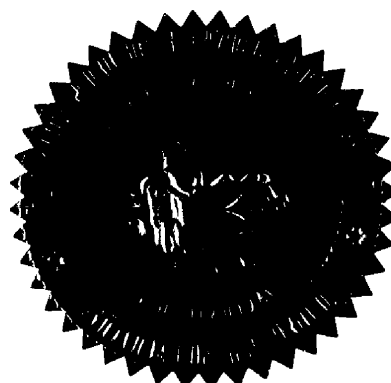


BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 001797-TP

In the Matter of

PETITION BY DIECA COMMUNICATIONS,  
INC. D/B/A COVAD COMMUNICATIONS  
COMPANY FOR ARBITRATION OF  
UNRESOLVED ISSUES IN INTERCONNECTION  
AGREEMENT WITH BELLSOUTH  
TELECOMMUNICATIONS, INC.



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VOLUME 1

PAGES 1 THROUGH 193

PROCEEDINGS: HEARING

BEFORE: COMMISSIONER LILA A. JABER  
COMMISSIONER BRAULIO BAEZ  
COMMISSIONER MICHAEL A. PALECKI

DATE: Wednesday, June 27, 2001

TIME: Commenced at 9:35 a.m.

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

REPORTED BY: TRICIA DeMARTE  
Official FPSC Reporter  
(850)413-6736

DOCUMENT NUMBER-DATE

FLORIDA PUBLIC SERVICE COMMISSION 08240 JUL-5 01

FPSC RECORDS REPORTING

## 1 APPEARANCES:

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13 Staff.

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COMMISSIONER JABER: Counsel, read the notice.

MS. BANKS: Pursuant to notice issued June 1st, 2001, this time and place has been set for a hearing in Docket Number 001797-TP, petition by Covad for arbitration of unresolved issues in interconnection agreement with BellSouth Telecommunications.

COMMISSIONER JABER: Let's take appearances.

MR. TWOMEY: Mike Twomey on behalf of BellSouth Telecommunications.

MR. MEZA: Jim Meza on behalf of BellSouth.

MS. BOONE: Catherine Boone on behalf of Covad Communications Company.

MS. BANKS: Felicia Banks and Jessica Elliott on behalf of PSC Staff.

COMMISSIONER JABER: Thank you. Ms. Banks, preliminary matters.

MS. BANKS: Commissioner Jaber, there are a couple of preliminary matters that Staff is aware of. The first is, parties have filed with the Commission several requests for confidentiality classification, and I just wanted to note for the record those requests that are pending.

The first is BellSouth's June 13th, 2001, request for confidential treatment of Document Number 07401-01. And this is the exhibit labeled WBS-3, which is the rebuttal testimony

1 of Bernard Shell. The next request is BellSouth's June 13th  
2 request for confidential treatment of Docket Number 07404-01,  
3 and these are exhibits to Covad's rebuttal testimony of  
4 Joseph Riolo and the panel testimony of Joseph Riolo and  
5 Beth Kientzle. The next request dated June 13th is for  
6 confidential treatment of Document Number 07398-01. And this  
7 is BellSouth's responses to Covad's second request for  
8 production of documents numbers 34, 35, 36, and 37.

9           The next request for confidentiality treatment, filed  
10 by Covad June 19th, is of Document Number 07626-01 and a motion  
11 for protective order, cross-reference Document Number 06670-01.  
12 And this is Covad's responses to Staff's first request for  
13 production of documents numbers 1 and 2. And the last thing  
14 Staff would note regarding confidentiality is, on June 19th  
15 BellSouth filed its notice to request a specified confidential  
16 classification of Document Number 07634-01, which is  
17 BellSouth's responses to Staff's first request for production  
18 of documents number 6.

19           COMMISSIONER JABER: Now, is it your recommendation  
20 that I rule on these pending confidentiality requests today, or  
21 can we go forward and issue an order subsequently if the  
22 information is used? It's my understanding that parties may  
23 not even use this information during the hearing.

24           MS. BANKS: That's my understanding,  
25 Commissioner Jaber. Staff would recommend because of, I guess,

1 the time frame and the amount of effort that it would take to  
2 go through the justifications for the confidential  
3 classification information that you would defer ruling on that  
4 subsequent to the hearing.

5 COMMISSIONER JABER: But to the degree the  
6 information is relied upon for cross examination purposes  
7 today, it can be treated as confidential.

8 MS. BANKS: That is correct, Commissioner.

9 COMMISSIONER JABER: Parties, let me just tell you,  
10 that is my preference, but does anyone have any objection to  
11 doing it that way?

12 MS. BOONE: No, ma'am.

13 MR. TWOMEY: BellSouth has no objection.

14 COMMISSIONER JABER: All right. Then that's the way  
15 we'll handle it, Ms. Banks. If there's any of this that is  
16 used today, it will be treated as confidential pursuant to our  
17 statutes and our rules. And to the degree an order is  
18 necessary later regarding the treatment of that information  
19 going forward, we will issue an order later.

20 What else, Ms. Banks?

21 MS. BANKS: There is one more preliminary matter at  
22 this point that Staff is aware of. Parties have represented to  
23 Staff that Issue 2 has been -- they have come to an agreement,  
24 and therefore, parties have requested Issue 2 be withdrawn.

25 COMMISSIONER JABER: Which issue is that?

1 MS. BANKS: Issue 2 is the issue that deals with the  
2 stoppage.

3 COMMISSIONER JABER: Okay. Parties agree that Issue  
4 2 can be withdrawn?

5 MS. BOONE: Covad agrees.

6 MR. TWOMEY: Yes.

7 COMMISSIONER JABER: All right. Let the record  
8 reflect that Issue 2 has been withdrawn by the parties.

9 Now, Ms. Banks, what about the testimony associated  
10 with that issue? Do we just enter all the testimony in and  
11 parties do not rely on that part of the testimony, or do you  
12 have another suggested route?

13 MS. BANKS: We had not discussed to the extent that  
14 parties would rely on that, I guess, for their briefs. I'm  
15 assuming that because it is testimony that's part of the record  
16 that if they needed to reference it, that that wouldn't be a  
17 problem.

18 MR. TWOMEY: I agree, Commissioner. We do have some  
19 testimony on either side on it. None of the confidential  
20 information relates to Issue 2, so we don't have any  
21 administrative issues with that. So we will just simply ignore  
22 that testimony for purposes of the hearing as far as BellSouth  
23 is concerned.

24 COMMISSIONER JABER: Thank you, Mr. Twomey.

25 MS. BOONE: For Covad, we would not intend to brief

1 an issue that we have reached agreement with BellSouth on, so  
2 it would be as though the testimony did not exist. We don't  
3 intend to rely on it either in cross examination at the hearing  
4 or in the brief.

5 COMMISSIONER JABER: Thank you, Ms. Boone.

6 Ms. Banks, what's next?

7 MS. BANKS: That is all of the preliminary matters  
8 that Staff is aware of at this time.

9 COMMISSIONER JABER: All right. Now, on the  
10 confidentiality and how we will go forward today, some of the  
11 testimony -- it's been asserted that some of the testimony  
12 should be treated as confidential. Now, how will the  
13 Commissioners know what part of the testimony should be treated  
14 as confidential, Felicia?

15 MS. BANKS: As I understand it, Commissioner Jaber,  
16 because the information which has been, I guess, requested for  
17 confidential classification treatment, parties are aware and  
18 they should note at the time of questioning concerning that  
19 particular piece of confidential information, they should at  
20 that time state that it is of a confidential nature or request  
21 for confidential treatment. And because we operate under the  
22 Sunshine Act, parties are aware to the extent that they can  
23 make reference to the information without divulging the  
24 confidential information, that they should do that.

25 COMMISSIONER JABER: Commissioners, is that

1 acceptable to you all? Okay. Thank you.

2 MS. BOONE: To further clarify, Commissioner Jaber,  
3 Covad's testimony does refer to some of the BellSouth  
4 proprietary numbers, but if you happen to be looking at Covad's  
5 testimony, it says, "begin proprietary, end proprietary." It's  
6 clearly marked, so in the version you have you will know if  
7 you're looking at it.

8 COMMISSIONER JABER: Thank you. All right.  
9 Ms. Banks, I know the next thing on your recommended list is  
10 that we swear in witnesses, but I want to know if the parties  
11 intend to make opening statements.

12 MS. BOONE: Yes, I'd like to make a brief opening  
13 statement. Thank you.

14 COMMISSIONER JABER: Okay.

15 MR. TWOMEY: BellSouth will make one as well. And I  
16 had one preliminary matter.

17 COMMISSIONER JABER: Go ahead.

18 MR. TWOMEY: And it concerns the issue of the  
19 witnesses. As I advised the Commission at the prehearing  
20 conference, BellSouth is actually participating in three  
21 hearings this week in various states, and the same witnesses  
22 are in all three -- some of the same witnesses are in all three  
23 cases. We have -- we will have three of our witnesses here.  
24 Two of them are in the room right now, and one will be arriving  
25 within the hour. Our first witness, our second witness, that's

1 Ms. Cox and Mr. Kephart, will be here, and Mr. Greene is here,  
2 and he is not our third witness in the lineup, but he is  
3 available if we get that far into the process by this  
4 afternoon. The remaining witnesses for BellSouth are arriving  
5 this evening. They are just finishing a hearing, I believe, in  
6 Alabama, and they will be here in the morning.

7 I don't know -- all of Covad witnesses will go first,  
8 and then we have BellSouth witnesses. I don't think we will  
9 get to my fourth witness today, but in the unlikely event that  
10 it's not quite six o'clock and we finish with BellSouth's third  
11 witness, I can do nothing but throw myself on the mercy of the  
12 Commission and say that my witnesses will not be here until the  
13 morning.

14 COMMISSIONER JABER: Well, Mr. Twomey, in the very  
15 optimistic chance that we get to your witness, I think that  
16 BellSouth's request to take Mr. Greene as a third witness is  
17 acceptable.

18 Ms. Boone, do you have any problem with that?

19 MS. BOONE: No, ma'am. We will be prepared for  
20 Mr. Greene by that time.

21 COMMISSIONER JABER: Okay. Mr. Twomey, it is our  
22 very optimistic request that we get through all the Covad  
23 witnesses today and start on yours and perhaps even get to  
24 Mr. Greene, so thank you for accommodating that.

25 MR. TWOMEY: I just wanted to advise the Commission

1 of that because not of all my witnesses are physically in the  
2 room to be sworn at this time, only Mr. Kephart and Mr. Greene.

3 COMMISSIONER JABER: Thank you. Ms. Banks.

4 MS. BANKS: Staff wanted to go ahead and introduce  
5 the stipulated exhibits to the extent that we can at this  
6 point.

7 COMMISSIONER JABER: Let's go ahead and hold off  
8 until the opening statements are made, we swear in testimony  
9 and start. Go ahead, Mr. Twomey, ten minutes.

10 MR. TWOMEY: Good morning, Commission. My name is  
11 Mike Twomey and I represent BellSouth. We're here to arbitrate  
12 a number of unresolved issues between Covad and BellSouth.  
13 When this case was originally filed, we had 35 issues, but  
14 after further negotiations between the parties, we have settled  
15 slightly less than half of those issues. The issues themselves  
16 are very diverse. They range from issues about what kind of  
17 limitation of liability ought to be included in the contract to  
18 what sort of costs ought to be assigned to collocation, and  
19 there's no real central theme that we could point to that ties  
20 all of these issues into a neat package.

21 There is an undercurrent, though, to most of these  
22 issues. And BellSouth has characterized that undercurrent as  
23 Covad's request for what we've referred to as preferential  
24 treatment in our testimony, and we don't mean that in a  
25 pejorative sense. Covad is negotiating this contract for its



1 benefit and its benefit alone. Under the Telecom Act, Covad  
2 has no obligation to look at the contract from the perspective  
3 of any party other than itself. BellSouth, on the other hand,  
4 has to look at the negotiated agreements from the perspective  
5 of the carrier who has to provide nondiscriminatory access to  
6 all CLECs, all ALECs in Florida, and we believe the Commission  
7 has a similar perspective in that regard.

8           Throughout the negotiations, BellSouth has taken a  
9 reasonable position on each of the outstanding issues from the  
10 perspective that this is a contract that can be opted into by  
11 various ALECs. It is a contract that to the extent we provide  
12 services above and beyond those required by the Act, that's  
13 something that we'd have to do for all of the ALECs who  
14 requested such treatment. And I think if taken in the proper  
15 perspective, BellSouth's positions will be demonstrated to be  
16 very reasonable and very procompetitive. And on that basis, I  
17 ask that after you consider the evidence in the case and the  
18 applicable law that you adopt BellSouth's recommended position  
19 on each of the outstanding issues. Thank you.

20           COMMISSIONER JABER: Ms. Boone.

21           MS. BOONE: Good morning, Commissioners. My name is  
22 Cathy Boone and I represent Covad Communications Company. We  
23 provide high-speed Internet access service using digital  
24 subscriber line technology here in Florida. We have been in  
25 business since 1996, and we've been in Florida since August of

1 1999. We began in the greater metropolitan Miami region, all  
2 the way from Boca to Fort Lauderdale down to metropolitan  
3 Miami, and now we are also offering service in Jacksonville,  
4 Orlando, and Tampa. We intend to continue providing service in  
5 Florida and continuing to expand our reach to as many customers  
6 as we can.

7           We are here because we need fair terms and conditions  
8 in our contract with BellSouth to govern that relationship for  
9 the next two years. To a large part, a lot of work has been  
10 done by this Commission. There is the collocation order;  
11 there's been the UNE pricing order. All of that work has  
12 helped Covad get some of the terms it needs. Additional help  
13 from the FCC with cageless collocation, line sharing, and line  
14 splitting have helped Covad get the types of terms and  
15 conditions it needs to be successful in this market, but we're  
16 not there yet.

17           We have divided -- I've divided our issues into about  
18 five sort of central groups, but before I talk about them very  
19 briefly, I wanted to give you one theme that I think will  
20 permeate all of our issues. And that is simply this: Covad  
21 wants the material terms of its business relationship with  
22 BellSouth to be set forth in its interconnection agreement. It  
23 doesn't sound like an extraordinary proposal because business  
24 partners have contracts which govern their rights and  
25 responsibilities. What we see time after time is that

1 BellSouth is unwilling to put terms, material terms, in its  
2 contract with Covad, and as a result, BellSouth retains the  
3 right to unilaterally change those terms. And that is  
4 disruptive to our business. It is potentially crippling to our  
5 success. And we ask that the Commission make a ruling on the  
6 issues we've put forward and require that they be resolved and  
7 set forth in the interconnection agreement.

8 Now, the five big categories are these. The first is  
9 intervals. You'll hear a lot about intervals, how quickly  
10 BellSouth does things that we need it to do. We're asking for  
11 an interval to be set on stand-alone ADSL, HDSL, and UCL loops.  
12 Those are the plain cooper DSL loops that we use largely for  
13 business customers. The second interval we ask for is for IDSL  
14 loops, and that's a kind of loop that will serve people that  
15 are far away from a central office or that are served by fiber.  
16 We want a set interval for that.

17 We've asked for an interval for conditioning the  
18 loops; that is the time it takes to do the work to remove  
19 impediments in the network that should have been removed 20  
20 years ago. We're asking for intervals for line sharing. And  
21 this one of the first times I think this Commission will be  
22 presented with some line sharing issues. Line sharing, of  
23 course, is using just the high frequency portion of an existing  
24 voice loop. And that's how BellSouth has gotten 303,000 DSL  
25 lines across this region. Covad is looking to use that same

1 technology and increase its numbers in this region. And we're  
2 looking for a reasonable interval in which BellSouth should do  
3 the very minor cross-connection work it takes to provision that  
4 loop.

5           Finally, we're asking the Commission to set an  
6 interval for resolving facilities issues. Covad has  
7 experienced over the past two years numerous orders, and you'll  
8 hear testimony from a former operations manager in Miami about  
9 the number and the kinds of pending facilities issues that we  
10 had that simply go into a black hole awaiting resolution and,  
11 in many respects, end up being cancelled. So we're asking you  
12 to set a date, set a time line that we can all work toward to  
13 getting those resolved.

14           The second group of issues is sort of an interesting  
15 one, and it's what we call sort of miscellaneous charges. Now,  
16 we've spent a lot of time over the past year doing the UNE cost  
17 case, and those are the big ticket items. That's what we pay  
18 when we order the unbundled network elements. But there are  
19 numerous other charges that BellSouth seeks to impose on ALECs  
20 in this State, and we're asking for reciprocity in some of  
21 those. For example, BellSouth has proposed that it be entitled  
22 to charge Covad if we change or modify an order. And we said,  
23 okay, that's fine, but if you change an order, if you change a  
24 delivery date, or if you do something else that causes us to do  
25 work, then you should pay us, and they have refused. We've

1 asked that BellSouth not charge us when they report "no trouble  
2 found" on a trouble ticket, especially in those situations  
3 where later on they admit there is a trouble. So you have two,  
4 three, four trouble tickets open before BellSouth solves the  
5 problem.

6           We've asked that BellSouth not charge manual service  
7 orders when they don't make electronic ordering available. The  
8 evidence will show that they don't make it possible for us to  
9 order a new nondesigned cooper loop through electronic means.  
10 We can't order the IDSL loop, which is about 30 percent of our  
11 loops. There's simply no mechanism -- we can't order line  
12 sharing right now because of coding problems. So every order  
13 we're submitting, we have to pay a manual service charge, but  
14 it's because BellSouth hasn't made electronic ordering  
15 available. And in their testimony they say if the systems have  
16 failed for some reason, then Covad shouldn't have to pay. So  
17 all we're asking is for that to be set forth in the contract.

18           The third group of issues is about line sharing. And  
19 you're going to hear a lot about this. We have witnesses here  
20 that have dug in very deeply into the line sharing cost study  
21 that BellSouth has proposed. We have suggested a better, more  
22 efficient network configuration, and that involves where you  
23 place the splitter. A splitter is just a passive device that  
24 does what it says, essentially, and that is to split the voice  
25 frequencies off from the data frequencies. One goes to

1 BellSouth's switch, and the other goes to Covad's collocation  
2 space. So where you put that splitter has a lot to do with how  
3 much it costs us to do line sharing, and it has to do with how  
4 many customers in Florida we can reach because of how far and  
5 how long the loops get based on that splitter placement. So  
6 you'll hear some about that.

7           You'll hear that Covad, not surprisingly, wants to be  
8 informed when BellSouth has completed its orders. BellSouth  
9 has put in place a system that automatically completes an order  
10 on the delivery date irrespective of whether they've actually  
11 done the physical work. So we're getting orders that are  
12 saying completed that have actually never been completed, and  
13 we're asking for a mechanism to be put in place to get us  
14 accurate completion notices.

15           We're going to be talking about test access and  
16 whether BellSouth should use the same test set to test and  
17 install our orders as it does for its own ADSL orders. If it  
18 works for BellSouth retail, why can't it work for Covad and  
19 other ALECs?

20           The fourth issue is collocation rates. And we have  
21 put in testimony that talks about, from an engineering  
22 perspective, some of the real concerns, some of the big picture  
23 items that we've highlighted. This Commission has determined  
24 that it will do a generic collocation case as a second part of  
25 the terms and conditions case. And we're asking for interim

1 rates to be set in this case based on the upcoming generic  
2 proceeding.

3           Finally, there are a couple of general terms that  
4 you'll hear a little bit about. BellSouth wants to restrict  
5 Covad's rights to opt-in to other agreements. We don't believe  
6 they're entitled to do that. We think the law is pretty clear  
7 that we are entitled to opt-in to any agreement at any time.  
8 BellSouth wants to cap their liability. They want to say, no  
9 matter what we do, no matter how badly we behave, the only  
10 damage you're entitled to is the cost of the service you would  
11 have received. And we don't think that's acceptable.

12           And finally, we have a couple of billing issues which  
13 are very serious issues about how we get our bills, when we get  
14 the bills, and what our obligations are about how to dispute  
15 those bills.

16           So I appreciate your attention. We believe that the  
17 evidence will show that Covad has stated reasonable positions,  
18 and that Covad's position should be adopted in this  
19 arbitration. Thank you.

20           COMMISSIONER JABER: Thank you, Ms. Boone.

21           Let me ask the witnesses to stand, please, raise your  
22 right hand.

23           (Witnesses collectively sworn.)

24           COMMISSIONER JABER: Thank you. All right.

25           Ms. Banks, you had some exhibits you wanted identified?

1 MS. BANKS: Yes, Commissioner Jaber. Staff's  
2 first Stipulated Exhibit 1 is Staff's official recognition  
3 list.

4 COMMISSIONER JABER: And the parties have seen the  
5 list, and there are no objections to the list?

6 MS. BANKS: The parties have been provided a copy of  
7 the list.

8 COMMISSIONER JABER: All right. Show Staff's  
9 official recognition list marked as Exhibit Number 1 in the  
10 hearing.

11 (Exhibit 1 marked for identification.)

12 MS. BANKS: Stipulated Exhibit Number 2 is Covad's  
13 responses to Staff's first set of interrogatories numbers  
14 1 through 7.

15 COMMISSIONER JABER: There's no objection to Stip 2?  
16 Okay. Show Stip 2 marked as Exhibit 2 in this proceeding.

17 (Exhibit 2 marked for identification.)

18 MS. BANKS: Stipulated Exhibit Number 3 is Covad's  
19 responses to Staff's second set of interrogatories numbers  
20 8 through 37, and requests for production of documents numbers  
21 3 through 20.

22 COMMISSIONER JABER: Stip 3 will be marked as  
23 Exhibit 3 in this proceeding.

24 (Exhibit 3 marked for identification.)

25 MS. BANKS: Stipulation Exhibit Number 4 is Covad's



1 responses to Staff's request for production of documents  
2 numbers 21 through 37.

3 COMMISSIONER JABER: Okay. Stipulation 4 is marked  
4 as Exhibit 4 in this proceeding.

5 (Exhibit 4 marked for identification.)

6 MS. BANKS: Stipulated Exhibit Number 5 is Staff's --  
7 I'm sorry, that's BellSouth's responses to Staff's second set  
8 of interrogatories and first request for production of  
9 documents.

10 COMMISSIONER JABER: Stipulated Exhibit 5 is marked  
11 as Exhibit 5 in this proceeding.

12 (Exhibit 5 marked for identification.)

13 MS. BANKS: And the last is Stipulated Exhibit Number  
14 6, and that's BellSouth's confidential responses to Covad's  
15 request for production of documents number 33.

16 COMMISSIONER JABER: Stipulated Exhibit Number 6 is  
17 marked as Exhibit 6 in this proceeding.

18 (Exhibit 6 marked for identification.)

19 MS. BANKS: Commissioner Jaber, if I can just  
20 interject.

21 COMMISSIONER JABER: Yes.

22 MS. BANKS: One more thing that, I guess, could be  
23 viewed as a preliminary matter. As it relates to Page 6 of the  
24 prehearing order --

25 COMMISSIONER JABER: Yes.

1 MS. BANKS: -- under the Section 6, which is labeled  
2 "Order of Witnesses," on direct testimony, I guess it's the  
3 fifth witness listed, Joseph Riolo --

4 COMMISSIONER JABER: Yes.

5 MS. BANKS: -- he did not file direct, only rebuttal.  
6 So to the extent whether he goes first in the order of  
7 witnesses or goes before the panel or the panel comes first, I  
8 don't know if --

9 COMMISSIONER JABER: I think the parties at the  
10 prehearing conference indicated that they wanted Mr. Riolo to  
11 go first --

12 MS. BANKS: Okay.

13 COMMISSIONER JABER: Is that correct?

14 MS. BOONE: That's correct.

15 COMMISSIONER JABER: -- before the panel.

16 MS. BANKS: Okay.

17 MS. ELLIOTT: Thank you.

18 MS. BOONE: And we will be taking up rebuttal and  
19 direct at the same time; correct?

20 COMMISSIONER JABER: Yes.

21 Anything else, Ms. Banks?

22 MS. BANKS: That's all that Staff has at this time.

23 COMMISSIONER JABER: All right. Mr. Twomey, call  
24 your first witness.

25 MS. BOONE: Actually, my first witness, Commissioner.

1 COMMISSIONER JABER: Yes. Thank you, Ms. Boone.

2 MS. BOONE: Covad calls Jason Oxman.

3 JASON D. OXMAN

4 was called as a witness on behalf of Covad Communications  
5 Company and, having been duly sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MS. BOONE:

8 Q Mr. Oxman, will you please state your name for the  
9 record.

10 A Jason Oxman, O-X-M-A-N.

11 Q And could you tell me by whom you are employed?

12 A I'm employed by Covad Communications Company.

13 Q Were you here when the Commissioner gave you the  
14 oath?

15 A I was.

16 Q Now, you have adopted the direct testimony of  
17 Mr. Thomas Koutsky; is that correct?

18 A Yes.

19 Q And that was 27 pages of direct; correct?

20 A Yes.

21 Q Did you also cause to be filed 12 pages and 1 exhibit  
22 of rebuttal testimony?

23 A Yes.

24 Q If I asked you the same questions today, would your  
25 answers be substantially the same?

1 A Yes.

2 Q And do you have any corrections to make to any of  
3 that testimony?

4 A No.

5 Q Have you prepared a summary?

6 A Yes.

7 Q Would you please give it.

8 COMMISSIONER JABER: No. Wait, Ms. Boone. Let's  
9 insert the testimony --

10 MS. BOONE: Sorry.

11 COMMISSIONER JABER: -- filed by Mr. Koutsky as  
12 adopted by Mr. Oxman into the record as though read. And did  
13 you do rebuttal too?

14 MS. BOONE: Yes, ma'am.

15 COMMISSIONER JABER: And let the record reflect that  
16 Mr. Oxman's rebuttal testimony is inserted into the record as  
17 though read.

18 Ms. Boone, let's go ahead and identify exhibits, and  
19 then we'll allow him to summarize his testimony.

20 MS. BOONE: Okay. We have one exhibit. If we could  
21 identify that as exhibit, I guess we're on 7.

22 COMMISSIONER JABER: Yes. JDO-1, Mr. Oxman's exhibit  
23 shall be identified as Exhibit Number 7.

24 (Exhibit 7 marked for identification.)

25

1 **Q. Please state your name, position and job duties.**

2 A. My name is Thomas M. Koutsky, Assistant General Counsel of Covad  
3 Communications Company. I have held this position since September 1997. In this  
4 position, I have been responsible for negotiating interconnection agreements with  
5 several incumbent local exchange carriers ("ILECs"), advocating Covad's regulatory  
6 and policy issues before the Federal Communications Commission, state PUCs, and  
7 Congress, and formulating Covad's strategy for ensuring the ILECs, such as  
8 BellSouth, provide Covad with unbundled access and interconnection arrangements  
9 in a manner that is consistent with the law and Covad's business needs.

10 **Q. Please state your qualifications and experience prior to joining Covad.**

11 A. I received my J.D. with Honors from The University of Chicago Law School in  
12 1991. From April 1994 to September 1997, I was an Attorney-Advisor in the  
13 Competition Division of the FCC. Prior to joining the FCC, I was an attorney at the  
14 Washington, DC law firm Steptoe & Johnson, where I focused on antitrust and  
15 litigation.

16

17 The Competition Division was responsible for ensuring that the FCC's policies and  
18 rules promoted the development of competition in all areas subject to the FCC's  
19 jurisdiction and that the FCC's decisions were consistent with sound economic and  
20 legal reasoning. Prior to passage of the 1996 Act, I developed and worked on  
21 policies relating to implementation of the 1992 Cable Act, merger review.

22 Beginning in 1995, I was the Competition Division's liaison with regard to the  
23 drafting and passage of what would eventually become the Telecommunications Act

1 of 1996 ("the Act"). After the Act was passed, I worked on the FCC's rulemakings  
2 that implemented Sections 251 and 252 of the Act, including the first FCC  
3 unbundling and interconnection rules. In 1997, I worked on the FCC's decisions that  
4 rejected the first three applications filed by Bell Operating Companies for  
5 "interLATA" entry, access charge reform, the first preemption decisions made by the  
6 FCC pursuant to Section 253 of the Act, and implementation of the universal service  
7 provisions of the Act (Section 254).

8  
9 My work at the FCC gave me an intimate knowledge of the workings and  
10 interrelationships of the 1996 Act - including how Sections 251 and 252 should be  
11 implemented in order to promote the development of competition in all  
12 telecommunications markets. In particular, as I will discuss further below, the  
13 fundamental and pervasive challenge in implementing Sections 251 and 252 of the  
14 Act is the need to recognize that because of disparate bargaining power between  
15 ILECs and companies like Covad, relying on "negotiations" alone to implement the  
16 substantive requirements of Section 251(c) will be insufficient to ensure the access  
17 needed for a fully-functioning and competitive market.

18 **Q. What is the purpose of your testimony?**

19 A. My testimony will cover the following Issues set forth in Covad's Petition for  
20 Arbitration:

21 ♦ Issue 1: What limitations of liability, if any, should be included in the Parties'  
22 Interconnection Agreement?

1           ♦ Issue 2: What should BellSouth's obligations be under this Interconnection  
2           Agreement in the event that BellSouth's workforce, or the workforce of its  
3           suppliers and vendors, engage in a work stoppage?

4           ♦ Issue 3: Should there be a limitation of an ALEC's right to opt-in to an existing  
5           interconnection agreement that has only six months remaining before it expires?

6           ♦ Issue 31: Should BellSouth send Covad both a paper and a duplicate electronic  
7           bill and in either instance, when should the bill be due?

8           ♦ Issue 32(a): Should Covad be required to pay amounts in dispute as well as late  
9           charges on such amounts?

10          I understand that other Covad witnesses will be addressing the other Issues presented  
11          in Covad's petition.

