'd know how these things are going to play
20 out; right?

21 A I don't know that you could compare results across
22 states, but that could be a theoretical possibility.

23 Q In your plan, you are advocating the setting of an
24 absolute cap; is that correct?

25 A Yes, we are.

1 Q And my understanding of how that would work is, if the
2 cap was at 36 percent, I think is what you're proposing, of
3 BellSouth's revenues, if BellSouth reached that cap in the
4 first eight months of the year, BellSouth would pay no remedies
5 for the last four months irrespective of what its service level
6 is; is that correct?

7 A That's correct.

8 Q And in your plan, would the Commission have the
9 authority to direct remedies above the absolute cap be paid?

10 A No. In our plan, once the cap -- well, legal issues
11 and Commission authority aside -- in our plan, once the cap was
12 reached that we would pay no more for the remainder of the year,
13 as in your hypothetical, I think the -- again, this is exactly
14 the same proposal that has been approved by the FCC in at least
15 four states: New York, Texas, Kansas, and Oklahoma.

16 I think the more realistic or the more practical
17 likelihood is, if we were to reach a cap where we're paying out
18 36 percent of our net income in terms of penalties, there will
19 probably be a significant change in the management of BellSouth,
20 and I suspect we would be in front of this Commission trying to
21 defend what we're doing in terms of bad service. The likelihood
22 of that happening, it's always a possibility. I don't think that
23 we're going to get to that point.

24 Q And the same would be true for the 75,000 measures you
25 allege that the ALECs have proposed. If BellSouth ever reached a

1 level where they were paying the most severe penalty or paying on
2 all 75,000 of the measures that you allege that are in the plan,
3 it would be at a point where we would need to do something
4 besides this plan to address BellSouth's operational problems;
5 isn't that correct?

6 A Yes. The difference is that the ALECs' plan doesn't
7 have any -- my reading of the ALEC plan, it has no cap on it at
8 all.

9 Q It does have a procedural cap, though, doesn't it?

10 A It has a procedural cap. I'm not sure what a
11 procedural cap is other than, let's get together and talk about
12 it, meanwhile the penalties continue to roll on.

13 Q And under the plan, those penalties would roll into a
14 state fund; right?

15 A After the procedural cap was reached?

16 Q Yes.

17 A I believe that's correct.

18 Q And then you would be allowed to come before this
19 Commission and explain why despite your service that was so poor
20 that it allowed itself to reach a 39 percent cap on your
21 revenues, you shouldn't pay any more money; is that correct?

22 A That's my understanding, yes.

23 Q So the Commission would have the final say on whether
24 there would be any further remedies paid by BellSouth?

25 A I think that's your proposal.

1 Q Okay. And again, back to the example here of the
2 calculation. That is an accurate reflection of what could happen
3 using your calculation; isn't that correct?

4 A Yes. That is an example of the calculation of the
5 affected volume under a situation where you have a product that
6 has a retail analog.

7 Q And so assuming there were 96 transactions in
8 violation, there is a possibility you could only pay on 29 under
9 your plan?

10 A In that particular case, that is the situation. And if
11 I could clarify why this -- I'll use my little pointer here. I
12 think you are getting to what happened to the remaining 96, why
13 we're not paying on the remainder of the 96 transactions. Resale
14 POTS has a clear retail analog, and the retail analog is retail I
15 think this was residence, actually. Well, let's assume it's
16 resale POTS as the heading indicates. The retail analog is
17 residence and business POTS. And the definition of parity is
18 substantially the same time and manner.

19 What I believe that the comment that was made yesterday
20 morning is, we should remedy all 96 of these transactions, not
21 the 29 down here. So your assertion is that we need to remedy to
22 get back to perfection, not recognize the fact that the ILEC in
23 this particular example had 9 percent missed appointments.

24 You want to get us to remedy every single transaction
25 that had a missed appointment which essentially says the

1 definition of parity is perfection. That's not the intent.

2 Q The example that you have there, there are, what, 67
3 transactions that are not paid on; is that correct?

4 A That's correct.

5 Q And it actually could be worse than that given any
6 particular set of numbers, or better; is that correct?

7 A Well, using that example, no, that's not correct. I
8 mean, that's what it is.

9 Q I said given any set -- I mean, any set of numbers; I'm
10 talking in terms of your calculation.

11 A Sure, yeah. If you've got a different set of
12 circumstances, the numbers will be different.

13 MR. PRESCOTT: If I could just have one minute. I have
14 nothing further for Mr. Coon.

15 CHAIRMAN JACOBS: Very well. That takes care of cross
16 from the ALECs. Staff.

17 CROSS EXAMINATION

18 BY MR. FUDGE:

19 Q Mr. Coon, in general, would you please describe the
20 rationale that BellSouth used to determine what measures should
21 or should not be included in their SQMs?

22 A Well, in general, the simple answer is, it started out
23 about three years ago with a set of measurements that we had that
24 had been used for a number of years in monitoring provisioning
25 and ordering and maintenance and so on. We had some new

1 measurements we had to implement as a result of the Telecom Act
2 because we had some processes which we never had had to deal with
3 before such as ordering, firm order confirmations and so on. But
4 we have gotten a lot of direction from several commissions, this
5 Commission being at the forefront of setting analogs and
6 benchmarks back about a year and a half or two years ago. We
7 have gotten a lot of input from the ALECs. And whether you want
8 to call the hearings and proceedings in other states
9 collaborative or not, we were ordered in Louisiana and Georgia to
10 produce a set of measurements, which is essentially what you have
11 before you here. So it's a product of a number of commissions'
12 input, some input from the ALEC community, and added to what we
13 had already been doing historically.

14 Q In general, what rationale had BellSouth used to
15 determine for each measure what was the appropriate level of
16 disaggregation for reporting?

17 A In general, it was to -- in talking about products, it
18 was an attempt to capture those products which had the most
19 activity and to emphasize some new emerging products such as xDSL
20 which may not have had a whole lot of activity when we proposed
21 them but are certainly important to a number of folks these days.

22 Q In your testimony, you discussed the importance of
23 achieving the appropriate level of disaggregation for each
24 measure. It is my understanding that measures can be
25 disaggregated by product, interface type, geography, volume,

1 level of mechanization, and dispatch status; is that correct?

2 A Yes, that's correct.

3 Q Would you please describe in general terms the
4 BellSouth recommended level of disaggregation for reporting the
5 preordering measures.

6 A I'm referring to page -- I'll just use one example and
7 see if I'm responding to your question. In my Exhibit DAC-1 on
8 Page 1-3, it lists the disaggregations of the reporting levels
9 for OSS response interval, which is a preordering measurement,
10 and basically says that we will report on response times from a
11 number of systems to a number of legacy systems, back-end
12 systems, and they are all pretty much described in these three
13 tables.

14 Q Are you going to disaggregate by interface for
15 preordering measures?

16 A Well, if by "interface" you mean LENS, TAG, RSAG and so
17 on, yes, that's how we would disaggregate.

18 CHAIRMAN JACOBS: I had a question on that. In many of
19 your measures, you don't show RoboTAG. Is that anticipated that
20 you would capture measurements for that?

21 THE WITNESS: Chairman Jacobs, I don't know. I don't
22 know whether RoboTAG is tied into TAG such as it would be picked
23 up or not. I think it is, but I'm just not sure.

24 CHAIRMAN JACOBS: Is there someone else who can tell
25 us?

1 THE WITNESS: Yes, sir, there is.

2 CHAIRMAN JACOBS: Who would that be?

3 THE WITNESS: That would be Mr. Pate.

4 CHAIRMAN JACOBS: Very well. Thank you.

5 BY MR. FUDGE:

6 Q In general, what is the recommended level of
7 disaggregation for reporting ordering measures?

8 A The ordering measures, I'll use the firm order
9 confirmation as an example, which is on page -- it starts on Page
10 2-25. And the reporting structure or the level of disaggregation
11 would be typically that which is back on Page 2-26. And for this
12 particular measurement, we would report mechanized, meaning that
13 the LSRs were submitted electronically and the firm order
14 confirmation was returned electronically or automatically. We
15 would report mechanized according to the levels or the product
16 levels that are listed on the left-hand side of the table at the
17 top of Page 2-26. And then we would also report the same listing
18 of products under partially mechanized, and then we would report
19 the same listing of products under nonmechanized.

20 Q Do you believe it is appropriate to disaggregate
21 ordering measures by geography?

22 A I'm sorry?

23 Q Do you believe it is appropriate to disaggregate
24 ordering measures by geography?

25 A No, I don't think it's necessary to do that. And the

1 reason I don't is because the systems are done -- the report --
2 well, the ordering mechanisms are regional. They are done -- the
3 same systems are used for all geographic areas. We do report
4 them by state. We just don't think it's necessary to take it
5 below that level. The same systems are basically used for all
6 LSRs whether they are submitted for one wire center in one state
7 or another wire center in another state.

8 Q What about disaggregating ordering measures by
9 interface?

10 A I don't think there's a whole lot of value to be gained
11 by separating the ordering measures by LENS and TAG and EDI. I
12 think what we have here, the mechanized, partially mechanized and
13 so on would capture that adequately.

14 Q Would it be appropriate to disaggregate ordering
15 measures by volume?

16 A No, it would not be, because the ordering measures
17 basically look at, I received an LSR, and it had some information
18 on it, and I returned that LSR. It doesn't matter whether the
19 LSR had one circuit or whether it had ten circuits on it. It's
20 how quickly did you process that piece of paper through the
21 systems to generate a service order. Now, when it gets into the
22 provisioning categories, then it would be appropriate to
23 disaggregate by the volume types that we have advocated here
24 because it does make a difference in the processes at that point.

25 Q What are the recommended levels of disaggregation for

1 provisioning measures?

2 A Just referring to missed installation of appointments
3 as an example, which is P-3. We have several different levels of
4 disaggregation here. On Page 3- 6 under report structure, we
5 would advocate reporting it in categories of less than ten lines
6 or circuit and greater than ten lines or circuits. That would be
7 one dimension to the disaggregation. A second dimension would be
8 right below it, the dispatch, nondispatch, which would be a
9 second dimension. And then the product dimension is listed back
10 on Page 3-7.

11 Q Would you disaggregate by mechanization?

12 A No, we would not. And they reason we wouldn't is
13 because by the time the order has gone through a generated
14 service order, the distinction between mechanization -- a
15 mechanically submitted LSR and one submitted through fax is
16 really not relevant to a provisioning measurement which starts
17 when the firm order confirmation has been returned back to the
18 ALEC. So there's really no -- there's no possible discrimination
19 that could occur in the provision measurements associated with
20 whether the order what submitted mechanically or nonmechanically.

21 Q What about disaggregating by geography?

22 A We think it would confuse and complicate -- it
23 certainly would complicate the amount of reporting that we would
24 have to do. We just don't think it's appropriate to monitor
25 performance at a geographic MSA level.

1 Q Would you please describe the recommended level of
2 disaggregation for maintenance and repair measures.

3 A Certainly. If you were to go back to maintenance and
4 repair missed appointments, Page 4-1 of Exhibit DAC-1, there are
5 basically two dimensions to the disaggregation. Under report
6 structure, you'll see that there's a dispatch, nondispatch,
7 meaning did we have to send somebody out in the field driving a
8 truck to repair the service. If it's nondispatch, it was either
9 corrected by somebody in a central office or it was corrected
10 through software changes. That would be one dimension. And then
11 the product dimension would be listed -- is listed on Page 4-2 in
12 that table at the top of the page.

13 Q Would it be appropriate to disaggregate maintenance and
14 repair measures by geography?

15 A No, for the same reason that I don't think it's
16 appropriate for provisioning.

17 Q When you are proposing to disaggregate by product, you
18 have listed approximately 17 to 19 different products you will
19 disaggregate for. How did BellSouth determine that these were
20 the appropriate products to be included?

21 A It was based on where the relative activity levels were
22 for the individual products. And as an example, a year and a
23 half or two years ago, there was very little facility-based --
24 there were very few facility-based ALECs compared to what we have
25 today. So most of the measurements that we had were weighted

1 towards resale, resale residence, business and so on and design.

2 Now that we have a much more -- there are many more
3 facility-based CLECs, we have got unbundled network elements, and
4 there's a lot more activity in the UNEs than there had been, so
5 we have added and the commissions have ordered us to add
6 additional products that are reflected in this table. Also, as I
7 mentioned earlier, some of the new emerging services such as xDSL
8 and line sharing, even though there's not a whole lot of volume
9 out -- or hasn't been a whole lot of volume out there up until
10 recently, that was added back sometime back.

11 Q The ALEC Coalition has proposed 41 products to be
12 disaggregated. Are you familiar with their list of products?

13 A Yes, I am.

14 Q Could BellSouth report data on each of these 41
15 products for those measures where it is appropriate to
16 disaggregate by product?

17 A Was it "could"? Was that your question?

18 Q Yeah, could.

19 A Could we?

20 Q Yes.

21 A I guess computers can do just about anything, so yeah,
22 we could probably figure out some way to do a lot of them. Quite
23 honestly, there are some in there that we don't have any data on
24 at all. We're not capturing something called an 8DB loop, as an
25 example, and there is a number of products that the ALECs have

1 requested that have very, very, very little volume.

2 Q It is my understanding that BellSouth does not
3 disaggregate ADSL, HDSL, and UCL. These products are lumped
4 together for reporting purposes; is that correct?

5 A That's correct.

6 Q Additionally, ISDN and UDC are reported together; is
7 that correct?

8 A That's true.

9 Q Is line splitting and line sharing lumped together as
10 well?

11 A I think line splitting is part of the process to
12 provide line sharing, so I wouldn't say that they are lumped
13 together. I think the line splitting is just part of the overall
14 process required to add a splitter to provide line sharing.

15 Q Would you please explain the advantages and
16 disadvantages of disaggregating loop types further than what
17 BellSouth is proposing.

18 A I can't think of very many advantages but the -- trying
19 to be positive, I guess it would allow a commission, should they
20 choose, to look at many, many more products that may have very
21 little activity. The disadvantages we pretty much talked about,
22 I think, over the last two days. To the extent that you get more
23 and more granular, I'm not sure it confuses the picture or
24 clarifies the picture about providing parity of service.

25 The analogy that I've used in several instances is, if

1 you're trying to determine what a painting is attempting to
2 portray, you wouldn't look at the individual brush strokes and
3 look at each brush stroke on the painting. You'd want to have a
4 little bit bigger picture.

5 The product aggregations that we proposed here have a
6 large majority -- and I would venture to say, within these
7 product disaggregations that we're listing just on this one
8 particular measurement, missed repair appointments, we probably
9 have 80 percent, 85, maybe even 90 percent of the overall
10 activity captured and uniquely identified. So the disadvantage
11 would be a lot more calculations, a lot more reporting, a lot
12 more paper. And then once you get all this specificity, what do
13 you do with it? That's a long answer to your question, I
14 apologize.

15 Q When BellSouth is proposing a benchmark, could you
16 please explain how BellSouth determined what the appropriate
17 benchmark should be.

18 A Most of the benchmarks proposed here are those that
19 have been ordered in the Georgia Commission.

20 Q For example, let's look at percent flow through service
21 request. For business orders, you are proposing a 90 percent
22 benchmark. How did you determine that 90 percent was
23 appropriate?

24 A I believe we don't think it's appropriate, but that's
25 the benchmark that has been ordered. In fact, I believe it was

1 ordered here in this proceeding for third-party testing. That's
2 the benchmark we have, and that's the one that was ordered again
3 in Georgia. To the extent that we have to produce a benchmark
4 for one state, in some instances, it's awful difficult to not
5 have to replicate that and adhere to that benchmark in other
6 states, particularly when you're dealing with a regional system
7 like this.

8 Q What factual basis do you have to believe that it is an
9 inappropriate benchmark?

10 A Our actual performance today, and Mr. Pate, I believe,
11 will talk about that at some length in the next day or two.

12 Q So do you believe the actual performance should be the
13 basis of your benchmark?

14 A No, I don't think it necessarily should be the basis of
15 the benchmark, but I think the achievability, the practical
16 ability to arrive at a particular benchmark needs to be taken
17 into account. And in some instances, some of these benchmarks
18 are extremely challenging, and some of them we're just not sure
19 we're going to be able to achieve.

20 Q On Page 47 of your direct testimony, you note that
21 under a procedural cap process it is possible for the Commission
22 to determine an ultimate cap that could result in the need for
23 some portion of excess BellSouth Tier 1 payments to be returned
24 by ALECs; is that correct?

25 A I'm sorry, I couldn't turn the pages quickly enough.

1 It was Page 47 of the direct?

2 Q Yes, sir.

3 A And you were reading from Line 16 or 17?

4 Q Between 8 and 11.

5 A I'm sorry, could you restate the question, please.

6 Q Sure. The essence of your statement is that there
7 would be some portion of excess payments under BellSouth's
8 Tier 1 that would have to be returned by the ALECs if the
9 Commission determines that a lower cap is appropriate?

10 A Yes, that's correct.

11 Q And you also state that it is unlikely that the ALECs
12 would voluntarily return any excess payments; is that correct?

13 A That's correct.

14 Q If the Commission required the Tier 1 payments beyond
15 the procedural cap be held in escrow by the ALECs pending the
16 resolution of the ultimate cap, would this potential problem be
17 resolved?

18 A Yes, it would.

19 Q When you state that a cap should be applied on an
20 annual basis, does this mean that a cap applies to the dollars
21 paid out in a 12-month period or to the dollar amount of
22 penalties associated with transactions in a 12-month period?

23 A It would be the dollars paid out during that 12-month
24 period.

25 Q Do you have any opinion about how the 12-month period

1 should be set?

2 A Do you mean January to December or July to June?

3 Q Yes, sir.

4 A No, I don't. I guess the Commission could determine
5 whether we're talking calendar years or fiscal years or some
6 hybrid.

7 Q If there is an absolute cap of a certain percentage of
8 net revenues, how frequently should this cap be calculated?

9 A Well, my own opinion is, we should follow the precedent
10 that's been established in some other ILECs that have been
11 approved by the FCC, and they calculated a net revenue cap based
12 on 1998 ARMIS reporting. And in several instances, I think
13 Southwestern Bell said this was a not-to-exceed amount, and they
14 also had a would-never-go-below amount. So I think something
15 along those lines would be appropriate.

16 Q When you stated earlier that it should be set on the
17 1998 revenues in other jurisdictions, do you think it should be
18 updated to 1999 or 2000 revenues for this Commission?

19 A Yes. I think 1999 is the -- I'm not sure about the
20 year 2000, whether that data is even out there, but I believe
21 that it would be appropriate to base it on 1999.

22 Q Ms. Bursh states on Page 29 of her direct testimony
23 that the procedural cap should apply on a rolling 12-month basis.
24 How do you interpret this statement?

25 A Well, my interpretation is not favorable, but the

1 literal interpretation is that -- let's assume we have reached a
2 procedural cap under that hypothetical situation to the extent
3 that moneys were paid in -- I'll just use January to December as
4 an example, and now we're into February of the following year.
5 To the extent that moneys were paid 12 months past, which would
6 be, what, March, I guess, that that amount of money would roll
7 off that 12-month roll, and then you would add to that the money
8 that would be paid in the current month.

9 Q Ms. Bursh states on Page 27 of her direct testimony
10 that absolute caps send the signal that once the ILEC's
11 performance deteriorates to a particular level, then further
12 deterioration in performance is irrelevant. Do you agree with
13 that statement?

14 A Could you say that again, please.

15 Q She stated that once -- an absolute cap sends a signal
16 that once the ILEC's performance deteriorates to a particular
17 level, then further deterioration in performance is irrelevant.

18 A Well, if you just base that conclusion solely on the
19 achievement of the cap without regard to what would happen as a
20 result of getting close to it and say that there is no other
21 incentive other than financial incentive, that's correct, but I
22 don't think that -- that's just simply not realistic. There are
23 many more other implications that would happen if we ever got
24 close to that cap other than just the financial implications.

25 Q On Page 56 of your direct testimony --

1 A Okay.

2 Q -- you state that BellSouth proposes to retain this
3 data in the PMAP for a period not to exceed 18 months. Has the
4 18-month retention period been adopted in any other jurisdiction?

5 A I don't know.

6 Q It's my understanding that there has been agreement
7 that retention of data for 18 months, that the ALEC Coalition
8 agrees with that. Is that your understanding?

9 A That I don't know either.

10 Q Do you have a disagreement over what amount of data or
11 what type of data should be retained?

12 A Do I have a disagreement?

13 Q With the ALEC Coalition.

14 A That was one of the -- I don't know that we have a
15 disagreement. I don't know that that's an issue. It may have
16 been one of the issues that were stipulated. I know this is one
17 of the exceptions that KPMG identified in the Georgia audit, is
18 to have a policy for data retention. And I think we're close to
19 having the 18-month interval or the 18-month retention period
20 being approved by KPMG and by the Georgia Commission.

21 Q On Page 19 of your direct testimony, you state that if
22 there was some systematic failure in posting reports, there could
23 be some need for a Commission overview as it relates to the
24 payments of penalties associated with late-filed reports. Could
25 you please explain what you mean by "systematic failure."

1 A I can't give you a precise definition. I guess it's
2 one of these things that, you know, you'll know it when you see
3 it. If we're late a day or two, given that there has not been a
4 whole lot of attention by any of the ALECs on the data that we
5 have in PMAP today, as one of the Staff discovery items
6 requested, they asked for the number of ALECs that are logging
7 into our PMAP system, and the percentage of that varies per month
8 to month, but it's 10 percent or less every month. So there's
9 not a whole lot of attention or there's not whole lot of interest
10 apparently being provided on the ALEC community on the reports
11 that we have in PMAP. Hence, we don't think that there's
12 probably a whole lot of harm being proposed or posed to the ALECs
13 if we are a day or two late.

14 If we're consistently a month late, a couple of weeks
15 late, then I think that would probably be categorized as a
16 systemic or systematic problem or failure in reporting --
17 providing the reports.

18 Q Yesterday, you attributed the KPMG audit as adequate
19 incentive to ensure that your reports are timely and accurate
20 and, therefore, would eliminate the need for a penalty for this
21 measure; is that correct?

22 A Yes.

23 Q You also stated that you believe the enforcement plan
24 was unnecessary because you believe BellSouth's service has
25 improved; is that correct?

1 A I don't think I said it in that term. If we're talking
2 about, did I think an enforcement plan was necessary to achieve
3 parity?

4 Q Yes.

5 A Well, this is a discussion we had a little earlier this
6 morning. I guess the Commission and Staff would have to
7 assess -- given that we don't have an enforcement plan mechanism
8 in place today, the question would be, are we providing service
9 at parity. I think we are, but you have to make an independent
10 decision about whether we are or not.

11 Q And do you believe that how -- much of that is
12 attributable to the KPMG audit that is currently under way?

13 A The KPMG audit of the performance measurements or the
14 OSS evaluation?

15 Q The OSS evaluation.

16 A I don't know.

17 Q Would you agree that it has had some impact on your
18 level of parity?

19 A Yes, I think it has. I think that there have been some
20 areas that KPMG has identified that probably wouldn't have been
21 identified sooner because they've tested some areas that we had
22 simply not had any experience with before. I don't know that
23 we're talking about a significant impact. I don't remember what
24 their report says, their summary report. I think it was very
25 favorable, but I would agree that there has been some impact.

1 Q In terms of calculations of measures, is BellSouth
2 anticipating any voluntary changes to the date/time stamp
3 mechanism of your calculations?

4 A Which calculations? There's a number of them that
5 depend upon the date/time stamp.

6 Q Intervals.

7 A The ordering intervals or the provisioning intervals?
8 We are changing the measurement point on the ordering intervals
9 for reject intervals and FOCs back to the ALEC -- back to the
10 interfaces used by the ALECs, if that's what you're talking
11 about.

12 Q Are you referring to starting the time stamp at the
13 firewall versus at the entry to the legacy system?

14 A Could you say that again, please.

15 Q Are you proposing to moving the starting the time stamp
16 for the interval calculation from the firewall -- to the firewall
17 versus at the entry to the legacy system?

18 A Yes, that's what I was talking about. We had been
19 measuring it at the entrance to the legacy system, which in our
20 terms is something called LEO, local exchange ordering, and
21 that's a little further inside the firewall from where the
22 Georgia Commission and even the ALECs said we need to measure.
23 So we're moving that measurement point back towards the firewall,
24 and specifically, it will be right at the interface, EDI, LENS,
25 and TAG, which are the interfaces used by the ALECs.

1 Q And when will this be completed?

2 A I don't know exactly. I think it's going to be done
3 within the next couple of months, if it hasn't been done already.
4 I'm just not sure. I can find out.

5 Q Do you know how this will affect this proceeding?

6 A None. We're talking about probably milliseconds or
7 seconds.

8 Q Are the changes reflected in the SQMs?

9 A Yes, they are.

10 Q Earlier in a response to a question by Mr. McGlothlin,
11 you referred to a time of month disaggregation. What metrics
12 does that apply to?

13 A I don't know exactly. Dr. Mulrow may have that
14 information, but I don't know.

15 Q The CLECs have proposed disaggregation by geography
16 for reporting purposes to the MSA level. Is there another level
17 of geographic disaggregation that this Commission could consider
18 for reporting purpose? For example, BellSouth has areas or
19 divisions in Florida; is that correct?

20 A Areas of?

21 Q Areas of operations.

22 A Yes. Well, I guess there are a number of alternatives.
23 You could -- we would advocate that you consider and adopt the
24 state level reporting. However, you could consider the North
25 Florida/South Florida operations. One problem with that is that

1 the operation -- the definition of North Florida/South Florida
2 from a BellSouth internal perspective changes from time to time
3 as we try to shift people around to meet the demand. So the
4 borderline may move from point to point. I guess you could take
5 it below MSA level, as recommended by the ALECs; could take it
6 even below that.

7 Q So would it be possible for reporting purposes to
8 disaggregate to this level?

9 A Would it be possible?

10 Q Yes.

11 A Yes, it would.

12 MR. FUDGE: That's all the questions we have.

13 CHAIRMAN JACOBS: Commissioners, I'd like to go ahead
14 and take a break now because I suspect you have --

15 MR. LACKEY: I have some redirect, but, I mean, I can
16 do it in 15 minutes, and we'll be out of here. You let me think
17 about it over lunch, it may take a little longer.

18 CHAIRMAN JACOBS: That's a powerful incentive.

19 MR. LACKEY: I was going to say, I'm learning about
20 incentive plans here.

21 CHAIRMAN JACOBS: I have a few question that I wanted
22 to -- let me see if I can go through mine very quickly and then
23 get to yours. You answered one of my questions when you deferred
24 it to Mr. Pate. Let me ask you to look at your -- you have a
25 chart here. I believe it's Page 3-15, if I'm not mistaken. No,

1 that's not it. I have -- 2-15. It has to do with measure O-6, I
2 believe. I may be wrong. I'm specifically interested in the
3 table. Would you walk me through what information this is
4 conveying to me?

5 THE WITNESS: Chairman Jacobs, I can do my best to walk
6 you through this; however, we have another witness here. But
7 we're talking about the number of orders that flow through and
8 the types of orders.

9 CHAIRMAN JACOBS: Right. Someone that's going to
10 address that for me.

11 THE WITNESS: Mr. Pate is much better at talking about
12 through this than I.

13 CHAIRMAN JACOBS: That makes that much easier. On
14 Page 2-24 -- actually, that was related to this, so I'll ask him
15 that question as well. Let me ask you a general question. If
16 the -- in an attempt to determine whether or not an order was --
17 has been timely completed, your clock begins to run when you have
18 basically a correct order from the ALEC; is that correct? So
19 that any processes that occurred prior to you getting -- working
20 through any errors that might have occurred in the initial
21 generation of the order would not start that clock?

22 THE WITNESS: That's correct.

23 CHAIRMAN JACOBS: Okay. And to the extent that that
24 process of getting the order right has manual intervention, that
25 wouldn't be measured here as well?

1 THE WITNESS: No, that's not correct. And I think I
2 probably answered the wrong question, your first question. We
3 have two processes. One is the process associated with getting
4 the order correct, and the other is the process associated with
5 once the order is correct, delivering the service. And those two
6 processes -- the first one is called firm order confirmation
7 timeliness. And to the extent that it takes us time to get the
8 errors corrected when the errors are our fault, that's captured
9 in firm order confirmation timeliness. But after that, the order
10 is correct, the service order is generated, and the order
11 completion interval, which is that second measurement for the
12 second process, you're already working with a corrected order.
13 So we would capture the time it takes us to figure out what we
14 did wrong if we made a mistake.

15 CHAIRMAN JACOBS: Okay. And the measurement that
16 you'll use for firm order confirmation timeliness, I guess that
17 was in measure O-9?

18 THE WITNESS: That's correct.

19 CHAIRMAN JACOBS: And that would be 95 percent within
20 3 hours?

21 THE WITNESS: Yes, sir. If the order was submitted
22 electronically and it was error-free, our commitment is to return
23 an FOC within 3 hours 95 percent of the time.

24 CHAIRMAN JACOBS: Okay. Partially mechanized LSR, that
25 means what?

1 THE WITNESS: Partially mechanized LSR means the order
2 was submitted electronically, and it required some manual
3 intervention typically for two reasons. One is the service was
4 electronically orderable by the ALEC, but we had to have some
5 people -- had to have a person or persons look at the order and
6 add or correct or verify some entries in the LSR to turn it into
7 a service order.

8 CHAIRMAN JACOBS: What --

9 THE WITNESS: That --

10 CHAIRMAN JACOBS: I'm sorry, go ahead.

11 THE WITNESS: That's one reason. The second reason is,
12 the order was submitted for a service which was electronically
13 orderable, and for whatever reason, there was a problem and it
14 fell out, required manual handling, and it was deemed to be a
15 problem that we created. It could have been a system problem; it
16 could have been something else. And our people had to go pick
17 the order up out of the queue, the electronic queue, fix it, and
18 send it on its way. And that's the 18-hour and the 10-hour
19 benchmark to do that.

20 CHAIRMAN JACOBS: Okay. And two questions. First of
21 all, your business rules don't lay out the criteria which will
22 determine when that manual intervention actually -- what causes
23 the manual intervention to occur. Is that more specifically laid
24 out?

25 THE WITNESS: If you're asking, do we in this

1 particular measurement describe the things that have caused that
2 order to fall out, no, we don't have that in here.

3 CHAIRMAN JACOBS: Okay. Is it possible to get a
4 further description of that?

5 THE WITNESS: Yes, sir, it is. In fact, we've got some
6 reports that describe -- and I don't know the name of the reports
7 but describe the certain -- the cause codes or the things that
8 caused an order to fall out and how many of them happened and so
9 on.