## 12   **THE NATURE OF AN "INTERCONNECTION AGREEMENT"**

13   **Q.    How do the issues listed above relate to BellSouth's provision of UNEs and**  
14   **interconnection to Covad pursuant to Sections 251 and 252?**

15   A.    When Congress passed the 1996 Act, it deliberately chose the "interconnection  
16   agreement" as the means in which requesting carriers like Covad are to obtain  
17   enforceable rights to UNEs and interconnection from ILECs like BellSouth. Prior  
18   to passage of the 1996 Act, several state commissions, including New York and  
19   Michigan had been implementing similar unbundling provisions by requiring ILECs  
20   to file tariffs with the state commission pursuant to the authority provided by the  
21   state communications law. Rather than require all ILECs to file interconnection and  
22   unbundling tariffs, Congress took a different approach and instead devised a scheme  
23   that required that ILECs enter into binding contracts with ALECs – the

1 "interconnection agreement" – for the rates, terms and conditions of interconnection  
2 and unbundling.

3 **Q. Why does the difference between a tariff and a contract matter?**

4 A. The difference lies in the means and ability to enforce the substantive provisions of  
5 those legal obligations. When an ILEC like BellSouth files an intrastate tariff before  
6 a state commission, the state commission's obligations and rights to review that tariff  
7 may be (and often are) limited by state law. In addition, the right of a purchaser of  
8 services under that tariff to dispute the rates, terms and conditions of that tariff may  
9 be limited. In addition, a state commission may not have the authority or may only  
10 have limited authority to adjudicate a dispute between the ILEC and the purchaser.  
11 And since the processes and powers vary between state commissions across the  
12 nation, relying solely on these processes and powers would dramatically slow the  
13 development of competition nationwide.

14  
15 By requiring that ILECs enter into binding contracts, Congress opened the door for  
16 a panoply of standard dispute resolution procedures for enforcing these contracts,  
17 including litigation before the courts. One of Covad's most difficult challenges has  
18 been to obtain interconnection agreements with ILECs that will provide Covad  
19 sufficient and enforceable legal rights to obtain the unbundled network elements  
20 ("UNEs") and collocation that we need to execute our business. Pursuant to Sections  
21 251 and 252 of the federal Act, all of the terms of these contracts are subject to  
22 arbitration before a state public commission, such as the Florida Public Service  
23 Commission. If a state commission chooses to arbitrate those disputes pursuant to



1 Section 252 of the federal Act, a state commission has the authority and the  
2 obligation to resolve "any open issue" presented to it. *See* 47 U.S.C. 252(b)(4)(C).

3 **Q. Why can't the Commission rely on BellSouth and Covad to negotiate the**  
4 **business aspects of the interconnection agreement?**

5 A. There are two reasons why these and other issues should be arbitrated by the  
6 Commission.

7

8 *First*, oversight of *all* provisions of an interconnection agreement are necessary  
9 because the relationship between an ILEC and an ALEC is not a "normal"  
10 commercial relationship. The processes and policies put in place by Sections 251  
11 and 252 are designed to overcome the fundamental disparity in bargaining power  
12 between an ILEC and an ALEC like Covad. Under "normal" commercial situations,  
13 contracts are entered into by parties because both parties perceive a mutual,  
14 beneficial gain from entering into the transaction. For example, I only buy a car  
15 when I decide that the value I receive from the car is greater than the cost of the car.  
16 On the other hand, the dealer will only sell me a car if the price I am willing to pay  
17 for the car is sufficient to cover its overhead, costs, and expected profit. The  
18 "haggling" process between me and a car dealer (while sometimes unpleasant and  
19 unsavory) is a means in which the dealer and I determine and decide whether both  
20 parties will gain from completing the sale. Of course, this negotiation process occurs  
21 in the context of a competitive market – I am free to walk out of the dealership and  
22 buy the same or similar car from a different dealer, and the dealer may have other  
23 buyers that will pay more for the vehicle. Both the dealer and I know that the other

1 party has an alternative to a negotiated agreement, and this competitive situation by  
2 itself generally provides sufficient incentive to close the negotiations swiftly and  
3 efficiently. In the context of a car sale, the role of regulation or legal intervention is  
4 generally limited to fraud, "lemon laws", defective materials, and the like – and not  
5 the sale price of the car.

6

7 "Negotiations" between an ALEC and an ILEC over interconnection *do not* occur in  
8 a competitive environment. ILECs like BellSouth possess a dominant market  
9 position over local facilities, and requesting carriers like Covad need to access those  
10 facilities in order to go into business in competition with BellSouth. As a result, the  
11 cooperation of an ILEC (however begrudging) is absolutely necessary for local  
12 competition to develop. The lack of local competition in local markets significantly  
13 affects both parties' approaches to the interconnection "negotiation."

14

15 In the car sale example, I always had the option of choosing a different dealer or  
16 different car. However, if Covad wants to offer DSL services in BellSouth service  
17 territories, it has no choice but to reach an "agreement" with BellSouth. The best  
18 alternative Covad has to a negotiated agreement is not being in business in those  
19 geographic areas.

20

21 From BellSouth's perspective, it has a dominant market position and knows that  
22 requesting carriers like Covad must reach an "agreement" with it before those  
23 providers can begin to compete with BellSouth. It is an economic fact that

1 possessing a monopoly is more profitable to a company like BellSouth than entering  
2 an agreement that will facilitate the development of a competitive market. As a  
3 result, BellSouth essentially has "nothing to gain and everything to lose" by  
4 cooperating in interconnection negotiations.

5  
6 Congress recognized this disparate bargaining power and decided that there must be  
7 regulatory oversight over the rates, terms and conditions of interconnection  
8 agreements between ILECs and ALECs. Congress knew that leaving the  
9 interconnection process to private "negotiations" only would be insufficient to ensure  
10 that competition develop in local markets rapidly. As a result, Sections 251 and 252  
11 provide a framework in which the FCC establishes unbundling and interconnection  
12 rules and in which state commissions are to resolve and adjudicate "any open issue"  
13 in an interconnection agreement that is not resolved by the parties. ILECs and  
14 ALECs are required by law to negotiate all aspects of the agreement in "good faith"  
15 and failure to do so is subject to regulatory penalty. *In the matter of BellSouth*  
16 *Corporation*, File No. EB-00-IH-0134, Order and Consent Decree, FCC 00-389 (rel.  
17 Nov. 2, 2000). And recognizing the importance of swift resolution, Congress  
18 provided carriers access to a state commission interconnection agreement arbitration  
19 process that is to meet certain deadlines and procedures.

20  
21 It is important to note that the disparity in bargaining power permeates *every clause*  
22 of the interconnection agreement – not simply the clauses related to UNE rates or  
23 OSS methods and procedures. Because interconnection agreements are enforceable

1 contracts, certain clauses, including a broad limitation of liability clause, can  
 2 significantly undermine legal rights that may be present in another section of the  
 3 contract. Also, BellSouth's refusal to even consider or discuss Covad's suggestion  
 4 about how to manage a potential strike means that absent regulatory intervention,  
 5 Covad has no adequate assurance that it will be treated in a nondiscriminatory  
 6 manner, as required by law. Finally, the failure of the contract to ensure that timely  
 7 and accurate bills are presented to Covad just as much impairs Covad's ability to do  
 8 business in Florida as does failure to provide a loop on a timely basis.

9 **Q. What is the other reason these issues should be arbitrated?**

10 A. If the Commission chooses to arbitrate pursuant to Sections 251 and 252, it must  
 11 "resolve" "any open issue" presented to it. Sections 252(b)(1), 252(b)(4)(C); *see*  
 12 *MCI Telecommunications Corp. v. BellSouth Telecommunications, Inc.*, 112 F. Supp.  
 13 2d 1286 (N.D. Fla. 2000). A recent decision by the Northern District of Florida  
 14 noted that "[the statutory term 'any open issues' makes clear that the right to arbitrate  
 15 is as broad as the freedom to agree; any issue on which a party unsuccessfully seeks  
 16 agreement may be submitted to arbitration." *Id.* at 1297.

17

18 A refusal to resolve an open issue by the statutory deadline provided for in Section  
 19 252 could be interpreted as a "failure to act" and could lead to the submission of the  
 20 entire arbitration to the FCC pursuant to Section 252.

21 **ISSUE 1: SHOULD BELL SOUTH BE PERMITTED TO REQUIRE COVAD TO**  
 22 **WAIVE LIABILITY FOR BREACHES OF THE AGREEMENT?**

1 **Q. What is the current limitation of liability clause in the existing Covad-BellSouth**  
2 **contract?**

3 A. Because Covad seeks to enforce its interconnection contracts with ILECs in a variety  
4 of settings, including breach of contract litigation before the courts, limitation of  
5 liability clauses are a focus of our negotiation strategy. In 1998, Covad and BellSouth  
6 specifically negotiated the limitation of liability clause to provide that BellSouth  
7 would not be protected by a limitation of liability clause if Covad were damaged  
8 "from the gross negligence or willful misconduct of BellSouth." In addition, the  
9 clause provided that if BellSouth failed to "honor in one or more material respects any  
10 one or more of the material provisions" of the contract, no limitation of liability would  
11 apply at all. Covad has proposed that the next interconnection agreement between  
12 Covad and BellSouth contain the same clause.

13 **Q. What has BellSouth proposed instead?**

14 A. BellSouth has put forward a proposal that would shield it from any substantial liability  
15 from *any* breach of the interconnection agreement. In particular, BellSouth has  
16 proposed that it would *only* be liable to Covad for the "actual costs of the services or  
17 functions not performed or improperly performed." That is an entirely unacceptable  
18 limitation and would gut the other substantive provisions of the Agreement.

19 **Q. How so?**

20 A. As discussed above, Congress wrote Sections 251 and 252 around the principle that  
21 interconnection agreements are enforceable legal contracts. In standard commercial  
22 settings, contracts are enforced through dispute resolution or litigation settings, and  
23 in the event a contract is breached, the damaged party can recover the damages

1 provided for in the agreement. A clause that substantially wipes out any responsibility  
2 or damages for a breach provides little, if any, incentive for a party to comply with  
3 the contract. If liability is severely limited (as in BellSouth's proposed change), the  
4 obligation to provide the contracted-for goods and services is watered down to the  
5 point that the obligation has little meaning.

6 **Q. How would BellSouth's proposal harm the Commission's pro-competitive**  
7 **initiatives?**

8 A. If BellSouth is successful in putting this clause in the Covad Agreement, even if the  
9 Commission implemented pro-competitive rules related to loop installation intervals,  
10 OSS, etc., BellSouth would not be liable to Covad for its failure to implement those  
11 policies. For example, under BellSouth's proposal, if BellSouth failed to provide a  
12 loop to Covad, Covad's "damages" would be limited to the "actual cost" of the loop  
13 it did not provide. In other words, BellSouth states that it will not bill Covad for a  
14 loop that it does not provide, and that Covad is precluded from recovering any other  
15 damages for that breach of contract.

16 **Q. Why is Covad's proposal better for competition and consumers?**

17 A. As stated above, Covad has only proposed to carry-forward the same clause that has  
18 governed the Agreement since 1998. Covad's proposal would provide that if  
19 BellSouth willfully breached the contract or engaged in gross negligence in  
20 implementing the contract, no limitation would apply. In addition, material  
21 breaches of the contract would not be subject to limited liability. The public interest  
22 is served by the development of competition in local markets – a development that  
23 requires the cooperation of the dominant carrier like BellSouth. Congress has chosen

1 that this cooperation be implemented and enforced through enforceable  
2 interconnection agreements. It is axiomatic that if a legal right cannot be enforced,  
3 it is as if the legal right does not exist in the first place. BellSouth's proposal would  
4 severely restrict Covad's ability to sue for and recover its actual, compensatory,  
5 consequential and punitive damages from breaches of the Agreement before a federal  
6 court, state court, the Commission, the FCC, or other appropriate authority. As a  
7 result, if BellSouth habitually fails to provide loops to Covad, under BellSouth's  
8 proposal, Covad would only be able to receive a credit for the charges for those non-  
9 delivered loops—even if those failures put Covad out of business. BellSouth seeks  
10 to eschew itself of responsibility for this behavior—even if the behavior were  
11 intentional.

12 **Q. Can the Commission determine that Covad's clause should be in the**  
13 **Agreement?**

14 **A.** Yes. As discussed above, the Commission has the legal authority and obligation  
15 under Sections 251 and 252 to arbitrate this clause. The importance of the limitation  
16 of liability clause is similar to the compensation provision MCI sought to arbitrate  
17 in the *MCI* decision. By asking the Commission to arbitrate the limitation of liability  
18 clause, Covad is not requesting that the Commission award Covad damages. In fact,  
19 Covad's proposal enables Covad to recover damages in direct litigation against  
20 BellSouth. Indeed, last December, Covad did initiate such an action in federal court  
21 against BellSouth. *See MCI* at 1298. ("there is assuredly nothing in that decision  
22 that precludes the Florida Commission from arbitrating a request for a compensation

1 provision as part of an arbitration proceeding otherwise properly undertaken by the  
2 Florida Commission").

3

4 In addition, Covad believes that BellSouth has waived any argument it may have  
5 about the arbitrability of this clause. The record reflects that *BellSouth*, not Covad,  
6 is the party that wants to change this provision in the Agreement. As a result, it is  
7 *BellSouth*, not Covad that has sought that Covad agree to this clause – not the other  
8 way around.

9 **ISSUE 2: SHOULD BELL SOUTH BE EXEMPTED FROM ITS OBLIGATIONS**  
10 **UNDER THIS AGREEMENT IN THE EVENT IT FAILS TO MANAGE ITS**  
11 **WORKFORCE SUFFICIENTLY TO AVOID A STRIKE?**

12 **Q. Why has Covad proposed a strike contingency planning process?**

13 A. In August 2000, Verizon suffered a strike of several of its trade unions in the former  
14 Bell Atlantic region. This strike significantly impacted Covad's operations in those  
15 states and significantly impacted Covad's ability to provide DSL service to end users.  
16 This strike put at risk sales to Covad customers, posed potential damage to good will,  
17 and required Covad to spend significant resources resolving issues caused by  
18 Verizon's failure to manage its labor relations.

19

20 The Verizon strike revealed that it is important to think about contingency and  
21 recovery plans, methods to track orders, notifications of stoppages, and escalation  
22 procedures. In the Verizon strike, such contingency planning was late in coming and  
23 a host of "emergency" calls and conferences, including near-daily oversight by FCC



1 staff were needed to remedy a situation that could have been disastrous for new  
2 entrants.

3 **Q. What has been BellSouth's response?**

4 A. Despite the fact that BellSouth's CWA contract is set to expire in the Summer of  
5 2002, BellSouth has rejected Covad's proposal to begin contingency planning for a  
6 strike. In fact, BellSouth has stated that it will not negotiate this point because it  
7 does not have sufficient personnel trained to make any decisions on this point.

8 **Q. Is BellSouth's position unlawful?**

9 A. Yes. In fact, BellSouth's refusal to make available or even train an individual with  
10 sufficient authority to make decisions on Covad's eminently reasonable request is in  
11 and of itself a violation of BellSouth's obligation to negotiate in good faith. FCC  
12 Rule 51.303(c)(7) specifically states that failure to "designate a representative with  
13 authority to make binding representations, if such refusal significantly delays  
14 resolution of issues" violates the good faith obligation. 47 C.F.R. 51.303(c)(7). In  
15 this case, BellSouth's apparent refusal to provide a person educated on these issues  
16 has delayed resolution until this date. See also 47 C.F.R. 51.303(c)(6) ("intentionally  
17 obstructing or delaying negotiations or resolutions of disputes" also violates good  
18 faith obligation).

19 **Q. How could strike procedures potentially harm new entrants?**

20 A. Without proper planning and assessment, a work stoppage policy could have a  
21 discriminatory impact on Covad and other ALECs, even more so than it would on  
22 BellSouth. For example, because Covad and other ALECs are new entrants, most  
23 ALEC orders are for "new" service installations (e.g., new loops or new line-sharing

1 orders). On the other hand, because BellSouth currently has a dominant market  
 2 share, BellSouth is more likely to process more maintenance/repair orders than "new"  
 3 service orders. As a result, a work stoppage policy that freezes all "new" installations  
 4 while giving maintenance and repair orders priority in the queue would have a severe  
 5 discriminatory impact upon Covad and other ALECs.

6

7 In addition, the fact that BellSouth only provides ADSL over line-shared lines while  
 8 ALECs provide a variety of DSL services over both line-shared and stand-alone  
 9 loops may also turn a facially inoffensive policy into a discriminatory one. For  
 10 instance, during the Verizon strike, for a period of time Verizon only processed  
 11 orders that did not require a "field dispatch." This policy meant that line-sharing  
 12 orders that required only CO work could be installed but that stand-alone loops  
 13 would be less likely to be installed. ALECs would see perhaps half of their retail  
 14 DSL orders delayed while BellSouth would be able to process most of its DSL retail  
 15 orders.

16 **Q. What would Covad's proposal require BellSouth to do?**

17 **A.** Covad's proposal would only require that BellSouth engage in active consultations,  
 18 meetings and communications with Covad if a work stoppage is imminent. In every  
 19 area we enter, Covad is among the largest consumer of unbundled loops and transport  
 20 provided by the ILEC. As a result, Covad believes that it should be afforded  
 21 contingency planning that other large commercial customers may obtain.

22 **ISSUE 3: SHOULD BELL SOUTH BE PERMITTED TO RESTRICT COVAD'S**  
 23 **RIGHTS UNDER SECTION 252(I) OF THE TELECOM ACT BY IMPOSING AN**

1 ARTIFICIAL LIMITATION ON COVAD'S ABILITY TO OPT-IN TO THE  
 2 INTERCONNECTION AGREEMENTS REACHED BETWEEN BELL SOUTH AND  
 3 OTHER COMPETITIVE CARRIERS?

4 **Q. Does the "opt-in" clause in the Covad-BellSouth Agreement place a time limit**  
 5 **on Covad's rights to particular agreements?**

6 A. No. The current Agreement states that BellSouth "shall make available" to Covad  
 7 "any interconnection, service or network element provided under any other  
 8 agreement filed and approved pursuant to 47 USC 252 as controlled by the  
 9 appropriate court of judicial review." This clause essentially states that Covad is  
 10 entitled to the full legal rights it may have under Section 252(I) of the Act to opt-in  
 11 to rates, terms and conditions BellSouth offers to other ALECs in Florida.

12 **Q. What limits does the law place on Covad's Section 252(I) rights?**

13 A. In 1996, the FCC implemented Section 252(I) with 47 CFR 51.809. That FCC rule  
 14 was affirmed by the United States Supreme Court in January 1999. Rule 51.809  
 15 specifically states:

16 An incumbent LEC shall make available without unreasonable delay  
 17 to any requesting telecommunications carrier any individual  
 18 interconnection, service, or network element arrangement contained  
 19 in *any agreement* to which it is a party that is approved by a state  
 20 commission pursuant to section 252 of the Act, upon the same rates,  
 21 terms and conditions as those provided in the agreement.

22  
 23 Under Rule 51.809, the *only* restrictions upon this option are those set forth in  
 24 51.809(b). That rule restricts Covad's 252(I) rights only for cases in which the ILEC  
 25 can demonstrate that its costs have changed or that such an arrangement is  
 26 technically infeasible to provide to Covad.

1 **Q. What restrictions has BellSouth proposed to place on Covad's legal rights?**

2 A. BellSouth has proposed two significant substantive restrictions. The first would  
3 prevent Covad from exercising Section 252(I) rights for any interconnection, service  
4 or network element arrangement that is provided for in a contract that is due to expire  
5 within six months of Covad's decision to opt-in to that arrangement. The second  
6 would require Covad to agree to all "legitimately related" clauses that relate to any  
7 particular arrangement.

8 **Q. Is either restriction contemplated for or provided for by the FCC Rule 51.  
9 809(b)?**

10 A. No. In fact, Rule 51.809(a), quoted above, explicitly states that an ILEC must  
11 provide "any individual . . . arrangement contained in any agreement."

12 **Q. Why would an ALEC seek to opt-into an arrangement that may expire within  
13 a few months?**

14 A. There are several legitimate reasons. Remember the discussion above with regard  
15 to the disparate bargaining power between an ILEC and an ALEC in an  
16 interconnection "negotiation." Until an ALEC closes an interconnection agreement,  
17 it cannot provide service – it cannot raise financing, it cannot begin marketing, etc.  
18 In the event an ILEC and an ALEC cannot agree on interconnection terms and an  
19 arbitration is begun, the ALEC also must await resolution of that arbitration before  
20 the arbitrated contract can be finished (a process that, pursuant to Section 252, can  
21 take up to 9 months).

22

23 Because of this situation, it is common business practice for an ALEC to use its

1 Section 252(I) rights to "opt-in" to an existing interconnection arrangement that it  
2 needs to do business while it begins or continues the process of negotiation or  
3 arbitration with the ILEC. ALECs routinely use these legal rights to get their  
4 business up and running in a state immediately.

5 **Q. But why would an ALEC opt-in to an arrangement that is about to expire?**

6 A. The fact that an arrangement may only have limited duration may actually be a  
7 reason for the ALEC to opt-in to that provision. In this manner, an ALEC will not  
8 be "locked-in" to a suboptimal arrangement for very long.

9

10 For example, in this arbitration, Covad is seeking a firm, 3-day loop installation  
11 interval from BellSouth. Covad expects that this arbitration will be completed in the  
12 next six months. Suppose that BellSouth enters into an agreement with one of  
13 Covad's competitors that would provide for a firm, 5-day loop installation interval  
14 for the next six months. Although Covad believes it will ultimately prevail on its  
15 request for a firm 3-day interval, it will still be able to use Section 252(I) to opt-in  
16 to the firm 5-day interval while its 3-day arbitration is pending. BellSouth's proposal  
17 would prevent Covad from exercising this right.

18

19 Covad has explored and undertaken such a strategy with other incumbent LECs. The  
20 fact that an agreement may be due to expire within a short period of time provides  
21 the ALEC the comfort in knowing that it need not be "stuck with" a suboptimal  
22 arrangement for any longer than necessary.

23

1           Because it is ALECs that need agreements to do business, ALECs should be  
2           expected to exercise their 252(I) appropriately. An ALEC is not likely to opt-in and  
3           build a business around an agreement that is due to expire unless the ALEC has a  
4           strong, legitimate reason to do so. Nothing in federal law gives BellSouth the  
5           authority to act as arbiter of an ALEC's business judgment.

6   **Q.    Would BellSouth's 6-month proposal significantly limit ALEC 252(I) options?**

7   A.    Yes. Most of BellSouth's interconnection agreements have a duration of two years.  
8           If you consider all of BellSouth's interconnection agreements as the pool of potential  
9           Section 252(I) candidates, at any particular point in time, BellSouth would exclude  
10          approximately 25% of all of BellSouth's interconnections, services, or UNE  
11          arrangements from the 252(I) process. That is a significant and arbitrary exclusion that  
12          has no basis in federal law.

13   **Q.    How would BellSouth's "legitimately related or negotiated in exchange for"  
14          proposal limit Covad's legal rights?**

15   A.    BellSouth's proposal that Covad accept all clauses that are "legitimately related to or  
16          were negotiated in exchange for or in connection with" the particular interconnection,  
17          service or network element arrangement Covad seeks to adopt is vague and subject  
18          to acrimonious interpretative battles. In its Petition, Covad stated that if the four  
19          corners of the agreement clearly indicate a legitimate relationship between an  
20          arrangement and other clauses, Covad would accept those clauses as well. But Covad  
21          does not believe that parole evidence should be used to determine whether "legitimate  
22          relationships" or "exchanges" exist between an arrangement and another clause that  
23          is not readily apparent from the four corners of the agreement. FCC Rule 51.809(a)

1 states that an ALEC is entitled to exercise its 252(I) rights "without unreasonable  
 2 delay." Covad is concerned that if BellSouth is permitted to delay an opt-in by  
 3 injecting the review of parole evidence, Covad's 252(I) rights would be substantially  
 4 impaired.

5 **Q. What type of parole evidence would conceivably be needed in order to  
 6 implement BellSouth's proposal?**

7 A. BellSouth's proposal opens the door for discovery of the correspondence and  
 8 testimonial evidence of negotiations between BellSouth and the ALEC whose  
 9 arrangement Covad seeks to implement. This process would conceivably involve  
 10 subpoenas, document discovery, and depositions of negotiators for the other ALEC.  
 11 In addition, discovery of BellSouth's interconnection agreement negotiation strategy  
 12 and tactics would also be necessary. Covad sees no reason why initiating this *Bleak  
 13 House*-type litigation would be in the public interest. Such a process would only  
 14 inject delay, uncertainty and cost for all providers.

15 **ISSUE 31: SHOULD BELLSOUTH SEND A COMPLETE ELECTRONIC AND**  
 16 **PAPER BILL WITHIN TEN BUSINESS DAYS OF THE BILL DATE, AND WHAT**  
 17 **WILL BE THE BILLING DATE OF THAT BILL?**

18 **Q. What language has Covad proposed for Attachment 7, Sections 1.4-1.5?**

19 A. BellSouth has agreed to prepare bills for Covad in both electronic and paper form but  
 20 takes the position that when it sends *either* billing format, the bill is due. Covad has  
 21 proposed that it have thirty days to process the bills when received. In particular,  
 22 Covad has proposed the following sections:

1           1.4    BellSouth shall send to DIECA within ten (10) business days  
2                   of the bill date the entire bill in electronic and paper form, unless  
3                   otherwise agreed to by the parties. If both the electronic and  
4                   paper form of the bill are not sent to DIECA within ten (10)  
5                   business days of the bill date, DIECA shall only be obligated to  
6                   pay that bill within thirty (30) days of receipt of the bill. The bill  
7                   will be due thirty days after the receipt of whichever copy of the  
8                   bill arrives later.

9  
10           1.5    Payment Due. The payment will be due on or before the next  
11                   bill date (i.e., same date in the following month as the bill date)  
12                   and is payable in immediately available funds, except as set forth  
13                   in section 1.4. [last three sentences of 1.5 are not in dispute]  
14

15           This proposal ensures that Covad will have thirty days to process and pay a bill once  
16           it has received it in the agreed-to format.

17   **Q.    What has BellSouth proposed?**

18   A.    BellSouth's proposal for Section 1.4 would delete the last sentence of Covad's  
19           proposed Section 1.4. In addition, BellSouth would delete the final clause ("except  
20           as set forth in section 1.4.") of the first sentence of Section 1.5. With these changes,  
21           BellSouth would give Covad less than twenty days to process and pay a bill.

22   **Q.    How so?**

23   A.    BellSouth ties payment of a bill to the "bill date" and not the actual date in which  
24           Covad receives the bill. Section 1.4 states that BellSouth will send a bill within ten  
25           business days (which can be up to fourteen calendar days) of the bill date. Section  
26           1.5 states that Covad's payment is due "on or before the next bill date." For example:  
27           April 16:     Bill date for March services  
28           April 30:     BellSouth sends bill with April 16 bill date to Covad (10<sup>th</sup> business  
29           day after April 16)



1 May 16: Covad payment due.

2 In this example, Covad has only thirteen business days (seventeen calendar days) to  
3 process and pay the bill.

4 **Q. But doesn't BellSouth's proposal give Covad additional time if BellSouth does  
5 not provide a bill on time?**

6 A. No. BellSouth only gives Covad extra time to process a bill if *both* the electronic and  
7 paper copies are late. For example:

8 April 16: Bill date for March services

9 April 30: BellSouth sends paper bill to Covad (10<sup>th</sup> business day)

10 May 1: BellSouth sends electronic bill to Covad (11<sup>th</sup> business day; late)

11 May 3: Covad receives paper copy

12 May 4: Covad receives electronic copy

13 May 16 Next "bill date"; payment due.

14 Using BellSouth's proposed language, the payment is due on May 16 – only eight  
15 business days after Covad received the electronic bill. This is because BellSouth's  
16 proposed Section 1.5 clearly states that "the payment will be due on or before the  
17 next bill date" – in this case, May 16. Because BellSouth was able to get a paper  
18 copy of the bill out the door on the tenth business day, BellSouth's proposed Section  
19 1.4 states only that if both forms of the bill are not sent to Covad within ten business  
20 days is Covad given thirty days to process and pay the bill.

21 **Q. How would Covad's proposal handle the second example above?**

22 A. Covad's proposal would ensure that Covad has adequate time to review and process  
23 the bills:

- 1 April 16: Bill date for March services
- 2 April 30: BellSouth sends paper bill to Covad (10<sup>th</sup> business day)
- 3 May 1: BellSouth sends electronic bill to Covad (11<sup>th</sup> business day; late)
- 4 May 3: Covad receives paper copy
- 5 May 4: Covad receives electronic copy
- 6 May 16 Next "bill date"
- 7 June 3: Covad payment due (30 days after receipt of electronic copy)

8 **Q. Why is this process important to Covad?**

9 A. As discussed above, Covad is one of the largest purchasers of loops, collocation, and  
10 transport services in the state of Florida and indeed the entire BellSouth region. The  
11 paper bills Covad has received from BellSouth and other ILECs often fill many  
12 boxes. It is a significant expense, and sometimes an impossibility, to review a paper  
13 bill in any timely fashion. As proposed by BellSouth, it could generate a paper bill  
14 on the tenth business day, delay sending an electronic copy of the bill for several  
15 days or weeks, and Covad would be obligated to review and pay that paper bill in  
16 only eight to ten business days. That is not a commercially reasonable request for  
17 a high-volume customer like Covad.

18 **Q. Why does reviewing the bills take so long?**

19 A. As discussed above, paper bills for loops, transport and collocation can fill boxes.  
20 Aside from the sheer administrative expense and impossibility of processing a paper  
21 record like this in only eight business days, in the past, Covad has encountered  
22 significant problems with BellSouth's bills.

1 Indeed, since September 1999, Covad has encountered several significant problems  
2 with the bills proffered by BellSouth. For example, for loop and transport circuits,  
3 through March 2001, Covad has identified over \$1.6 million worth of BellSouth  
4 overcharges. These instances of over billing include mistakes or errors for circuit  
5 charges, canceled circuits, disconnected circuits, mileage errors, service data errors,  
6 improper application of tax exemption, and USOC logic set errors. Detecting these  
7 problems and raising the dispute with BellSouth to hopefully resolve that problem  
8 takes time and effort. In addition, Covad believes that BellSouth's current billing  
9 dispute proposal (Issue 32) would essentially put the onus on Covad to pay the entire  
10 amount of a bill while such an issue is in dispute. Covad strongly believes that  
11 BellSouth's proposals would have a significant anticompetitive impact: indeed,  
12 BellSouth would have a tremendous incentive to produce incorrect paper bills,  
13 demand immediate payment from the ALEC, and delay resolution of that dispute.