10 CHAIRMAN JACOBS: Okay. That would be useful.

11 MR. LACKEY: Mr. Chairman, I believe Mr. Pate can
12 discuss the design fallout when he gets on the stand.

13 CHAIRMAN JACOBS: Wonderful. And then my last
14 question is -- and this is really the reason for going here.
15 There's a significant standard difference. If it's partially
16 mechanized, we go from a 95 percent within 3 hours to 85 percent
17 within 18 hours. And that, you would agree, is a pretty
18 significant gap in the standard?

19 THE WITNESS: Yes, Mr. Chairman, I would absolutely
20 agree. But however, I would go on to say that if you look at the
21 large volume of orders or LSRs that are submitted, about
22 86 percent of the orders are submitted electronically, and
23 relative percentage terms, there's probably less than
24 10 percent -- my numbers may be off here a bit -- that would
25 fall out to require manual handling.

1 CHAIRMAN JACOBS: Which would lead me to conclude
2 that there wouldn't be such a big gap because you're not talking
3 about such a large number that are going to fall out for manual
4 processing.

5 THE WITNESS: Except when they do fall out, in many
6 cases, there's a lot of work that has to be done.

7 CHAIRMAN JACOBS: Okay. Very well. That's all I have.
8 Commissioners?

9 COMMISSIONER BAEZ: I just have a couple. Mr. Coon,
10 what's your understanding of the purpose of Tier 1 and
11 Tier 2 penalties?

12 THE WITNESS: The Tier 1 penalties, in general terms,
13 are intended to provide compensation to the ALEC kind of like a
14 business-to-business relationship that we would -- the retail
15 units would have with their residential or business customers.
16 As an example, if we don't complete an installation on time, in
17 some cases, the retail units will waive the installation charges.
18 So it's an attempt to replicate the business-to-business
19 relationship that we would have with the individual CLEC and
20 still provide us incentive to perform.

21 The Tier 2 is higher, a higher level, more severe.
22 It's intended to provide additional incentive when there are
23 things that BellSouth does that affects the CLEC industry as a
24 whole and not necessarily just an individual CLEC.

25 COMMISSIONER BAEZ: I know that you probably answered

1 this question before, but I'm having trouble understanding what
2 the rationale is for some of your measurements to be only in
3 Tier 2 and not in Tier 1.

4 THE WITNESS: The simplest rationale is, are there
5 measurements that affect such that if we do not perform a process
6 adequately, would it affect one CLEC individually, or would it
7 affect all of them? And that's -- most of the Tier 2 would --
8 some of the Tier 2 that are not in Tier 1 would fall into that
9 category.

10 COMMISSIONER BAEZ: But I guess looking at it the other
11 way, and I guess this is the trouble that I'm having
12 understanding that rationale is, looking at it the other way,
13 wouldn't a particular CLEC have to suffer some harm in a Tier
14 1 sense in order for that failure of the company to rise to a
15 Tier 2 level? In order for it to have an effect on the entire
16 competitive LEC population, don't you have to go -- isn't there a
17 one-by-one -- you know, aren't there LECs individually getting
18 harmed at the same time?

19 THE WITNESS: Yes. In many of our measurements, they
20 would have been remedied in Tier 1.

21 COMMISSIONER BAEZ: Because there is redundancy or
22 there's overlap?

23 THE WITNESS: Yes. Every Tier 1 measurement is in Tier
24 2. There are some Tier 2 measurements, as your question got to,
25 that are not in Tier 1. And those typically are the ones that if

1 you have a failure in the process that affect all CLECs, not just
2 one.

3 COMMISSIONER BAEZ: Okay. And now, going on to
4 another thing. I think you're the second or third witness. I've
5 lost track at this point, but at least two of you that I recall,
6 and the Staff witness being the other, have at least -- there's
7 been some discussion as to the delta value. And it seems to me,
8 and correct me if I'm wrong, but I keep hearing discussion like
9 it's somehow subject to an eyeball test. You know, it may just
10 as well be -- I think Mr. Prescott questioned you on that -- it
11 might be just as well .25 as it would be 1. There's no hard
12 information to say it should be this or that at this point, I
13 mean, at least I think I heard you say that or suggest it.

14 And I wonder if somebody can help me with -- I think
15 Mr. Prescott in his opening statement brought out a chart that
16 kind of backs into or shows a comparison between the delta
17 values. And I wonder if you can take a look at it and see what
18 you see wrong with those calculations or with those comparisons
19 that wouldn't allow us to back into a proper value, if I'm
20 correct in assuming that, you know, it really is how we see it.
21 And that's what I hear you suggesting.

22 THE WITNESS: Commissioner, I'm not even sure I
23 understand what that is based on. I mean, I understand what the
24 words say.

25 COMMISSIONER BAEZ: Well, my understanding of it is

1 that somehow the percentages in the pink row corresponding to the
2 different delta values is how much of a percentage of customers
3 having to -- would have to be receiving discriminatory service or
4 service subject to discrimination before the enforcement measure
5 would kick in. Can somebody -- I see some people nodding.
6 That's my understanding of it. I don't --

7 MR. PRESCOTT: I think that's basically right, but I
8 think the determination would be one of how much discrimination
9 the ALEC customer is suffering in comparison to the BellSouth
10 customer before a determination of materiality is made.

11 COMMISSIONER BAEZ: So it's -- and I'm sorry to have
12 you testify, Mr. Prescott, but you're the one that brought up the
13 chart. Can you put it in a simpler term for me? I mean, that
14 44 percent, that would mean that I, as a customer of a CLEC,
15 would have to be suffering 44 percent more discrimination; is
16 that --

17 MR. PRESCOTT: I don't think it's 44 percent more. It
18 would be the --

19 COMMISSIONER BAEZ: What does that percentage mean?
20 What does that percentage represent?

21 MR. PRESCOTT: It represents 44 percent of the CLEC
22 customers would suffer --

23 COMMISSIONER BAEZ: Okay. Before --

24 MR. PRESCOTT: -- they would suffer that much more than
25 BellSouth.

1 COMMISSIONER BAEZ: And I guess I was just wondering,
2 Mr. Coon, your thoughts on that. I mean, is that a fair -- if we
3 don't know what the precise delta number or value should be, or
4 if no one can agree on it, is there a method of backing into it
5 where we see in terms of what percentage, for instance, of
6 customers would have to be discriminated against before an
7 enforcement measure became --

8 MR. LACKEY: Excuse me, could I interrupt and testify
9 for a minute?

10 CHAIRMAN JACOBS: By all means.

11 COMMISSIONER BAEZ: It's up to the Chairman.

12 MR. LACKEY: I'm just concerned that this is something
13 that Dr. Mulrow -- this is not -- I don't think this is our
14 chart, and it's something that Dr. Mulrow may need to address
15 rather than a nonstatistician.

16 COMMISSIONER BAEZ: I understand, Mr. Lackey. It's
17 just that I keep getting the feeling that since no one can agree
18 on what this delta value is, and Mr. Coon testified as much, I
19 mean, maybe you would characterize it a different way, but I'm
20 getting the feeling that this is something that's one of those, I
21 know it when I see it. And I guess I'm trying to determine how
22 it is I'm supposed to be looking at it so that I'll know it when
23 I see it.

24 MR. LACKEY: And my only point was, is this what we're
25 doing?

1 COMMISSIONER BAEZ: I'm sorry?

2 MR. LACKEY: My only point is, is this what we're
3 doing? Is this a fair analysis that you're looking at here?
4 That's all --

5 COMMISSIONER BAEZ: My question to Mr. Coon was, does
6 he see anything wrong with that characterization of it.

7 MR. LACKEY: The point I was making is, he's not the
8 statistician, so I'm not sure he can --

9 COMMISSIONER BAEZ: And if he doesn't want to answer
10 it, I guess let's let the question out there. Who was it that
11 might be able to --

12 MR. LACKEY: If anybody can, it would be Dr. Mulrow,
13 who is our statistician.

14 COMMISSIONER BAEZ: Okay. Thank you.

15 MR. PRESCOTT: Commissioner, that exhibit is Dr. Bell's
16 exhibit. And he is perfectly willing to explain it now if you'd
17 like, but he will be testifying later.

18 COMMISSIONER BAEZ: We can wait. Thank you. Thank
19 you, Mr. Coon.

20 CHAIRMAN JACOBS: Very well. Redirect.

21 MR. LACKEY: It really is going to take 15 minutes if
22 you want to wait until after lunch. I promise I won't drag it
23 out after lunch if you're ready to quit. I'm indifferent. I'll
24 do it now or do it then.

25 CHAIRMAN JACOBS: My objective in breaking probably is

1 no longer an objective, so we might as well get done with
2 Mr. Coon and then break.

3 MR. LACKEY: I'll be happy to do it. Thank you, sir.

4 CHAIRMAN JACOBS: Okay.

5 REDIRECT EXAMINATION

6 BY MR. LACKEY:

7 Q Mr. Coon, I'm Doug Lackey and I'm your lawyer.

8 A Pleased to meet you, Mr. Lackey.

9 Q I just have a couple of questions. Do you recall that
10 Commissioner Jaber was asking you at one point about the source
11 of the numbers and whether you were getting the information that
12 you were testifying to from other people?

13 A Yes, I do.

14 Q Does our plan provide that our reports and our data
15 will be audited by an independent outside auditor?

16 A Yes. There is an appendix attached to our plan,
17 actually, it's Appendix C, that calls for an annual audit of our
18 performance measurements plan. And that's one that KPMG has
19 conducted in Georgia, is conducting here in Florida. We have
20 that as an ongoing part of our plan.

21 Q And will there be an audit by an independent
22 third-party auditor each year?

23 A Yes, I think that's a very safe assumption.

24 Q So the Commission shouldn't be required to rely on our
25 word about any of these data points; is that right?

1 A No.

2 Q Mr. McGlothlin asked you quite a few questions about
3 statistics, and then he asked you to make some calculations. Do
4 you recall that?

5 A I do.

6 Q And I think the number that I finally heard was
7 something like 12,800 comparisons. Do you recall that?

8 A Yes, I do.

9 Q Is the issue that we're worried about here the number
10 of calculations that are involved in this process?

11 A No. A computer is perfectly capable of adding two and
12 two and getting four and doing that multiple times.

13 Q Is a computer capable of making millions of
14 calculations?

15 A Yes, it is.

16 Q What is the problem if it's not the calculations?

17 A The real problem is retaining all of the data necessary
18 to capture the information, which would be as a result of
19 adopting the ALEC plan, and to generate the reports, 75,000 or
20 however many reports we want to talk about, associated with each
21 of those determinations of parity. And to make all of that
22 information available to all of the ALECs for each of that
23 portion, the 75,000 measurements, that would be appropriate to
24 that ALEC, not all of them would be appropriate to every one
25 because they don't all have products and they don't all operate

1 in the same areas. But we're talking about a tremendous amount
2 of data generation, report generation.

3 Q Even if there was no data in a cell or for a measure,
4 under the ALEC plan, would you still have to have a computer
5 program that would report the results --

6 A Yes, we would.

7 Q Now, in response to a question yesterday, your response
8 was, yes, if we had a big enough computer. Can you tell us what
9 you meant by that?

10 A Well, basically, what I just said is that the
11 ability -- the computers are used for a couple of different
12 things. One is to retain the data, one is to perform the
13 calculations, and the other is to produce the reports, and yet,
14 another one has to place them available to the ALECs for their
15 viewing. And the concern that we would have is, do we have
16 enough competing horsepower to do that, given that where we are
17 today with our system, which we think is a very good system, is
18 at capacity with the set of measurements we have today.

19 Q Are we working on a new computer system?

20 A Yes. We have a new computer system that is being --
21 will be implemented by the end of the year. It's called --

22 Q I'm sorry. I didn't mean to interrupt you.

23 A It's called PMAPNG, and the NG stands for "next
24 generation."

25 Q And would it have the capacity to generate all these

1 reports, or would you have the same problem you've been
2 discussing?

3 A Could you say that again, please.

4 Q Yeah. We've been talking about the problem is not the
5 calculations, it's the generating the reports. Would that same
6 problem still exist irrespective of the computer system you use?

7 A Yes, it would.

8 Q You remember Mr. Prescott took you to Page 105 in your
9 deposition?

10 A I do.

11 Q And he had you read a question and answer. Do you
12 recall that?

13 A Yes, I do.

14 Q Do you have that page with you?

15 A No, I don't.

16 Q The page will be there momentarily. Do you remember
17 that the question had to deal with masking? Is that correct?

18 A Yes, I do.

19 Q And there was a question about whether the aggregation
20 that we did would mask results. Do you recall that?

21 A I do.

22 Q And would you read your answer that you read
23 Mr. Prescott one more time so I can set the stage for the next
24 question?

25 A The answer is: It would distort it, but if anything, I

1 think it would distort it in favor of the CLEC.

2 Q Now, can you explain to the Commission why you think
3 that if there were masking that occurred, it would occur in a way
4 that favored the ALECs rather than BellSouth?

5 A I think it would depend upon the context of the
6 question, which I don't have here in front of me.

7 Q I can give you the page before it, if you'd like.

8 A Okay. Now, I understand. The question basically was
9 talking about the aggregation of two-wire analog loop design,
10 nondesign, UNE digital loop DS1 greater than, less than. And we
11 are comparing them to a residence and business analog, retail
12 analog. And if we assume that the residence and business retail
13 analog has a shorter interval, then by grouping these together,
14 if there is any masking, it would tend to say that the comparison
15 is from a longer set of intervals for the ALECs to a shorter set
16 of intervals for BellSouth retail. That's basically the reason
17 that I used -- I said it would distort it in favor of the CLEC.

18 Q Now, to continue on the issue of masking, let me give
19 you a hypothetical. Let me ask you to assume that there is a new
20 carrier in town located in Miami, one central office, and that
21 carrier orders ten xDSL lines from us. For the CLEC or
22 ALEC-specific measures, would the fact that there was another
23 ALEC in that same office that had 100,000 orders mask any poor
24 performance for the first ALEC?

25 A No, it wouldn't. And the reason it wouldn't is because

1 in -- I'll just use order completion interval as an example.
2 There is a Tier 1 penalty, and there is also ALEC-specific
3 reports associated with that specific ALEC. So if you had poor
4 performance on a new and emerging carrier, it would not be masked
5 by whatever happens with a larger carrier because there is ALEC
6 specificity in that particular measurement.

7 MR. LACKEY: That's all I have, Mr. Chairman. Thank
8 you.

9 CHAIRMAN JACOBS: Very well. You were true to your
10 word.

11 COMMISSIONER DEASON: Excuse me. You were going to
12 get the number of --

13 MR. LACKEY: I forgot the most important question. I'm
14 sorry. May I ask another question, Mr. Chairman?

15 CHAIRMAN JACOBS: By all means.

16 BY MR. LACKEY:

17 Q There was an issue about the number of central offices
18 in the state of Florida --

19 COMMISSIONER DEASON: Wire centers.

20 Q -- wire centers in the state of Florida. Do you have
21 that number?

22 A Yes, I do. It's 196.

23 MR. LACKEY: Thank you. I'm sorry. I didn't write
24 that one down. I'm too old, and I can't remember them.

25 CHAIRMAN JACOBS: Exhibits.

1 MR. LACKEY: Move 16, Mr. Chairman.

2 CHAIRMAN JACOBS: Without objection --

3 (Exhibit 16 admitted into the record.)