14 **Q. In your opinion, can Covad adequately process a paper bill within eight to ten**  
15 **business days?**

16 **A.** I have been involved in an on-going ILEC billing verification and reconciliation  
17 process at Covad. Covad has a dedicated team of professionals whose sole job is to  
18 review and reconcile ILEC bills. Even when we get electronic copies of such bills,  
19 the verification process takes a significant amount of time. In my opinion, Covad is  
20 not able to process boxes of a paper bill in eight to ten business days. Indeed, no  
21 high-volume consumer of UNEs and collocation can be expected to engage in a  
22 complete and thorough review of voluminous bills.

23 **Q. But doesn't BellSouth promise to provide electronic copies? Won't that help?**

1 A. While BellSouth has agreed to provide an electronic copy, the due date of a bill is not  
 2 dependent upon preparation of that bill. As shown above, as proposed by BellSouth,  
 3 it can insist on payment within eight to ten business days even if it has only prepared  
 4 a paper bill. Under Covad's proposal, Covad will not be obligated to pay a bill until  
 5 thirty days after it has received both the electronic and paper copies of the bill.  
 6 Covad's proposal is a commercially reasonable term that any high-volume purchaser  
 7 should be able to receive.

8 **ISSUE 32(A): SHOULD COVAD BE OBLIGATED TO PAY AN AMOUNT IN**  
 9 **DISPUTE, AND IF COVAD DOES NOT PAY, SHOULD BELLSOUTH BE**  
 10 **PERMITTED TO ASSESS LATE PAYMENT CHARGES FOR THAT AMOUNT?**

11 **Q. Has Covad encountered billing problems with BellSouth in the past?**

12 A. Yes, very significant ones. As discussed above, Covad has encountered several  
 13 significant billing problems with BellSouth. Through March 2001, Covad has  
 14 identified over \$1.6 million worth of overcharges. BellSouth mistakes include errors  
 15 for circuit charges, canceled circuits, disconnected circuits, mileage errors, service  
 16 data errors, improper application of tax exemption, and USOC logic set errors. In  
 17 fact, the size, extent and pervasive nature of these billing discrepancies reveal  
 18 significant problems with BellSouth's billing systems for UNEs and collocation.  
 19 While Covad cannot speak for other carriers, I anticipate that other ALECs are facing  
 20 similar substantial billing disputes.

21 **Q. If Covad believes a bill is incorrect, what should the process be?**

22 A. If BellSouth has overcharged Covad, Covad should not have to pay the amount of the  
 23 overcharges while the dispute is resolved. In addition, late payment charges should

1 not be assessed on an amount withheld in dispute. Covad should also not be subject  
2 to suspension or termination of service for "nonpayment" if the nonpayment is due  
3 to a legitimate billing dispute (Section 3.2). Only if it turns out that Covad has  
4 incorrectly withheld an amount should late payment fees be considered. As  
5 discussed above, billing discrepancies can run into the hundreds of thousands and  
6 even millions of dollars. Covad has proposed language in Attachment 7, Sections  
7 1.7 and 3.2 to reflect that process.

8 **Q. How would BellSouth's proposal adversely impact competition in Florida?**

9 A. Again, it is important to understand the fundamental disparity in bargaining power  
10 between an ILEC like BellSouth and an ALEC like Covad. For Covad to keep its  
11 business up and running in Florida, BellSouth must continue to provide loops,  
12 collocation, transport, and OSS to Covad. While BellSouth is certainly entitled to  
13 payment for the elements and services it actually provides, it is only entitled to  
14 payment of the actual, approved or agreed-to rate for those elements and services.  
15 An BellSouth should not be permitted to threaten to cut off Covad's access to loops  
16 and elements because Covad refuses to pay an incorrect bill.

17  
18 By requiring ALECs to pay all billed amounts prior to resolution, BellSouth bears  
19 absolutely no risk or burden in the event it renders an incorrect bill. As a result,  
20 BellSouth's proposal actually creates a perverse incentive for BellSouth to render  
21 incorrect bills. A certain percentage of billing mistakes may never be detected by the  
22 ALEC - for example, a mileage charge for a high-cap, DS3 circuit may not be readily  
23 determinable by an ALEC, as calculation of the mileage may be dependent upon

1 BellSouth network information that the ALEC may not have ready access to  
2 (especially within the 8-10 business-day window proposed by BellSouth). In  
3 addition, under BellSouth's proposal, BellSouth would be able to collect interest on  
4 the disputed amount pending resolution. As a result, even if the dispute is resolved  
5 in the ALEC's favor eventually, BellSouth is no worse off than if it had rendered a  
6 correct bill in the first place.

7

8 It is important once again for the Commission to understand the relative position of  
9 the ILEC and the ALEC. I do not need to remind the Commission of the realities of  
10 the ALEC industry today--the willingness of financiers to fund ALEC ventures is  
11 significantly diminished from the 1996-99 period. In contrast, BellSouth enjoys a  
12 stable cash flow and profit and dominant market position. By establishing a system  
13 that encourages BellSouth to render incorrect bills and that requires ALECs to pay  
14 these inflated amounts to BellSouth while the dispute is resolved, the Commission  
15 will establish a system that causes ALECs to run out of cash faster if they operate in  
16 Florida. In both the short and long runs, placing this additional cost and risk on  
17 ALEC entry into Florida will harm Florida consumers.

18 **Q. Are BellSouth's billing proposals discriminatory?**

19 A. Access to billing systems are explicitly part of the OSS unbundled network element  
20 mandated by the FCC. As a result, BellSouth must provide "nondiscriminatory"  
21 access to billing. If BellSouth believes that its billing practices are  
22 nondiscriminatory, it must stand ready to prove that it treats its retail customers  
23 (either residential or high-volume businesses, or both) in the same manner - that is,

1           allowing only eight to ten business days to review a voluminous paper bill and  
2           assessment of late payment charges even on matters in dispute.

3   **Q.   Does that conclude your direct testimony?**

4   **A.   Yes.**

1 **Q. Please state your name, position and job duties.**

2 A. My name is Jason D. Oxman, Senior Counsel of Covad Communications  
3 Company. I am based in Washington, D.C. I have held this position since  
4 September of 1999. In this position, I direct Covad's advocacy before federal  
5 regulatory agencies. I also advocate Covad's regulatory and policy issues before  
6 state PUCs and Congress. In addition, I have frequent interactions with  
7 incumbent local exchange carriers ("ILECs") in order to negotiate interconnection  
8 and other agreements.

9 **Q. Please state your qualifications and experience prior to joining Covad.**

10 Immediately prior to joining Covad, I spent over two years at the Federal  
11 Communications Commission, in two different capacities. I started at the  
12 Commission in September 1997 as a staff attorney in the Common Carrier  
13 Bureau. In that capacity, I had primary responsibility for several aspects of the  
14 long distance applications of BellSouth for Louisiana and South Carolina, both of  
15 which the FCC rejected. I also played a critical role in several of the rulemaking  
16 proceedings that the Commission undertook as part of its Advanced Services  
17 dockets, including the Commission's so-called Cageless Collocation order. In  
18 November 1999, I was named Counsel for Advanced Communications in the  
19 Office of Plans and Policy at the Commission. In that capacity, I advised the  
20 Commission on broadband-related legal and technical issues, including a broad  
21 range of local competition issues.



1 I served as a law clerk to the Maine Supreme Judicial Court from 1996 to 1997. I  
2 hold a Masters of Science in Mass Communications and a Juris Doctor from  
3 Boston University. I hold a B.A. *cum laude* from Amherst College.

4 **Q. What is the purpose of your testimony?**

5 A. In the first instance, I adopt as my own the testimony submitted by Thomas M.  
6 Koutsky of Covad on April 23, 2001, in this docket. Although his testimony as  
7 submitted remains valid and accurate, Mr. Koutsky is no longer employed by  
8 Covad, and it is necessary for me to replace him as a witness in this docket. As  
9 with Mr. Koutsky's testimony, my rebuttal testimony will cover the following  
10 Issues set forth in Covad's Petition for Arbitration:

11 ♦ Issue 1: What limitations of liability, if any, should be included in the Parties'  
12 Interconnection Agreement?

13 ♦ Issue 2: What should BellSouth's obligations be under this Interconnection  
14 Agreement in the event that BellSouth's workforce, or the workforce of its  
15 suppliers and vendors, engage in a work stoppage?

16 ♦ Issue 3: Should there be a limitation of an ALEC's right to opt-in to an  
17 existing interconnection agreement that has only six months remaining before  
18 it expires?

19 I understand that other Covad witnesses will be addressing the other Issues  
20 presented in Covad's petition. Although my rebuttal testimony does not address  
21 all of the issues raised by Mr. Koutsky, I adopt the arguments he raised as to those  
22 issues for purposes of my testimony.

1 **ISSUE 1: LIMITATION OF LIABILITY**

2 **Q. What is the limitation of liability language proposed by BellSouth in its**  
3 **negotiations with Covad?**

4 A. The BellSouth proposal states:

5 8.4 Limitation of Liability.

6  
7 8.4.1 Each Party's liability to the other for any loss, cost, claim, injury or  
8 liability or expense, including reasonable attorney's fees relating to or  
9 arising out of any negligent act or omission in its performance of this  
10 Agreement whether in contract or in tort, shall be limited to a credit for the  
11 actual cost of the services or functions not performed or improperly  
12 performed.

13  
14 **Q. What has Covad proposed?**

15 A. Covad proposes that the parties retain the limitation of liability provision from  
16 their existing Interconnection Agreement, which has been approved by this  
17 Commission. It states:

18 7.1 Liability Cap.

19 7.1.1 With respect to any claim or suit, whether based in contract, tort or any  
20 other theory of legal liability, by DIECA, any DIECA customer or by any  
21 other person or entity, for damages associated with any of the services  
22 provided by BellSouth pursuant to or in connection with this Agreement,  
23 including but not limited to the installation, provision, preemption,  
24 termination, maintenance, repair or restoration of service, and subject to the  
25 provisions of the remainder of this Section, BellSouth's liability shall be  
26 limited to an amount equal to the proportionate charge for the service  
27 provided pursuant to this Agreement for the period during which the  
28 service was affected. **Notwithstanding the foregoing, claims for**  
29 **damages from the gross negligence or willful misconduct of BellSouth**  
30 **and claims for damages by DIECA resulting from the failure of**  
31 **BellSouth to honor in one or more material respects any one or more**  
32 **of the material provisions of this Agreement shall not be subject to**  
33 **such limitation of liability.**  
34

1 **Q. Do you agree with BellSouth's statement that the limitation of liability**  
2 **language proposed by BellSouth is standard in the telecommunications**  
3 **industry?**

4 A. No. In support of that statement, BellSouth quotes only from its own tariffs,  
5 which hardly establishes a standard for the industry. In fact, Covad's  
6 interconnection agreements with other Bell companies provide for liability should  
7 either party to the agreement act with willful or intentional misconduct. Covad's  
8 agreements with Bell Atlantic (NY) (Verizon), and Pac Bell contain such  
9 provisions. Furthermore, Covad has opted into the Interconnection Agreement  
10 between GTE California and AT&T in California, which likewise does not  
11 insulate GTE from liability for gross negligence, willful misconduct or material  
12 breaches of the contract. (Exhibit No. \_\_\_\_\_, JDO-1).

13  
14 BellSouth will not even subject itself to liability for the willful and intentional  
15 misconduct of its employees or agents. Indeed, it seeks to avoid all such liability  
16 by arguing that it is "standard industry practice" for carriers to immunize  
17 themselves from such liability. As evidenced by Covad's agreements with other  
18 carriers, it is not.

19 **Q: Do you agree with BellSouth's statement that limitations of liability issues**  
20 **are not proper for resolution by this Commission because section 251 of the**  
21 **Act does not address liability issues specifically?**

22 A. No. Section 251 of the 1996 is literally only a few sentences long. The typical  
23 Covad interconnection agreement with an incumbent LEC is hundreds of pages

1 long. Clearly, section 251 does not spell out in detail each and every obligation of  
2 the contracting parties. Rather, the Act sets out in minimal detail the obligations  
3 on those carriers, and issues that do not reach resolution voluntarily are to be  
4 resolved, pursuant to section 252 of the Act, by the relevant state commission.  
5 For example, section 251(c)(3) of the Act imposes a required on incumbent LECs  
6 to provide unbundled network elements. It makes no mention of loops. If  
7 BellSouth were correct that an issue must be specifically mentioned in the  
8 language of the Act to be subject to Commission arbitration, Covad would not be  
9 able to bring any loop issues for arbitration. This is why the courts have found  
10 section 252(e) of the Act to require state commissions to “resolve” “any open  
11 issue” that the Commission chooses to arbitrate pursuant to Sections 251 and 252.  
12 Sections 252(b)(1), 252(b)(4)(C); *see MCI Telecommunications Corp. v.*  
13 *BellSouth Telecommunications, Inc.*, 112 F. Supp. 2d 1286 (N.D. Fla. 2000).

14 **Q. Is Covad seeking limitation of liability language that is any different from**  
15 **language that has existed in prior contracts with BellSouth?**

16 A. No. Because Covad seeks to enforce its interconnection contracts with ILECs in a  
17 variety of settings, including breach of contract litigation before the courts,  
18 limitation of liability clauses are a focus of our negotiation strategy. In 1998,  
19 Covad and BellSouth specifically negotiated the limitation of liability clause to  
20 provide that BellSouth would not be protected by a limitation of liability clause if  
21 Covad were damaged “from the gross negligence or willful misconduct of  
22 BellSouth.” In addition, the clause provided that if BellSouth failed to “honor in  
23 one or more material respects any one or more of the material provisions” of the

1 contract, no limitation of liability would apply at all. Covad has proposed that the  
2 next interconnection agreement between Covad and BellSouth contain the same  
3 clause.

4 **Q. What has BellSouth proposed instead?**

5 A. As set out in greater detail in Mr. Koutsky's testimony that I adopt, BellSouth has  
6 put forward a proposal that would shield it from any substantial liability for *any*  
7 breach of the interconnection agreement. In particular, BellSouth has proposed  
8 that it would *only* be liable to Covad for the "actual costs of the services or  
9 functions not performed or improperly performed." That is an entirely  
10 unacceptable limitation and would gut the other substantive provisions of the  
11 Agreement.

12 **Q. Has BellSouth made additional offers regarding the limitation of liability  
13 provision?**

14 A. Covad and BellSouth have been in ongoing negotiations in an attempt to reach  
15 resolution on this issue. Although BellSouth seems to be willing to accept liability  
16 for gross negligence or willful misconduct, it continues to seek to insulate itself  
17 from any liability for making "good faith" interpretations of contract provisions,  
18 which later turn out to be wrong. This proposal seems to create broad areas for  
19 disagreement between the parties and incorporates ambiguity and vagueness into a  
20 contract provision that should be simple and straightforward. Covad prefers that  
21 the limitation of liability provisions, quoted above, in its existing contract with  
22 BellSouth be incorporated into its new contract with BellSouth.

1 **Q: Do you agree with BellSouth that the Florida Commission’s decision in the**  
2 **MCI Order, where the Commission declined to impose a liability clause on the**  
3 **carriers, controls here?**

4 A: No. In the first instance, that decision does not, as BellSouth suggests, stand for  
5 the proposition that the Commission need not rule on limitation of liability clauses  
6 in the section 252(e) context – that issue has been decided by the courts, and the  
7 answer is that the Commission must address the issue. Beyond that, the particular  
8 factual circumstances at issue in the MCI arbitration are inapposite here, where  
9 MCI is not a party.

10 **ISSUE 2: STRIKE CLAUSE**

11 **Q: Do you agree with BellSouth’s statement in its testimony that Covad is**  
12 **seeking “special treatment” in the event of a BellSouth work stoppage?**

13 A: No. Covad learned the hard way from the lengthy Verizon strike that the Bell  
14 companies tend to put available resources on their retail arm before their  
15 wholesale arm. BellSouth has a legal obligation to treat Covad in a  
16 nondiscriminatory manner in providing UNEs, collocation space, and other  
17 network elements and facilities required by section 251 of the Act. As such, this  
18 issue is properly before the Commission in this arbitration – Covad simply seeks a  
19 contractual assurance that BellSouth will comply with its obligations under the  
20 Act. Because BellSouth refuses to provide such a term in its interconnection  
21 agreement with Covad, Covad has submitted the issue to the Commission for  
22 resolution.

1 **ISSUE 3: SHOULD BELLSOUTH BE PERMITTED TO RESTRICT COVAD'S**  
2 **RIGHTS UNDER SECTION 252(I) OF THE TELCOM ACT BY IMPOSING AN**  
3 **ARTIFICIAL LIMITATION ON COVAD'S ABILITY TO OPT-IN TO THE**  
4 **INTERCONNECTION AGREEMENTS REACHED BETWEEN BELLSOUTH**  
5 **AND OTHER COMPETITIVE CARRIERS?**

6

7 **Q. What arguments does BellSouth make in support of its desire to limit Covad's**  
8 **ability to opt into an Interconnection Agreement with 6 months or less**  
9 **remaining on its term?**

10 A. BellSouth makes several arguments that fail to justify its arbitrary decision to strip  
11 Covad of its full opt-in rights: specifically, BellSouth argues: (1) "most ALECs  
12 would not want to opt into an Interconnection Agreement with less than six months  
13 remaining" (Cox Direct, p. 10); (2) BellSouth needs time to negotiate with ALECs  
14 to avoid arbitration (Cox Direct, 12-13); (3) allowing Covad to opt into an  
15 Interconnection Agreement will be administratively burdensome. These  
16 arguments cannot and do not justify depriving Covad of substantive rights to opt  
17 into Interconnection Agreements of its choice.

18

19 First, Covad clearly wants the ability to opt into Interconnection Agreements with  
20 six months or less remaining on their term. Covad arbitrates this issue before the  
21 Florida Commission to ensure that its rights are protected. In the context of an  
22 arbitration for terms of the Interconnection Agreement between BellSouth and  
23 Covad, it does not matter what BellSouth believes "most ALECs want." It is clear

1 that this is an option that Covad seeks. Surprisingly, BellSouth attempts to  
2 position itself as an expert and opines about what “most ALECs want.” Such  
3 opinions are questionable at best, especially in light of Covad clear statement of its  
4 intention to litigate for the right to opt into an Interconnection Agreement with six  
5 months or less remaining on its term. It is clear what Covad wants, BellSouth’s  
6 comments notwithstanding.

7  
8 Second, negotiations toward settlement of issues may actually be advanced when  
9 negotiation time tables are accelerated. In fact, agreement on issues between  
10 Covad and BellSouth accelerated dramatically after Covad filed its arbitration  
11 petition before this and other Commissions, as evidenced by the fact that there  
12 were 35 issues listed in Covad petition’s and only 20 or so remain unresolved at  
13 this point.

14  
15 Finally, BellSouth has offered no evidence whatsoever to substantiate its claims of  
16 an administrative burden resulting from handling Interconnection Agreements that  
17 were opted into within six months of duration. In fact, it is unclear to me why  
18 these contracts would be treated, maintained or administered any differently than  
19 any other Interconnection Agreement.

20  
21 None of these arguments should distract this Commission from Covad’s legal right  
22 to opt into any Interconnection Agreement at any time.



1 **Q. Do you agree with BellSouth that a six-month limitation on Covad's opt-in**  
2 **rights is permissible?**

3 A. No. In 1996, the FCC implemented Section 252(I) with 47 CFR 51.809. That  
4 FCC rule was affirmed by the United States Supreme Court in January 1999. Rule  
5 51.809 specifically states:

6 An incumbent LEC shall make available without unreasonable delay to any  
7 requesting telecommunications carrier any individual interconnection, service, or  
8 network element arrangement contained in *any agreement* to which it is a party  
9 that is approved by a state commission pursuant to section 252 of the Act, upon  
10 the same rates, terms and conditions as those provided in the agreement.

11 Under Rule 51.809, the *only* restrictions upon this option are those set forth in  
12 51.809(b). That rule restricts Covad's 252(I) rights only for cases in which the  
13 ILEC can demonstrate that its costs have changed or that such an arrangement is  
14 technically infeasible to provide to Covad.

15 **Q. What restrictions has BellSouth proposed to place on Covad's legal rights?**

16 A. BellSouth has proposed two significant substantive restrictions. The first would  
17 prevent Covad from exercising Section 252(I) rights for any interconnection,  
18 service or network element arrangement that is provided for in a contract that is  
19 due to expire within six months of Covad's decision to opt-in to that arrangement.  
20 The second would require Covad to agree to all "legitimately related" clauses that  
21 relate to any particular arrangement.  
22

23 **Q. Is either restriction contemplated for or provided for by FCC Rule 51.**  
24 **809(b)?**

25 A. No. In fact, Rule 51.809(a), quoted above, explicitly states that an ILEC must  
26 provide "any individual . . . arrangement contained in any agreement."

1 **Q. Do you agree with BellSouth that there is no reason why an ALEC would**  
2 **ever want to opt in to an agreement that will expire within 6 months?**

3 A. No. There are several legitimate reasons why Covad, or another ALEC, would  
4 seek to do so. In the event an ILEC and an ALEC cannot agree on interconnection  
5 terms and an arbitration is begun, the ALEC also must await resolution of that  
6 arbitration before the arbitrated contract can be finished (a process that, pursuant  
7 to Section 252, can take up to 9 months). Because of this situation, it is common  
8 business practice for a ALEC to use its Section 252(I) rights to “opt-in” to an  
9 existing interconnection arrangement that it needs to do business while it begins  
10 or continues the process of negotiation or arbitration with the ILEC. ALECs  
11 routinely use these legal rights to get their business up and running in a state  
12 immediately. The fact that an arrangement may only have limited duration may  
13 actually be a reason for the ALEC to opt-in to that provision. In this manner, a  
14 ALEC will not be “locked-in” to a suboptimal arrangement for very long.

15  
16 For example, in this arbitration, Covad is seeking a firm, 3-day loop installation  
17 interval from BellSouth. Covad expects that this arbitration will be completed in  
18 the next six months. Suppose that BellSouth enters into an agreement with one of  
19 Covad’s competitors that would provide for a firm, 5-day loop installation interval  
20 for the next six months. Although Covad believes it will ultimately prevail on its  
21 request for a firm 3-day interval, it will still be able to use Section 252(I) to opt-in  
22 to the firm 5-day interval while its 3-day arbitration is pending. BellSouth’s

1 proposal would prevent Covad from exercising this right, if the other ALEC's  
2 Interconnection Agreement were set to expire within 6 months.

3 **Q. Would BellSouth's 6-month proposal significantly limit ALEC 252(I)**  
4 **options?**

5 A. Yes. Most of BellSouth's interconnection agreements have a duration of two  
6 years. If you consider all of BellSouth's interconnection agreements as the pool of  
7 potential Section 252(I) candidates, at any particular point in time, BellSouth  
8 would exclude approximately 25% of all of BellSouth's interconnections, services,  
9 or UNE arrangements from the 252(I) process. That is a significant and arbitrary  
10 exclusion that has no basis in federal law.

11 **Q. Does this conclude your rebuttal testimony?**

12 A. Yes.

1           COMMISSIONER JABER: Mr. Oxman, you may give your  
2 summary now.

3           A     Thank you, Commissioner, and good morning. My  
4 testimony addresses several issues, only three of which remain  
5 after settlement as discussed this morning. Those three issues  
6 I'd like to summarize briefly. The three issues are: Number  
7 one, the issue of limitation on liability; number two, the  
8 issue of the availability of an interconnection agreement for  
9 opt-in; and issue three, billing disputes and payment of bills.

10           As to the first issue, limitation of liability, I  
11 raise four principal issues in my testimony. Number one, to  
12 address BellSouth's concern about the ability of the Commission  
13 to actually address this issue. I discuss the language in  
14 Section 251 of the Telecommunications Act that requires a state  
15 commission to address any open issues. As BellSouth and Covad  
16 have failed to reach agreement in their negotiations on the  
17 issue of limitation of liability, that is an open issue as that  
18 term is used in Section 251, and is, therefore, appropriate for  
19 this Commission to address and resolve because of the failure  
20 of the parties to reach agreement.

21           As to the substance of the limitation of liability  
22 issue, I discuss in my testimony the issue of the liability cap  
23 as proposed by BellSouth being unsustainable for Covad's  
24 business. BellSouth attempts to limit its liability as to all  
25 manners of failure to adhere to the terms of the contract by

1 BellSouth, including gross negligence and willful misconduct.  
2 That is to say that under BellSouth's proposed language, even  
3 if BellSouth or its agents or employees acts in a grossly  
4 negligent manner or acts willfully to deny Covad, for example,  
5 the unbundled network elements to which it is entitled, the  
6 collocation space to which it is entitled, even if those are  
7 denied negligently and willfully, BellSouth under its proposed  
8 language would agree only to refund to Covad the actual cost of  
9 those unbundled elements or the actual cost of that  
10 collocation.

11           The reason that is unsustainable is, quite simply,  
12 that it would provide BellSouth a perverse incentive to deny us  
13 that to which we are entitled under the contract because they  
14 would suffer no harm whatsoever, only causing them to owe us a  
15 refund for services that they did not provide. On the other  
16 hand, Covad, as a new entrant into the market in Florida, would  
17 suffer irreparable harm by being denied the very elements to  
18 which BellSouth is required to provide under the '96 Act.

19           I also addressed in my testimony the suggestion of  
20 BellSouth that BellSouth's agreement with MCI on this issue  
21 suggests that Covad should have agreed to the same terms.  
22 MCI's ability to reach agreement with BellSouth is, of course,  
23 not relevant to the issues that Covad has. MCI is a much  
24 larger company. It's the second largest interexchange carrier  
25 in the country, the largest Internet backbone provider in the

1 country, much more able to sustain harm under a contract than  
2 Covad is. So it's certainly understandable why they would have  
3 different concerns than we.

4           And finally, I address in my testimony the issue of  
5 BellSouth's contention that performance metrics should resolve  
6 these issues as adopted by the Commission. There's no need for  
7 contract language on liability. And quite simply, there are a  
8 couple of reasons that's not true. First of all, the  
9 performance metrics have not yet been adopted by the  
10 Commission. We have a need for protection for BellSouth's  
11 failure to perform today, and that protection will not be  
12 available under the performance metrics until such time as the  
13 Commission adopts them. And then, as Ms. Boone mentioned in  
14 her opening statement, those performance metrics are subject to  
15 change, they are subject to constant revision, and they also  
16 cover a very narrow subset of the issues that could arise under  
17 the contract. Our contract, our interconnection agreement with  
18 BellSouth is dozens, if not hundreds, pages long. Many issues  
19 can arise under it. The performance metrics only address a few  
20 issues.

21           The second issue I raise in my testimony is as to the  
22 availability of an interconnection agreement for opt-in. The  
23 opt-in language of the Act and the FCC's rules require  
24 BellSouth to provide to any carrier for opt-in, not only entire  
25 agreements, but also pursuant to the so-called pick-and-choose

1 rule individual interconnection services or network elements of  
2 those agreements. BellSouth has proposed an unreasonable, in  
3 our view, restriction on our ability to opt-in to agreements.  
4 And I should note that the Commission's ruling on this issue  
5 will obviously have implications for not only Covad's ability  
6 to opt-in but also other carriers.

7           BellSouth's proposal is that there be a time  
8 limitation on the ability of a carrier to opt-in to agreements  
9 so that the last six months or half a year are not available of  
10 an agreement. We believe that is not foreseen within the  
11 Commission's rules that a carrier would be allowed to impose  
12 such a restriction. I set out in my testimony in greater  
13 detail some of the reasons why Covad would need to opt-in to an  
14 agreement that may have only six months left on it and some of  
15 the reasons why the FCC's rules do not permit BellSouth to  
16 impose such a restriction.

17           And then the final issue in summary that I raise in  
18 my testimony is on billing, and there are two billing issues  
19 within that. Number one is the time schedule pursuant to which  
20 BellSouth requires us to actually pay the bills. On their face  
21 in the proposed language that BellSouth has offered, it appears  
22 that BellSouth is giving us a generous 30-day period to pay our  
23 bills, but in actual practice, given the time period in which  
24 BellSouth actually sends the bills to us, the time it takes for  
25 those bills to be transmitted and the time it takes for us to

1 review those bills, which are often several boxes in volume,  
2 not a simple page or two, we end up having a matter of -- as  
3 set out in the testimony and in the testimony of Mr. Koutsky --  
4 a matter of eight to ten business days to review and pay those  
5 bills, and that is an unacceptably short period of time. We  
6 have proposed language we think is reasonable that gives us the  
7 opportunity to review the bills and, again, as set out in my  
8 testimony and in Mr. Koutsky's. This is not a hypothetical  
9 need. We have in recent months opened to disputes with  
10 BellSouth over literally hundreds of thousands of dollars of  
11 what we think are overcharges, and we need the ability to have  
12 time to review those bills to make sure we're not paying more  
13 than we have to, particularly in these financial times as I'm  
14 sure the Commission is aware.

15           And the second issue within the billing testimony  
16 that I've submitted is the disputes language that BellSouth has  
17 proposed. BellSouth has proposed language relating to our  
18 ability to open disputes with them that requires us to make, in  
19 essence, an interest-free loan to BellSouth. Even where we  
20 believe that in good faith those payments are not due, we are  
21 subject to financial penalty for overcharges to BellSouth  
22 because we don't have the money to use and BellSouth does.  
23 Unfortunately, it doesn't work the other way around. And we'd  
24 like to see the Commission adopt language that permits us to  
25 withhold payments that we believe in good faith are not due



1 rather than BellSouth's proposal, which is to have them act as  
2 our bank account rather than our bank, and we believe that's  
3 unreasonable. That's a brief summary of my testimony. And I  
4 will respond to any questions as needed.

5 MS. BOONE: Mr. Oxman is available for cross  
6 examination.

7 COMMISSIONER JABER: Okay. Before we get started,  
8 Mr. Oxman, let me ask you to speak directly into the  
9 microphone. The end of your sentences, sometimes you trailed  
10 off, and that will help everyone, actually.