4 MR. McGLOTHLIN: I move 19.

5 CHAIRMAN JACOBS: Without objection --

6 (Exhibit 19 admitted into the record.)

7 MS. BOONE: Mr. Chairman, I move 18 into the record,

8 please.

9 CHAIRMAN JACOBS: Without objection, Exhibit 18 is

10 admitted.

11 (Exhibit 18 admitted into the record.)

12 CHAIRMAN JACOBS: And for the record, the exhibit we

13 formerly marked as 17 was withdrawn.

14 MS. BOONE: Yes, sir.

15 CHAIRMAN JACOBS: Very well. Thank you very much,

16 Mr. Coon.

17 MR. LACKEY: Excuse me. Mr. Chairman, may Mr. Coon be

18 excused from the proceeding?

19 CHAIRMAN JACOBS: He may.

20 MR. LACKEY: Thank you, sir.

21 (Witness excused.)

22 CHAIRMAN JACOBS: Thank you very much. We'll break

23 and we'll come back at 1:30.

24 (Lunch recess.)

25 CHAIRMAN JACOBS: We'll go back on the record. I think

1 we are at the next witness.

2 MR. CARVER: Yes, sir.

3 CHAIRMAN JACOBS: Mr. Carver.

4 MR. CARVER: BellSouth calls Cindy Cox.

5 CYNTHIA K. COX

6 was called as a witness on behalf of BellSouth

7 Telecommunications, Inc., and, having been duly sworn, testified

8 as follows:

9 DIRECT EXAMINATION

10 BY MR. CARVER:

11 Q Ms. Cox, would you please state your full name and your
12 business address.

13 A Yes. My name is Cindy Cox. My business address is
14 675 West Peachtree Street in Atlanta, Georgia.

15 Q By whom are you employed and in what capacity?

16 A I'm employed by BellSouth. I'm a senior director in
17 the state regulatory department.

18 Q Have you caused to be filed in this proceeding 10 pages
19 of direct testimony and 11 pages of rebuttal testimony?

20 A Yes, I have.

21 Q And there are no exhibits to your testimony; correct?

22 A Correct.

23 Q Do you have any changes to either your direct or
24 rebuttal testimony?

25 A No, I do not.

1 Q If I ask you today the questions that appear in your
2 testimony, would your answers be the same?

3 A Yes, they would.

4 MR. CARVER: Mr. Chairman, I request that the witness's
5 direct and rebuttal testimony be inserted into the record as
6 though read.

7 CHAIRMAN JACOBS: Without objection, show the direct
8 and rebuttal testimony are entered into the record as though
9 read.

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1 BELL SOUTH TELECOMMUNICATIONS, INC.
2 DIRECT TESTIMONY OF CYNTHIA K. COX
3 BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
4 DOCKET NO. 000121-TP
5 MARCH 1, 2001
6

7 Q. PLEASE STATE YOUR NAME, YOUR POSITION WITH BELL SOUTH
8 TELECOMMUNICATIONS, INC. ("BELL SOUTH") AND YOUR
9 BUSINESS ADDRESS.
10

11 A. My name is Cynthia K. Cox. I am employed by BellSouth as Senior Director for
12 State Regulatory for the nine-state BellSouth region. My business address is
13 675 West Peachtree Street, Atlanta, Georgia 30375.
14

15 Q. PLEASE PROVIDE A BRIEF DESCRIPTION OF YOUR BACKGROUND
16 AND EXPERIENCE.
17

18 A. I graduated from the University of Cincinnati in 1981 with a Bachelor of
19 Business Administration degree in Finance. I graduated from the Georgia
20 Institute of Technology in 1984 with a Master of Science degree in Quantitative
21 Economics. I immediately joined Southern Bell in the Rates and Tariffs
22 organization with the responsibility for demand analysis. In 1985 my
23 responsibilities expanded to include administration of selected rates and tariffs
24 including preparation of tariff filings. In 1989, I accepted an assignment in the
25 North Carolina regulatory office where I was BellSouth's primary liaison with

1 the North Carolina Utilities Commission Staff and the Public Staff. In 1993, I
2 accepted an assignment in the Governmental Affairs department in Washington
3 D.C. While in this office, I worked with national organizations of state and local
4 legislators, NARUC, the Federal Communications Commission ("FCC") and
5 selected House delegations from the BellSouth region. In February 2000, I was
6 appointed Senior Director of State Regulatory.

7

8 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

9

10 A. The purpose of my testimony is to provide BellSouth's position on four of the
11 issues (4, 8, 29, and 30) contained in the Florida Public Service Commission's
12 ("Commission") Order Establishing Procedure (Order No. PSC-01-242-PCO-
13 TP), issued January 26, 2001. The Commission has opened this docket to
14 develop permanent performance metrics for the ongoing evaluation of operations
15 support systems ("OSS") provided by incumbent local exchange carriers
16 ("ILECs"). The purpose of the performance metrics and associated monitoring
17 and enforcement program is to ensure that alternative local exchange companies
18 ("ALECs") receive nondiscriminatory access to the ILEC's OSS. Through my
19 testimony and the testimony of the other BellSouth witnesses, BellSouth
20 presents its comprehensive proposal that includes appropriate performance
21 metrics and enforcement mechanisms that will ensure that ALECs receive
22 nondiscriminatory access to BellSouth's OSS.

23

24 My testimony addresses the general policy matters raised by this docket. In
25 addition to my testimony, we will present the testimony of David Coon, who is

1 responsible for detailing and describing the performance metrics that BellSouth
2 supports, as well as describing the voluntary enforcement plan that BellSouth is
3 proposing. In addition, we present the testimony of Dr. Ed Mulrow, who is a
4 statistician and who will provide information regarding the proper statistical
5 analysis that should be followed to determine whether ALECs are receiving
6 nondiscriminatory treatment where retail analogues for the services provided by
7 BellSouth to ALECs are available.

8

9 ***Issue 4a: Does the Commission have the legal authority to order implementation of a***
10 ***self-executing remedy plan?***

11 ***4b: With BellSouth's consent?***

12 ***4c: Without BellSouth's consent?***

13

14 Q. WHAT IS BELLSOUTH'S POSITION REGARDING ISSUE 4(a), (b), and
15 (c)?

16

17 A. Although I am not a lawyer, and this issue will ultimately have to be addressed
18 by lawyers who can explain the legal reasoning behind it, my understanding is
19 that the Commission does not have the legal authority to order the
20 implementation of a self-effectuating penalty plan. This understanding is
21 consistent with the position contained in the direct testimony of the Commission
22 Staff's witness Mr. Paul Stallcup filed on February 7, 2001. On page 5, line 6 of
23 his direct testimony, Mr. Stallcup reiterates his understanding "that the
24 Commission does not have the authority to order any payments that could be
25 considered monetary damages." He further concludes, and I agree, that the

1 “adoption of any Tier 1 enforcement mechanism would require that the parties
2 enter into a voluntary agreement that these payments be made before the
3 Commission could approve a Tier 1 enforcement mechanism.” The same is true
4 regarding payment of Tier 2 penalties. Again, I agree with Mr. Stallcup’s
5 understanding that “the Commission does not have the authority to receive
6 penalty payments absent a finding of a willful violation of a Commission order,
7 rule or statute.” Nevertheless, and irrespective of whether BellSouth can be
8 legally compelled to adhere to such an enforcement plan, BellSouth is willing to
9 voluntarily submit to the self-effectuating enforcement mechanism described in
10 Mr. Coon’s testimony, provided the metrics are appropriate.

11

12 ***Issue 8: When should the Performance Assessment Plan become effective?***

13

14 Q. WHEN SHOULD BELLSOUTH’S PROPOSAL TAKE EFFECT?

15

16 A. The FCC has identified the implementation of enforcement mechanisms to be a
17 condition of 271 relief. The FCC believes such a plan would be an additional
18 incentive to ensure that BellSouth continues to comply with the competitive
19 checklist after interLATA relief is granted. (See Bell Atlantic New York, ¶ 429-
20 430; Southwestern Bell Texas Order, ¶ 420-421; Southwestern Bell
21 Kansas/Oklahoma Order, ¶ 269) Enforcement mechanisms and penalties,
22 however, are neither necessary nor required to ensure that BellSouth meets its
23 obligations under Section 251 of the Act, and the FCC has never indicated
24 otherwise.

25

1 In fact, the desire for long distance relief, which is an immediate goal of
2 BellSouth's, has to be viewed as a powerful incentive for a Bell Operating
3 Company ("BOC") to meet its obligations under Section 251 of the Act,
4 including providing nondiscriminatory access to its OSS. The concept of
5 performance penalties, on the other hand, has been developed as the incentive
6 for continued compliance after long distance authority is granted. Therefore, it
7 is appropriate that no part of the enforcement mechanism proposal take effect
8 until the plan is necessary to serve its purpose – i.e., until after BellSouth
9 receives interLATA authority. Under BellSouth's proposal, any necessary
10 payment of penalties for Florida ALECs that have incorporated the plan into
11 their interconnection agreements will commence at such time as BellSouth
12 obtains interLATA relief in Florida.

13

14 ***Issue 29: What is the appropriate definition of "affiliate" for the purposes of the***
15 ***Performance Assessment Plan?***

16 ***Issue 30a: Should BellSouth be required to provide "affiliate" data as it relates to***
17 ***the Performance Assessment Plan?***

18 ***Issue 30b: If so, how should data related to BellSouth affiliates be handled for***
19 ***purposes of:***

20 ***1. Measurement reporting?***

21 ***2. Tier 1 compliance?***

22 ***3. Tier 2 compliance?***

23

24 Q. WHAT IS BELL SOUTH'S POSITION ON ISSUES 29 AND 30?

25

1 A. The term "Affiliate" is defined in the Act as follows:

2 AFFILIATE - The term "affiliate" means a person that (directly or
3 indirectly) owns or controls, is owned or controlled by, or is under
4 common ownership or control with, another person. For purposes of
5 this paragraph, the term "own" means to own an equity interest (or the
6 equivalent thereof) of more than 10 percent. (47 U.S.C. 153(1))
7

8 The statutory definition of the term "affiliate" is clear and unambiguous. The
9 real issue, however, is not how the term "affiliate" should be defined, but
10 whether there are circumstances in which BellSouth's performance related to its
11 transactions with its affiliates should be considered in the context of the
12 Performance Assessment Plan.
13

14 Q. WHAT IS BELLSOUTH'S POSITION ON THE ISSUE AS YOU'VE
15 DESCRIBED IT ABOVE?
16

17 A. The only possible BellSouth affiliate data that might be appropriately considered
18 is that which is necessary to make a meaningful, "apples-to-apples" comparison
19 between ALECs and any BellSouth affiliate that is in a position comparable to
20 that of the ALECs. It makes no sense to scrutinize data that relates to BellSouth
21 affiliates whose business is not comparable to ALEC business, for example,
22 BellSouth International's provision of service in Venezuela. Thus, the only
23 affiliate data that might properly be considered is that which relates to a
24 BellSouth-affiliated ALEC.
25

1 For example, if a BellSouth affiliated ALEC, which was certified to provide local
2 service, was operating in a state within BellSouth's service territory, it could be
3 appropriate to consider the performance that BellSouth provides to this ALEC.
4 A separate question is how this data should be collected and used in the context
5 of the Performance Assessment Plan.

6
7 Q. HOW HAS THE FCC USED AFFILIATE DATA?

8
9 A. In the Bell Atlantic New York Order, the FCC discusses basing the retail analog
10 on the performance that the BOC provides to "itself, its customers or its
11 affiliates,". At the same time, the FCC held that nondiscriminatory access had
12 been demonstrated because there was "no statistically significant difference
13 between Bell Atlantic's provision of service to competitive LECs and its own
14 retail customers...." (emphasis added) (*See* Bell Atlantic New York Order, ¶ 58;
15 *see also* Southwestern Bell Kansas/Oklahoma Order, ¶ 58) In other words,
16 performance to affiliates did not play any specific role in the FCC's comparative
17 analysis.

18
19 For example, the FCC found that Bell Atlantic provided nondiscriminatory
20 access to interconnection trunking because the trunking that it provides to
21 ALECs "is equal in quality to the interconnection that Bell Atlantic provides to
22 its own retail operations...." (*See* Bell Atlantic New York Order, ¶ 68; *see also*
23 Southwestern Bell Texas Order, ¶ 67; Southwestern Bell Kansas/Oklahoma
24 Order, ¶ 223) Likewise, the FCC found that Bell Atlantic was compliant with
25 Checklist Item 6 (unbundled local switching) based upon a finding that "the

1 features, functions and capabilities of the switch [provided to the ALEC] include
2 the basic switching function as well as the same basic capabilities that are
3 available to the incumbent LEC's customers." (See Bell Atlantic New York
4 Order, ¶ 343; see also Southwestern Bell Texas Order, ¶ 339; Southwestern Bell
5 Kansas/Oklahoma Order, ¶ 242) In a third example, the FCC found that Bell
6 Atlantic was compliant with Checklist Item 7 (911 and E911) based on the
7 conclusion that Bell Atlantic had satisfied the requirement to "maintain the 911
8 database entries for competing LECs with the same accuracy and reliability that
9 it maintains the database entries for its own customers." (See Bell Atlantic New
10 York Order, ¶ 349; see also Southwestern Bell Texas Order, ¶ 344;
11 Southwestern Bell Kansas/Oklahoma Order, ¶ 255)

12

13 Thus, a review of these orders makes it clear that the analysis that was
14 performed to determine whether a retail analog has been met was simply to
15 compare, in a statistically valid manner, the performance provided to the ALEC
16 to the performance that the BOC provides to its retail customers. Performance
17 related to affiliates played no role in this analysis.

18

19 Q. HAVE OTHER STATE COMMISSIONS IN BELL SOUTH'S TERRITORY
20 ADDRESSED THE ISSUE OF AFFILIATE PERFORMANCE DATA?

21

22 A. Yes. In its January 12, 2001 ruling in Docket No. 7892-U, the Georgia PSC
23 refused to adopt the ALEC's proposal for comparisons between the performance
24 for ALECs and the performance for the BellSouth affiliate, concluding that if an
25 ALEC believes that BellSouth is showing preference to its affiliate, the ALEC

1 may file a complaint with the Commission. (GPSC Order at p. 13)

2

3 On February 12, 2001, the Louisiana PSC approved, in Docket No. U-22252,
4 Subdocket C, the Staff Recommendation that included a proposal for the review
5 of affiliate data. The Staff recommended that if the activity in Louisiana of
6 BellSouth's affiliated ALEC reaches a certain threshold, then it should be
7 reviewed in the context of future audits to determine whether there is any
8 statistically significant indication of discriminatory treatment. The Louisiana
9 PSC Staff, however, recommended no other action at this time.

10

11 Q. IN LIGHT OF THE ABOVE, WHAT DO YOU PROPOSE?

12

13 A. As with all other ALECs, BellSouth will produce measurements for its ALEC,
14 both individually and in the aggregate. In fact, BellSouth's ALEC will receive
15 the same treatment, use the same systems, receive the same measurements and
16 be entitled to the same remedies as any other ALEC operating in BellSouth's
17 service territory. In addition, the performance of the BellSouth affiliated ALEC
18 will be included to develop the aggregate ALEC data used to determine
19 performance for purposes of the enforcement mechanism. Further, BellSouth
20 will provide to the Commission periodic performance results for its affiliated
21 ALEC just as it does for any other ALEC operating in its territory.