11 THE WITNESS: I will. I apologize.

12 COMMISSIONER PALECKI: And before BellSouth starts, I  
13 wanted to ask one clarifying point on the limitation of  
14 liability issue. Would you have a problem with a limitation of  
15 liability where liability arising out of simple negligence  
16 would be limited to a credit for the actual cost of the service  
17 or function not performed or improperly performed but an  
18 exclusion from this limitation, any and all losses resulting  
19 from gross negligence and intentional misconduct?

20 THE WITNESS: I assume that question was directed at  
21 me?

22 COMMISSIONER PALECKI: Yes.

23 THE WITNESS: I'm sorry. I'm afraid I didn't  
24 understand the last part of your proposal, so I'd have to ask  
25 you to restate that. It's hard not having the language in

1 front of me.

2 COMMISSIONER PALECKI: My question is: Would you  
3 have a problem with a limitation on liability arising out of  
4 simple negligence but an exclusion from a limitation for gross  
5 negligence and intentional misconduct? So that there would be  
6 a limitation for simple negligence; there would not be such a  
7 limitation for gross negligence or intentional misconduct.

8 And the reason I'm asking the question is that it  
9 appears to me that Covad and BellSouth are very close to  
10 agreement on this issue.

11 THE WITNESS: Obviously, I'd have to see the language  
12 in writing in order to see exactly what it is you're proposing,  
13 but I agree with you certainly that our sole dispute in this  
14 arena is the issue of the liability caps application to gross  
15 negligence and willful misconduct. You know, you're using the  
16 phrase "simple negligence," which has a legal term -- has a  
17 legal connotation, I should say, and I'd have to see exactly  
18 what it was in writing that you're proposing in order to agree  
19 or disagree with that proposal.

20 COMMISSIONER JABER: Well, Commissioner Palecki, I  
21 would assume you'd want to clarify that that's a question, not  
22 a proposal.

23 COMMISSIONER PALECKI: It's not a proposal. I simply  
24 wanted to find out where you stood. Thank you.

25 THE WITNESS: Okay.

1 COMMISSIONER JABER: BellSouth.

2 CROSS EXAMINATION

3 BY MR. MEZA:

4 Q Good morning, Mr. Oxman.

5 A Good morning.

6 Q My name is Jim Meza and I represent BellSouth.

7 A I'm sorry, Mezan (phonetic)?

8 Q Meza, M-E-Z-A.

9 You are an attorney; is that correct?

10 A Yes, that is correct.

11 Q And your title with Covad is assistant general  
12 counsel; is that correct?

13 A No.

14 Q No, it's not correct. What is your title?

15 A Senior counsel.

16 Q Senior counsel. Would you agree with me that  
17 BellSouth is willing to exclude the limitation of liability for  
18 gross negligence or intentional misconduct as  
19 Commissioner Palecki just asked you about? Would you agree  
20 with me that BellSouth has proposed that to Covad?

21 A Yes.

22 Q In your summary, you said that BellSouth is -- let's  
23 see if I can quote you, wants to effectively have all manner of  
24 conduct insulated through this limitation of liability; is that  
25 correct?

1 A Yes.

2 Q But isn't it a fact, sir, that BellSouth has indeed  
3 proposed to Covad that gross negligence and willful misconduct  
4 be excluded from such limitation of liability?

5 A No.

6 Q That's not true?

7 A In my summary, I stated that BellSouth intended to  
8 exclude willful misconduct and gross negligence.

9 Q Okay. So are you saying -- are you saying today that  
10 BellSouth has not proposed to limit the limitation of liability  
11 so that it won't apply to losses resulting from gross  
12 negligence or intentional misconduct? I mean, I'm sort of  
13 getting a disconnect here, because in your summary, you stated  
14 that we want to sort of insulate ourselves from all types of bad  
15 behavior, yet we have proposed certain language to Covad that  
16 would exclude the limitation of liability for gross negligence  
17 and intentional misconduct.

18 A You're now paraphrasing my -- I'm sorry.

19 COMMISSIONER JABER: Go ahead.

20 A You're now paraphrasing my testimony. I didn't  
21 mention anything about all types of bad behavior. I will  
22 restate what I said in my summary. I have it in my notes in  
23 front of me. What I said was that BellSouth has proposed  
24 language that would apply the limitation of liability cap to  
25 gross negligence and willful misconduct. Our proposal is that

1 the cap not apply to gross negligence and willful misconduct.  
2 That was what I said in my summary, and that is what I said in  
3 my testimony as well.

4 Q Correct. But hasn't BellSouth proposed language to  
5 say that the cap wouldn't apply if their actions are determined  
6 to be grossly negligent or intentional misconduct?

7 A Well, now, I'm confused. You asked me before if  
8 BellSouth had proposed language applying the cap to everything  
9 except gross negligence and willful misconduct, meaning that  
10 you had proposed language applying the cap to what was termed  
11 "simple negligence."

12 Q Correct. That's what I asked you. That's what I've  
13 been trying to ask you. And if you have a question, you can  
14 refer to Ms. Cox's direct testimony on Page 4 where she  
15 specifically states that we have offered this language to  
16 Covad. And I'm just trying to understand if that's the case,  
17 if Covad refuses to accept our proposal, or it just is simply  
18 unaware of it.

19 A I'm afraid I don't have Ms. Cox's testimony in front  
20 of me. If I could trouble you for it, I'd be happy to respond  
21 to that question.

22 MR. MEZA: Okay. Sure. May I approach the witness?

23 COMMISSIONER JABER: Yes. Mr. Meza, for the record  
24 what page did you refer him to in Ms. Cox's testimony?

25 MR. MEZA: That's Page 4 of her direct.

1           COMMISSIONER PALECKI: In addition to Ms. Cox's  
2 testimony, I'd also point out that on Page 10 of the prehearing  
3 order, BellSouth specifically states, exclusion from this  
4 limitation losses resulting from gross negligence or  
5 intentional misconduct. And I think BellSouth is bound by its  
6 representation there in the prehearing order.

7 BY MR. MEZA:

8           Q     What part of Ms. Cox's proposal is unacceptable to  
9 Covad?

10          A     The application of a liability cap that caps  
11 BellSouth's liability to Covad in the event of BellSouth's  
12 failure to perform under the contract to the cost of the  
13 services that BellSouth was providing to Covad.

14          Q     So Covad would agree with BellSouth's proposal, I  
15 mean, I guess is what I'm trying to ask you.

16          A     Well, BellSouth's proposal still applies what we're  
17 calling a liability cap. It caps BellSouth's liability.  
18 That's part of the language that has been proposed.

19          Q     So what you're saying is that Covad doesn't agree to  
20 any limitation of liability?

21          A     No, that's not what I'm saying.

22          Q     Well, then what limitation of liability would Covad  
23 find acceptable?

24          A     Well, the issue that I discuss in my testimony is the  
25 proposal that BellSouth has made. Do you want me to --

1 Q Well, I think the issue in your testimony, and  
2 correct me if I'm wrong, has been determined to be incorrect  
3 given the fact that BellSouth has, at least in Ms. Cox's  
4 testimony and in the prehearing statement, offered additional  
5 language that expands -- or that limits the limitation of  
6 liability. And what I'm asking is, at what -- when would it  
7 apply under Covad's proposal?

8 A Well, keep in mind that the issue we're discussing  
9 here is not whether BellSouth would owe particular payments to  
10 us or not. This is not a decision on the merits that's being  
11 made here about whether BellSouth acts in a particular manner  
12 or BellSouth owes certain payments to Covad. The issue here is  
13 what rights and remedies Covad has the ability to pursue in the  
14 event of a breach of the contract. So --

15 Q Do you have the issue statement in front of you?

16 A I don't have anything in front of me other than --

17 COMMISSIONER JABER: Mr. Meza, let me try to help you  
18 out here so that we can move forward. Mr. Oxman, what is your  
19 understanding of BellSouth's proposal related to the liability  
20 limitation issue? Because I don't think any of you are on the  
21 same page. What is your understanding? Let's establish that,  
22 and let's let Mr. Meza ask his questions again. Go ahead.

23 THE WITNESS: Okay. My understanding is that  
24 BellSouth has proposed language that would cap their liability  
25 in certain circumstances for failure to perform under the

1 interconnection agreement at the cost of the actual service  
2 that was due to Covad, as I mentioned in my summary before, for  
3 example, the cost of an individual loop, and would not permit  
4 Covad to pursue either in court or in front of this Commission  
5 or before federal regulators any additional damages beyond the  
6 actual cost of the service.

7 COMMISSIONER JABER: All right. And is it your  
8 understanding that that proposed cap would be for simple  
9 negligence and gross negligence?

10 THE WITNESS: My understanding is that the proposed  
11 cap would be for simple negligence.

12 COMMISSIONER JABER: All right. Mr. Meza, go ahead,  
13 ask your questions now.

14 BY MR. MEZA:

15 Q Is it Covad's position that the limitation of  
16 liability should not apply to a breach of a material provision  
17 of the contract?

18 A It is Covad's position that the limitation of  
19 liability -- you're referring to the cap?

20 Q First, I'm asking you a yes-or-no question, so I  
21 would appreciate a yes-or-no response, and then --

22 A I just want to make sure I know what you're referring  
23 to.

24 Q Yeah, I'm just asking a question. Is it Covad's  
25 position that the limitation of liability should not apply to



1 breaches of a material provision of the agreement?

2 A Yes.

3 Q Okay. What does Covad consider a material breach to  
4 be?

5 A Of which provision of the agreement?

6 Q Any.

7 What constitutes a material breach or a breach of a  
8 material provision?

9 A Well, as that term would be defined by the  
10 appropriate legal authority reviewing the parameters of the  
11 agreement, a material breach would be a breach of an  
12 agreement -- of a provision of the interconnection agreement  
13 that prevented us from accessing or obtaining the particular  
14 service or interconnection arrangement or network element under  
15 the agreement that we were entitled to.

16 Q Has Covad proposed a definition of a material  
17 provision?

18 A I do not know.

19 Q And what would be the determining factor to determine  
20 if a provision was material?

21 A Well, as I mentioned before, the issue here that we  
22 are seeking the Commission's ruling on is whether we have the  
23 right to argue before the appropriate tribunal that we should  
24 be entitled to damages beyond the actual cost of service. The  
25 issue is, the language that BellSouth has proposed would

1 prevent us from even getting our day in court in the event that  
2 BellSouth failed to provide us something that we're entitled to  
3 under the agreement, and thus, we don't actually need to engage  
4 in the hypothetical act of deciding what a material breach  
5 would be. That would be for an appropriate court to decide.  
6 All we're looking for is our ability to pursue remedies when  
7 we're harmed by BellSouth's failure to adhere to its contract.

8 Q So you're not asking the Commission to adopt your  
9 proposed language then; you're just asking them to arbitrate  
10 this issue. That's what I understand you to be saying.

11 A We are asking the Commission to arbitrate this issue  
12 by adopting language that fulfills the requirements of the  
13 Communications Act and BellSouth's obligations.

14 Q What language has Covad specifically proposed as to  
15 this issue?

16 A I haven't been involved in the process of negotiating  
17 the interconnection agreement with BellSouth's parties here, so  
18 I couldn't actually speak to what language has gone back and  
19 forth.

20 Q Well, do you know if Covad has proposed any language?

21 A Yes, I believe Covad has proposed language.

22 Q Would you agree with me that liquidated damages is  
23 not an enumerated item under Section 251 and 252 of the Act?

24 A No.

25 Q Are you familiar with this Commission's decision,

1 recent decision, in the MCI arbitration?

2 A Yes.

3 Q Do you have that with you?

4 A No.

5 Q Would you like to see a copy?

6 A Sure.

7 Q Okay.

8 A Thank you.

9 Q Could you look at Page 184 of that order?

10 A I have Page 184.

11 Q Excuse me?

12 A I have Page 184.

13 Q Do you see -- excuse me. I'm sorry, I gave you the  
14 wrong page number. It's Issue 107.

15 COMMISSIONER JABER: Page 107 of the order?

16 MR. MEZA: Thank you for your patience. And I  
17 apologize for the delay, but I think I found the page. It's  
18 Page 173. I apologize, Commissioners.

19 COMMISSIONER JABER: No problem.

20 BY MR. MEZA:

21 Q You would agree with me that on Page 173 there's a  
22 section entitled, "Decision." And subject to check, I will  
23 tell you that this portion of the order deals with MCI's  
24 attempt to arbitrate a limitation of liability. Now, if you  
25 could read on Page 173 and 174 for me to yourself those two

1 pages, I'd appreciate it.

2 A You'd like me to read the section marked "Decision"  
3 that continues from 173 to 175?

4 Q Actually, you can stop on Page 174 at the second to  
5 last paragraph.

6 A Okay. I have read through the second to last  
7 paragraph on Page 174.

8 Q And you would agree with me that this decision --  
9 this part of the decision deals with the limitation of  
10 liability language and whether it's appropriate to arbitrate  
11 and the discussion of the District Court's decision in the  
12 MCI --

13 A Yes, it appears that the discussion is of a  
14 liquidated damages clause.

15 Q Now, if you could, go to Page 175, first paragraph.  
16 Do you see the first paragraph? And the first full sentence in  
17 that paragraph starting with the word "we," do you see that?

18 A Yes.

19 Q Could you read that sentence, please.

20 A Out loud?

21 Q Yes, into the record.

22 A "We find that the record does not support a finding  
23 that" --

24 Q It's the sentence right before that, the first full  
25 sentence.

1 A Oh, I'm sorry.

2 Q That's okay.

3 A "We note that liquidated damages is not an enumerated  
4 item under Sections 251 and 252 of the Act."

5 Q And I know it seems like an eternity ago when I asked  
6 you this question, but is your opinion different than this  
7 Commission's decision as to whether liquidated damages is an  
8 enumerated item under the Act?

9 A I assume you're asking me not the specific decision  
10 that was before the Commission in WorldCom versus -- in this --  
11 I'm sorry, I don't know the caption of this that you've  
12 provided me. You're not asking me if I agree with the  
13 Commission's decision in this arbitration.

14 Q No, I'm just asking you that if -- is your opinion  
15 different than what this Commission found in this case?

16 A Having not read the entire decision and the facts  
17 before the Commission and the particular issues, I'm hesitant  
18 to compare my opinion to the opinion of the Commission in a  
19 multihundred page decision. I'd be happy to offer my specific  
20 opinion as to any of the issues related to Sections 251 and  
21 252, but I'm not in a position to be able to compare my opinion  
22 to the opinion of the Commission.

23 COMMISSIONER JABER: Well, let me ask you this.  
24 Where in Section 251 and Section 252 of the Act does it list  
25 liquidated damages as an enumerated item?

1 THE WITNESS: It does not list the phrase --  
2 liquidated damages does not appear anywhere in Section 251 or  
3 252 or, to the best of my knowledge, anywhere else in the Act.

4 COMMISSIONER JABER: All right.

5 BY MR. MEZA:

6 Q Would you agree with me that this Commission, based  
7 upon the facts before it in the MCI case, refused to impose the  
8 adoption of any disputed terms contained in the limited  
9 liability provision for breaching the material provision of  
10 that agreement? Would you agree with that?

11 A Again, I'm not in a position to discuss what the  
12 Commission did other than in the three paragraphs you've just  
13 had me read.

14 Q All right. Well, didn't you cite to this order in  
15 your summary?

16 A In the summary that I presented today?

17 Q Yes.

18 A No, I don't believe I did.

19 Q You were talking about another MCI case?

20 A Yes. I was talking about the MCI case decided on  
21 June 6th of 2000 by the Northern District of Florida.

22 Q All right. And you're not referring to the more  
23 recent MCI arbitration that this Commission has decided in I  
24 think it was March of 2001?

25 A That's correct, I was not referring to this decision.

1 Q Okay. Well, go ahead and read the last paragraph  
2 right before the new section on Page 175 where it begins,  
3 "Based on the foregoing."

4 A Would you like me to read it aloud?

5 Q No, you can read it to yourself.

6 A Okay. Okay.

7 Q Now, I'm going to reask my question. Do you consider  
8 yourself familiar with this order now that you've read it? So  
9 if I ask you a question, will you be able to respond to it,  
10 regarding that paragraph that you just read?

11 A Regarding this paragraph?

12 Q Yes.

13 A Sure.

14 Q Okay. Would you agree with me that this Commission  
15 in that order, based upon the facts before it, refused to  
16 impose the adoption of any disputed terms contained in the  
17 limited liability provision for breaching the material  
18 provision of that agreement?

19 A According to this paragraph you just had me read --

20 Q Yes.

21 A -- yes, it appears the Commission found that it did  
22 not have sufficient evidence before it in the record to make  
23 that determination. Yes.

24 Q Okay. Are you aware that after this decision, MCI  
25 and BellSouth reached an agreement on the limitation of

1 liability provision?

2 A I am aware of that, yes.

3 Q And are you also aware that BellSouth has offered  
4 that same language to Covad in this proceeding?

5 A I am aware of that as well, yes.

6 Q Would you also agree with me that the Georgia Public  
7 Service Commission recently addressed this issue?

8 A Yes, I am aware of that.

9 Q And would you agree with me, subject to check, that  
10 in order Docket Number 11901 that Commission ruled that the  
11 parties were not required to adopt language regarding a  
12 liability cap beyond what they are willing to agree upon  
13 through negotiations?

14 A I'm afraid I don't have a specific enough  
15 recollection of that order in order to be able to agree with  
16 you.

17 Q Would you like to see the order?

18 A If you'd like to show it to me, sure.

19 Q Yeah. If you could, please look at Issue 107, which  
20 is on Page 26. And if you could, read that to yourself,  
21 please.

22 A Okay. I have read it.

23 Q Would you agree with me that in this order that this  
24 Commission found that the parties were not required to adopt  
25 language regarding a liability cap beyond what they are willing



1 to agree upon through negotiations? Would you agree with that  
2 statement?

3 A Yes.

4 Q Okay. Now, Covad finds BellSouth's proposal  
5 unacceptable; is that correct?

6 A Yes.

7 Q And Covad -- well, does Covad know exactly what  
8 actions should be governed by a limitation of liability?

9 A I'm sorry, I don't understand that question.

10 Q What do you want the Commission to do today regarding  
11 this issue?

12 A We believe the Commission should, as part of this  
13 arbitration of issues unresolved between BellSouth and Covad,  
14 direct the parties to include in their interconnection  
15 agreement a provision that entitles Covad to pursue remedies  
16 against BellSouth for damage caused to Covad by BellSouth's  
17 failure to adhere to the terms of the contract, and that  
18 BellSouth should not be able to avoid liability or, I should  
19 say, potential liability for its failure to provide Covad the  
20 services and arrangements due under the contract by imposing a  
21 cap on that liability that limits BellSouth's liability only to  
22 the actual cost of the services due.

23 Q And in your opinion, that cap should not apply to --  
24 in any situation; correct?

25 A I believe that the imposition of a liability cap is

1 inappropriate for a material breach of the contract.

2 Q Which you said we don't have to hypothetically  
3 discuss; correct?

4 A Right. The provisions that we are asking the  
5 Commission to adopt in this arbitration are simply provisions  
6 that entitle Covad to take its burden of proof into a court and  
7 attempt to prove that BellSouth has harmed us in a material  
8 way. Nothing in what we're asking the Commission to do  
9 actually imposes any liability on BellSouth. All that we're  
10 asking for is our ability to pursue remedies in court beyond  
11 the actual cost of a loop, for example.

12 Q You stated --

13 COMMISSIONER PALECKI: Let me interrupt, I'm sorry.  
14 I'm trying to figure out what your real concern is here. And  
15 it just comes to mind that if a service is not properly  
16 performed by BellSouth, it's very likely that it could result  
17 in the loss of the customer to Covad. Is that your real  
18 concern, that you want to have recourse if you are hooking up a  
19 DSL customer? It takes a month to get them hooked up. They  
20 get frustrated, and they go back to BellSouth, and they say,  
21 BellSouth, we're tired of waiting on Covad, we'd like you to  
22 hook us up to BellSouth DSL service. Is that your real concern  
23 here?

24 THE WITNESS: Yes, sir.

25 COMMISSIONER PALECKI: Thank you.

1 THE WITNESS: And if I may, Commissioner. That is,  
2 in our view, a commercially reasonable provision to have in a  
3 contract for services from a wholesale provider to a retail  
4 provider like Covad. We believe that in a normal commercial  
5 relationship between a wholesaler and a retailer where the  
6 retailer suffers harm as a result of the failure of the  
7 wholesaler to provide a necessary input as required by the  
8 contract, then the retailer is entitled to damages for that,  
9 which would include, as you suggest, the loss of a customer.

10 COMMISSIONER PALECKI: So that's why you're not  
11 really satisfied with the distinction between ordinary  
12 negligence and intentional acts or gross negligence, because  
13 it -- still whether it's ordinary negligence or not, it won't  
14 cover your loss of the customer in those circumstances where  
15 the customer becomes fed up and just decides not to use Covad.

16 THE WITNESS: That's correct. Of course, our burden  
17 of proof in trying to assert a claim against BellSouth would be  
18 more easily met in a case of gross negligence or willful  
19 misconduct, but again, as I mentioned before, all we're asking  
20 for is the ability to attempt to assert our rights in court for  
21 contract damages beyond the actual cost of the service.

22 COMMISSIONER PALECKI: Thank you.

23 BY MR. MEZA:

24 Q Covad provides service to ISPs; is that correct?

25 A Our customers include both end users and Internet

1 service providers.

2 Q For your end users who are ISPs, you would consider  
3 that to be a commercial relationship; correct?

4 A We don't have any end users who are ISPs.

5 Q For your customers. The ISPs who buy your service,  
6 would you consider that to be a commercial relationship?

7 A Yes.

8 Q Do you have a limitation of liability provision in  
9 your agreements between you and the ISPs?

10 A I'm not familiar with the limitation of liability  
11 provisions in our contracts with our ISPs. That's not an  
12 aspect of my job that has required me to look at those  
13 contracts, so I'm afraid I can't speak to it.

14 Q Do you think it would be reasonable for Covad to have  
15 such a provision?

16 A Yes.

17 Q Would you agree with me that Rule 51.809(c) requires  
18 ILECs to keep agreements or to make them available for opt-in  
19 for a reasonable period of time?

20 A Yes.

21 Q Would you also agree with me that the Maryland Public  
22 Service Commission has found that a request to opt-in into an  
23 agreement that only had six months left exceeded the bounds of  
24 a reasonable period of time?

25 A I'm afraid I don't have a copy of that decision in

1 front of me, and I would be unable to agree with your  
2 characterization of the holding in that decision without  
3 actually reading the holding.

4 Q Okay. I will show you a copy so that you can become  
5 familiar with it.

6 COMMISSIONER PALECKI: While this is being passed  
7 out, I wanted to ask: If this time was a three-month period  
8 rather than a six-month period, would you agree on a limitation  
9 to the ALEC's right to opt-in? I mean, it really does seem  
10 that when you reach a very sort period of time --

11 COMMISSIONER JABER: Commissioner Palecki, I hate to  
12 interrupt you, but we need -- they probably need to listen to  
13 the question too. So do you want to hold that thought?

14 COMMISSIONER PALECKI: Yes.

15 COMMISSIONER JABER: He stood right there, and I  
16 though we better let them sit down first.

17 COMMISSIONER PALECKI: I'll repeat my question. If  
18 we were talking about a shorter period and just out of the blue  
19 I'm going to say three months, you would agree, would you not,  
20 that there is a certain length of time where there should be a  
21 limitation on the ALEC's right to opt-in? And perhaps six  
22 months you might think is long, but would three months be  
23 reasonable, in your opinion?

24 THE WITNESS: Certainly, Commissioner, as you  
25 highlight the question is, how do we flush out the term

1 "reasonable?" I would point you, though, to the FCC's  
2 discussion of the term "reasonable" in the local competition  
3 order that the Commission put out in 1996. The reason I say  
4 that is because despite the suggestion of BellSouth that the  
5 reasonableness language of the Commission's Rule 51.809 is  
6 directed solely at a time period, the actual reason that the  
7 FCC cited in adopting the reasonableness rule was to protect  
8 carriers against changes in technology and changes in price so  
9 that, in our view, the focus of the reasonableness inquiry is  
10 not on a set period of time, but rather the burden is on  
11 BellSouth to prove that it is not reasonable for an agreement  
12 to be available for opt-in because, for example, technology has  
13 changed and the services that BellSouth agreed to provide two  
14 years ago are no longer technically feasible to provide.

15           So I apologize for the long-winded answer to your  
16 relatively simple question, but the reason I highlight that is  
17 because the purpose behind the rule is not to put a fixed  
18 period of time in place, but rather to allow BellSouth and  
19 other incumbent LECs to argue that it is no longer technically  
20 feasible for them to make a particular interconnection  
21 agreement or provisions therein available.

22           COMMISSIONER PALECKI: Thank you.

23           COMMISSIONER JABER: Mr. Meza.

24 BY MR. MEZA:

25           Q     That brings up an interesting question. Are you then

1 saying that the Rule 51.809 when it refers to reasonable period  
2 of time doesn't necessarily mean a time period?

3 A No, that's not what I said.

4 Q You're saying the intent of the rule was for the  
5 ILECs to refuse to offer agreements that were technically  
6 unreasonable or infeasible or out of date; correct?

7 A Rather than have you characterize it, why don't I  
8 just restate it? The intent of the Commission's rule is not to  
9 impose a set in stone time period that agreements would or  
10 would not be available. If that were the case, the FCC would  
11 have adopted, for example, BellSouth's proposal that an  
12 agreement not be available for the last six months of its term,  
13 but the Commission did not do that.

14 What the Commission adopted was a rule permitting an  
15 incumbent carrier to argue to a fact finder, such as a state  
16 commission, that it is technically infeasible or infeasible  
17 because of changes in price to offer an agreement after a  
18 certain period of time because, for example, the service that a  
19 carrier agreed to provide two years ago is no longer  
20 technically feasible to provide. And when I say "for example,"  
21 I'm not making up the example myself, that's the example that  
22 the FCC cited in the local competition order, a change in  
23 technology.

24 So, yes, a reasonable period of time obviously  
25 involves a period of time, as I'm sure you know that I

1 recognize, but the reasonable period of time is not to be  
2 determined in a vacuum or to be determined arbitrarily. It's  
3 to be determined based on the incumbent carrier carrying its  
4 burden of demonstrating to a fact finder that it is not  
5 technically feasible for them to provide the either entire  
6 agreement or particular terms of that agreement.

7 Q Getting back to the case I provided you. If you  
8 could, look on Page 5. And you can -- if you want to read the  
9 whole thing, feel free, but I'm specifically going to ask you  
10 about the paragraph that has the asterisk and the three next to  
11 it.

12 A Okay. I see that paragraph.

13 Q Could you read that paragraph, please.

14 A Would you like me to read it to myself?

15 Q Yes.

16 A Okay. I've read the paragraph.

17 Q Would you agree with me that the agreement at issue  
18 in this case was signed on July 16th, 1996?

19 A Yes.

20 Q And would you also agree with me that the agreement  
21 at issue had a termination date of July 1st of 1999?

22 A Yes.

23 Q And that's pretty much a three-year time period.  
24 Would you agree with that?

25 A Yes.



1 Q And would you also agree with me that in this case  
2 the Maryland Public Service Commission found that Global NAPS'  
3 request to opt-in, which occurred two and a half years after  
4 the agreement was available for public inspection, exceeded the  
5 bounds of reasonable period of time?

6 A Yes.

7 Q Now, correct me if I'm wrong, but in your testimony,  
8 one of the reasons you say that ALECs or Covad needs to be able  
9 to opt-in to an agreement at any time is in a situation where  
10 you're arbitrating or negotiating a new agreement, and there  
11 may be another agreement out there with more favorable terms  
12 that you want to take advantage of prior to your arbitration is  
13 resolved; is that correct?

14 A That is correct.

15 Q All right. There is nothing prohibiting Covad from  
16 attempting to amend its current arbitration agreement or  
17 interconnection agreement, is there?

18 A As a legal matter?

19 Q As a legal matter, yes.

20 A There is nothing that prevents us from attempting to  
21 amend as a legal matter. As a practical matter, there are  
22 numerous obstacles to that.

23 Q Well, isn't it a fact that Covad has amended its  
24 agreement with BellSouth on several occasions?

25 A Yes.

1 Q And if Covad wanted to take advantage of a more  
2 recent agreement that had more advantageous terms, couldn't it  
3 just opt-in to that agreement?

4 A Any agreement?

5 Q Yeah.

6 A If your question is, are we entitled under the law to  
7 opt-in --

8 Q Yes.

9 A -- to another agreement --

10 Q Yes.

11 A -- yes, the law entitles us to do that.

12 Q Would you consider opting in a week before the  
13 agreement expires to be a reasonable period of time?

14 A It, of course, depends on the circumstances  
15 surrounding the need to opt-in and the status of negotiations  
16 between Covad and BellSouth. You have to understand that the  
17 reason we would do this is in order to stay in business and  
18 continue to offer service to customers. In the absence of an  
19 agreement, we can't do that. We certainly may be forced by  
20 exigent circumstances, such as the failure of Covad and  
21 BellSouth to reach agreement, to opt-in to another agreement.  
22 As you well know, we prefer to do the negotiations ourselves  
23 and come up with our own agreement, and opt-in is not an option  
24 that we often exercise. However, in the event that we needed  
25 to stay in service, and we needed an agreement with BellSouth,

1 and we couldn't reach an agreement with BellSouth through the  
2 normal interconnection agreement negotiation process, yes, we  
3 may need to in an emergency opt-in to an agreement that has a  
4 very short period of time left on it.

5 Q Well, if you can't reach an agreement, why would you  
6 enter into an agreement that only had a week left, and then  
7 you've got to start the whole process over again?

8 A Again, we are not in a position where we have the  
9 ability to go in search of another wholesale supplier of  
10 network elements. We have to negotiate with BellSouth. And if  
11 those negotiations do not reach fruition at a time when we are  
12 trying to offer service to our customers, we have to go in  
13 search of another agreement to opt-in to. And that may be an  
14 agreement that has a very limited period of time left on it,  
15 but we are driven by the need to stay in business and the need  
16 to have an agreement in place with BellSouth.

17 Q Well, in this situation in this case, Covad and  
18 BellSouth are still operating under the old agreement; is that  
19 correct?

20 A I don't know. You haven't mentioned that as part of  
21 the hypothetical.

22 Q I'm asking you a factual question.

23 A Oh, I'm sorry, I thought you were still on the  
24 hypothetical about the --

25 Q No. In this case, isn't Covad and BellSouth

1 operating under the old agreement between the parties?

2 A Yes.

3 Q And that agreement expired or would have expired upon  
4 its terms; correct?

5 A Yes.

6 Q And the parties have yet to resolve all of the issues  
7 involved with the negotiations; is that correct?

8 A Yes.

9 Q And Covad has not opted in to any other agreement  
10 since the termination or prior to the termination of that  
11 agreement; is that correct?

12 A Not that I'm aware of.

13 Q That's not correct, or you're not aware of Covad  
14 opting in?

15 A I am not aware of Covad opting in. I'm not certain,  
16 I'm not aware of any.

17 Q And Covad today is still providing customers; is that  
18 correct?

19 A I'm sorry?

20 Q Covad today is providing service to customers; is  
21 that correct?

22 A That's correct.

23 Q Do you have your direct testimony handy?

24 A I don't have anything in front of me, other than what  
25 you've given me and my notes from my opening statement.

1 MS. BOONE: I've got it.

2 BY MR. MEZA:

3 Q Okay. If you could, look on Page 17, please.

4 MS. BOONE: I'm sorry, that's the rebuttal.

5 THE WITNESS: Okay.

6 COMMISSIONER JABER: Mr. Meza, you're referring  
7 Mr. Oxman to Page 17 of the direct testimony?

8 MR. MEZA: Yes.

9 MS. BOONE: So much testimony, I'm sorry.

10 MR. MEZA: I have it, Cathy. Yeah, it's no big deal.

11 MS. BOONE: Here it is. I'll just give him this one.  
12 Let's just keep both of these up there.

13 THE WITNESS: Thank you.

14 BY MR. MEZA:

15 Q If you could, read Lines 10 through 13, please, on  
16 Page 17.

17 A To myself?

18 Q Yes.

19 A Okay. I have read it.

20 Q And in that hypothetical, or example, you set  
21 forth -- you're explaining once again why it's beneficial to  
22 Covad to have the ability to opt-in at any time. You state,  
23 and I quote, suppose that BellSouth enters into an agreement  
24 with one of Covad's competitors that would provide for a firm  
25 five-day loop installation interval for the next six months.

1 Although Covad believes it will ultimately prevail on its  
2 request for a firm three-day interval, it will still be able to  
3 use Section 252(i) to opt-in to the firm five-day interval  
4 while its three-day arbitration is pending.

5           And that hypothetical presented in your testimony, it  
6 is based on the fact that BellSouth entered into an agreement  
7 with an ALEC for six months; is that correct?

8           A     That's correct.

9           Q     Are you aware of any contract that BellSouth has  
10 entered into for a period of six months?

11          A     I have absolutely no idea whether BellSouth has ever  
12 entered into a contract with any party for six months.

13          Q     And didn't you state on Page 18 of your testimony  
14 that most of BellSouth's interconnection agreements have a  
15 duration of two years?

16          A     Yes.

17          Q     Would you agree with me that Rule 51.809 requires an  
18 ILEC to offer an agreement on the same rates and terms and  
19 conditions as those provided in the agreement the ALEC wants to  
20 opt-in to?

21          A     Yes.

22          Q     Under Covad's interpretation of 51.809, if BellSouth  
23 and an ALEC agreed upon a rate in a five-year agreement, could  
24 Covad receive that same rate for two years instead of five?

25          A     If BellSouth agreed to provide it, yes.

1 Q Could Covad require BellSouth to reduce the term of  
2 the contract for the rate?

3 A Assuming that issue was brought to arbitration before  
4 a Commission and Covad were to request that rate for a shorter  
5 term, do you mean as a factual matter or as a legal matter?

6 Q I'm asking you under your interpretation of 51.809.  
7 BellSouth and an ALEC reach an agreement for a specific rate  
8 for a five-year term, can Covad under your interpretation of  
9 the FCC rule opt-in to that agreement and require a different  
10 term?

11 A The reason I asked if you were referring to it as a  
12 legal matter or a factual matter is, I'm not sure if you're  
13 asking me to interpret the FCC's rule or to interpret our  
14 ability to enter into an interconnection agreement provision.

15 Q I'm asking you under the FCC's rule. Is that  
16 allowed?

17 A It is allowed, yes, for BellSouth to give us those  
18 contract terms. Yes, it is allowed.

19 Q Does BellSouth have to give you those terms?

20 A Under the FCC's rules, the FCC's interpretation of  
21 Section 51.809 provides that if a carrier seeks to opt-in to an  
22 agreement that has a particular rate for a particular period of  
23 time, the incumbent LEC can refuse to provide that rate for a  
24 different period of time assuming it can demonstrate as a  
25 factual matter that it was only offering the rate for that set

1 period of time because that's the period of time that the rate  
2 is appropriate.

3 COMMISSIONER JABER: Mr. Meza, I need to give the  
4 court reporter a break.

5 MR. MEZA: Okay. That's fine.

6 COMMISSIONER JABER: So let's take 10 minutes and  
7 come back at 11:15. Thank you.

8 (Brief recess.)

9 COMMISSIONER JABER: Let's go ahead and get started.  
10 Mr. Meza, you were finishing up cross examination.

11 MR. MEZA: Yes, ma'am. Thank you.

12 BY MR. MEZA:

13 Q Would you admit, Mr. Oxman, that it's Covad's  
14 position that if the agreement itself on the four corners  
15 indicates a legitimate relationship between an arrangement in  
16 other clauses, that Covad would accept those other clauses?

17 A I'm sorry, I don't understand the question. Are you  
18 talking about opting in to certain provisions of an agreement?

19 Q Yes, yes. Yes, that's what I'm talking about.

20 A Okay. If --

21 Q I mean, and maybe if I help you to refresh your  
22 recollection by looking at your testimony on Page 18.

23 A Yes.

24 Q Okay. So your answer to my question is yes?

25 A Yes.



1 Q Okay. Good. I think that's the most progress we had  
2 all day.

3 A You ask short questions; I'll give sort answers.

4 Q Would you agree with me that the common practice in  
5 the industry is for bills to be due on a certain due date and  
6 not 30 days from when the payor receives the bill?

7 A I'll agree with you, yes.

8 Q Would you agree with me, subject to check, that  
9 BellSouth's tariffs with its customers in its access service  
10 tariff requires payment to be due by a date certain as stated  
11 in the bill and not 30 days when the payor receives the bill?

12 A I'll accept your representation on that.

13 Q Is it Covad's position that if BellSouth sends an  
14 electronic and paper bill within the ten business days of the  
15 bill date, that Covad will pay that amount by the date stated  
16 in the bill?

17 A You're assuming that all the charges in those bills  
18 are properly due, and we don't dispute any of them?

19 Q Correct, correct.

20 A Yes.

21 Q So Covad's only problem is when one form of the bill  
22 is mailed or sent after the ten business days from the due  
23 date -- from the bill date?

24 A We don't currently receive bills in electronic form  
25 from Covad, I'm sorry, from BellSouth. We receive them in

1 paper form. So you're correct. Our issue is with the date of  
2 receipt of the paper bills at the time that we have to review  
3 those paper bills.

4 Q But if the paper bills are mailed or sent to you via  
5 Federal Express, or however, within the ten business days from  
6 the bill date, does Covad have a problem with that?

7 A Yes.

8 Q I thought you just told me that as long as we mailed  
9 it within ten business days, you intend to pay it by the due  
10 date.

11 A You said if we received it within ten business days,  
12 not mailed it.

13 Q Okay. Let me rephrase it if you misunderstood me.  
14 If BellSouth sends a bill as it is required under the proposal,  
15 which I think -- which the parties agreed to, within ten  
16 business days of the bill date, does Covad intend to pay the  
17 bill within the due date -- by the due date?

18 A If we receive the bill within ten business days, is  
19 it that your hypothetical?

20 Q No. Are you familiar with the provision at issue?

21 A Yes.

22 Q Under the provision, and you can check it if you'd  
23 like, I believe it says that BellSouth will provide to Covad  
24 electronic and paper form of the bill within ten -- will send  
25 it to Covad within ten business days of the bill date. Do you

1 agree with that?

2 A I agree that that's BellSouth's proposal, yes.

3 Q Well, maybe I misunderstood as to what the actual  
4 dispute is. I thought --

5 A Okay. Perhaps I can clarify for you.

6 Q Okay.

7 A Our issue, as set out in my testimony and as I  
8 mentioned in the summary of my testimony, is that BellSouth has  
9 a date on which it issues a bill. And the date is the date on  
10 the bill, and payment is due 30 days from the date on the bill.  
11 Our problem is that we do not receive the bill in a time period  
12 that allows us 30 days to actually reconcile the amounts due  
13 and make payment to BellSouth.

14 COMMISSIONER PALECKI: Well, let me just jump in.

15 THE WITNESS: I'm sorry.

16 COMMISSIONER PALECKI: Let me jump in on that. It's  
17 BellSouth's position to have payment tied to the bill date.  
18 Covad is asking for payment tied to the receipt date. Would a  
19 reasonable compromise here be payment tied to either the  
20 postmarked date or the acknowledged receipt from an approved  
21 carrier or delivery service?

22 THE WITNESS: Depending --

23 COMMISSIONER PALECKI: Obviously, BellSouth isn't  
24 going to know what your receipt date is, and they don't want to  
25 be put in a position where they have to take your word for

1 that.

2 THE WITNESS: That certainly makes sense,  
3 Commissioner.

4 COMMISSIONER PALECKI: Would that be a reasonable  
5 compromise on this?

6 THE WITNESS: Depending on the manner of transport.  
7 If it's an overnight transport, obviously that would be  
8 extremely satisfactory. As I'm sure you know from our  
9 testimony, our issue is, we have frequent and very expensive  
10 disputes with BellSouth over these bills. And the way  
11 BellSouth has put their payment system in place does not afford  
12 us the opportunity to audit those bills. So all we're really  
13 looking for on this part of the billing dispute issue is  
14 sufficient time to review the bills that are sent to us. So --

15 COMMISSIONER PALECKI: It's a time issue, but on the  
16 billing date, it requires you to trust BellSouth. On receipt  
17 date, it requires BellSouth to trust you. And obviously, these  
18 parties don't trust each other. So why don't we tie it to a  
19 date such as a postmark or an acknowledged receipt from the  
20 shipper? And then you don't have to worry about that issue.

21 THE WITNESS: That seems like an eminently reasonable  
22 way of resolving the dispute, yes.

23 COMMISSIONER JABER: And as a follow-up, if that is  
24 reasonable, then what difference does it make to you how they  
25 get it to you? If you have 30 days from the postmark date or

1 from the date you acknowledge receipt, it doesn't matter how  
2 they get you the bill.

3 THE WITNESS: I respectfully disagree, Commissioner.

4 COMMISSIONER JABER: Okay.

5 THE WITNESS: If they send it to us via traditional  
6 U.S. mail which guarantees a five to seven business day  
7 transport, that's very different from sending it to us via  
8 overnight Federal Express where we're guaranteed to get it the  
9 next day. If it takes a day versus a week, that's a very big  
10 difference when you're talking about only 15 or 20 days that  
11 we're going to have left to review the bills.

12 COMMISSIONER JABER: So then the most preferable from  
13 your standpoint would be when you acknowledge receipt of it?

14 THE WITNESS: No. The preferable would be, as  
15 Commissioner Palecki points out, it's reasonable to rely on the  
16 date of an independent third party transport mechanism, like  
17 Federal Express, rather than relying on either the sent date or  
18 the receipt date. But if that third party is going to be a  
19 third party that takes a week to get to us, that's not going to  
20 solve our concerns. If we get it the next day, that does.

21 COMMISSIONER JABER: Okay.

22 BY MR. MEZA:

23 Q Hasn't BellSouth offered to Covad an electronic  
24 method of sending it to Covad where it would be instantaneous?

25 A Yes, BellSouth has proposed that. Unfortunately,

1 Covad is unable to adopt that electronic system.

2 Q Okay. Why?

3 A In the first and most important instance, we are at a  
4 particular period, as I'm sure everyone in this room is aware,  
5 of the lack of availability of capital funds to make  
6 significant investments in our infrastructure. The proposal  
7 that BellSouth has made to us, I understand, for electronic  
8 billing would cost us well over a million dollars to implement.  
9 And we certainly would love the ability to interface  
10 electronically with BellSouth on that system. We don't have  
11 the money to spend on the capital expenditure. That, of  
12 course, in and of itself is not a sufficient excuse for seeking  
13 arbitration of the issue, but we think it's very important for  
14 the Commission to be aware of.

15 The solution to that problem, given our inability to  
16 fund the purchase of such a system, is to reach a reasonable  
17 compromise to ensure that we have sufficient time to review  
18 paper bills. We would have appreciated BellSouth's willingness  
19 to work with us on that issue given the realities of the  
20 financial markets, but unfortunately, we're before the  
21 Commission on this issue.

22 Q And you would agree with me that if the Commission  
23 would adopt Covad's proposal as to this issue that other ALECs  
24 could opt-in to this agreement and have a 30-day upon receipt  
25 billing date as well?

1 A Yes.

2 Q And I'm not suggesting Covad would, but other ALECs  
3 could suggest that they have not received a bill in order to  
4 delay payment. Would that be a possibility?

5 A Yes.

6 Q And as far as how Covad is currently getting its  
7 bills today, BellSouth sends to Covad a magnetic tape through  
8 Federal Express; is that correct?

9 A Yes.

10 Q So BellSouth is providing you at least in one format  
11 with overnight delivery of one version of the bill.

12 A In that particular circumstance as to the magnetic  
13 tape, yes. As to all bills, no.

14 Q On Page 24 of your direct testimony you state that  
15 Covad's proposal is commercially reasonable simply -- well, I'm  
16 not going to quote, I'm just going to paraphrase for you, and  
17 you can agree with me whether it's correct or not, that Covad's  
18 proposal was commercially reasonable given that it is a  
19 high-volume purchaser. Would you agree with that?

20 A Yes, that is my testimony.

21 Q Is it Covad's belief that a smaller ALEC is not  
22 entitled to pay its bill 30 days from receipt?

23 A My testimony doesn't cover what a smaller carrier is  
24 or is not capable or entitled to do. It only covers what Covad  
25 is looking for.

1 Q And your testimony is that because Covad is a  
2 high-volume purchaser, it should be able to receive this type  
3 of bill payment which you admitted is different than the  
4 industry standard.

5 A That is one of the reasons we believe that it's  
6 appropriate for us to have this. Some of the other reasons I  
7 cite in there include the large number and expensive disputes  
8 that we have with BellSouth over incorrect billing.

9 Q Okay. You've mentioned those disputes. And isn't it  
10 a fact that some of those disputes have been resolved and, in  
11 fact, in Covad's favor?

12 A Yes.

13 Q And isn't it also a fact that while those disputes  
14 were pending, BellSouth has not required Covad to make payment  
15 on the disputed amount?

16 A We have many disputes underway. I'm not sure if that  
17 statement is true as to all of them. I just don't know the  
18 answer.

19 Q You don't know?

20 A I do not know if that is correct or not.

21 Q Okay. Do you know if during the dispute period  
22 whether -- if BellSouth is charging Covad late payment charges  
23 on the amount that Covad claims is in error?

24 A I believe the way the contract works is that --

25 Q I'm talking today, currently, how Covad is operating



1 today.

2 A That's what I'm speaking to. I believe that the way  
3 our agreement with BellSouth works is that if we incorrectly  
4 withhold payment, we owe you not only a late payment fee, but  
5 we also owe you a penalty that's an interest amount as well.

6 Q But that's only if after through the dispute  
7 resolution it is determined that Covad actually owes the money.

8 A That's correct.

9 Q Okay. Now, would you also agree with me that as to  
10 this new agreement, BellSouth agrees that Covad should not have  
11 to pay portions of a bill that Covad disputes what that dispute  
12 is proceeding?

13 A Yes, that's correct.

14 Q And would you also agree with me that BellSouth  
15 agrees that Covad only has to pay late charges on disputed  
16 amounts that Covad is eventually determined to owe?

17 A If Covad disputes the amount?

18 Q And it's determined that Covad actually owes the  
19 amount, late changes are owed?

20 A Yes, that's correct.

21 Q But if through the dispute process it is determined  
22 that Covad does not owe the amount, then no late charges are  
23 placed?

24 A Not exactly. If Covad does not initiate the dispute  
25 process on time. In other words, if Covad gets its bill late

1 from BellSouth and isn't given sufficient time to review the  
2 bill and then initiate the dispute resolution process, in that  
3 case even if we eventually prevail, we would owe late payment  
4 fees.

5 Q And the opposite of that would be true. If you do  
6 get your bill in time but you failed to pay it in time, you  
7 would pay late charges?

8 A In the absence of a legitimate dispute?

9 Q Yes.

10 A That's correct.

11 Q Okay. Would you agree with me that if another ALEC  
12 adopted Covad's arbitration agreement and the Commission  
13 adopted your proposed language, that they would have an  
14 incentive to contest bills to avoid payment if late charges  
15 were not to be paid on disputed amounts that were eventually  
16 determined to be owed?

17 A No.

18 Q You wouldn't agree that one possible way to delay  
19 payment would be just to dispute a charge?

20 A Well, I can't speak as to an agreement you have with  
21 anybody else, but as to our agreement, as we just discussed, if  
22 we eventually end up owing the amount, then we owe you the  
23 amount, and we owe you -- if we didn't properly open the  
24 dispute. In other words, if we gamed the system and didn't  
25 open the dispute properly, we would owe you late charges and

1 interest penalties.

2 Q Well, I'm asking you if the Commission adopted  
3 Covad's proposal, and I'm just asking you, is it's a  
4 possibility?

5 A I suppose it's a possibility, sure.

6 COMMISSIONER JABER: Mr. Oxman, when a company --  
7 when an ALEC disputes the amount from BellSouth and loses the  
8 complaint, so to speak, and has to pay the late charges, are  
9 they paid all at once under the current agreements?

10 THE WITNESS: I'm afraid I don't know the answer to  
11 that.

12 COMMISSIONER JABER: Okay.

13 THE WITNESS: Do you mean is the entire amount, the  
14 disputed amount plus the penalty and interest, due at the same  
15 time?

16 COMMISSIONER JABER: Yes.

17 THE WITNESS: I honestly don't know the answer to  
18 that.

19 MR. MEZA: That's all I have.

20 COMMISSIONER JABER: Okay. Staff. Commissioners,  
21 before Staff gets to its questions, do you have questions?

22 MS. BANKS: Commissioner Jaber, Staff has nothing.

23 COMMISSIONER JABER: Ms. Boone, redirect.

24 MS. BOONE: I have very brief redirect.

25 REDIRECT EXAMINATION

1 BY MS. BOONE:

2 Q Mr. Oxman, you were shown the Florida MCI decision  
3 and a Georgia decision about limitation of liabilities, weren't  
4 you?

5 A Yes. I still have them in front of me.

6 Q Okay. Now, help me understand this, because if the  
7 Commissions there said, we're not going to do anything about a  
8 limitation of liability cap, what does that mean for the  
9 parties? Or in this case if the same thing were decided, what  
10 would that mean for the contract between Covad and BellSouth?

11 A We would be unable to reach agreement on that issue,  
12 and the contract would probably not include the language that  
13 we proposed.

14 Q And it wouldn't include the language that BellSouth  
15 proposed?

16 A Correct.

17 Q So there would be no limitation of liability, not  
18 what Covad proposed and not what BellSouth proposed?

19 A That's correct.

20 Q And you've looked at these orders briefly, the  
21 Georgia and the Florida one, and they basically say that they  
22 are not going to impose a particular type of language; is that  
23 correct?

24 A That's correct.

25 Q And if that same decision were rendered in this case,

1 then we would have a problem with our contract?

2 A Right. BellSouth and Covad have been unable to reach  
3 agreement on this issue which is why we presented it to the  
4 Commission for arbitration.

5 MR. MEZA: I have to object to Ms. Boone's leading  
6 questions. This is redirect, and I ask that she ask  
7 appropriate questions.

8 COMMISSIONER JABER: Ms. Boone, just rephrase your  
9 questions. He's not objecting to the scope. He's objecting to  
10 the form of the question.

11 MS. BOONE: I'd be happy to, Commissioner. I was  
12 just getting a little excited. I was just trying to move it  
13 along.

14 BY MS. BOONE:

15 Q Now, why were we talking about liquidated damages?  
16 Is Covad proposing a liquidated damages provision?

17 A No.

18 Q So if liquidated damages are or are not enumerated in  
19 Section 251 or 252, what does that matter for this complaint?

20 A It's just as irrelevant for purposes of this  
21 complaint as the resolution by the Maryland PSC of a dispute  
22 between Global NAPS and Bell Atlantic Maryland.

23 Q Where in your testimony is Covad's proposal for the  
24 limitation of liability?

25 A I believe it is on Page 3 of my rebuttal testimony.

1 Q And where can that proposal be found today?

2 A That proposal I took from our current in effect  
3 interconnection agreement between BellSouth and Covad. The  
4 proposed language is simply a continuation of the language that  
5 is already in effect and that BellSouth and Covad agree to  
6 already.

7 Q And I believe Mr. Meza asked you whether the term  
8 "material breaches" was defined. Do you recall that group of  
9 questions?

10 A I do recall. And I believe I said it was not.

11 Q Are you aware of whether BellSouth has had any  
12 disputes about the term that exists in Covad's contract today  
13 in that liability cap?

14 A To the best of my knowledge, there has been no  
15 dispute that has arisen under this existing language for the  
16 duration of the agreement that we've had with them.

17 MS. BOONE: Okay. I'd like to pass out something to  
18 mark as Exhibit 8.

19 COMMISSIONER JABER: Ms. Boone, tell me what it is  
20 before we mark it.

21 MS. BOONE: Yes. This is the BellSouth/MCI agreed  
22 upon limitation of liability language.

23 COMMISSIONER JABER: Exhibit 8 shall be marked as  
24 BellSouth/MCI liability cap language.

25 (Exhibit 8 marked for identification.)

1 BY MS. BOONE:

2 Q Mr. Meza was asking you some questions about the MCI  
3 and BellSouth agreement subsequent to their arbitration here in  
4 Florida; is that right?

5 A Yes, he was.

6 Q Would you turn to the second page here -- or let's  
7 look at the first page first. And what is -- what -- can you  
8 read that very last paragraph and just generally tell me what  
9 you think that is, 11.1.1? Characterize it, if you would, when  
10 you are done reading.

11 A This appears to be a limitation of liability  
12 provision.

13 Q Okay. And would you turn to the next page, please,  
14 the very top of that page. What are the exceptions that are  
15 listed to that limitation of liability?

16 A There are two exceptions to the limitation of  
17 liability. Number one, in the event of gross negligence or  
18 willful misconduct, including intentional torts of BellSouth.  
19 And the second exception where the liability cap would not  
20 apply is BellSouth's refusal to comply with the terms of this  
21 agreement.

22 Q Now, as to number two, are there any exceptions to  
23 number two?

24 A BellSouth's refusal to comply with the terms of the  
25 agreement must be based upon a reasonable and good faith

1 interpretation of its terms.

2 Q Well, now, how is "good faith interpretation"  
3 defined, Mr. Oxman?

4 A It is not defined.

5 Q And how is a "reasonable refusal" defined?

6 A That is not defined either.

7 Q Do you have an opinion about whether this type of  
8 language would be open to dispute between Covad and BellSouth?

9 A It would be. It would be, as I mentioned in my  
10 earlier testimony, for Covad to establish before a trier of  
11 fact as to whether BellSouth's refusal to comply was indeed  
12 good faith or not. BellSouth would probably argue that it was,  
13 and Covad would probably try to establish that it wasn't, but  
14 since it's not defined in the contract, that would be for a  
15 trier of fact.

16 Q I'd like to ask you some questions about the opt-in  
17 provision. Now, you mentioned the First Report and Order.

18 MS. BOONE: And I'd like to mark this as Covad  
19 exhibit -- or just Exhibit 9.

20 COMMISSIONER JABER: First Report and Order?

21 MS. BOONE: It is actually a -- I just have a couple  
22 of pages from it, to make it easier.

23 COMMISSIONER JABER: Excerpts from First Report and  
24 Order, Exhibit 9.

25 (Exhibit 9 marked for identification.)



1 BY MS. BOONE:

2 Q Just take a look at that, please, Mr. Oxman. You  
3 were talking with Mr. Meza about what the FCC had said a  
4 reasonable time to opt-in was about. Could you direct us in  
5 here specifically to what you're talking about?

6 A Sure. The discussion I was having with Mr. Meza was  
7 in reference to the policy reasons that the FCC adopted Rule  
8 51.809 related to the reasonable time period for opting in.  
9 And the discussion I was having with him referenced -- well,  
10 not specifically because I didn't have it in front of me  
11 before, but Paragraph 1319 of this order where the FCC explains  
12 why it adopted Rule 51.809 and why it adopted the requirement  
13 that the agreements be made available for a reasonable period  
14 of time. And you'll see in this paragraph the two examples I  
15 cited of technical feasibility and changes in price.

16 Q How does this -- in your opinion, how did the FCC  
17 intend the reasonable time to be actually implemented by  
18 incumbent carriers?

19 A Well, as I mentioned to Commissioner Palecki in our  
20 discussion of what exactly a reasonable time means, the burden  
21 is on the incumbent LEC to demonstrate that there is a specific  
22 reason why an agreement should not be available for opt-in, for  
23 example, because a service that the incumbent agreed to provide  
24 two years ago is no longer technically feasible to provide.

25 Q Is there anything in this order which substantiates

1 BellSouth's right to limit opt-in rights at six months to the  
2 end of the term?

3 A No. There's nothing in here that imposes an actual  
4 time period or suggests that the incumbent has the power to  
5 limit the availability of an agreement solely based on a number  
6 of months and not on a technical or pricing reason.

7 Q I just have one more question about billing. If  
8 Covad pays -- goes ahead and pays BellSouth the bill and it's  
9 later determined that those charges were wrong, does BellSouth  
10 pay any penalty to Covad or interest?

11 A No.

12 MS. BOONE: Thank you, I have no further questions.

13 COMMISSIONER JABER: Thank you, Ms. Boone.

14 Exhibits -- before we get to the Covad exhibits, let me go  
15 ahead and have the record reflect that Exhibits 1 through 6 are  
16 admitted without objection.

17 (Exhibits 1 through 6 admitted into the record.)

18 COMMISSIONER JABER: Ms. Boone.

19 MS. BOONE: I'd like to move Exhibits 8 and 9 into  
20 the record -- oh, 7, 8, and 9, excuse me.

21 COMMISSIONER JABER: Exhibits 7, 8, and 9 are moved  
22 into the record without objection.

23 (Exhibits 7 through 9 admitted into the record.)

24 COMMISSIONER JABER: Mr. Oxman, thank you.

25 THE WITNESS: Thank you very much.

1 (Witness excused.)

2 COMMISSIONER JABER: Mr. Allen.

3 THOMAS E. ALLEN

4 was called as a witness on behalf of Covad Communications  
5 Company and, having been duly sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MS. BOONE:

8 Q Would you please state your name for the record,  
9 please.

10 A Yes, it's Tom Allen.

11 Q And by whom are you employed, Mr. Allen?

12 A I'm employed by Covad Communications.

13 Q Did you cause to be filed in this docket 32 pages of  
14 direct testimony and 30 pages of rebuttal testimony with 3  
15 exhibits?

16 A Yes, I did.

17 MS. BOONE: I would like to number the exhibits to  
18 Mr. Allen's testimony as -- TEA-1 would be Exhibit 10.

19 COMMISSIONER JABER: Hang on, Ms. Boone. Let the  
20 record reflect that Mr. Allen's prefiled direct testimony is  
21 inserted into the record as though read. Mr. Allen's rebuttal  
22 prefiled testimony is inserted into the record as though read.

23 Ms. Boone, Exhibits TEA-1 through 3, can they be  
24 identified as a composite exhibit?

25 MS. BOONE: Certainly. That would be easier.

1           COMMISSIONER JABER: All right. Composite Exhibit 10  
2 will be marked for TEA-1 through TEA-3.

3           (Exhibit 10 marked for identification.)

4           COMMISSIONER JABER: Go ahead, Ms. Boone.

5 BY MS. BOONE:

6           Q     Mr. Allen, do you have any changes or corrections to  
7 the testimony you have offered?

8           A     Yes, I do.

9           Q     Could you please make those.

10          A     Yes. It's on Page 28 of my direct. The  
11 first sentence should read, "Yes. Qwest had developed a  
12 completion report that it used to e-mail to Covad daily."

13          Q     Are there any other changes?

14          A     That's it.

15          Q     If I asked you the same questions, would your answers  
16 be substantially the same as those you've given?

17          A     Yes, they would.

18

19

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25

1 **Q. What is your name and for whom are you employed?**

2 A. My name is Tom Allen, and I am employed as Vice President of ILEC Relations for  
3 Covad Communications Company (“Covad”). My business address is 10 Glenlake  
4 Parkway, Suite 650 Atlanta, GA 30328.

5 **Q. What are your responsibilities as Vice President of ILEC Relations?**

6 A. As Vice President of ILEC Relations and External Affairs, I have responsibility for  
7 regulatory and ILEC management for the BellSouth region.

8 **Q. What is the purpose of your testimony?**

9 A. I want to provide the Commission with a general understanding of the reasonable  
10 terms and conditions Covad has proposed in negotiations for its Interconnection  
11 Agreement with BellSouth. Specifically, I will be addressing issues 5(a), 5(b), 5(c),  
12 6, 7(a), 7(b), 8, 11, 12, 13, 21, 22, 29, 30. In addition to myself, Covad is filing direct  
13 testimony of four other witnesses. Tom Koutsky will address Issues 1, 2, 3, 31 and  
14 32(a) (as well as the Issue A proposed by staff regarding this Commission’s  
15 jurisdiction to hear this arbitration). William Seeger will address Issues 5(a), 5(b),  
16 5(c), 8, 25, 30. As a panel, Elizabeth Kientzle and Joseph Riolo will address Issues  
17 16, 18, 23, and 24 (with respect to line sharing costs only).