22

23 Thus, the Commission will have the information to allow it to evaluate
24 BellSouth's performance to its ALEC relative to all other ALECs. As to the
25 question of what to do with this information, the Commission could reasonably

1 adopt either the Georgia approach (i.e., no action) or the Louisiana approach
2 (i.e., using the data to monitor only, at least for the time being). The
3 Commission should not, however, unnecessarily complicate the plan by
4 attempting prematurely to tie BellSouth-affiliate performance to the Performance
5 Assessment Plan based on concerns about the hypothetical occurrence of future
6 discrimination.

7

8 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

9

10 A. Yes.

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BELLSOUTH TELECOMMUNICATIONS, INC.
REBUTTAL TESTIMONY OF CYNTHIA K. COX
BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 000121-TP
MARCH 21, 2001

Q. PLEASE STATE YOUR NAME, YOUR POSITION WITH BELLSOUTH TELECOMMUNICATIONS, INC. ("BELLSOUTH") AND YOUR BUSINESS ADDRESS.

A. My name is Cynthia K. Cox. I am employed by BellSouth as Senior Director for State Regulatory for the nine-state BellSouth region. My business address is 675 West Peachtree Street, Atlanta, Georgia 30375.

Q. HAVE YOU PREVIOUSLY FILED TESTIMONY IN THIS PROCEEDING?

A. Yes. I filed direct testimony in this proceeding on March 1, 2001.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my rebuttal testimony is to respond to the direct testimony filed by several witnesses in this proceeding on March 1, 2001. Specifically, I will address portions of the testimony of Mr. John J. Rubino and Dr. George S. Ford filed on behalf of Z-Tel Communications, Inc. ("Z-Tel"); Ms. Cheryl Bursh and Ms. Karen Kinard filed on behalf of AT&T Communications of the Southern

1 States, Inc, WorldCom, Inc., Dieca Communications Company D/B/A Covad
2 Communications Company, New South Communications Corp., Mpower
3 Communications Corp., e.spire Communications, Inc., ITC^DeltaCom
4 Communications, Inc., Rhythms Links Inc., and Z-Tel, (collectively referred to
5 as “ALEC Coalition”); Mr. Thomas Allen, filed on behalf of Covad
6 Communications Company (“Covad”); Mr. James Falvey, filed on behalf of
7 e.spire Communications, Inc. (“e.spire”); Mr. Michael Iacino, filed on behalf of
8 Mpower Communications Corp. (“Mpower”); and, Mr. William Gulas and Mr.
9 Keith Kramer, filed on behalf of IDS Telcom, LCC (“IDS”).
10

11 Q. DO YOU HAVE ANY GENERAL COMMENTS ON THE ALECS’ DIRECT
12 TESTIMONY, FILED ON MARCH 1, 2001?
13

14 A. Yes. BellSouth has spent an enormous amount of time and money over the past
15 several years developing a performance measurement plan that will more than
16 adequately measure the service that BellSouth provides to the alternative local
17 exchange company (“ALEC”) community. The plan will allow both this
18 Commission and the FCC to determine whether BellSouth is providing service
19 to ALECs in “substantially the same time and manner” that it provides to itself,
20 or that it allows the ALECs a “meaningful opportunity to compete”, as required
21 by the FCC.
22

23 I would also like to briefly respond to the implications by Ms. Bursh (pages 4-5)
24 that local competition will not be realized absent a performance measurement
25 and enforcement plan. Local competition is here. According to a recent FCC

1 report, Florida is among the top four states in the nation in terms of end-user
2 lines served by ALECs. The FCC's analysis reveals that, as of June 30, 2000,
3 16 large ALECs alone served 983,047 access lines in Florida and that 8.1% of
4 total Florida access lines had been won by ALECs. In December 2000, this
5 Commission's Division of Competitive Services released a similar report that
6 also found substantial competition in Florida. Specifically, the FPSC's
7 "Competition in Telecommunications Markets in Florida" report states,

8 ALECs responding to this year's data request report serving 710,617
9 access lines, more than 6 percent of the state's total and more than the
10 nationwide average of 4 percent. In addition to those companies
11 actively serving telephone customers in Florida, another 100 indicated
12 they are poised to enter the state's markets either through resale, UNEs,
13 facilities-based or a combination of these business strategies. Business
14 customers can obtain services in nearly 70 percent of the state's
15 exchanges at rates, terms, and conditions presumably comparable to
16 those offered by incumbent LECs. (Competition Report at page 55)

17
18 It is obvious that local competition in Florida is not being deterred by the
19 absence to date of a Commission-approved performance measurement and
20 enforcement plan.

21
22 Q. PLEASE RESPOND TO DR. FORD'S CONTENTION (PAGE 6, LINES 20-
23 21) THAT "THE FCC'S STANDARDS FOR A PERFORMANCE PLAN ARE
24 VERY LOW."

25

1 A. Dr. Ford seems to suggest that the FCC has set the standard for a performance
2 plan too low when it approved Southwestern Bell's 271 applications for Texas,
3 Oklahoma and Kansas. He also suggests that this Commission should require a
4 more stringent performance plan than the FCC has determined is needed. It is
5 not surprising that Dr. Ford takes issue with the FCC's 271 decisions since the
6 FCC has expressly disagreed with basic assumptions contained in Dr. Ford's
7 testimony in those cases. (*See* Memorandum Opinion and Order in CC Docket
8 No. 99-295, released December 22, 1999, ¶ 435, fn 1330) However, to the
9 extent Dr. Ford is arguing that the FCC's analysis for establishing its
10 performance plan standards is flawed, he is simply wrong. Further, even if
11 there were some basis for this Commission to conclude that the FCC has set the
12 bar too low (and there is none), it would still not be appropriate to simply ignore
13 the conclusions of the FCC and set different, higher standards.

14

15 Q. PLEASE RESPOND TO MS. BURSH'S COMMENTS ON PAGE 5 THAT
16 BELLSOUTH HAS NO INCENTIVE TO COMPLY WITH PERFORMANCE
17 STANDARDS WITHOUT A PENALTY PLAN.

18

19 A. BellSouth has a multitude of incentives to comply with the Act absent a penalty
20 plan. First, BellSouth's compliance is not contingent upon enforcement
21 mechanisms but is required by law. Second, ALECs have many options to
22 pursue should they believe BellSouth is not in compliance with its obligations
23 (i.e. FCC complaint process, Commission complaint process, or other legal
24 action). Finally, BellSouth cannot gain the authority to provide long distance
25 service in Florida unless it is determined by the FCC -- with input from this

1 Commission – that BellSouth is providing nondiscriminatory access to all
2 ALECs in Florida. These are powerful incentives for BellSouth to comply with
3 its obligations under the Act, and these incentives have not been diminished by
4 the lack (to date) of enforcement mechanisms.

5

6 Q. ON PAGE 37, MS. BURSH CONTENDS THAT THE PENALTY PLAN
7 SHOULD GO INTO EFFECT IMMEDIATELY. DO YOU AGREE?

8

9 A. Absolutely not. As I stated in my direct testimony, it is not appropriate for
10 BellSouth’s penalty plan to take effect until it is necessary to serve its purpose –
11 i.e., until after BellSouth receives interLATA authority. Ms. Bursh’s contention
12 (page 37, line 21) that penalties must be paid immediately “so that the benefits
13 of its effect on the marketplace can be realized” is misplaced. As demonstrated
14 by the FCC and Florida PSC reports cited above, the marketplace is developing
15 quite well without the payment of penalties. Further, it is the performance
16 measurements that are designed to demonstrate compliance, not the penalty
17 plan. The penalty plan is designed to prevent backsliding after interLATA
18 relief.

19

20 The FCC’s public interest analysis in the Bell Atlantic New York Order
21 supports this conclusion by stating:

22 [o]ur examination of the New York monitoring and enforcement
23 mechanisms is solely for the purpose of determining whether the risk of
24 post-approval [271] (emphasis added) non-compliance is sufficiently
25 great that approval of its section 271 application would not be in the

1 public interest. Our analysis has no bearing on the separate question of
2 how the Commission would view and respond to any particular conduct
3 by Bell Atlantic in the *federal* enforcement context. Id. fn. 1326.

4

5 The FCC also says, in footnote 1323 of the same Order, (referring to Bell
6 Atlantic's proposed performance plan),

7 [b]ecause this aspect of our public interest inquiry necessarily is
8 forward-looking and requires a predictive judgment, this is a situation
9 where it is appropriate to consider commitments made by the applicant
10 to be subject to a framework in the future. (Emphasis added.)

11

12 The FCC reached similar conclusion in its orders approving Southwestern
13 Bell's 271 applications in Texas, Kansas and Oklahoma. (*See* Southwestern
14 Bell Texas Order, ¶ 423-424; Southwestern Bell Kansas/Oklahoma Order, ¶
15 273)

16

17 Performance remedies are not a requirement of Section 251 of the Act, nor are
18 they necessary to ensure that BellSouth fulfills its responsibilities under this
19 Section. The FCC, although strongly encouraging "state performance
20 monitoring and post-entry level enforcement," has "never required BOC
21 applicants to demonstrate that they are subject to such mechanisms as a
22 condition of section 271 approval." (Bell Atlantic New York Order, ¶ 429)
23 (emphasis added) Therefore, performance monitoring and remedies are not
24 required by the Act, and are not necessary to enforce the Section 251 market
25 opening provisions of the Act.

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Q. IN THE TWO QUESTIONS AND ANSWERS ON PAGES 8-9 OF HIS TESTIMONY, Z-TEL'S WITNESS MR. JOHN RUBINO RECOMMENDS THAT THE COMMISSION "EXAMINE THE DEVELOPMENT OF SOME TYPE OF PERFORMANCE ASSURANCE PLAN AS EARLY AS POSSIBLE IN THE EVOLUTION OF THEIR LOCAL SERVICE MARKET" (PAGE 8 LINES 17-19), AND "OBSERVE THE ACTUAL MARKET IN ACTION TO ENSURE THAT THE PERFORMANCE METRICS CAPTURE AND REPORT RESULTS ACCURATELY." (PAGE 9, LINES 3-4) PLEASE COMMENT.

A. BellSouth agrees with Mr. Rubino's suggestions. However, I find them odd since he apparently doesn't acknowledge that BellSouth, the FPSC, the FCC and the ALECs have been working together very closely to ensure just what Mr. Rubino suggests.

BellSouth's performance measurement and enforcement plan take into consideration all of the points that Mr. Rubino has made. In addition, BellSouth has submitted to an independent, extensive third-party testing process, conducted by KPMG, to determine, among other things, if BellSouth's reported measurements are accurate. It is the actual BellSouth systems and processes that have been tested. Yet, Mr. Rubino suggests that in addition to the testing, additional observations of the actual market in action should be made. BellSouth has had commercial use of its network and systems in Florida since 1996. This use has grown significantly since that time and the information that

1 BellSouth submits to the ALECs and to the Commission on a periodic basis is
2 reflecting actual commercial usage.

3

4 Q. MS. KINARD SUGGESTS ON PAGE 40 THAT BELLSOUTH SHOULD BE
5 REQUIRED TO REPORT AFFILIATE PERFORMANCE INFORMATION
6 “SEPARATELY BY EACH AFFILIATE (DATA, WIRELESS, FUTURE
7 LONG DISTANCE, OR OTHER) WITH ACTIVITY IN THE METRIC
8 CATEGORY.” (LINES 23-24) DO YOU AGREE?

9

10 A. Yes and no. It appears we are in agreement with Ms. Kinard that a BellSouth
11 affiliate that does not purchase wholesale services from BellSouth should not be
12 subject to a reporting requirement. However, we disagree with Ms. Kinard
13 since she appears to believe that data should be reported for any BellSouth
14 affiliate that purchases wholesale services, even if that affiliate is not providing
15 local services. In the context of performance measurements and enforcement
16 mechanisms, the only current BellSouth affiliate that could potentially be
17 relevant to the discussion is BellSouth’s ALEC, which is the only affiliate that
18 could provide local exchange services.

19

20 Even if the Commission determines that affiliate reporting is appropriate, it
21 makes no sense to attempt to use the provision of wholesale service to a
22 BellSouth affiliate as a surrogate for a retail analog unless the affiliate buys the
23 same wholesale services that ALECs buy to provide local services. Obviously,
24 the services that a wireless BellSouth affiliate purchases or that a long distance
25 affiliate purchases to provide their services are different than the services that

1 ALECs purchase from BellSouth to provide local service. For this reason, the
2 wholesale services these non-local affiliates would purchase really cannot be
3 used as an analog to make parity judgments. Given this, there is simply no
4 reason to require that this information about fundamentally different types of
5 transactions be reported.

6

7 Q. THE TESTIMONY OF MESSRS. JAMES FALVEY (E.SPIRE), THOMAS
8 ALLEN (COVAD), AND MICHAEL IACINO (MPOWER) RAISES
9 SEVERAL ISSUES AND AREAS WHERE THEY BELIEVE THIS
10 COMMISSION SHOULD ESTABLISH PERFORMANCE
11 MEASUREMENTS. PLEASE COMMENT.

12

13 A. The testimony of these witnesses addresses several issues, most of an
14 operational nature. In order to introduce or discuss gratuitous complaints, Mr.
15 Falvey, Mr. Iacino and Mr. Allen loosely tie operational issues to the subject of
16 performance measurements. This docket is not a complaint proceeding; its
17 purpose is to determine the appropriateness of BellSouth's performance
18 measurement and enforcement plan. These anecdotal complaints do not provide
19 any meaningful input for the Commission in its deliberation on appropriate
20 performance measurements and enforcement mechanisms. Beyond the
21 irrelevance of these claims to this proceeding, it is also inappropriate to
22 introduce these anecdotal complaints in this docket. The Commission does not
23 have sufficient information, or time, to review data that would be necessary to
24 make a judgment as to the validity of these ALEC's allegations. If any of these
25 ALECs actually have legitimate complaints, they would be best handled

1 through the filing of a complaint under the well-established Commission
2 procedure, not in a generic performance measurements docket. Having said
3 this, BellSouth denies that it has intentionally done any of the things that these
4 witnesses claim.

5
6 It should be noted that even if e.spire, Covad, or Mpower had raised problems
7 with enough specificity for them to be addressed, it has not been the intention of
8 the FCC, nor should it be of this Commission, to craft a performance
9 measurement for every single item or service that BellSouth provides to the
10 ALEC community. The FCC, in ¶440 of its Bell Atlantic New York Order,
11 noted,

12 [c]ommenters have set forth a long list of specific criticisms, arguing
13 that the Plan: unduly forgives discriminatory conduct; fails to deter
14 targeted discrimination directed against individual competing carriers;
15 excessively aggregates performance data and combines metrics, thereby
16 masking unsatisfactory results; and does not include penalties that
17 escalate with the severity of the performance shortfall. These criticisms,
18 however, do not undermine our overall confidence that the Plan will
19 detect and sanction poor performance when it occurs.