18 Furthermore, since the last issue list was submitted to the Commission, the  
19 parties have continued to work to resolve certain open issues. The following issues  
20 have all been resolved and will not need to be litigated in this docket: 4, 9, 14, 15, 17,  
21 20, 26, 27, 28, 32(b), 33, 34, and 35. Additionally, BellSouth and Covad agreed that  
22 issues 10(a), 10(b), and 24 (except for costs relating to line sharing) have been

1 litigated and will be resolved by the Final Order in Docket 990649-TP, the UNE  
2 Pricing docket. Those three issues likewise will not need to be addressed in this  
3 docket.

4 As the Vice President of ILEC Relations, I spend a great deal of time in my  
5 job ensuring that Covad's sole supplier, BellSouth, is able to meet its commitments  
6 under the interconnection agreement. Covad needs an Interconnection Agreement  
7 with reasonable terms that allow Covad to successfully develop its business plan.  
8 Therefore, these key unresolved issues must be addressed and incorporated into an  
9 interconnection agreement between Covad and BellSouth.

10 **Q. Briefly describe your professional and educational background?**

11 A. I graduated from Emory University in 1976 with a BA in Political Science. I then  
12 attended the University of Georgia where I graduated with a Master's Degree in  
13 Public Administration, majoring in Public Finance in 1978. I began my career with  
14 Southern Bell in the Residence Installation and Maintenance Department as an  
15 Installation Foreman in Augusta, Georgia. My next assignment was as Dispatch  
16 Supervisor for the Augusta District. I went into Customer Services where I worked  
17 as a Business Office Manager and in various positions in the Billing and Collection  
18 group in the Customer Services-HQ organization and the Rates and Tariff -  
19 Regulatory group at Southern Bell headquarters. By 1990, this group was  
20 incorporated into the BellSouth Regulatory Policy and Planning organization. I was  
21 a part of this group where I worked on Local Competition planning until I left  
22 BellSouth in October of 1995.

1           After leaving BellSouth, I joined Intermedia Communications as Divisional  
2 Vice President- Regulatory and External Affairs with all regulatory responsibilities.  
3 In this role, I was also the lead negotiator of Interconnection Agreements. In July  
4 1997, I joined ICG Communications as Vice President of Regulatory and External  
5 Affairs. Finally, I joined Covad Communications in September 1999 as Vice  
6 President of ILEC Relations and External Affairs with responsibility of the  
7 regulatory and ILEC management in the BellSouth region.

8 **Q. Describe Covad's general business plan.**

9 A. Covad is a competitive local exchange carrier that provides high-speed Internet and  
10 network access utilizing digital subscriber line ("DSL") technology. Covad offers  
11 DSL services through Internet service providers ("ISPs") to small and medium sized  
12 businesses, home users, and directly to companies who use DSL to enable their  
13 employees to connect with their businesses' internal computer networks ("Local Area  
14 Networks") from their homes. Covad currently provides its services across the  
15 United States in 81 of the top metropolitan statistical areas ("MSAs"), including  
16 Orlando, Miami, Jacksonville, and Tampa.

17

18 **Issue 5(a): WHAT IS THE APPROPRIATE INTERVAL FOR BELL SOUTH TO**  
19 **PROVISION AN UNBUNDLED VOICE-GRADE LOOP, ADSL, HDSL, OR UCL**  
20 **FOR COVAD?**

21 **Q. What does Covad propose as the appropriate loop delivery intervals?**

22 A. BellSouth offers several different types of unbundled loops, including voice-grade,

1 ADSL, HDSL and Unbundled Copper Loops (UCLs). Covad proposes a uniform  
2 and firm loop installation interval of three (3) business days for these types of loops.  
3 The work required to provision a DSL loop is simple and routine. DSL loops are  
4 nothing but voice grade copper loops, and, therefore, provisioning intervals should  
5 reflect that fact.<sup>1</sup>

6 **Q. Why is it important that the Commission establish firm loop intervals?**

7 A. A firm and predictable loop delivery interval is critical to Covad's success in  
8 delivering competitive DSL service in Florida. BellSouth proposes that it be given  
9 a "targeted" 5-7 business days to provision a loop, counting from the time the Firm  
10 Order Confirmation ("FOC") date is returned to Covad. To Covad's customers, that  
11 means that BellSouth would have its "targeted" 2 business days to return the FOC  
12 and a "targeted" 5 business days to deliver the loop. Because BellSouth does not  
13 propose a firm interval for the Service Inquiry, the SI process has the effect of  
14 "tolling" the 5 business day target interval—only when the SI process is completed  
15 does the 5 business day target interval resume. Since no interval is established for  
16 the SI process, BellSouth in effect would be able to grant itself an unspecified time  
17 to install a loop.

18 BellSouth steadfastly refuses to negotiate a shorter loop delivery interval.

19 BellSouth will only commit to targets to provision a DSL loop, in addition to

---

<sup>1</sup> BellSouth also offers, and Covad requires, "IDSL-Compatible Loops." The installation interval for IDSL-Compatible loops is addressed in Issue 5(b).



1           whatever time is necessary to perform a Service Inquiry before the clock even starts  
2           on the loop provisioning interval.

3   **Q.   Is it appropriate to only consider the loop intervals without taking into account**  
4   **the Firm Order Confirmation (FOC) delivery interval?**

5   A.   No. As I stated above, BellSouth's FOC interval is two (2) business days. This is  
6       simply added to the loop delivery interval. This interval is compounded by the  
7       manual service order process of faxing LSRs. In other ILEC regions, the FOC  
8       interval is much shorter. For example, in SBC's PacBell region, the FOC interval  
9       is six (6) hours and in the Qwest region, the FOC interval is only twenty-four (24)  
10      hours.

11   **Q.   Do you have any other concerns with BellSouth's proposed loop delivery**  
12   **intervals?**

13   A.   Yes. In addition to the concerns I discussed above, BellSouth wishes to reserve the  
14      right to alter and extend loop delivery intervals unilaterally, as it did last year when  
15      it extended the loop delivery interval for the ISDN loop. Without a clear contract  
16      provision requiring BellSouth to deliver loops in a firm interval, BellSouth has no  
17      incentive to meet its "targets" or to improve. BellSouth's current loop delivery  
18      intervals deny Covad a meaningful opportunity to compete in Florida.

19           A firm loop interval—one that cannot be altered by unilateral action by  
20      BellSouth—will assist competitors, the Commission, and Florida consumers. From  
21      Covad's and the Commission's perspective, a firm and predictable loop installation  
22      interval in the contract will allow every Covad employee to refer to the

1 Interconnection Agreement to know decisively what is required of BellSouth. A firm  
2 loop delivery interval will also enable Covad to set customer expectations and deliver  
3 service that meets or exceeds those expectations.

4 **Q. Have other state commissions ordered loop delivery intervals for xDSL loops,**  
5 **which are included in interconnection agreements?**

6 A. Yes. Covad has won arbitration awards that have set specific loop delivery intervals  
7 in several states in the Verizon territory, such as New York, Pennsylvania, Maryland  
8 and Massachusetts. In those states, the standard loop delivery interval set for all  
9 DS0 loops (this category includes all xDSL type loops) is six (6) business days from  
10 receipt of a correct LSR. This means that unlike BellSouth, the firm order  
11 confirmation (FOC) interval is included in the loop delivery interval. This interval  
12 is significantly less than the previous interval of ten (10) business days that Verizon  
13 originally proposed. Further, based on the arbitration decisions, these intervals are  
14 to be clearly spelled out in the final Interconnection Agreement language between  
15 Covad and Verizon. That way, both Verizon and Covad understand the interval in  
16 which Verizon must deliver its loops to Covad and that interval may not be altered  
17 by Verizon unilaterally.

18 **Q. Has Covad also agreed to specific language in Interconnection Agreements**  
19 **regarding loop delivery intervals with other ILECs?**

20 A. Yes. Covad has reached agreement with SBC for its entire 13-state region regarding  
21 specific loop delivery intervals. Loop delivery intervals for stand-alone xDSL loops  
22 is five (5) business days with no conditioning and ten (10) business days with

1 conditioning. The loop delivery for line sharing is three (3) business days with no  
2 conditioning and ten (10) business days with conditioning. This agreement  
3 demonstrates that carriers can agree to clearly defined loop delivery intervals that are  
4 a part of the Interconnection Agreement language.

5 **Q. Why is it important to include intervals in the actual language of the**  
6 **interconnection agreement?**

7 A. Covad employees must have a single reliable source to go for loop delivery interval  
8 information. Without this single source, Covad wastes valuable time and resources  
9 trying to determine if the ILEC is meeting its contractual obligation. It is not  
10 acceptable to just reference an interval guide on a web site. These can, and do,  
11 change at times without input or negotiation with Covad. If the specific language  
12 on loop delivery intervals is a part of the interconnection agreement and BellSouth  
13 wishes to make changes, then that can be accomplished through the negotiation of  
14 amendments to the Interconnection Agreement. This affords both parties the  
15 opportunity to negotiate and discuss what changes will occur to the loop delivery  
16 intervals.

17

18 **Issue 5(b): WHAT IS THE APPROPRIATE INTERVAL FOR BELLSOUTH TO**  
19 **PROVISION AN IDSL-COMPATIBLE LOOP FOR COVAD?**

20 **Q. What does Covad propose as the appropriate interval for an IDSL-compatible**  
21 **loop?**

22 A. Covad proposes that in general BellSouth commit to providing IDSL-Compatible

1       Loops within (5) five calendar days of submission of an LSR. This interval  
2 recognizes that in some, but not all, instances, BellSouth will need to place an  
3 appropriate line card in the digital loop carrier system to support this loop. Thus,  
4 Covad proposes 5 business days for this work.

5               In addition, installation of an xDSL loop served by certain IDLC systems  
6 often requires a "work around" to certain components of that DLC system. As a  
7 result, Covad has proposed that BellSouth undertake this work around and provide  
8 such loops within (10) ten business days.

9 **Q. What is the problem with BellSouth's proposal for IDSL-compatible loops?**

10 A. BellSouth has not proposed any substantive installation interval for IDSL-  
11 Compatible Loops (called "UDC Loops" by BellSouth) and seemingly does not agree  
12 that it should provide a work-around for IDSL-Compatible Loops over an IDLC. For  
13 an installation interval, BellSouth only refers to its "Interval Guide", a document that  
14 BellSouth can unilaterally change at any moment. In addition, despite the fact that  
15 Covad has been ordering ISDN loops for IDSL service for two years, BellSouth  
16 refuses to agree to anything other than a "target" delivery interval.

17               BellSouth refuses to provide a work around when it has chosen to deploy a  
18 type of IDLC through which DSL cannot be provisioned. Without such a work  
19 around, large groups of customers may be prevented from obtaining the competitive  
20 advanced services they desire.

21 **Q. Why must the Commission set firm installation intervals for BellSouth to**  
22 **provide IDSL-compatible loops?**

1 A. For the same reasons set forth above for unbundled digital loops, Covad believes that  
2 a firm installation interval for IDSL-Compatible Loops will make Covad's operations  
3 more efficient and will advance the public interest (as consumers would receive  
4 service more quickly). Most importantly, firm intervals are critical to ensuring  
5 Covad's ability to deliver satisfaction to customers. Customers demand, and should  
6 be entitled to know, when Covad can provide them with DSL service. Under  
7 BellSouth's proposal, BellSouth commits only to "targeted" intervals. Those  
8 "targets" do not hold BellSouth accountable for meeting customer expectations.  
9 Moreover, by refusing to put the interval in Covad's contract, BellSouth reserves its  
10 ability to change the interval at any time.

11 Covad utilizes IDSL-Compatible loops to provide IDSL service. Covad's  
12 IDSL service is requested by end-users that are either too far from a central office to  
13 receive ADSL or SDSL service, or by end-users served by a fiber-fed digital loop  
14 carrier (DLC) system. This represents a substantial portion of the consumers served  
15 by BellSouth in Florida that otherwise would not be able to obtain Covad's DSL  
16 service. Last year, BellSouth unilaterally extended its target loop delivery interval  
17 from 7 to 12 days, without consultation or approval of Covad. We want to prevent  
18 that from happening again.

19

20 **Issue 5(c): WHAT SHOULD BE THE APPROPRIATE INTERVAL FOR**  
21 **BELLSOUTH TO "DE-CONDITION" (I.E., REMOVE LOAD COILS OR BRIDGED**  
22 **TAP) LOOPS REQUESTED BY COVAD?**

1 **Q. What is loop de-conditioning?**

2 A. Covad recognizes that for certain loops, de-conditioning actions need to be taken in  
3 order for that loop to support DSL services. These de-conditioning services include  
4 the removal of load coils and excessive bridge taps—encumbrances originally on a  
5 loop put in place to support analog voice service (in the case of a load coil) or to save  
6 BellSouth engineering costs (in the case of a bridge tap). BellSouth has performed  
7 and continues to perform these de-conditioning services for its own retail data  
8 communications services, including ADSL.

9 **Q. What interval does Covad propose for BellSouth to "de-condition" loops when**  
10 **requested by Covad?**

11 A. Covad proposes that BellSouth de-condition loops within (5) five business days of  
12 Covad's order. This interval for de-conditioning would be an additive to the  
13 installation intervals discussed in Issues 5(a) and (b) above. Covad believes that these  
14 intervals are reasonable.

15 In negotiations, BellSouth has proposed a series of different "target"  
16 conditioning intervals, depending on what type of de-conditioning is required. For  
17 underground plant, BellSouth proposes to give itself up to 30 business days—nearly  
18 a month and a half—to de-condition a loop. It also should be noted that if Issues 5(a)  
19 and 5(b) are resolved in BellSouth's favor, BellSouth's promised conditioning  
20 intervals may ultimately be meaningless—because the overall loop installation  
21 interval in BellSouth's proposals is so flexible and subject to unilateral alteration by  
22 BellSouth.

1           Moreover, numerous other retail services require loops that are de-  
2           conditioned, including ISDN and T-1 service. BellSouth does not make its retail  
3           customers wait an undisclosed period of time for a conditioned loop. Therefore, it  
4           is inappropriate to make Covad wait an unspecified period for the same work to be  
5           performed.

6  
7   **Issue 6: WHERE A DUE DATE FOR THE PROVISIONING OF A FACILITY IS**  
8   **CHANGED BY BELLSOUTH AFTER A FIRM ORDER CONFIRMATION HAS**  
9   **BEEN RETURNED ON AN ORDER, SHOULD BELLSOUTH REIMBURSE COVAD**  
10   **FOR ANY COSTS INCURRED AS A DIRECT RESULT OF THE**  
11   **RESCHEDULING?**

12   **Q.    Can you please explain why it is important that Covad should be reimbursed for**  
13    **any costs incurred as a direct result of rescheduling?**

14    A.    Yes. I would be glad to explain. BellSouth has proposed, in 2.1.7 and 2.1.8 of  
15    Attachment 2, that Covad compensate BellSouth's costs in the event Covad cancels  
16    or changes a loop order. As a result, Covad has proposed that BellSouth compensate  
17    Covad in the event BellSouth modifies or cancels a Covad unbundled loop order,  
18    using the same rates that BellSouth would impose on Covad.

19           In two years of operation in the BellSouth territory, BellSouth has repeatedly  
20    and unilaterally cancelled Covad unbundled loop orders—oftentimes on the date  
21    BellSouth originally promised to provide the loop (the FOC date). These last-minute  
22    cancellations impose considerable costs on Covad because ordering and receiving an

1 unbundled loop is only part of the process Covad must follow in order to turn-up  
2 DSL service to a customer.

3 BellSouth believes that Covad should compensate BellSouth if Covad cancels  
4 or modifies a loop order—but, at the same time, BellSouth does not agree that it  
5 should pay Covad the same rates if BellSouth cancels or modifies a Covad loop  
6 order. By proposing that Covad compensate BellSouth, under the recent *MCI*  
7 decision, BellSouth may no longer challenge this Commission’s jurisdiction to  
8 arbitrate this issue pursuant to Section 252.

9 **Q. Why shouldn’t BellSouth be entitled to recover costs when Covad changes or**  
10 **cancels an order?**

11 A. In complex business relationships, parties do not generally attempt to impose  
12 penalties on every possible failure point. For example, when Covad sends a package  
13 through UPS, Covad can call UPS and change the destination of the package. It may  
14 cost UPS a small amount of administrative work, but UPS does not attempt to charge  
15 Covad for that. As business partners, UPS recognizes that Covad is a valuable  
16 customer. UPS wants Covad’s business and does not seek to penalize Covad for  
17 changes or cancellations of an order.

18 BellSouth is different. As a monopoly provider, BellSouth recognizes Covad  
19 has no where else to buy loops. Therefore, BellSouth can unilaterally decide to  
20 impose penalties on each potential point in the provisioning process.

21 **Q. How big a problem is this?**

22 A. It is substantial. In Florida alone, BellSouth issues more than one firm order



1 confirmation ("FOC") with a loop delivery date on 36% of Covad's orders. Greater  
2 than 12% of Covad's orders receive 3 or more delivery dates. Covad had at least 10  
3 orders receiving 8 or more delivery dates.

4 **Q. Can you explain how receiving multiple firm order confirmations (FOCs) on a**  
5 **single order can significantly add to Covad's internal processing time and costs?**

6 A. Sure. When Covad receives a firm order confirmation (FOC), it contains the due  
7 date for the installation of that loop. Today, FOCs are received manually via a fax  
8 from the BellSouth Local Carrier Service Center (LCSC) or by referring to a  
9 BellSouth web-based report called the PON (Purchase Order Number) Status Report.

10 Once received, Covad then must update its internal systems to reflect the date that  
11 BellSouth is scheduled to complete delivery of the loop. Based on the due date  
12 provided by BellSouth on the FOC, the Covad systems then trigger testing on the  
13 loop, notification to end user, and the dispatch of a Covad installation technician for  
14 completion of the DSL service. Therefore, Covad is relying on the BellSouth due  
15 date to set up all of the downstream steps towards provisioning DSL for the end user.

16 If after receipt of the original FOC BellSouth changes the due date, BellSouth  
17 must issue a new FOC. The only way Covad is aware of the new FOC is by  
18 receiving the faxed FOC, provided we receive the fax, because no one would check  
19 the PON Status Report since we already received a FOC. Assuming we did receive  
20 the new fax, we must change the Covad internal systems to reflect the new BellSouth  
21 delivery date. The new FOC can be received before, on, or after the original due  
22 date. Changes will have to be made to the scheduled testing of the loop as well as

1 changes of the load for the Covad technician who was to be dispatched based on the  
2 original due date. The Covad representative will have to also contact the Internet  
3 service provider (ISP) so it can contact the end user customer to let them know of the  
4 change in the BellSouth due date. Depending on when the new FOC was received,  
5 this often causes end user customer frustration because they have already taken time  
6 off work to be home when the loop is delivered.

7 If for some reason we do not receive the new FOC via fax, the order would  
8 not be looked at again until after the original BellSouth delivery date. Covad usually  
9 finds out about these after the ISP or the end user customer contacts Covad. As you  
10 can imagine, this contact is not generally pleasant. This whole sequence of events  
11 adds to Covad's internal processing time which results in much higher provisioning  
12 costs. These costs are magnified when two, three, four or more FOCs are issued on  
13 single order.

14 **Q. What does Covad propose to resolve this issue?**

15 **A.** All we want is nondiscriminatory treatment. Either BellSouth must agree not to  
16 charge Covad for modifying or cancelling an order or BellSouth must reimburse  
17 Covad when BellSouth modifies or cancels an order by changing the delivery date.

18

19 **Issue 7(a): WHEN BELLSOUTH PROVISIONS A NON DESIGNED xDSL LOOP,**  
20 **UNDER WHAT TERMS, CONDITIONS AND COSTS, IF ANY, SHOULD**  
21 **BELLSOUTH BE OBLIGATED TO PARTICIPATE IN JOINT ACCEPTANCE**  
22 **TESTING TO ENSURE THE LOOP IS PROPERLY PROVISIONED?**

1 **Q. Should BellSouth be required to participate in joint acceptance testing on non-**  
2 **designed loops?**

3 A. Yes. Joint Acceptance Testing is a safety net intended to catch non functional loops  
4 during the provisioning process, rather than forcing these problems to be resolved  
5 through the repair and maintenance process. This testing should be unnecessary  
6 because when Covad orders a loop, it should always receive a functional loop from  
7 BellSouth. Requiring BellSouth to perform Joint Acceptance Testing on all loops,  
8 including the new non designed loop, insures that Covad gets what it pays for. Once  
9 BellSouth proves that it is delivering functional loops with consistency, this testing  
10 will become unnecessary.

11 **Q. How does Joint Acceptance Testing work?**

12 A. Essentially, Joint Acceptance Testing works as follows. The BellSouth technician,  
13 having delivered the loop to the customer premise, calls a Covad 1-800 number.  
14 Next, the BellSouth technician and Covad run a series of tests on the loop (like  
15 having the BellSouth technician put a short on the loop) to establish that it is  
16 functioning properly. Although it is not foolproof, these series of tests can determine  
17 in most instances whether the loop works at the time of installation. By requiring  
18 BellSouth to participate in Joint Acceptance Testing on all loops, including non  
19 designed xDSL loops, the Commission can ensure that more of BellSouth loops  
20 function properly at the time of delivery.

21 **Q. What does Covad propose as the terms and conditions for joint acceptance**  
22 **testing of a non-designed loop?**

1 A. BellSouth should provide for joint acceptance testing on every non-designed loop  
2 that it provides to Covad. BellSouth should be required to perform such testing  
3 before Covad will accept the loop as "delivered."

4 **Q. At what cost should joint acceptance testing be performed?**

5 A. First, I strongly believe that Covad should not be charged for this testing at all. It is  
6 only necessary to insure that BellSouth actually does what has it promised to do --  
7 deliver a functional, fully connected loop. Covad developed this series of tests that  
8 they do cooperatively with BellSouth and other ILECs as a result of the ILECs'  
9 failures to properly provision loops. The testing procedure acts as a safety net. This  
10 saves both ALECs and BellSouth time and money because it identifies problems with  
11 loops during the provisioning process, rather than having these issues arise only as  
12 trouble tickets. In Covad's experience, Joint Acceptance Testing identifies instances  
13 in which BellSouth has not made the promised cross connections or has not made  
14 them properly. Thus, the testing confirms that BellSouth has not delivered Covad a  
15 functional, fully connected loop. Obviously, this testing safety net **should** be  
16 unnecessary. Given that the cost of delivering a functional loop is built into  
17 BellSouth's rate structure, there should be no charge to Covad for this testing.

18 **Q. What proposal has Covad made to BellSouth about Joint Acceptance Testing**  
19 **on the new non-designed (UCL-ND) loop?**

20 A. Covad is willing to put its money where its mouth is. From experience, we believe  
21 that Joint Acceptance Testing on these loops will show that BellSouth is failing to  
22 provision a fully connected and functional loop the vast majority of the time. Thus,

1 we proposed:

2 BellSouth will provide joint acceptance testing on the UCL-  
3 ND for \$40. If BellSouth delivers UCL-ND loops on time  
4 that are functional 90% of the time, Covad will pay for the  
5 Joint Acceptance Testing. If BellSouth does not deliver  
6 UCL-ND loops that are functional on time 90% of the time,  
7 BellSouth pays for the Joint Acceptance Testing.

8 We believe this is a reasonable proposal. If BellSouth can deliver functional loops  
9 on time at a level that enables Covad to successfully compete, Covad will have no  
10 need to require Joint Acceptance Testing.

11

12 **Issue 7(b): SHOULD BELLSOUTH BE PROHIBITED FROM UNILATERALLY**  
13 **CHANGING THE DEFINITION OF AND SPECIFICATIONS FOR ITS LOOPS?**

14 **Q. Why is it crucial that BellSouth not be allowed to unilaterally change the**  
15 **definitions and specifications for its loops?**

16 **A.** BellSouth seeks to reserve the right to unilaterally change the definitions of loops by  
17 changing its Technical Specifications. All Covad needs is a loop that complies with  
18 the engineering guidelines that BellSouth's network should already be designed to  
19 support. But we are trying to build a business based on loops as specified in the  
20 existing BellSouth documents and in our contract. BellSouth seeks to reserve the  
21 right to alter the definition and specifications of its loops unilaterally, by making  
22 changes to its Technical References. Covad's business plan relies on certainty and

1 its ability to consistently order the loops as defined in its contract with BellSouth.  
2 Covad asks that BellSouth's loop definitions for DSL loops remain as defined in the  
3 contract and the Technical Specifications in place on the date of Execution of the  
4 Interconnection Agreement.

5 **Issue 8: WHEN COVAD REPORTS A TROUBLE ON A LOOP WHERE, AFTER**  
6 **BELLSOUTH DISPATCHES A TECHNICIAN TO FIX THE TROUBLE, NO**  
7 **TROUBLE IS FOUND BUT LATER TROUBLE IS IDENTIFIED ON THAT LOOP**  
8 **THAT SHOULD HAVE BEEN ADDRESSED DURING BELLSOUTH'S FIRST**  
9 **DISPATCH, SHOULD COVAD PAY FOR BELLSOUTH'S COST OF THE**  
10 **DISPATCH AND TESTING BEFORE THE TROUBLE IS IDENTIFIED?**

11 **Q. Please explain the process that Covad goes through when there is a trouble on**  
12 **the loop and must report it to BellSouth.**

13 **A.** When Covad experiences trouble with a UNE loop, Covad opens a trouble ticket with  
14 BellSouth. On numerous occasions, BellSouth has responded to the trouble ticket  
15 by saying "no trouble found," presumably meaning that BellSouth had dispatched a  
16 truck, tested the loop and found no problems. BellSouth then charges Covad for that  
17 dispatch. After several trouble tickets are opened on the loop, a joint meeting  
18 between Covad and BellSouth will occur. In many instances, BellSouth and Covad  
19 technicians then locate and resolve the problem. However, it is then incumbent upon  
20 Covad to challenge all of the incorrect "no trouble found" charges imposed on  
21 Covad.

22 **Q. Should Covad be charged for BellSouth's dispatch and testing on a loop if**

1 **BellSouth is not able to identify a trouble on that loop?**

2 A. Absolutely not. That's the best way to preclude BellSouth from charging Covad for  
3 these types of trouble tickets. Covad proposes that BellSouth not be allowed to  
4 charge when no trouble is found on the loop. Covad certainly does not open trouble  
5 tickets without a problem on the loop and, as a matter of customer service, BellSouth  
6 should service the loops Covad orders. Moreover, Covad pays extraordinarily high  
7 recurring charges that are sufficient for all routine maintenance on the loops it orders.  
8 Moreover, Covad should certainly not be charged for trouble tickets that are  
9 prematurely closed. We know this is the case since many times Covad is forced to  
10 open multiple trouble tickets before BellSouth actually finds and fixes the problem.  
11 In Florida, for example, Covad has been forced to open more than one trouble ticket  
12 on 40% of the loops where a trouble ticket was opened at all. That means that 40%  
13 of the time, BellSouth is failing to cure the problem with its loop on the first trouble  
14 ticket. By not allowing BellSouth to charge Covad for trouble tickets when "no  
15 trouble" is found, BellSouth will have an incentive to cure the problems on the first  
16 ticket. At the very least, Covad should not be charged when BellSouth has  
17 improperly and prematurely closed the trouble ticket.

18

19 **Issue 11: WHAT RATE, IF ANY, SHOULD COVAD PAY BELLSOUTH IF THERE**  
20 **IS NO ELECTRONIC ORDERING INTERFACE AVAILABLE, WHEN IT PLACES**  
21 **A MANUAL LSR FOR: (A) AN XDSL LOOP? (B) LINE SHARING?**

22 Q. What nonrecurring rate does BellSouth propose for a manual Local Service

**1 Request (LSR) submitted for an xDSL loop and line sharing?**

**2 A.** Under Covad's existing Interconnection Agreement, BellSouth charged Covad  
**3** \$19.99 nonrecurring charge for each Local Service Request (LSR) that it submitted  
**4** manually in Florida. In the most recent UNE pricing docket in Florida, BellSouth  
**5** proposed a similar charge.

**6 Q. Is this charge appropriate?**

**7 A.** No. Such a charge is clearly anti-competitive. First, BellSouth retail customers are  
**8** not required to pay any such manual order charges because BellSouth has developed  
**9** electronic ordering systems for its own retail divisions. In contrast, BellSouth has  
**10** delayed development of Electronic Data Interchange ("EDI") for pre-ordering and  
**11** ordering of xDSL loops. As a result of this delay, Covad has been forced to submit  
**12** orders manually, either using a facsimile or email. Covad must then follow-up and  
**13** escalate each and every order manually as well. This process has had a severe and  
**14** detrimental impact on Covad's business. BellSouth claims that it has now made  
**15** electronic ordering available for xDSL loops, but all of BellSouth systems for  
**16** handling these orders (LENS, TAG, EDI) are in the embryonic stage and are  
**17** relatively unstable. Covad, for example, has experienced numerous problems with  
**18** placing orders through LENS.

**19** If any charge is allowed to be imposed for manual LSRs, it should only be  
**20** allowed when BellSouth has functional, stable electronic systems available for  
**21** ordering which Covad has chosen not to use. When BellSouth's systems are  
**22** nonfunctional, rather than delaying orders, Covad will be forced to use the manual



1 processes. This severely delays Covad's process. BellSouth seeks to further damage  
2 Covad by imposing an additional charge for manual service order processing, even  
3 though Covad must order manually as a result of BellSouth's own failure to provide  
4 functional, electronic ordering systems for xDSL loops.

5

6 **Issue 12: SHOULD COVAD HAVE TO PAY FOR A SUBMITTED LSR WHEN IT**  
7 **CANCELS AN ORDER BECAUSE BELLSOUTH HAS NOT DELIVERED THE**  
8 **LOOP IN LESS THAN FIVE BUSINESS DAYS?**

9 **Q. Does Covad believe it should be charged for submitting the LSR if BellSouth**  
10 **has not delivered the loop within the required interval?**

11 A. No. BellSouth unjustly states that it should be paid an LSR OSS charge even if it  
12 ultimately fails to deliver a loop to Covad or delivers that loop late. Covad strongly  
13 disagrees. Because of BellSouth's poor performance in delivering loops, Covad's  
14 customers often cancel orders while Covad is waiting for BellSouth to deliver a loop.  
15 BellSouth seeks to charge Covad the LSR submission fee for these cancelled orders,  
16 even if it is BellSouth that has delayed in providing the loop. BellSouth's proposal  
17 provides BellSouth a perverse incentive to delay Covad loop deliveries.

18 **Q. What does Covad propose in this situation?**

19 A. Covad proposes that BellSouth waive the LSR OSS charge if Covad cancels an LSR  
20 when BellSouth has failed to deliver a loop within the loop delivery interval. Covad  
21 believes this bright-line proposal would better align BellSouth's interests with  
22 installing Covad's loops, rather than delaying those installations. Requiring Covad

1 to pay for LSR submission when BellSouth fails to meet loop delivery intervals only  
 2 makes Covad suffer for BellSouth's poor performance.

3

4 **Issue 13: WHAT ACCESS SHOULD COVAD HAVE TO BELLSOUTH'S LOOP**  
 5 **MAKE UP INFORMATION?**

6 **Q. Does the FCC's UNE Remand Order make it clear what access to loop make**  
 7 **information Covad is entitled to?**

8 A. Yes. The FCC's *UNE Remand Order* requires BellSouth to provide access to all  
 9 loop makeup (LMU) information it possesses. The *UNE Remand Order* states at ¶  
 10 427 that,

11 an incumbent LEC *must* provide the requesting carrier with  
 12 nondiscriminatory access to *the same detailed information about the*  
 13 *loop* that is available to the incumbent, so that the requesting carrier  
 14 can make an independent judgment about whether the loop is capable  
 15 of supporting the advanced services equipment the requesting carrier  
 16 intends to install. . . . [I]ncumbent LECs *must provide requesting*  
 17 *carriers the same underlying information that the incumbent LEC has*  
 18 *in any of its own databases or other internal records.*

19  
 20 The FCC also made clear that "the relevant inquiry is not whether the retail arm of  
 21 the incumbent has access to the underlying loop qualification information, but rather  
 22 whether such information exists anywhere within the incumbent's back office and  
 23 can be assessed by any of the incumbent LEC's personnel." *Id.* at ¶ 430.

24 **Q. What level of access to its loop make up information has BellSouth proposed?**

25 A. BellSouth has only proposed that Covad have mediated access to some of this  
 26 information, by operation of a Loop Makeup Service Inquiry (LMUSI) process.

1 **Q. Does this level of access meet the requirements of the FCC's UNE Remand**  
2 **order?**

3 A. There are several significant problems with BellSouth's proposed LMUSI process:

4 • BellSouth does not guarantee the accuracy or reliability of the LMU  
5 information provided

6 • The LMU information BellSouth proposes to offer Covad is incomplete

7 • BellSouth's contract proposal was that it be allowed to take up to seven  
8 business days to respond to a Manual LMUSI (BellSouth may have altered  
9 its opinion since then); Covad has proposed a three business day interval for  
10 a Manual LMUSI.

11 • BellSouth refuses to give Covad access to Map Viewer, its existing on line  
12 plat system, that is already available to BellSouth personnel.

13 **Q. Why is it paramount that BellSouth provide nondiscriminatory access to all of**  
14 **BellSouth's OSS as stated by the FCC?**

15 A. Nondiscriminatory access to all loop makeup information resident in *all* BellSouth  
16 databases and files is crucial to the development of local competition in Florida.

17 Ready access to this information will dramatically reduce the cost and ease of  
18 providing DSL services to Florida customers, because Covad will be in a position to

19 determine what type of DSL a customer will be able to receive before Covad places  
20 a loop order, receives a loop, and attempts installation. Florida customers will

21 clearly benefit by avoiding the many pitfalls and challenges they must now confront  
22 in obtaining DSL service.

1 **Q. Is there a problem with the way BellSouth's loop make up interfaces are**  
2 **designed?**

3 A. Yes. The way BellSouth designed the electronic loop makeup inquiry precludes  
4 Covad from effectively using the system. BellSouth requires that Covad search for  
5 loop makeup by identifying a BellSouth loop product. For example, rather than  
6 simply inputting a customer's address and asking what loops are available (like  
7 Covad would like to do), BellSouth requires that Covad search for ADSL loops to  
8 a customer's house. If the loops to that customer's house do not meet the BellSouth  
9 defined criteria for that type of loop, the loop makeup will indicate that no loops are  
10 available. Covad would then have to make another inquiry seeking information on  
11 a different, maybe a longer, loop type, like the IDSL loop. At any rate, Covad is  
12 forced to hunt and peck to find loops, all because BellSouth has imposed artificial  
13 and illegal restrictions on its access to loop information.

14 **Issue 21: SHOULD BELL SOUTH BE REQUIRED TO PROVIDE ACCURATE**  
15 **SERVICE ORDER COMPLETION NOTIFICATIONS FOR LINE SHARED UNE**  
16 **ORDERS?**

17 **Q. Should BellSouth be required to provide accurate service order completion**  
18 **notifications for line sharing?**

19 A. Yes. Remember, provisioning a line shared loop requires no truck roll. All  
20 BellSouth has to do is perform some simple cross connections in the central office.  
21 Covad seeks accurate information from BellSouth confirming that the cross  
22 connections necessary to provision a loop have been performed. It's that simple.

1 BellSouth refuses to send Covad a service order completion, like it does for other  
2 loop orders. Our experience shows that BellSouth routinely fails to perform the  
3 cross connections on time, which makes accurate service order completion notices  
4 even more important.

5 **Q. Has BellSouth provided a suitable accurate and timely service order completion**  
6 **system?**

7 A. No. BellSouth has given ALECs access to two reports on its web site called the  
8 COSMOS CFA Report and the SWITCH CFA Report. However, these reports are  
9 not completion notifications. Instead, they are lists of working cable, pair, and  
10 splitter assignments listed by CLLI code and telephone number.

11 **Q. Why are the COSMOS/SWITCH reports not a suitable and accurate timely**  
12 **service order system?**

13 A. This solution is not an active completion notification that is sent to Covad. It is  
14 merely a stop-gap solution to a larger issue. The notification that is sent to the  
15 ALECs only show the completion of the billing order and not that the physical cross-  
16 connects have been completed in the central office. It's ironic. The system is clearly  
17 designed to start billing at the earliest possible point, but the system apparently is not  
18 set up to ensure that the work for which Covad is billed has been done.

19 Further, Covad must actively go to the web to view the reports and to search  
20 for orders that *should* be completed. If the phone number is on the report and has a  
21 "wk" or working status, it means that the BellSouth CO technician has completed the  
22 work order for the central office cross-connects for the line sharing. This means that

1 the line sharing should be complete and working.

2 The reason that there are two reports is that BellSouth has two internal  
3 facilities and assignment systems---COSMOS and SWITCH. COSMOS is the older  
4 system that is gradually being replaced by SWITCH. This means that Covad must  
5 look in both reports for each order to see if BellSouth completed the work on the due  
6 date. If the number is not on the report and it is past the due date, BellSouth has  
7 instructed ALECs to open a trouble ticket with its repair and maintenance center.  
8 Obviously, this is an unworkable system.

9 **Q. Are there any other problems associated with the COSMOS/SWITCH reports?**

10 A. Yes. These web-based reports are only updated three (3) times per week. This can,  
11 in practical terms, cause the delivery interval for the line sharing order to increase  
12 because Covad cannot dispatch for the data installation at the end user premises until  
13 we know that BellSouth has actually completed the work. These reports must be  
14 updated at least Monday through Friday in order to give ALECs accurate completion  
15 notifications so they can set realistic end user expectations. In addition, the report  
16 format is not very user friendly. It is difficult to search for the CLLI codes and phone  
17 numbers of the line sharing order. BellSouth has said that it is working on enabling  
18 these reports to be easily downloaded in a spreadsheet format, but this has not been  
19 done.

20 **Q. How does this inaccurate and unusable information affect Covad?**

21 A. Covad depends upon BellSouth to accurately and timely notify Covad that work has  
22 been completed on line shared loops. BellSouth's failure to provide accurate service

1 order completion notices for line-shared UNE orders jeopardizes Covad's ability to  
2 effectively compete for customers in the state of Florida. When Covad receives  
3 inaccurate service order completions from BellSouth, Covad wastes time and effort  
4 attempting to get its customer's service going -- only to learn that the DSL service  
5 cannot work because BellSouth had not yet accomplished the limited cross  
6 connection work necessary to provision the line shared loops. Covad has been  
7 plagued with inaccurate information recorded on the various databases and  
8 spreadsheets BellSouth forces Covad to use to ascertain the status of its orders.

9 **Q. What does Covad propose?**

10 A. Covad seeks two things. First, Covad wants BellSouth to update the information in  
11 SWITCH/COSMOS on a daily basis. BellSouth will only commit to doing it three  
12 times week. Second, Covad wants BellSouth to produce to Covad a daily list of  
13 completed line share orders.

14 **Q. Should BellSouth provide a daily completion report to Covad for line sharing  
15 orders?**

16 A. Yes. Although, BellSouth has attempted to provide systems (CSOTS and  
17 COSMOS/SWITCH REPORT) to Covad that would provide information on  
18 successful completion of line sharing order, these systems are not adequate.  
19 BellSouth should simply provide a daily email listing all of the line sharing orders  
20 that were completed by BellSouth on the previous day. Covad could verify this  
21 against its records based on the firm order confirmations (FOCs) received.

22 **Q. Do other ILECs provide such completion reports?**

1 A. Yes. Qwest <sup>had</sup> ~~has~~ developed a completion report that it <sup>used to email</sup> ~~emails~~ to Covad daily. This  
 2 report lists all line sharing orders that Qwest completed the previous day. This line  
 3 sharing completion reporting function is also being added to Qwest's electronic  
 4 ordering systems. When completed, Covad will be able to access the system and pull  
 5 reports showing completions of line sharing orders. This report will also include  
 6 what are called "losses." Losses are notifications of when a Covad customer has  
 7 disconnected to go to another data provider. BellSouth should produce a similar  
 8 report for Covad.

9

10 **Issue 22: SHOULD BELLSOUTH BE REQUIRED TO TEST FOR DATA**  
 11 **CONTINUITY ON EACH LINE SHARED LOOP BOTH IN THE PROVISIONING**  
 12 **AND IN THE REPAIR AND MAINTENANCE OF THE LOOPS?**

13

14 **Q. Why is crucial that BellSouth test for data continuity during provisioning and**  
 15 **repair and maintenance of line sharing?**

16 A. During the initial implementation of line sharing, Covad experienced numerous  
 17 problems with ensuring that BellSouth had completed the work necessary to  
 18 provision the loop. As a result of the FCC Line Sharing Summits, Covad and  
 19 BellSouth determined that BellSouth technicians were testing line-shared loops only  
 20 for working voice service. BellSouth technicians did not test to insure that BellSouth  
 21 had properly completed the cross connections on the data line from the splitter to the  
 22 collocation space.



1 **Q. Has BellSouth since implemented data continuity testing in both for**  
2 **provisioning and repair and maintenance?**

3 A. Yes. BellSouth has implemented the use of the Line Sharing Verification Test Set  
4 (LSVT) in most of its central offices. As of April 12, 2001 BellSouth reported that  
5 approximately 420 central offices had the LSVT. BellSouth began deployment of  
6 the LSVT in January 2001. It also modified its methods and procedure for its central  
7 office technicians to use the test set during initial provisioning of line sharing and  
8 also during repair and maintenance. This is a good first step.

9 **Q. Does the LSVT provide the necessary data continuity testing that Covad needs**  
10 **to assure that BellSouth has accurately provisioned and repaired line sharing**  
11 **orders?**

12 A. No. While the LSVT is a good step towards providing good quality line sharing  
13 orders to Covad, it does not provide Covad with all that it needs regarding this issue.  
14 BellSouth has testing capabilities that it uses for its own retail ADSL that it refuses  
15 to use for Covad line sharing.

16 **Q. What capability does BellSouth use to test its own retail ADSL?**

17 A. Covad has learned that BellSouth uses a Sunset ADSL test set to test its own ADSL  
18 services. Covad discovered this when several BellSouth CO technicians actually  
19 used these sets to successfully test Covad line sharing circuits. With the success that  
20 we have experienced using the Sunset ADSL test sets in a few offices, Covad  
21 requested during the line sharing collaborative that BellSouth use these sets to  
22 provision Covad's line shared service. BellSouth responded the the Sunset test set

1 could only be used for BellSouth retail ADSL orders, not Covad's wholesale orders.

2 BellSouth seemed to be under the impression that the Sunset test set might  
3 not work on equipment other than that used by BellSouth for its retail service. As a  
4 result, Covad researched the Sunset ADSL test set manufactured by Sunrise  
5 Telecom. We discovered that it is designed to work with DMT4 ADSL Line Cards;  
6 the same type of line cards which Covad uses on all line sharing orders and  
7 BellSouth uses for its ADSL service.

8 **Q. Why should BellSouth use the Sunset ADSL test set for Covad line sharing**  
9 **orders?**

10 A. Unlike the LSVT test set, the Sunset ADSL test set would provide Covad repair  
11 representatives, located in Covad's repair center, with visibility into the configuration  
12 of our line sharing circuits and improve our cooperative testing abilities during the  
13 repair and maintenance process.

14 **Q. Should BellSouth still use the LSVT for the provisioning of line sharing circuits**  
15 **for Covad?**

16 A. Yes. The LSVT test allows the BellSouth central office technicians to double-check  
17 the cross-connections and jumpers when initially wiring Covad line sharing orders.  
18 The Sunset ADSL test set would only be used in a repair and maintenance situation.

19 **Q. Does this mean that the Sunset test set would not be used if Covad was having**  
20 **trouble turning up a line sharing circuit initially?**

21 A. No. The way that BellSouth has implemented its processes, as soon as the due date  
22 for an order has passed, BellSouth considers it a maintenance issue. Today, Covad

1 must open a trouble ticket on a new order that is having a problem, even though it  
2 has never been successfully turned up on the provisioning side.

3 **Q. Do you think that BellSouth could easily modify its methods and procedures to  
4 begin using the Sunset ADSL test set for Covad line sharing orders?**

5 A. Absolutely. Since BellSouth uses these for its own retail ADSL service, it can easily  
6 be used for Covad's service as well. The benefits to Covad are enormous, and use  
7 of the set will also help BellSouth resolve quickly problems on the orders.

8

9 **Issue 29: WHAT RATES SHOULD COVAD PAY FOR COLLOCATION?**

10 **Q. Can Covad adequately offer testimony on this issue at this time?**

11 A. No. Once BellSouth files its cost study, Covad will have an opportunity to evaluate  
12 the proposals and will offer testimony on this issue in rebuttal.

13

14 **Issue 30: SHOULD BELLSOUTH RESOLVE ALL LOOP "FACILITIES" ISSUES  
15 WITHIN THIRTY DAYS OF RECEIVING A COMPLETE AND CORRECT LSR?**

16 **Q. Why is it crucial that BellSouth resolve loop facilities issues within thirty (30)  
17 days of receiving a complete and correct LSR?**

18 A. This issue is similar to that addressed in Issue 5 (loop provisioning intervals, in  
19 particular Issue 5(a) and (b)). BellSouth has proposed language that would only  
20 obligate it to resolve "facilities" issues for a Covad loop order in an unspecific  
21 manner. As described in Issue 5 above, Covad believes it is vitally important that the  
22 loop installation process be as predictable and uniform as possible. Allowing

1 BellSouth to claim that a loop is presented with a "facility" issue without placing a  
2 time frame around resolution of that issue essentially gives BellSouth the unilateral  
3 power to delay Covad loop installations.

4 To give you a sense of how serious a problem this is, Covad estimates that  
5 over 10% of its cancelled Florida orders were placed in a "pending facilities" que by  
6 BellSouth. Similarly, of Covad's working loops in Florida, more than 20% percent  
7 experienced facilities issues, of those more than 23% were placed into pending  
8 facilities queue more than once. BellSouth believes that its legal obligations require  
9 it only to offer a parity interval for resolving facilities issues, but BellSouth  
10 steadfastly refuses to produce any documentation to prove that it is currently  
11 resolving pending facility situations at a parity level. Instead, BellSouth believes  
12 Covad should take its word that it is performing at a parity level.

13 As discussed above, firm and predictable installation intervals would result  
14 in better end-user customer service, would help detect breakdowns in BellSouth's  
15 provisioning systems, and would expedite dispute resolution procedures.

16

17 **Q. Does that conclude your direct testimony?**

18 **A. Yes.**

1 **Q. What is your name and by whom are you employed?**

2 A. My name is Tom Allen, and I am employed as Vice President of ILEC Relations  
3 for Covad Communications Company ("Covad"). My business address is 10  
4 Glenlake Parkway, Suite 650 Atlanta, GA 30328.

5 **Q. What are your responsibilities as Vice President of ILEC Relations?**

6 A. As Vice President of ILEC Relations and External Affairs, I have responsibility for  
7 regulatory and ILEC management for the BellSouth, Qwest, and Sprint regions.

8 **Q. What is the purpose of your testimony?**

9 A. The purpose of my testimony is to rebut several of the issues discussed by  
10 BellSouth witnesses Kephart, Latham, Williams, Pate, and Cox. I want to provide  
11 the Commission with a general understanding of the reasonable terms and  
12 conditions Covad has proposed in negotiations for its Interconnection Agreement  
13 with BellSouth.

14 **Issue 5(a): WHAT IS THE APPROPRIATE INTERVAL FOR BELL SOUTH TO**  
15 **PROVISION AN UNBUNDLED VOICE-GRADE LOOP, ADSL, HDSL, OR UCL**  
16 **FOR COVAD?**

17 **Q. On page 4, lines 12-25 of BellSouth witness Latham's direct testimony, Mr.**  
18 **Latham states that the intervals for voice-grade, ADSL, HDSL, and UCL**  
19 **unbundled loops should be six business days. Do you agree?**

20 A. No. First of all, it is not clear that Mr. Latham means the loop should be delivered  
21 within six business days of receipt of the LSR from Covad. That is the interval  
22 included in BellSouth's Product and Services Guide. Again, the BellSouth guide

1 provides only targets and sets no firm loop delivery intervals, upon which Covad  
2 is entitled to rely. If Mr. Latham means that the xDSL loop should be delivered 6  
3 business days after Covad receives the FOC, then he is actually advocating an even  
4 more extended loop delivery interval than is currently targeted by BellSouth. In the  
5 Performance Measures docket in Florida, BellSouth advocated an extended loop  
6 delivery interval of 7 business days after the FOC, which is also longer than the  
7 interval set forth in the Product and Services Guide.

8 Moreover, as I have stated, Covad proposes a uniform and firm loop  
9 installation interval of three (3) business days for these types of loops. The work  
10 required to provision a DSL loop is simple and routine. DSL loops are nothing but  
11 voice grade copper loops, and, therefore, provisioning intervals should reflect that  
12 fact. Mr. Latham states that SL1 voice loops are non-designed, but he fails to  
13 justify what steps, if any, are taken by BellSouth in the provisioning of the loop that  
14 take additional time. Without that evidence, BellSouth offers no support for its  
15 loop delivery interval. BellSouth cannot continue to be allowed to have inflated  
16 provisioning intervals that disadvantage Covad and, ultimately, Florida end users.

17 **Q. Mr. Latham also discusses on page 4, lines 21-25 of his direct testimony that**  
18 **these intervals are needed to "efficiently and accurately install the volume of**  
19 **loops being demanded by our CLEC customers." Can you please comment?**

20 **A.** Mr. Latham asserts that monthly volume for DSL loop types has grown  
21 significantly over the past 12 months. However, I would be interested to see the  
22 number for just the first four months of this year. With several ALECs going out

1 of business, I believe loop demand could be decreasing, so a uniform three-business  
2 day interval for these loop types should be attainable by BellSouth. Further, if  
3 volume is in fact increasing significantly, then BellSouth should staff accordingly  
4 to meet the needs of its wholesale customers as well as to meet its legal obligations  
5 to provide non-discriminatory treatment to Covad.

6 **Q. On page 5, lines 1-6 of BellSouth witness Latham's direct testimony, he**  
7 **discusses the differences in provisioning a BellSouth retail circuit versus an**  
8 **unbundled loop. Do agree that the differences in work would require the**  
9 **interval of 6 business days?**

10 A. No. Although some retail loops are already connected to the switch, Mr. Latham  
11 tries to make the act of performing simple central office cross-connection seem like  
12 rocket science. Again, the task of a BellSouth central office technician making  
13 cross-connection to Covad's collocation should not add days to an interval.

14 **Issue 5(b): WHAT IS THE APPROPRIATE INTERVAL FOR BELL SOUTH TO**  
15 **PROVISION AN IDSL-COMPATIBLE LOOP FOR COVAD?**

16 **Q. On page 5, lines 19-20 of BellSouth witness Latham's direct testimony, Mr.**  
17 **Latham states, "as recognized by the FCC, not all ISDN loops are completely**  
18 **compatible with IDSL service." Do you agree with his statement?**

19 A. I'm not sure what Mr. Latham is referencing regarding the FCC, but as the evidence  
20 in Covad's IDSL complaint against BellSouth in Georgia showed, all ISDN loops  
21 that comply with the applicable ANSI standards will support IDSL. However,  
22 BellSouth has employed certain digital loop carrier ("DLC") units that create ISDN

1 loops that do not comply with the ANSI standards, when placed in certain time  
2 slots on the DLC unit. Thus, all BellSouth has to do is place Covad's IDSL orders  
3 in the proper time slots, and the loop will function perfectly.

4 Our experience reveals that BellSouth's major problem with IDSL loops  
5 does not relate to DLC slot placement issues, but rather results from BellSouth's  
6 technicians being poorly trained on installing line cards in the DLC units.  
7 Irrespective of whether BellSouth is provisioning an IDSL or an ISDN loop,  
8 BellSouth technicians must set the options correctly on the line cards. Options are  
9 set exactly the same for both ISDN service and for IDSL service. Nonetheless,  
10 BellSouth's technicians are still having problems, which delays provisioning.  
11 BellSouth should solve this through better training, rather than by elongating the  
12 loop delivery intervals. Stretching out the intervals does not solve the problem.  
13 Shorter loop delivery intervals drives BellSouth performance. Without shorter  
14 intervals, Covad can expect little improvement in BellSouth performance.

15 **Q. Do you agree with BellSouth witness Latham that the provisioning interval for**  
16 **IDSL-compatible loops should be 10 business days plus the FOC?**

17 A. No. As I stated in my direct testimony, Covad proposes that in general BellSouth  
18 commit to providing IDSL-Compatible Loops within (5) five business days of  
19 submission of an LSR. In some cases, the ISDN loop is clean copper, no different  
20 than a copper SL1 loop or an ADSL loop. Nonetheless, Covad's proposed interval  
21 recognizes that in some, but not all instances, BellSouth will need to place an  
22 appropriate line card in the digital loop carrier system to support this loop. Thus,



1 Covad proposes 5 business days for this work.

2 In addition, installation of an xDSL loop served by certain IDLC systems  
3 often requires a "work around" to certain components of that DLC system. As a  
4 result, Covad has proposed that BellSouth undertake this work around and provide  
5 such loops within (10) ten business days. BellSouth offers no evidence why this  
6 work cannot be accomplished in this time period. BellSouth simply does not want  
7 to make any effort to provide a work around in a reasonable time.

8 **Issue 5(c): WHAT SHOULD BE THE APPROPRIATE INTERVAL FOR**  
9 **BELLSOUTH TO "DE-CONDITION" (I.E., REMOVE LOAD COILS OR**  
10 **BRIDGED TAP) LOOPS REQUESTED BY COVAD?**

11 **Q. On page 7, lines 1-9 of BellSouth witness Latham's direct testimony, Mr.**  
12 **Latham discusses BellSouth position on the interval to condition a loop. Do**  
13 **agree with BellSouth's proposals on this issue?**

14 **A. No. BellSouth argues that the loop conditioning intervals, for 1 to 3 intervening**  
15 **devices, intervals should be 10 days for aerial plant, 15 days for buried plant, and**  
16 **30 days for underground plant. These intervals are simply too long to condition**  
17 **loops. All BellSouth is doing by proposing such intervals is slowing the growth of**  
18 **competitive DSL to Florida consumers. Moreover, as I have stated in my direct**  
19 **testimony, numerous other retail services require loops that are de-conditioned,**  
20 **such as ISDN and T-1 service. BellSouth does not make its retail customers wait**  
21 **these extended periods of time for a conditioned loop. Therefore, it is inappropriate**  
22 **to make Covad customers wait unnecessarily for the same work to be performed.**

1     **Q.     Should BellSouth be conditioning loops as a part of its everyday maintenance**  
2     **of its outside plant?**

3     A.     Absolutely. First, loops under 18,000 feet with load coils are a remnant of the past  
4     -- antiquated outside plant that has not been brought up to engineering standards  
5     that have been in place for more than 20 years. BellSouth needs loops conditioned,  
6     just as Covad does, for a variety of retail services, including the provision of ISDN  
7     and T-1. Moreover, BellSouth has announced aggressive plans to provide DSL  
8     service to 600,000 customers by the end of 2001. (See Exhibit No. \_\_\_\_\_, TEA -  
9     1). In that same investor's report, BellSouth notes that it has earned over \$1 billion  
10    in revenue from data services. Moreover, it claims that it "continues to transform  
11    its core network from analog voice to digital data." In addition to developing  
12    remote terminal capabilities for digital service, BellSouth's statement must mean  
13    either it is in the process of or has plans to upgrade its outside plant to remove load  
14    coils that are unnecessarily on loops and which inhibit digital services. Otherwise,  
15    BellSouth would have a very difficult time meeting its goal of 600,000 DSL  
16    customers by the end of this year. Preparing a network for digital service involves  
17    active work to remove impediments to digital service, such as load coils and  
18    excessive bridged tap.

19                 Finally, in other dockets, BellSouth has admitted that it cannot distinguish  
20    between money it spent on conditioning and that spent for other maintenance  
21    activities. (See Exhibit No. \_\_\_\_\_, TEA-2). This shows that BellSouth does treat  
22    conditioning as routine maintenance. As such, it should not need the extended

1 intervals it proposes here.

2 **Q. What interval does Covad propose for loop conditioning?**

3 A. Covad proposes a five (5) business day interval for loop conditioning all xDSL loop  
4 types. Five days is a very reasonable interval when you consider exactly what  
5 needs to be done to provision basic loops.

6 **Q. What conditioning interval did BellSouth propose in the Florida Performance  
7 Measures docket?**

8 A. BellSouth proposed that penalties be assessed against it if it failed to condition a  
9 loop within 14 business days. This interval was ordered by the Georgia  
10 Commission. When asked why BellSouth did not offer this interval to Covad in  
11 negotiations, Mr. Latham responded that BellSouth only agreed it could condition  
12 loops in 14 days after the Georgia Commission ordered it to.

13 **Q. Why is that significant?**

14 A. BellSouth will not improve any aspect of its performance for Covad if it is not  
15 required to by a Commission order. Irrespective of what this Commission decides  
16 regarding penalties for conditioning, Covad requests a contract provision entitling  
17 it to conditioned loops in 5 business days. Moreover, BellSouth should bear the  
18 burden of proving to this Commission that it (1) does not condition loops for its  
19 own retail customers in less time and (2) that it cannot condition loops in the time  
20 requested by Covad. Without such a showing, this Commission should accept  
21 Covad's proposed intervals.

1 **Issue 6: WHERE A DUE DATE FOR THE PROVISIONING OF A FACILITY IS**  
2 **CHANGED BY BELLSOUTH AFTER A FIRM ORDER CONFIRMATION HAS**  
3 **BEEEN RETURNED ON AN ORDER, SHOULD BELLSOUTH REIMBURSE**  
4 **COVAD FOR ANY COSTS INCURRED AS A DIRECT RESULT OF THE**  
5 **RESCHEDULING?**

6 **Q. How did this issue arise in negotiations between Covad and BellSouth?**

7 A. This issue is the direct result of BellSouth efforts to impose charges on Covad when  
8 Covad changes or modifies an order. Covad asked BellSouth to remove that  
9 proposal. When BellSouth refused, Covad argued that if BellSouth wanted to  
10 charge Covad for changing or modifying an order, then Covad should be entitled  
11 to assess a similar charge on BellSouth when BellSouth changes or modifies a  
12 Covad order. One of the most common ways this occurs is when BellSouth  
13 provides Covad with a Firm Order Confirmation ("FOC") loop delivery date, and  
14 then later changes that date one or several times. In addition to the wasted time  
15 processing the original delivery date, and arranging Covad technician's scheduling  
16 accordingly (which I described fully in my direct testimony), this change in  
17 delivery date can cause huge customer dissatisfaction, especially when BellSouth  
18 does not inform Covad until the last minute that the loop will not be delivered after  
19 all. Imagine if you had taken off work to wait for BellSouth to install your DSL  
20 line, only to find out at the end of the day that BellSouth had changed the delivery  
21 date.