20 BellSouth's plan will "detect and sanction poor performance when it occurs."
21

22 Q. DO YOU HAVE ANY GENERAL COMMENTS ON THE TESTIMONY OF
23 MESSRS. WILLIAM GULAS OR KEITH KRAMER (IDS)?

24

25 A. Yes. The testimony of these two witnesses is very much like the testimony

1 offered by e.spire, Covad, and Mpower. Generally, all of these companies are
2 attempting to use this docket as an opportunity to improperly put complaints
3 about BellSouth's alleged performance in front of the Commission, albeit in an
4 improper forum and in a cursory fashion that does not allow these complaints to
5 be investigated to determine if they are valid. However, the brevity of Mr.
6 Gulas' and Mr. Kramer's testimony, along with the fact that they both filed
7 exactly the same testimony, supports the conclusion that these claims are
8 spurious. The Commission should ignore such unsupported assertions in this
9 case.

10

11 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

12

13 A. Yes.

14

15 #250041

1 BY MR. CARVER:

2 Q Ms. Cox, could you summarize your testimony, please.

3 A Yes. Good afternoon. BellSouth already has numerous
4 incentives to fulfill its obligations and to satisfy the 271
5 checklist requirements. No one would seriously question whether
6 BellSouth's desire to achieve interLATA relief is genuine and
7 that gaining such authority provides a huge incentive to comply
8 with its obligations. However, the FCC has expressed concern
9 about the consequences once interLATA relief is granted.

10 With the incentive to enter the market removed, the FCC
11 wanted another incentive to help ensure continued compliance.
12 These plans are not intended to be the only means to address
13 ALECs' or BellSouth's performance concerns. However,
14 self-effectuating remedies are viewed by the FCC as an expedient
15 way to remedy inadequate performance if it occurs. Since the
16 purpose of a remedy plan is to replace the incentive that some
17 contend is lost once interLATA relief is granted, it doesn't make
18 any sense to effectuate it before that point.

19 Regarding the use of affiliate data, the only BellSouth
20 affiliate that could potentially be relevant is its ALEC.
21 Because BellSouth will produce data for its ALEC affiliate, just
22 as it does for other ALECs, this Commission will have all the
23 necessary information it needs to evaluate BellSouth's
24 performance to its ALEC as compared to other ALECs. As I said
25 earlier, the standard established by the FCC to determine whether

1 BellSouth is providing nondiscriminatory access is a comparison
2 of the BOCs performance to its retail customers and its
3 performance to the ALECs or a proxy for that performance or a
4 benchmark. I urge the Commission to use this standard. The
5 Commission should not prematurely establish BellSouth's
6 performance to its affiliates as the standard for assessing
7 nondiscriminatory treatment. The Commission should also
8 recognize that the only affiliate that could be relevant for
9 reporting purposes is an affiliate that's providing local service
10 such as an ALEC.

11 In conclusion, I urge this Commission to adopt
12 BellSouth's performance assessment plan as submitted in this
13 proceeding by Mr. Coon. BellSouth's performance assessment plan
14 is an excellent means to ensure that BellSouth continues to meet
15 its obligations to the ALECs after receiving approval to provide
16 interLATA long distance service. The issue that a remedy plan is
17 designed to address doesn't even exist until BellSouth enters the
18 interLATA market. Consequently, any payments required by the
19 plan should not begin until after that event occurs. Thank you.

20 MR. CARVER: The witness is available for cross
21 examination.

22 CHAIRMAN JACOBS: Very well. Mr. Prescott.

23 MR. PRESCOTT: Thank you.

24 CROSS EXAMINATION

25 BY MR. PRESCOTT:

1 Q Ms. Cox, I have a few questions on your testimony
2 regarding when the performance incentive plan ought to become
3 effective in this docket. Isn't it true that Section
4 251 requires BellSouth to provide parity service to ALECs?

5 A Yes. Section 251 requires us to provide
6 nondiscriminatory access.

7 Q Right. And that requirement exists separate and apart
8 from any question of BellSouth obtaining 271 approval; isn't that
9 correct?

10 A Well, not really meeting obligations. Obligations of
11 251 is a prerequisite of gaining interLATA authority.

12 Q Right. But your obligation to meet the requirements of
13 251 exists whether you apply for 271 relief or not; isn't that
14 correct?

15 A Yes, they do.

16 Q And nothing in Section 251 prohibits the use of a
17 performance incentive plan to ensure that BellSouth meets its
18 obligations under 217; isn't that correct?

19 A No, nothing would prohibit it, but again, nothing would
20 require it.

21 Q Right. So if this Commission decided that it would be
22 in the best interest of competition to implement the plan prior
23 to BellSouth obtaining 271 approval, it could do that?

24 A Well, I'm sure the Commission knows their authority
25 better than I do. It's just what BellSouth is urging is that the

1 fact that we must demonstrate compliance with 251 and we must
2 demonstrate that we are providing nondiscriminatory access in
3 order to get 271 relief is a huge incentive. And the concern
4 that's been expressed is, what happens when that perceived
5 incentive is gone, and that's what occurs after 271 relief. So
6 that's where the FCC has expressed concern.

7 Q So actually, implementing the plan prior to 271 would
8 assist you in proving that you are providing parity service?

9 A I believe the performance data will demonstrate that.
10 A penalty plan is not required to demonstrate compliance.

11 Q But there are performance measures associated with a
12 penalty plan; correct?

13 A Well, my understanding is performance measures drive
14 parts of payment plan, the penalty plan.

15 Q So there will be reports generated regarding
16 BellSouth's performance?

17 A Yes. And there will be reports generated and are being
18 generated on our performance.

19 Q But not on the level that's provided -- the level of
20 disaggregation that is provided in SEEM currently that you're
21 proposing. It's not -- the reports that are currently being
22 generated are not based on the disaggregation in SEEM, are they?

23 A I'm sorry, I thought your question was payments of the
24 penalties versus measurements.

25 Q No. What I'm saying is, as part of the enforcement

1 mechanism, there are certain measures that BellSouth has to
2 report on. And let's use your plan, for example. There are some
3 measures in the SQM that BellSouth will report data for, and then
4 there are certain measures that BellSouth will pay penalties on.
5 And my question to you is, if the Commission puts that into
6 effect -- puts the plan into effect before 271, the data that is
7 generated could be used to assist you in proving that you're
8 providing parity service; isn't that correct?

9 A Yes. But again, as I said, I believe performance data
10 itself can demonstrate compliance. I don't think the existence
11 of a penalty plan is necessary to demonstrate compliance.

12 Q And wouldn't the penalties attached to the penalty plan
13 provide BellSouth with additional incentive to meet its parity
14 obligation?

15 A Prior to 271 relief?

16 Q Prior to 271.

17 A I don't think so. I mean, getting 271 relief is a huge
18 incentive. And in a sense, not having that relief is the penalty
19 at this point in time.

20 Q Are you aware that there are other state commissions
21 that have enacted performance incentive plans that became
22 effective prior to 271 approval?

23 A Yes, I am aware of that.

24 Q So it's not unheard of for that to happen?

25 A No, I'm aware of a few states that have done that, yes.

1 MR. PRESCOTT: I have nothing further for Ms. Cox.

2 CHAIRMAN JACOBS: Mr. McGlothlin.

3 CROSS EXAMINATION

4 BY MR. McGLOTHLIN:

5 Q Hello, Ms. Cox.

6 A Hello.

7 Q I'll refer you to Page 7 of your direct testimony. In
8 the context of discussing the subject of the use of affiliate
9 data, you cite the FCC order in the Bell Atlantic case, do you
10 not?

11 A Yes, I do.

12 Q And you cite it because in that order the FCC indicated
13 the type of performance it would regard as nondiscriminatory;
14 correct?

15 A Yes. I cite it in the context of the affiliate that
16 the analysis that they performed was a comparison of the service
17 that Bell Atlantic was providing to its retail customers as
18 opposed to the ALECs in New York.

19 Q Would you read for me the sentence beginning at Line 19
20 of Page 7?

21 A "For example, the FCC found that Bell Atlantic provided
22 nondiscriminatory access to interconnection trunking because the
23 trunking that it provides to ALECs 'is equal in quality to the
24 interconnection that Bell Atlantic provides to its own retail
25 operations.'"

1 Q So the FCC equated nondiscriminatory conduct with
2 equality of quality; correct?

3 A That was their finding.

4 Q All right. On Page 4 of your rebuttal testimony, you
5 respond to Dr. Ford's direct testimony, and you suggest that he
6 was mistaken when he referred to the standards in Texas, Kansas,
7 and Oklahoma. Do you see that passage?

8 A Yes.

9 Q Can you tell me how many measures were involved in
10 Texas under the Texas plan?

11 A No, I cannot.

12 Q How about Oklahoma?

13 A I cannot.

14 Q Kansas?

15 A No, I don't know.

16 MR. MCGLOTHLIN: Nothing further.

17 CHAIRMAN JACOBS: Mr. O'Roark.

18 CROSS EXAMINATION

19 BY MR. O'ROARK:

20 Q Good afternoon, Ms. Cox.

21 A Good afternoon.

22 Q I'm D. O'Roark, and I represent WorldCom.

23 A Nice to see you.

24 Q Good to see you too. I have just a few questions for
25 you; all of them focus on the issue of affiliates.

1 A Okay.

2 Q In your rebuttal testimony, and again in your summary,
3 you state that the only current BellSouth affiliate that could
4 potentially be relevant would be BellSouth's ALEC; is that right?

5 A Yes. Or an ALEC affiliate would be the affiliate that
6 would be relevant, yes.

7 Q And I gather that the name of that affiliate here in
8 Florida is BellSouth Enterprises, or BSE; is that right?

9 A I believe that is one of the names, yes. I think there
10 might be another ALEC as well.

11 Q Would that be BellSouth BST?

12 A Yes, I think that is the name of that one.

13 Q Are either of those two ALECs active in Florida today?

14 A I don't believe so. The BSE was in the Tampa area. I
15 just don't know how active they are. They are not active in the
16 BellSouth franchise region.

17 Q Both of those ALECs would be involved in the provision
18 of local voice service; is that right?

19 A Yes, they would. However, they would not be buying
20 their facilities from BST. They would be buying them from the
21 incumbent LEC in those territories.

22 Q Now, BellSouth.net also is a BellSouth affiliate; is
23 that right?

24 A Yes, there is a BellSouth affiliate called
25 BellSouth.net.

1 MR. FUDGE: Mr. O'Roark, could you speak into the
2 microphone? We're having trouble hearing you over here.

3 MR. O'ROARK: Yes. I'm sorry. Is that better?

4 MR. FUDGE: Yes.

5 BY MR. O'ROARK:

6 Q BellSouth.net is active in Florida today?

7 A Well, and I need to clear this up a little.

8 BellSouth.net, the affiliate, actually doesn't provide any
9 service to retail customers. There's a service called
10 BellSouth.net that's our Internet service, and that's actually
11 provided by BST. It's an unregulated service of BellSouth.

12 Q What BellSouth company provides broadband service to
13 consumers?

14 A BellSouth Telecommunications, BST.

15 Q Does BellSouth have a data affiliate?

16 A No, we do not.

17 Q Just so we're clear, let's say a consumer here in
18 Florida wants broadband and wants it from BellSouth. I gather
19 the company that they should call is BellSouth
20 Telecommunications, Inc.?

21 A Well, they would call BellSouth, I mean, like they
22 would call for their regular service. It's an unregulated
23 service, but it's provided on what the FCC calls an integrated
24 basis, and it's handled through cost allocation rules and so on
25 and so forth.

1 Q When the BellSouth rep receives that call, the
2 first thing you do in the broadband business, at least for xDSL,
3 is you need to do something called loop qualification to see
4 whether that customer can be served using his or her existing
5 telephone line; is that right?

6 A I really don't know --

7 Q Well --

8 A -- if that's the first thing or not.

9 Q -- that was a foundational question. What I'm driving
10 at, and I'll see perhaps if you can answer this one, do you know
11 if BellSouth reports on its performance for itself in doing
12 something like -- not something -- in doing loop qualification?

13 A I don't know specifically on loop qualifications, but
14 BellSouth's performance would be included in the retail. It's
15 included in the measure, in otherwise, that's used in the
16 comparison. That's my understanding.

17 Q Thank you. That does answer my question.

18 A Okay.

19 COMMISSIONER JABER: Ms. Cox, I'm trying to understand
20 one of your responses. You said BellSouth's ALEC is called BST.
21 And it's BST that provides the data service known as
22 BellSouth.net.

23 THE WITNESS: I'm sorry if that's what I said.
24 BellSouth's ALEC, there's actually two, and one, I believe, is
25 called BSE --

1 COMMISSIONER JABER: Oh, BSE. Okay.

2 THE WITNESS: -- and the other is BST.

3 MR. O'ROARK: BellSouth BST.

4 THE WITNESS: BellSouth BST is the other. Those are
5 ALECs as you would think of an ALEC. But our Internet service,
6 which was called BellSouth.net and Fast Access is actually
7 provided through BST.

8 COMMISSIONER JABER: BST --

9 THE WITNESS: Is the phone company.

10 COMMISSIONER JABER: Okay. So your ALEC is called BST.
11 Is that the distinction?

12 THE WITNESS: BellSouth BST.

13 COMMISSIONER JABER: Okay.

14 MR. O'ROARK: Commissioner Jaber, maybe I can circle
15 back and see if I can clarify.

16 BY MR. O'ROARK:

17 Q Ms. Cox, as I understand it, you've described two
18 BellSouth ALECs. There's BellSouth Enterprises, which is
19 sometimes abbreviated BSE.

20 A BSE.

21 Q And there is a second ALEC called BellSouth BST, which
22 I assume is sometimes abbreviated simply BST.

23 A I don't know if that's how it's abbreviated, but that
24 would be a distinction.

25 Q I only say that because you just used the term "BST,"

1 and I assume that was the ALEC to which you were referring.

2 A When I talk about the Internet service, I'm talking
3 about BST the phone company, the ILEC, if you will.

4 Q When you said "BST" a moment ago, you were not
5 referring to the ALEC. You were using BST as an abbreviation for
6 BellSouth.

7 A Right. Just so I can be clear, the ALECs are
8 providing, if they're active, local service to customers that are
9 not in BellSouth's franchise area right now. And the Internet
10 service we are talking about are retail customers in our area.

11 CHAIRMAN JACOBS: How do you provision DSL in your
12 territory?

13 THE WITNESS: I'm sorry, I couldn't hear your question.

14 CHAIRMAN JACOBS: How do you provision BellSouth DSL
15 in your territory?

16 THE WITNESS: Like our broadband Internet service?

17 CHAIRMAN JACOBS: Right.

18 THE WITNESS: Through the phone company. BellSouth
19 Telecommunications provides that. It's called Fast Access
20 service, but it is considered an unregulated service.

21 CHAIRMAN JACOBS: Thank you.

22 BY MR. O'ROARK:

23 Q Let me follow up just a bit more, Ms. Cox. We talked
24 about loop qualification, and you said that the BellSouth retail
25 loop qualification data would be included in the retail data that

1 BellSouth reports; is that correct?

2 A Well, I said I didn't know specifically about loop
3 qualification, but generally, the performance data that is the
4 retail performance data if it's compared to a retail analog would
5 include the BellSouth data.

6 Q So you don't know one way or the other whether
7 specifically retail loop qualification information would be
8 included in what BellSouth reports?

9 A I don't know the specific measures. No, I don't.

10 Q And I assume your answer would be the same if I asked
11 you about orders that BellSouth reps place for broadband service
12 for BellSouth retail customers?

13 A I don't know the measures. And part of my problem is,
14 I don't know to what extent these are benchmarks versus retail
15 analogs that we're talking about. In a benchmark, obviously it's
16 been determined there is no analog.

17 Q Beginning at Page 7 of your direct testimony, you
18 discuss several FCC 271 cases. And you draw the conclusion that
19 in those cases the FCC has not used affiliate data in its
20 analysis. Do you recall that testimony?

21 A Yes.

22 Q And those 271 cases related to New York, Texas, Kansas
23 and Oklahoma; is that right?

24 A That's correct.

25 Q To your knowledge, was affiliate data presented to the

1 FCC in those cases?

2 A I'm not sure. In Texas -- I believe it was in Texas,
3 or Kansas and Oklahoma, I can't remember which one -- there was
4 some discussion where the FCC acknowledged they did not look at
5 the separate data affiliate's performance because SBC had met its
6 burden of proof on the data for the wholesale customers, and then
7 went on to explain that the data affiliate was not purchasing the
8 same services, really. I just don't know if that data got
9 presented to the FCC or not.

10 Q And you don't know whether the data was -- the
11 affiliate data was presented to the FCC in any of those three
12 cases, do you?

13 A I don't know if it was presented. There's just
14 language in there that indicated the FCC did not consider it.

15 Q But you don't know whether there was anything for the
16 FCC to consider, do you?

17 A No. That's what I said, I don't know if it got
18 presented.

19 Q Did the FCC say anything in those three cases to
20 suggest that it would not consider affiliate data if that data
21 was presented to it?

22 A To me, it indicated that it would not consider
23 affiliate data unless that affiliate was buying the same
24 services.

25 Q Hard to see how affiliate data would be relevant unless

1 it concerned the same services; right?

2 A Right. And that's our point when we suggest that the
3 only affiliate that, you know, would be relevant would be an ALEC
4 type affiliate of ours.

5 Q One last thing I'd like to cover. As I understand it,
6 BellSouth proposes to include its ALEC affiliate data with
7 aggregate ALEC data that BellSouth reports; is that right?

8 A That's correct, to the extent they would be purchasing
9 the services from us.

10 Q Assume for a moment that BellSouth was providing better
11 service to its ALEC affiliate than to other ALECs. Can you make
12 that assumption?

13 A Okay.

14 Q Including affiliate data in the aggregate ALEC data
15 would improve the reported performance of BellSouth, wouldn't it?

16 Let me rephrase that, that may have been a bit
17 confusing.

18 A Okay.

19 Q Including the BellSouth ALEC data with the aggregate
20 ALEC data reported by BellSouth, would -- again, using our
21 assumption that BellSouth was providing better service to its
22 ALEC affiliate, including that data in the aggregate would
23 improve the aggregate number, wouldn't it?

24 A Well, it would depend on the volume, to some extent.
25 If it was a very small volume, I don't know that it would make

1 that much difference in the aggregate. And we also are proposing
2 that the individual ALEC data would be available for the
3 Commission to review as well.

4 Q Well, is the answer to my question, yes, it would
5 improve the aggregate number perhaps a little, perhaps more?

6 A It could certainly change the aggregate depending on
7 the volume, yes.

8 Q Well, if the service is better to the BellSouth
9 affiliate, it's going to improve the aggregate number, isn't it?

10 A Yes, depending on the volume of the transactions.

11 Q And so, for example, by including the ALEC affiliate
12 data, you may help BellSouth meet a benchmark that it might
13 otherwise miss; correct?

14 A Well, I think by providing the individual information
15 as well, certainly this Commission could look at that, and if it
16 looked like there was a large volume or something of our
17 provision of service to our ALEC that was better, I think they
18 could probably reach the conclusion that that was having an
19 impact on the aggregate and could look into that.

20 Q But until the Commission looks into that and makes a
21 change, as it stands now as BellSouth proposes it, again,
22 assuming better performance for the BellSouth affiliate,
23 including that data in the aggregate data could help BellSouth
24 meet a benchmark that it would otherwise miss.

25 A Well, to date, there is no performance data because the

1 ALEC is not providing any service in our territory. So, I mean,
2 to the extent in considering this the Commission wants to
3 consider some sort of revision because of that concern, I mean,
4 they are certainly free to do that. I believe that by reporting
5 the data, they can look at that and monitor it, and then
6 determine if they think there needs to be some modifications.

7 Q All that said, is the answer to my question, yes, that
8 including the data could help BellSouth meet the benchmark?

9 A Yes, it could in theory.

10 Q And I believe you referred to the Georgia performance
11 measurement order in your testimony. On this point, the Georgia
12 Commission said that affiliate data should not be included with
13 the ALEC aggregate data; is that right?

14 A And also that it should not be reported, I believe, or
15 considered as a benchmark.

16 MR. O'ROARK: Thank you. That's all the questions I
17 have.

18 CHAIRMAN JACOBS: Ms. Boone.

19 CROSS EXAMINATION

20 BY MS. BOONE:

21 Q Hello, Ms. Cox. Cathy Boone for Covad. How are you?

22 A Hello. I'm fine. Thank you.

23 Q I wanted the follow up on a few questions that were
24 asked regarding when this plan, the entire plan, as BellSouth has
25 proposed it or the one adopted by the ALECs -- or proposed by the

1 ALECs should be implemented. Now, it's your position in this
2 case that although you're happy to report data, there shouldn't
3 be any penalties assessed before BellSouth receives 271 relief;
4 is that correct?

5 A Yes, generally that's correct.

6 Q And I believe on Page 3 of your rebuttal testimony, you
7 discuss some of the reasons for this. And you say that there
8 are, quote, many options for CLECs to pursue regarding problems
9 with BellSouth performance. Do you recall that?

10 A Yes, I'm sorry, what page did you say?

11 Q Page 3.

12 A Okay. I don't see that on my rebuttal, but that's
13 okay. I remember that. It's in there.

14 Q Okay. Some of the things you discuss are things like
15 complaints to this Commission; is that right?

16 A Yes, that was mentioned.

17 Q Now, you're also taking the position in this case that
18 this Commission does not have the authority to award damages; is
19 that right?

20 A Yes, we have taken the position that they don't have
21 the legal authority. But we did recognize that as a voluntary
22 measure, and we're obviously proposing a plan that we are willing
23 to have a plan.

24 Q Okay. We'll discuss that in a second. But you are
25 taking the position that a complaint brought by Covad or any

1 other CLEC to this Commission could not render an award of
2 damages, just irrespective of how bad BellSouth's performance
3 was; that's correct?

4 A I'm not sure that's our position. Again, I'm not a
5 lawyer, but my understanding is, there is a provision in the
6 statute for the Commission to award fines. I think it's referred
7 to for willful violations of the Commission order. So I believe
8 they have authority, but there's always some sort of showing and
9 discussion around that.

10 Q My question is, can they award damages to Covad? Yes
11 or no?

12 A I believe they can, consistent with that part of the
13 statute, but then I'm not a lawyer.

14 Q I'm only asking you this because you have in your
15 testimony put forth what you think are some options for ALECs in
16 Florida until the time that you do have a penalty plan in place.
17 That's why I'm exploring this with you. Now, are you aware of
18 whether the FCC can award damages and complaints?

19 A Of what they can?

20 Q If they can.

21 A I believe they can. I believe in Section 271, there's
22 some reference to their ability for enforcement.

23 Q Okay. Prior to 271 relief, do you know with respect to
24 a 251 or 252 obligation whether the FCC is entitled to award
25 damages?

1 A I don't know specifically.

2 Q You also mentioned that CLECs could take other legal
3 action, and by that, I assume you mean they could file lawsuits?

4 A Yes, I believe that would be an option.

5 Q Would you believe that the CLECs could file antitrust
6 lawsuits?

7 A My understanding is they have.

8 Q Do you know that BellSouth has taken a position in
9 Covad's antitrust lawsuit that it is not entitled to file an
10 antitrust lawsuit based on these violations?

11 A No. I'm not a lawyer.

12 Q Do you know if BellSouth has taken a similar position
13 in Mpower's antitrust lawsuit?

14 MR. CARVER: I'm going to object at this point. This
15 witness is not a lawyer. And counsel has asked her five or six
16 questions in a row that have specifically to do with legal
17 questions, what -- you know, can antitrust suits be filed, could
18 damages be awarded. I think it's beyond the scope of her
19 testimony, and since she has repeatedly answered by saying that
20 she is not a lawyer and that she cannot address those legal
21 questions, I object to counsel continuing to ask these questions
22 over and over.

23 CHAIRMAN JACOBS: Ms. Boone.

24 MS. BOONE: Mr. Chairman, this witness has submitted
25 testimony to this Commission indicating that it should not

1 implement immediately an enforcement mechanism to render bad
2 BellSouth performance in the form of damages. She has expressed
3 in her testimony her belief and BellSouth's belief that there are
4 adequate other options for CLECs to pursue in Florida. I'm
5 attempting to discuss with her what those options are. And I'm
6 happy to accept the fact that she's not a lawyer, and she can
7 respond as much as she wants to, but I want to get on the record
8 an understanding of what options are out there and what aren't.

9 CHAIRMAN JACOBS: Why don't we take this approach?
10 Why don't you stay as close as possible to what she has in her
11 testimony rather than exploring options or alternatives to what
12 might be legal options or alternatives to parties and the basis
13 for her testimony? That way we can stay as close as possible --
14 I would agree with counsel that she's already indicated that she
15 is not lawyer and has limited legal background.

16 MR. CARVER: Mr. Chairman, under that approach, if I
17 could just request that counsel tell us specifically the part of
18 Ms. Cox's testimony that she is asking her about so that I could
19 follow along.

20 CHAIRMAN JACOBS: Ms. Boone.

21 MS. BOONE: Yeah, I thought it was Page 3 of the
22 rebuttal. It must be Page 3 of the direct.

23 CHAIRMAN JACOBS: Yes, I believe it is direct. Do you
24 have that?

25 MR. CARVER: Well, the only thing I see is on Page 3.

1 There is a single sentence that says, "Although I am not a
2 lawyer, and this issue will ultimately have to be addressed by
3 lawyers who can explain the legal reasoning behind it, my
4 understanding is that the Commission does not have the legal
5 authority to order the implementation of a self-effectuating
6 penalty plan." And then she goes on talk about how her position
7 is consistent with Staff's, but otherwise, that's the extent of
8 her comment. There is nothing here about antitrust suits.
9 There's nothing here about whether or not the Commission could
10 order penalties in complaint cases. All of that this goes well
11 beyond the single sentence in her testimony.

12 MS. BOONE: I'm almost done with this line of
13 questioning, but I wrote down Page 3 of my rebuttal, and I put it
14 in quotes, so I know it's here. So if you'll just give me one
15 minute to find it, I'd be happy to find it.

16 CHAIRMAN JACOBS: Okay. Let me ask this question while
17 we're looking for that. Ms. Cox, you indicated that you were
18 basing your position here on Mr. Stallcup's. And he had
19 indicated in his testimony, as I believe, that it was based on
20 the idea of our limited authority to issue damages; correct?

21 THE WITNESS: Well, I think what I actually said was,
22 our position is in agreement with Mr. Stallcup's. I was just
23 basing what I said on discussions with our lawyers.

24 CHAIRMAN JACOBS: I understand. The award of a remedy
25 pursuant to performance measures generally has to do with whether

1 or not a particular measure has been achieved or not; is that
2 correct?

3 THE WITNESS: Yes, generally.

4 CHAIRMAN JACOBS: And we heard earlier that the
5 purpose in setting those remedies in place -- well, let me ask
6 you that question. What, in your opinion, is the purpose of
7 having those remedies there in place?

8 THE WITNESS: The purpose of the remedies, as I see
9 them, is once BellSouth gets the authority to provide long
10 distance service, there is a perception that perhaps we would not
11 be as diligent in meeting our obligations under 251 in the
12 nondiscrimination requirements. And so the penalties are seen as
13 something to keep us from backsliding on that with the
14 recognition that until we get that authority, obviously we are
15 going to work very hard because we have to demonstrate --

16 CHAIRMAN JACOBS: So the idea is that the objective is
17 for BellSouth to render performance that is on par -- at parity
18 with what it provides for itself, and therefore, the remedies are
19 pretty much -- and I'm going to go off into another legal
20 landslide here, but in contrast to what we might generally
21 consider to be damages which is to mean you are trying to
22 recompense someone for something they had lost. It sounds more
23 here that it's more of a penalty because you didn't meet a
24 prescribed standard. Is that a fair assessment to you?

25 THE WITNESS: Yeah, I think that's a fair assessment.

1 It's something that is a barrier, I guess, if you will, to keep
2 us from backsliding on meeting our obligations.

3 CHAIRMAN JACOBS: So to the extent our authority might
4 be limited to award damages, if we view this more in terms of
5 whether or not we have authority to award a penalty because you
6 haven't adhered to a parity standard, that would get away from
7 that rationale. Do you agree?

8 THE WITNESS: I really can't address that from a legal
9 standpoint.

10 CHAIRMAN JACOBS: Thank you.

11 BY MS. BOONE:

12 Q Thank you. I have found the reference in your
13 testimony, and I apologize. It was Page 4 of the rebuttal, Line
14 21, where you say, "Second, ALECs have many options to pursue
15 should they believe BellSouth is not in compliance with its
16 obligations (i.e., FCC complaint process, Commission complaint
17 process, or other legal action)." Correct?

18 A Yes, that's what it says.

19 Q Now, in his opening statement, Mr. Lackey said that the
20 parties were not in this case to determine whether a plan should
21 be adopted but rather which one. Do you recall that statement?

22 A Yes, I do recall that.

23 Q Do you agree that another issue that BellSouth at least
24 is raising is when an enforcement plan should be in place?

25 A Yes, that's an issue in this proceeding, the timing.

1 Q Now, you think it should be after 271. And let me ask
2 you this: Do you believe that CLECs are entitled to
3 nondiscriminatory treatment before BellSouth achieves 271?

4 A Yes. And that's what the performance data part of the
5 plan is designed to demonstrate.

6 Q You just don't think that BellSouth should have to pay
7 any penalties if it fails to meet that parity before you get 271?

8 A No. I believe the penalties are designed and were
9 envisioned to protect against backsliding. Until we get 271,
10 we're certainly not going to backslide because the penalty really
11 now is that we can't provide long distance service.

12 Q Did you see the exhibit that was used by Mr. Prescott
13 of AT&T -- oh, it's up there right now -- regarding the delta
14 value? Do you recall that during his opening statement?

15 A Yes. I wasn't able to see it, but I remember him
16 talking about it.

17 Q Well, let me ask it to you this way. Just assume
18 hypothetically, so we're not going to get into the validity of
19 that at all. Assume hypothetically that at some point of
20 BellSouth performance it was rendering 44 percent failed
21 performance for an ALEC. Okay? Can you assume that for me?

22 A When you say "failed performance," on a measure?

23 Q Yes, on a measure, on a single measure. Okay. That's
24 the assumption. Now, do you believe if BellSouth provides
25 performance at a level of 43 percent failure that that is then

1 parity?

2 A I really can't address that. That has to do more with
3 the plan as opposed to the timing of when it would go in.

4 Q Okay. I'm just asking you generally whether you think
5 that a difference in 1 percent can make that kind of
6 determination, whether you are, in fact, in compliance with the
7 law or not.

8 MR. CARVER: Objection. I think this particular type
9 of question, which is 1 percent parity or not parity, that could
10 have been addressed to Mr. Coon. It could perhaps be addressed
11 to the statisticians. It's well outside the scope of this
12 witness's testimony, however, and she's already answered by
13 saying that she can't answer the question. So I object --

14 MS. BOONE: I'm happy to move along.

15 CHAIRMAN JACOBS: Okay. Thank you.

16 BY MS. BOONE:

17 Q Now, you've taken the position in this case that this
18 Commission does not have the authority to award penalties at this
19 point. It's only by BellSouth's agreement that such a plan can
20 be implemented; is that right?

21 A We've offered a plan. We recognize a plan needs to be
22 put in, but yes, generally, that's my understanding of our legal
23 view.

24 Q And is it also your view that the only way this
25 Commission could enforce a plan, an entire plan, with both

1 measurements and enforcement would be with BellSouth's
2 agreement?

3 A I don't know.

4 Q You state in your testimony that you are willing to
5 agree if the metrics are correct.

6 A I believe I said if we believe the metrics are
7 appropriate, yes.

8 Q Yes, if the metrics are appropriate. Now, what if the
9 metrics aren't appropriate? Will you agree then?

10 A Well, I don't know. I mean, we would have to see.

11 Q So essentially this Commission could sit here for three
12 days, go through all these workshops, Staff could do a rec, and
13 then BellSouth could ultimately be displeased with the outcome
14 and say, we're not agreeing?

15 A No, I'm not saying that. I'm saying I don't know what
16 would happen then.

17 Q On Page 9 of your rebuttal, you are responding to
18 Mr. Allen's testimony from Covad. And I believe you say with
19 reference to a number of the CLECs who have offered operational
20 testimony that they have not provided any meaningful input. Do
21 you see that?

22 A Yes, for this proceeding.

23 Q Okay. You understand that, for example, for
24 Mr. Allen's testimony we have explained to this Commission while
25 we believe that delivering an xDSL loop on time and working is

1 something that is important, does your testimony mean that that
2 is not meaningful input?

3 A No. What I was intending to say is that to the extent
4 the testimony was basically complaints, if you will, about
5 service, that those are the types of things we would certainly
6 want to address with those companies. However, what we're really
7 here today to talk about here are appropriate measures and what
8 should be the structure of the plan.

9 Q Let's talk just for a moment about some of those
10 specific complaints. For example, the testimony filed by e.spire
11 and by IDS has some very specific instances of problems, and you
12 read that testimony; right?

13 A Yes, I read it all. I can't recall it all by memory,
14 so if --

15 Q Okay. Did you take the opportunity to investigate
16 from, say, the account managers for those two customers what the
17 nature of that problem was?

18 A I don't recall there being many specifics in the
19 testimony that would have lent itself to that type of
20 investigation.

21 Q You don't recall that in the IDS testimony?

22 A I don't recall it, but as I said, I can't recall all
23 the testimony from memory.

24 Q I understand. But if specific instances had been
25 raised or even a systematic problem that one of the CLECs raised

1 in a testimony, did BellSouth take that opportunity to find out
2 if that was a real business problem?

3 A I don't know. I don't know to what extent we have had
4 discussions with those customers. I have not, after reading the
5 testimony.

6 Q Okay. Well, the testimony always -- both of those
7 pieces of testimony stated that BellSouth -- that they had
8 contacted their BellSouth account reps and had tried to work
9 through it in a business solution. Do you recall those
10 statements?

11 A Again, I can't recall the testimony. If you'd like to
12 show me some references.

13 Q It's okay. But with respect to any of the CLECs that
14 filed testimony with specific or generalized complaints, did you
15 take any steps to investigate whether those were accurate or not?

16 A No. Again, as I said, I don't remember there being any
17 specifics that would have lent itself to such an investigation.

18 Q Did you take any steps to look at whether there were
19 any general complaints that required BellSouth to improve its
20 performance in any specific ways?

21 A No, I did not.

22 Q One of the statements you make in your testimony is
23 that -- I believe this is in your direct testimony -- is that
24 competition is flourishing. Do you recall that statement?

25 A I think that's in my rebuttal.

1 Q Thank you.

2 A It's okay.

3 Q Do you recall that statement?

4 A Yes, I discussed the status of local competition.

5 Q Now, you're familiar with some ALECs who were active in
6 Florida who are no longer in business; is that correct? Are you
7 familiar with any? Let me ask it that way.

8 A I don't know any specifically off the top of my head.

9 Q How about NorthPoint? It's a DSL provider that's
10 recently gone into bankruptcy and was very active in the Miami,
11 Florida markets. Are you familiar with that?

12 A Yes.

13 Q And are you familiar with ICG Communications?

14 A Yes.

15 Q Are you aware they are in bankruptcy?

16 A No, I was not aware of that.

17 Q Are you familiar with e.spire?

18 A Yes.

19 Q Are you aware they are in reorganization?

20 A No, I was not aware of that specifically.

21 Q Now, when you said that competition was flourishing in
22 Florida, upon what information did you base that?

23 A I based that on the FCC report that I cite on Page 3
24 that was issued in the end of the year 2000 where it indicates
25 that there are 16 large ALECs in Florida serving 983 access

1 lines, and I also based it on a report that the Florida
2 Commission Staff issued in 2000.

3 Q So do you believe -- I believe you cite here on Line
4 3 of Page 3 of your testimony that 8.1 percent of the access
5 lines in Florida had been won by ALECs. Is that, in your mind,
6 the number that creates a flourishing competitive environment?

7 A I believe that that's an indication that the policies
8 that this Commission have put in place are working, and that
9 there are ALECs who are active in the market and serving
10 customers. I think that breakdown actually indicated that it was
11 around 14 percent of the business market.

12 Q Okay. And is 13 and 14 percent the right amount to
13 describe competition as flourishing?

14 A I don't know that there is a right amount.

15 Q Well, if this Commission were to determine that
16 interLATA relief should be based on a percentage of lines that
17 were provided by competitors, what would you think the reasonable
18 percentage would be?

19 A I would suggest that they not base it on that since
20 that's not a requirement of the Act.

21 Q Okay. And aside from that, if you were to pick a
22 number even if it's not a requirement of the Act, what would that
23 number be?

24 A I don't know. I don't have a number.

25 MS. BOONE: Thank you. I have no further questions.

1 CHAIRMAN JACOBS: Very well. Staff.

2 CROSS EXAMINATION

3 BY MR. FUDGE:

4 Q Good afternoon, Ms. Cox.

5 A Good afternoon.

6 Q Earlier you were asked about your statement in your
7 direct testimony about the voluntary submission to a plan if the
8 appropriate metrics are adopted. Do you remember that statement?

9 A Yes.

10 Q And you stated you didn't know whether or not BellSouth
11 would refuse to submit if the metrics proposed by Mr. Coon were
12 not accepted. Do you remember that statement?

13 A Yes.

14 Q On Page 4 of your rebuttal testimony, Lines 24 through
15 25, you state that finally BellSouth cannot gain the authority to
16 provide long distance service in Florida unless it is determined
17 by the FCC with input from this Commission that BellSouth is
18 providing nondiscriminatory access to all the ALECs in Florida.

19 A Correct.

20 Q Now, if BellSouth chose not to submit to an enforcement
21 plan, then how could it gain the appropriate authority to provide
22 long distance service in Florida?

23 A Well, what I would hope would happen is, the FCC when
24 looking at providing -- whether we're providing nondiscriminatory
25 access, what they are going to look at is the performance data,

1 and that's what we call the SQM piece of the plan. And we are
2 going to have to show by some means that we are providing
3 nondiscriminatory access. There is no doubt about that. The FCC
4 is going to want to see an enforcement plan. We firmly believe
5 that. We are just hopeful that throughout this process we can
6 come up with one we can all live with.

7 Q Would you agree that this Commission has the duty to
8 ensure that all providers of telecommunication services are
9 treated fairly by preventing any competitive behavior?

10 A Yes, I believe they are.

11 Q Would you also agree that under Chapter 364, this
12 Commission has the obligation to promote the deregulation of
13 local telephone companies in Florida by ensuring that all
14 monopoly services are available to all competitors on a
15 nondiscriminatory basis?

16 A Yes. Again, I am not a lawyer, but that is my reading
17 of the statute.

18 Q And would an appropriate enforcement plan help promote
19 those two goals?

20 A Well, and I think that's part of what it's designed
21 for. Again, until we receive interLATA relief, we have a huge
22 incentive to do that. Once we receive the interLATA relief, then
23 I believe an enforcement plan could be a means to address just
24 what you talked about.

25 Q Do you believe that BellSouth should or will be at

1 parity for every single measure and submeasure when the FCC
2 grants 271 approval?

3 A You know, I don't know.

4 Q Are you aware of any other -- other than any affiliated
5 ALECs, are you aware of any specific BellSouth affiliates which
6 currently do rely upon BellSouth's OSS databases, system
7 interfaces, or back-end systems in their operations?

8 A Not that I'm aware of.

9 Q On Page 8 of your direct testimony, you note that the
10 Georgia Public Service Commission has held that if an ALEC
11 believes that BellSouth is showing preference to its affiliate,
12 the ALEC may file a complaint with the Commission; is that
13 correct?

14 A I'm sorry, you said direct?

15 Q Yes.

16 A Yes, that's what it says.

17 Q Okay. Without the reporting of affiliate data, as you
18 recommend, on what basis would a Florida ALEC be able to gather
19 reliable data from BellSouth to show such preferential treatment
20 to a nonALEC affiliate?

21 A I really don't know, and that's one reason we would
22 propose that the data would be provided.

23 MR. FUDGE: Thank you.

24 CHAIRMAN JACOBS: Any questions, Commissioners?

25 COMMISSIONER DEASON: Yeah, I have a question. I'm

1 just trying to understand BellSouth's position on the
2 self-effectuating mechanism. It's your testimony that BellSouth
3 would voluntarily comply with that requirement if the Commission
4 adopts the position of Mr. Coon; correct?

5 THE WITNESS: I think actually what was said, what we
6 believe are appropriate.

7 COMMISSIONER DEASON: Okay. I guess that is the basis
8 of my question then. Can there be an appropriate mechanism that
9 is not 100 percent what Mr. Coon has proposed? And if there is
10 some deviation, how much deviation can there be before BellSouth
11 declares it inappropriate and refuses to voluntarily comply with
12 the mechanism?

13 THE WITNESS: On the first question, I imagine there
14 could be something that would be appropriate that wouldn't be
15 identical to the plan. I really can't give you an answer on the
16 second part as to how -- at what point would BellSouth view it as
17 inappropriate.

18 COMMISSIONER DEASON: So how would we know, when
19 we make a decision, and then we just wait for BellSouth to let us
20 know if they agree or disagree?

21 THE WITNESS: Well, hopefully, we will continue through
22 the process, continue having discussions with the ALECs as we've
23 been having them and just continue to try to work through the
24 process.

25 COMMISSIONER DEASON: I guess I'm a little confused.

1 What do you mean "work through the process"? We're in an
2 evidentiary hearing, and we've got issues, and this Commission is
3 going to take evidence and make a vote, and that's going to be
4 the outcome. And then once we make that decision, what then is
5 BellSouth going to do?

6 THE WITNESS: And I can't say. I don't know until we
7 see what happens, unfortunately.

8 CHAIRMAN JACOBS: I had a question. And as soon as I
9 started to ask it, I don't remember it. Let me find my notes
10 real quick on your testimony. You indicated that there is data
11 from affiliates that you would report, and I assume that reflects
12 to the companies that you described earlier in your testimony; is
13 that correct?

14 THE WITNESS: Yes. To the extent we have an ALEC type
15 affiliate that is purchasing services from us, yes, that data
16 would be reported.

17 CHAIRMAN JACOBS: However, all of your -- to the extent
18 that I've seen -- I've gone through the measures that you've
19 identified, all of those measures indicate that where you do a
20 comparison, it would be to your retail offering; is that also
21 correct?

22 THE WITNESS: My understanding of the plan, to the
23 extent there's what's called a retail analog or a comparison, it
24 is the retail. What would happen in the case of an ALEC
25 affiliate is, you would see the performance that we provide to

1 that ALEC like you would to other ALECs as compared to that same
2 benchmark.

3 CHAIRMAN JACOBS: I'm sorry. Walk me through that
4 again, please.

5 THE WITNESS: You would have on a particular measure
6 and let's say there's a -- I don't know the measures well enough,
7 but there's a comparison where the retail -- our retail service
8 is the comparison to the service we give an ALEC. To the extent
9 we have an ALEC affiliate, you would see that same comparison for
10 our ALEC affiliate.

11 CHAIRMAN JACOBS: So you do both of them?

12 THE WITNESS: Correct. And to the extent it's a
13 benchmark, you provide 95 percent in 3 days, or something to that
14 effect, you would see the performance to our affiliate as
15 compared to that benchmark.

16 CHAIRMAN JACOBS: Okay. I understand. In instances
17 where -- and I can't think of one. Let me not ask you this
18 question, and I'll go back because I think there's probably
19 another witness that I can ask this to. I was trying to come up
20 with an example where your retail is not really a direct parallel
21 to a CLEC function. And the one that keeps coming up, jumping to
22 my mind is a UNE offering. You don't have anything in your
23 retail product offering that would equate to that, do you?

24 THE WITNESS: I really can't address how the measures
25 have been set up, unfortunately.

1 CHAIRMAN JACOBS: And that will be Mr. Pate, I think.

2 THE WITNESS: I don't know if Mr. Pate will know that
3 either.

4 CHAIRMAN JACOBS: We'll figure it out. Thank you.
5 Redirect.

6 MR. PRESCOTT: Excuse me, Mr. Commissioner. May I be
7 permitted to ask one question before he does his redirect? It's
8 just one.

9 CHAIRMAN JACOBS: Okay. Very briefly.

10 RE CROSS EXAMINATION

11 BY MR. PRESCOTT:

12 Q Ms. Cox, didn't the Georgia Commission order the
13 enforcement plan to take effect prior to 271 approval, their
14 plan?

15 A Yes. I believe you had asked me about if some states
16 had done that before. They were one, yes.

17 MR. PRESCOTT: Okay. I just didn't -- thank you.

18 CHAIRMAN JACOBS: Very well. Redirect.

19 MR. CARVER: No redirect.

20 CHAIRMAN JACOBS: And no exhibits.

21 MR. CARVER: That's correct.

22 CHAIRMAN JACOBS: Very well.

23 Thank you, Ms. Cox. You are excused.

24 THE WITNESS: Thank you.

25 (Witness excused.)

(Transcript continues in sequence with Volume 4.)

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1 STATE OF FLORIDA)
2 : CERTIFICATE OF REPORTER
3 COUNTY OF LEON)

4
5 I, TRICIA DeMARTE, Official Commission Reporter, do hereby
6 certify that the Hearing in Docket No. 000121-TP was heard by the
7 Florida Public Service Commission at the time and place herein
8 stated.

9 IT IS FURTHER CERTIFIED that I stenographically
10 reported the said proceedings; that the same has been transcribed
11 under my direct supervision; and that this transcript, consisting
12 of 184 pages, Volume 3 constitutes a true transcription of my
13 notes of said proceedings and the insertion of the prescribed
14 prefiled testimony of the witnesses.

15 I FURTHER CERTIFY that I am not a relative, employee, attorney
16 or counsel of any of the parties, nor am I a relative or employee
17 of any of the parties' attorneys or counsel connected with the
18 action, nor am I financially interested in the action.

19 DATED THIS 1ST DAY OF MAY, 2001.

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Tricia DeMarte

TRICIA DeMARTE
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