1     **Q.     On page 18, lines 1-14 of BellSouth witness Cox's direct testimony, Ms. Cox**  
2     **states that in order for BellSouth to guarantee that the requested due date will**  
3     **not be missed, then the rates that Covad pays for the services would have to**  
4     **be increased to reflect BellSouth's additional costs. Do you agree?**

5     **A.     Absolutely not. We continue to hear arguments about increased costs, but we**  
6     **never hear the specifics. BellSouth has never provided the specific activities that**  
7     **would be different in order to provide a true and accurate firm order confirmation**  
8     **(FOC). Furthermore, to a large extent, BellSouth's ability to deliver and meet Firm**  
9     **Order Confirmation delivery dates results from BellSouth's own record keeping.**  
10    **When BellSouth's records are accurate, BellSouth should be able to look at those**  
11    **records, issue a FOC delivery date to Covad, and meet that date. If BellSouth fails**  
12    **to keep its records updated or otherwise fails to perform sufficient, routine**  
13    **maintenance on its outside plant, then BellSouth may encounter problems with**  
14    **meeting its delivery date. Nonetheless, BellSouth should bear the costs of its**  
15    **failures to maintain accurate records, not Covad. Furthermore, BellSouth**  
16    **completely ignores the costs Covad incurs when BellSouth changes a delivery date**  
17    **as a result of work load or constraints unrelated to the existence of facilities.**

18            When BellSouth fails to provide service on the due date provided on the  
19    FOC, it affects Covad's relationship with BellSouth as a supplier, and it also affects  
20    Covad's relationship with its customer. The Commission should obligate  
21    BellSouth to provide service as committed in the firm order confirmation ("FOC").  
22    Otherwise, BellSouth should pay Covad's related costs that result from changing

1 or modifying a Covad order.

2 **Q. Do other ILECs verify facilities before providing due dates via a FOC?**

3 A. Yes. Qwest does a check for facilities before providing a due date on the FOC and  
4 at no "extra" cost to Covad. In fact, Qwest has a thirteen step process for checking  
5 the availability of facilities prior to issuing a FOC. Covad experiences facility  
6 problems in the Qwest region, just like it does in the BellSouth region. The  
7 difference is that Qwest gives us information about potential problems before it sets  
8 a loop delivery date, and starts Covad's order processing and operations dispatch  
9 processes. That way, Covad can make informed decisions about how to proceed  
10 with orders and most importantly, Covad can accurately advise its customers about  
11 potential problems. From a customer satisfaction standpoint, we've found Qwest's  
12 process to be superior to BellSouth's. In the Qwest territory, Covad can be much  
13 more confident about informing its customers when service will be delivered.  
14 BellSouth apparently wants Covad's Florida customers to wait quietly until  
15 BellSouth decides it will deliver the ordered facilities. BellSouth does not impose  
16 such uncertainty on its own retail customers and should not do so to Covad's.

17 **Q. On page 21, lines 10-22 of BellSouth witness Cox's direct testimony, Ms. Cox**  
18 **states that, "BellSouth does not unilaterally cancel an ALEC's orders." Do**  
19 **you agree?**

20 A. No. Ms. Cox does not appear to be fully informed about the BellSouth processes  
21 for ALEC orders that are in place today. I have discovered through discussions  
22 with Covad's Florida field operations managers and technicians that BellSouth does

1 in fact unilaterally cancel Covad orders. BellSouth systematically cancels the  
2 following type of orders: (1) Orders requiring conditioning. Thus, the burden is  
3 placed on Covad to issue another SI-LSR for a loop with conditioning. (2) Orders  
4 with missed installation appointments, including those appointments missed for  
5 reasons attributable solely to BellSouth. Thus, Covad must resubmit the order each  
6 time within 5 days, even if it was a BellSouth-caused missed appointment; (3)  
7 BellSouth cancels loops that have buried load coils, require a new remote terminal,  
8 new pedestal or where a long-term facility issue cannot be cleared within thirty (30)  
9 days.

10 These occurrences exemplify the lack of customer service exhibited by  
11 BellSouth. I cannot think of another vendor that cancels customer orders, rather  
12 than trying to work them. From my perspective, this shows that BellSouth does not  
13 really want Covad's orders and certainly will make no significant efforts to ensure  
14 that Covad's orders are successfully filled by BellSouth.

15 **Q. On page 22, lines 2- 17 of BellSouth witness Cox's direct testimony, Ms. Cox**  
16 **states that Covad should rely on filing complaints with the Commission or look**  
17 **to the Performance Measurements Docket (000121-TP) to resolve the issue of**  
18 **missed commitments. Do you agree?**

19 **A.** No. Covad understands that the Commission has a complaint process and Covad  
20 is participating in the Performance Measurements Docket in Florida, but that is not  
21 the point. Covad is simply asking that this Commission require contract language  
22 in the Covad-BellSouth interconnection agreement that would obligate BellSouth

1 to reimburse Covad when it cannot meet a due date for service ordered by Covad.  
2 Experience has shown Covad that BellSouth will only adhere to the letter of its  
3 contracts. If a particular provision is not in the contract, Covad has had little luck  
4 obtaining service or assistance from BellSouth.

5 Remember, this issue arises from BellSouth's decision to place language in  
6 the contract requiring Covad to reimburse BellSouth for any changes or  
7 modifications to orders placed by Covad. All Covad seeks is equal treatment. If  
8 BellSouth believes it is entitled to be reimbursed each time Covad changes an  
9 order, than BellSouth should likewise reimburse Covad each time BellSouth  
10 changes an order.

11 **Q. Does BellSouth provide service installation guarantees for its retail operations?**

12 A. Yes. BellSouth has a service called the Commitment Guarantee Plan located in its  
13 Florida General Subscriber Services Tariff, Section A 2.17. This service provides  
14 a credit of \$25 for residential and \$100 for business customers, "...should  
15 [BellSouth] fail to meet its commitment in connection with installation or repair of  
16 service..." For BellSouth to offer such a commitment to its retail customers and not  
17 to wholesale customers is blatantly discriminatory. Covad's request is very  
18 reasonable when put in to context of what BellSouth does for its retail customers.

19 **Issue 7(a): WHEN BELLSOUTH PROVISIONS A NON DESIGNED xDSL LOOP,**  
20 **UNDER WHAT TERMS, CONDITIONS AND COSTS, IF ANY, SHOULD**  
21 **BELLSOUTH BE OBLIGATED TO PARTICIPATE IN JOINT ACCEPTANCE**  
22 **TESTING TO ENSURE THE LOOP IS PROPERLY PROVISIONED?**



1     **Q.     On page 3, lines 1-15 of BellSouth witness Kephart's direct testimony, Mr.**  
2     **Kephart states that BellSouth will only perform testing to ensure that a non-**  
3     **designed XDSL loop meets the specifications for that loop. Is this acceptable?**

4     A.    No. Because BellSouth continues to provide non-functioning loops to Covad, Joint  
5     Acceptance Testing of all loops is crucial. I would like to stress again that Joint  
6     Acceptance Testing is a safety net intended to catch non functional loops during the  
7     provisioning process, rather than forcing these problems to be resolved through the  
8     repair and maintenance process. This testing should be unnecessary because when  
9     Covad orders a loop, it should always receive a functional loop from BellSouth.  
10    Requiring BellSouth to perform Joint Acceptance Testing on all loops, including  
11    the new non designed loop, ensures that Covad gets what it pays for. Once  
12    BellSouth proves that it is delivering functional loops with consistency, this testing  
13    will become unnecessary.

14   **Q.     What is Covad's proposal regarding the rates, terms and conditions for Joint**  
15   **Acceptance Testing of a non-designed loop as discussed in your direct**  
16   **testimony?**

17   A.    BellSouth should participate in Joint Acceptance Testing on every non-designed  
18   loop before Covad will accept the loop as "delivered." As I proposed in my direct  
19   testimony, Covad is willing to put its money where its mouth is. From experience,  
20   we believe that Joint Acceptance Testing on these loops will show that BellSouth  
21   routinely fails to provision a fully connected and functional loop the vast majority  
22   of the time. Thus, we proposed that BellSouth provide Joint Acceptance Testing

1 on the UCL-ND for \$40. If BellSouth delivers UCL-ND loops on time that are  
2 functional 90% of the time, Covad will pay for the Joint Acceptance Testing. If  
3 BellSouth does not deliver UCL-ND loops that are functional on time 90% of the  
4 time, BellSouth pays for the Joint Acceptance Testing. We believe this is a  
5 reasonable proposal. If BellSouth can deliver functional loops on time at a level that  
6 enables Covad to successfully compete, Covad will have no need to require Joint  
7 Acceptance Testing.

8 **Q. Does Covad have this type of an arrangement with any other ILECs?**

9 A. Yes. Covad has an agreement to do just this with Southwestern Bell Telephone  
10 Company ("SWBT"). If SWBT does not deliver good loops on time to Covad 90%  
11 of the time, then Covad does not have to pay for Joint Acceptance Testing. To date,  
12 we have not had to pay for Joint Acceptance Testing with SWBT, because they  
13 continue to fall below the 90% benchmark. This same financial incentive would be  
14 beneficial in the BellSouth region. Copies of the relevant provisions of Covad's  
15 Southwestern Bell Interconnection Agreement are attached. (See Exhibit No.  
16 \_\_\_\_\_, TEA-3).

17 **Q. Why does BellSouth oppose mandatory Joint Acceptance Testing?**

18 A. That's a good question. BellSouth argues that it will not dispatch a truck on every  
19 UCL-ND loop. This dispatch rate calculation makes the cost of the UCL-ND  
20 similar to that of the SL1. Nonetheless, BellSouth acknowledges that it must  
21 provision Covad a fully connected loop when Covad orders a UCL-ND, but  
22 BellSouth wants Covad to test the loop for it. BellSouth seeks to escape any

1 responsibility regarding whether it has delivered a functional, connected loop.

2           Apparently, this is how BellSouth has decided to provision the UCL-ND.  
3 BellSouth will inform Covad that the loop has been delivered, without any testing  
4 whatsoever, unless BellSouth has dispatched a truck for that particular loop. The  
5 loop may or may not be fully connected and functional. Covad will then ask its  
6 customer to stay home from work and will roll a truck to perform its portion of the  
7 installation, including installing the customer premise equipment. Only then, when  
8 Covad tests the loop, will we know if BellSouth has done the cross connections in  
9 the central office or in the field properly. At that point, if the loop is not working,  
10 BellSouth apparently wants Covad to open a trouble ticket. Then, and only then,  
11 will BellSouth take the time to ensure that its loop is fully provisioned. BellSouth  
12 acknowledges that it will have to pay for its truck roll to repair the loop.

13           From Covad's perspective, this is exactly backwards. Before we ask a  
14 customer to stay home from work, we want to make sure we can deliver DSL  
15 service. We cannot deliver DSL service on a loop that BellSouth has not properly  
16 provisioned. We propose that BellSouth participate in Joint Acceptance Testing  
17 with Covad on every UCL-ND provisioned. If 90% of the loops in a particular  
18 month that are tested are delivered on time and working, Covad will pay for all the  
19 Joint Acceptance Testing on every loop ordered in a particular month. That way,  
20 BellSouth will not be out any money for the truck roll. If less than 90% of the  
21 UCL-ND loops are delivered on time and working, BellSouth must pay for the Joint  
22 Acceptance Testing.

1 **Issue 7(b): SHOULD BELLSOUTH BE PROHIBITED FROM UNILATERALLY**  
2 **CHANGING THE DEFINITION OF AND SPECIFICATIONS FOR ITS LOOPS?**

3 **Q. On page 5, lines 6-9 of BellSouth witness Kephart's direct testimony, Mr.**  
4 **Kephart states that Covad should not be allowed to impose static network**  
5 **standards that could limit BellSouth's ability to meet the needs of all ALECs.**  
6 **Do you agree with this statement?**

7 **A. No. Loop standards should not change as frequently as BellSouth would like the**  
8 **Commission to believe. BellSouth seeks to reserve the right to unilaterally change**  
9 **the definitions of loops by changing its Technical Specifications. Covad asks that**  
10 **BellSouth's loop definitions for DSL loops remain as defined in the contract and**  
11 **the Technical Specifications in place on the date of execution of the Interconnection**  
12 **Agreement. If BellSouth does, in fact, change a loop specification then a simple**  
13 **amendment to the interconnection agreement could be made, as BellSouth requires**  
14 **Covad to do every time it makes changes, like offering new products and services.**

15 Covad is building a business based on the loop products and their  
16 specifications as set forth by BellSouth. For example, assume that Covad's  
17 equipment is designed to utilize loops that meet a certain industry standard. At the  
18 beginning of the Interconnection Agreement with BellSouth, BellSouth's loop  
19 product technical specifications may assure Covad that it will receive a loop that  
20 meets the industry standards. Then, half way through the contract, BellSouth could  
21 unilaterally change its loop specifications to something else entirely. This could  
22 severely disrupt Covad's business, delay necessary customer installations, and

1 otherwise detrimentally effect Covad's business. BellSouth offers no legitimate  
2 reason why one party to a contract should be able to unilaterally change key  
3 provisions of the contract, merely by changing the Technical References  
4 incorporated into the Interconnection Agreement.

5 Covad merely asks that the Technical Reference and Specifications in place  
6 when it executes its Interconnection Agreement govern its Interconnection  
7 Agreement for the duration of the agreement. If BellSouth believes an industry  
8 standard necessitates a change to the Technical Reference, then it is free to  
9 negotiate with Covad for an amendment to their agreement.

10 **Issue 8: WHEN COVAD REPORTS A TROUBLE ON A LOOP WHERE, AFTER**  
11 **BELLSOUTH DISPATCHES A TECHNICIAN TO FIX THE TROUBLE, NO**  
12 **TROUBLE IS FOUND BUT LATER TROUBLE IS IDENTIFIED ON THAT LOOP**  
13 **THAT SHOULD HAVE BEEN ADDRESSED DURING BELLSOUTH'S FIRST**  
14 **DISPATCH, SHOULD COVAD PAY FOR BELLSOUTH'S COST OF THE**  
15 **DISPATCH AND TESTING BEFORE THE TROUBLE IS IDENTIFIED?**

16 **Q. On page 23, lines 9-11 of BellSouth witness Cox's direct testimony, Ms. Cox**  
17 **states, "BellSouth understands that Covad is asking that BellSouth not charge**  
18 **Covad for the dispatch and testing necessary to determine that there is not**  
19 **trouble on a loop." Is this accurate?**

20 **A. Trouble tickets on which "no trouble is found" are a fallacy. Covad's DSLAM**  
21 **equipment enables it to check to ensure that its systems are working all the way to**  
22 **the demarcation point, beyond which BellSouth is responsible. Thus, the times**

1 when BellSouth will dispatch a truck and legitimately conclude that there is no  
2 trouble on the line are few, and would involve only situations in which a problem  
3 with a customer's inside wiring prevented the loop from functioning. What Covad  
4 is trying to avoid are the numerous and unnecessary trouble tickets it is forced to  
5 open repeatedly on loops, only to have BellSouth either not try to fix the loop or  
6 give up before resolving the problem on the loop. Covad is trying to focus on why  
7 so many BellSouth trouble tickets are closed, reporting "no trouble found," when  
8 there are later problems identified on the loop.

9 **Q. What does BellSouth propose as a solution for Covad to recoup this "no**  
10 **trouble found" charge?**

11 A. Ms. Cox states on page 25 of her direct testimony that Covad could use the Billing  
12 Dispute Process in the current interconnection agreement or for Covad to not close  
13 the trouble ticket when BellSouth reports no trouble found. These proposals are  
14 neither efficient nor reasonable. First, BellSouth seeks to force Covad to go  
15 through the process of tracking all of BellSouth's erroneous "no trouble found"  
16 trouble tickets, then protesting them, and hoping for reimbursement. Instead,  
17 Covad believes BellSouth is responsible for erroneous "no trouble found" reports  
18 on trouble tickets. Either BellSouth should develop a mechanism for tracking these  
19 and providing a credit, or BellSouth should not charge at all for these trouble  
20 tickets. As I've mentioned above, the legitimate "no trouble found" tickets will be  
21 few. The rest result from BellSouth's unwillingness to do what it takes to repair the  
22 loop.

1           Furthermore, Ms. Cox does not appear to be familiar with how the trouble  
2 ticket process works at BellSouth. Covad has no ability to force BellSouth to keep  
3 a trouble ticket open. Furthermore, BellSouth often closes the trouble ticket  
4 without notice. This is another example of BellSouth placing unnecessary  
5 roadblocks in front of Covad in our pursuit of providing competitive DSL services  
6 to Florida consumers.

7   **Q. Does BellSouth routinely close trouble tickets to no trouble found (NTF)?**

8   A. Yes. BellSouth will close out a Covad trouble ticket to NTF and Covad assumes  
9 that is the end of it. There is no BellSouth process that allows Covad an option to  
10 keep the trouble ticket opened or put it in "delayed maintenance" status for 24, 48,  
11 72 hours to allow for further testing. Even if BellSouth is offering to put this  
12 process in place now, it does not solve the problem. BellSouth should be  
13 investigating why so many trouble tickets are closed with no trouble found.  
14 Likewise, BellSouth should be investigating, as a matter of customer service, why  
15 so many loops have repeat troubles, after a trouble ticket is closed, reporting "no  
16 trouble found."

17           If BellSouth will allow Covad to keep the trouble ticket opened and will  
18 work with Covad on the trouble isolation until the trouble can be isolated, then we  
19 would not have deal with the issue of who pays for a dispatch. Because BellSouth  
20 closes the trouble ticket to NTF, a charge is automatically generated to Covad for  
21 the dispatch. If trouble tickets are allowed to remain open until Covad accepts the  
22 loop as fully functional (and delivers to BellSouth a serial number confirming that

1 acceptance), then this issue could be resolved. BellSouth has thus far refused to  
2 accept this solution.

3 **Issue 11: WHAT RATE, IF ANY, SHOULD COVAD PAY BELLSOUTH IF THERE**  
4 **IS NO ELECTRONIC ORDERING INTERFACE AVAILABLE, WHEN IT**  
5 **PLACES A MANUAL LSR FOR: (A) AN XDSL LOOP? (B) LINE SHARING?**

6 **Q. On pages 26 and 27 of BellSouth witness Cox's direct testimony, Ms. Cox**  
7 **argues that BellSouth is not required to provide ALECs electronic ordering**  
8 **for all unbundled network elements (UNEs) and therefore should be able to**  
9 **charge a manual service order fee to Covad when Covad issues manual service**  
10 **orders. Do you agree?**

11 **A. No. It makes no sense for BellSouth to be able to charge an ALEC a manual**  
12 **service order charge of \$21.56, when it does not offer an electronic order alternative**  
13 **for its wholesale customers. Until BellSouth establishes a fully functional**  
14 **electronic ordering system for xDSL loops and line sharing and Covad has had time**  
15 **to develop its interface for such ordering, Covad should not have to pay the manual**  
16 **service order charge. As I stated in my direct testimony, BellSouth claims that it**  
17 **has now made electronic ordering available for xDSL loops and line sharing loops,**  
18 **but all of BellSouth systems for handling these orders (LENS, TAG, EDI) are in the**  
19 **embryonic stage and are relatively unstable. Covad, for example, has experienced**  
20 **numerous problems with placing orders through LENS.**

21 If any charge is allowed to be imposed for manual LSRs, it should only be  
22 allowed when BellSouth has functional, stable electronic systems available for



1 ordering which Covad has chosen not to use. When BellSouth's systems are not  
2 working, rather than delaying orders, Covad will be forced to use the manual  
3 processes. This severely delays Covad's process and ultimately delays service to  
4 Florida end users and adds to Covad's cost of doing business.

5 **Issue 12: SHOULD COVAD HAVE TO PAY FOR A SUBMITTED LSR WHEN IT**  
6 **CANCELS AN ORDER BECAUSE BELLSOUTH HAS NOT DELIVERED THE**  
7 **LOOP IN LESS THAN FIVE BUSINESS DAYS?**

8 **Q. On pages 29-30 of BellSouth witness Cox's direct testimony, Ms. Cox states,**  
9 **"that once Covad submits an LSR, BellSouth begins processing Covad's order**  
10 **and, even if Covad withdraws it request, Covad is responsible for paying**  
11 **whatever charges are appropriate to reimburse BellSouth for the work done**  
12 **on Covad's behalf." Do you agree?**

13 **A. No. BellSouth unjustly states that it should be paid an LSR OSS charge even if it**  
14 **ultimately fails to deliver a loop to Covad or delivers that loop late. BellSouth's**  
15 **delayed loop delivery stifles Covad's ability to recruit and retain satisfied customers**  
16 **in Florida. What is damaging Covad is when it takes 10, 20 or even 30 days to**  
17 **deliver the loop or if BellSouth never delivers a loop at all. With such poor**  
18 **performance, end user customers will not wait for service and ultimately will**  
19 **cancel. Therefore, Covad believes it is reasonable that the Commission require**  
20 **BellSouth to waive the ordering charge when BellSouth does not deliver within the**  
21 **stated interval.**

22 Further, Covad strongly disagrees that this should be addressed as part of

1 the Commission's generic performance measures docket. BellSouth continues to  
2 ask the Commission to kick out issues to other generic dockets or processes. Covad  
3 is entitled to arbitrate any open issue in this proceeding. Covad seeks to include  
4 this provision in the terms and conditions governing its interconnection with  
5 BellSouth.

6 **Issue 13: WHAT ACCESS SHOULD COVAD HAVE TO BELLSOUTH'S LOOP**  
7 **MAKE UP INFORMATION?**

8 **Q. Have the parties reached agreement about the terms and conditions for access**  
9 **to loop makeup information?**

10 **A. Yes.**

11 **Issue 21: SHOULD BELLSOUTH BE REQUIRED TO PROVIDE ACCURATE**  
12 **SERVICE ORDER COMPLETION NOTIFICATIONS FOR LINE SHARED UNE**  
13 **ORDERS?**

14 **Q. On page 6, lines 21-25 of BellSouth witness Williams' direct testimony, Mr.**  
15 **Williams argues that the BellSouth CLEC Service Order Tracking System**  
16 **(CSOTS) provides an accurate service order completion notification. Do you**  
17 **agree with Mr. Williams' statements?**

18 **A. Absolutely not. Although this system allows Covad to check the status of the**  
19 **billing order and will soon allow Covad to check the status of the provisioning**  
20 **order, it does not provide accurate service order completion. Remember,**  
21 **provisioning a line-shared loop requires no truck roll. BellSouth only has to**  
22 **perform simple cross connections in the central office. Covad seeks accurate**

1 information from BellSouth confirming that the cross connections necessary to  
2 provision a loop have been performed. It's that simple. BellSouth refuses to send  
3 Covad a service order completion, like it does for other loop orders.

4 **Q. Can you explain why CSOTS does not provide accurate service order**  
5 **completion for line sharing orders?**

6 A. BellSouth argues that Covad can get the information it needs from CSOTS. This  
7 is not true. CSOTS is designed so that line sharing provisioning service orders  
8 automatically complete or "auto-complete" on the due date. Therefore, even if the  
9 physical provisioning work in the central office has not been performed, the service  
10 order will be listed as complete in CSOTS on the due date that is carried on the  
11 order. Once again, this information has no relationship to whether the actual work  
12 has been done to provision a line shared loop. This would not be a problem if the  
13 BellSouth central office technicians actually completed the work on the due date  
14 95 percent of the time. Unfortunately, that is not what Covad has experienced to  
15 date with respect to BellSouth line sharing provisioning.

16 In April, Covad line sharing installations failed on 26% of the loops. These  
17 failures were due to either BellSouth's failure to complete cross-connections on  
18 time or BellSouth's failure to perform the cross-connections correctly. Because  
19 Covad does not always dispatch a technician on the BellSouth delivery date or the  
20 customer does not always attempt an install using a self-install kit on the BellSouth  
21 delivery date, the 26% failed is actually a very low number. It would probably be  
22 much higher if we could attempt to install on the BellSouth due date. BellSouth

1 continually misses the delivery of line sharing loops because they do not complete  
2 the necessary central office cross-connections on time. Covad needs to know that  
3 the provisioning work has actually been completed. Since we are paying for this  
4 work, we believe this is a reasonable request.

5 **Q. Does BellSouth offer another means to verify accurate completion of a line**  
6 **sharing order?**

7 A. BellSouth proposes a solution in the form of a couple of web-based reports called  
8 the COSMOS CFA Report and the SWITCH CFA Report. As I discussed in my  
9 direct testimony, this solution is not an active completion notification that is sent  
10 to Covad. It is merely a stop-gap solution to a larger issue. Moreover, BellSouth  
11 refuses to update these reports daily and will only update the reports **3 times a**  
12 **week**. The notification that is sent to Covad only shows the completion of the  
13 billing order and not that the physical cross-connects have been completed in the  
14 central office. It's ironic that the system is clearly designed to start billing at the  
15 earliest possible point, but the system apparently is not set up to ensure that the  
16 work for which Covad is billed has been done. Rather, Covad must actively go to  
17 the web to view the reports and to search for orders that *should* be completed. If  
18 the phone number is on the report and has a "wk" or "working status", it means that  
19 the BellSouth CO technician has completed the work order for the central office  
20 cross-connects for the line sharing. This means that the line sharing should be  
21 complete and working.

22 As I explained more fully in my direct testimony, these reports do not

1 replace an accurate service order completion notification. BellSouth's electronic  
2 ordering systems for line sharing are new and are still being tested.

3 **Q. What does Covad need from BellSouth regarding accurate completion**  
4 **notifications?**

5 A. Again, as I discussed in my direct testimony, BellSouth should simply provide a  
6 daily email listing of all of the line sharing orders that were completed by BellSouth  
7 on the previous day. Covad could verify this against its records based on the firm  
8 order confirmations (FOCs) received. This is just what another ILEC, Qwest,  
9 provides to Covad for line sharing orders in that region. Moreover, Verizon  
10 provides such a list on all stand alone loops ordered.

11 **Q. On page 13 and 14 of BellSouth witness Pate's direct testimony, Mr. Pate**  
12 **discusses how accurate completion notifications are delivered to ALECs and**  
13 **that line sharing should be treated the same. Will these completion**  
14 **notifications be accurate for line sharing orders?**

15 A. No. As I discussed above in my rebuttal of BellSouth witness Williams' testimony,  
16 line sharing provisioning orders "auto-complete" on the due date. Therefore, even  
17 if we submit an order for line sharing electronically and are returned an electronic  
18 completion notification from BellSouth, it does not really mean that provisioning  
19 of the order is complete. Because of this auto-complete mechanism, ALECs have  
20 no way to know if the physical work in the central office has been completed on  
21 time. Covad has continued to experience problems with BellSouth completing the  
22 central office cross-connects on the due date. That is why we have requested a line

1 sharing completion report be sent to Covad daily. This report must be based off of  
2 BellSouth's COSOMS/SWITCH database since this is the only means to determine  
3 if the physical work has been done. A completion notification that is truly accurate  
4 is crucial for Covad to provide competitive DSL service to Florida consumers.

5 **Issue 22: SHOULD BELLSOUTH BE REQUIRED TO TEST FOR DATA**  
6 **CONTINUITY ON EACH LINE SHARED LOOP BOTH IN THE PROVISIONING**  
7 **AND IN THE REPAIR AND MAINTENANCE OF THE LOOPS?**

8 **Q. On page 7, lines 6-17 of BellSouth witness Williams' direct testimony, Mr.**  
9 **Williams states that BellSouth is willing to test continuity of the data circuit**  
10 **wiring. Can you please comment?**

11 **A.** Yes. As stated in my direct testimony, it is crucial that BellSouth test for data  
12 continuity during provisioning and repair and maintenance of line sharing. During  
13 the initial implementation of line sharing, Covad has experienced numerous  
14 problems with ensuring that BellSouth has completed the work necessary to  
15 provision the loop. The fact that BellSouth has implemented the line sharing  
16 verification transmitter (LSVT) is a move in the right direction. However, it is not  
17 enough. As I asserted in my direct testimony, the LSVT does not provide the  
18 necessary data continuity testing that Covad needs to assure that BellSouth has  
19 accurately provisioned and repaired line sharing orders. While the LSVT is a good  
20 step toward providing good quality line sharing orders to Covad, it does not provide  
21 Covad with all that it needs regarding this issue. BellSouth has testing capabilities  
22 that it uses for its own retail ADSL that it refuses to use for Covad line sharing.

1     **Q.     Can you please explain again what capability BellSouth uses to test its own**  
2     **retail ADSL?**

3     A.     Covad has learned that BellSouth uses a Sunset ADSL test set to test its own ADSL  
4     services. Covad discovered this when several BellSouth CO technicians actually  
5     used these sets to successfully test Covad line sharing circuits. With the success  
6     that we have experienced using the Sunset ADSL test sets in a few sets to provision  
7     Covad's line shared service, we requested that BellSouth use this test set on all our  
8     loops. BellSouth responded the Sunset test set could only be used for BellSouth  
9     retail ADSL orders, not Covad's wholesale orders.

10    **Q.     Why should BellSouth use the Sunset ADSL test set for Covad line sharing**  
11    **orders?**

12    A.     Again, unlike the LSVT test set, the Sunset ADSL test set would provide Covad  
13    repair representatives, located in Covad's repair center, with visibility into the  
14    configuration of our line sharing circuits and improve our cooperative testing  
15    abilities during the repair and maintenance process.

16    **Q.     Should BellSouth still use the LSVT for the provisioning of line sharing**  
17    **circuits for Covad?**

18    A.     Yes. The LSVT test allows the BellSouth central office technicians to double-  
19    check the cross-connections and jumpers when initially wiring Covad line sharing  
20    orders. The Sunset ADSL test set would only be used in a repair and maintenance  
21    situation.

22    **Q.     Does this mean that the Sunset test set would not be used if Covad was having**

1 **trouble turning up a line sharing circuit initially?**

2 A. No. The way that BellSouth has implemented its processes, as soon as the due date  
3 for an order has passed, BellSouth considers it a maintenance issue. Today, Covad  
4 must open a trouble ticket on a new order that is having a problem, even though it  
5 has never been successfully turned up on the provisioning side. BellSouth could  
6 easily modify its methods and procedures to begin using the Sunset ADSL test set  
7 for Covad line sharing orders. Since BellSouth uses these for its own retail ADSL  
8 service, it can easily be used for Covad's service as it would quickly resolve  
9 problems on the orders.

10 **Issue 30: SHOULD BELLSOUTH RESOLVE ALL LOOP "FACILITIES" ISSUES**  
11 **WITHIN THIRTY DAYS OF RECEIVING A COMPLETE AND CORRECT LSR?**

12 **Q. On page 5, lines 24-25 of BellSouth witness Kephart's direct testimony, Mr.**  
13 **Kephart states that, "it is not reasonable to place an arbitrary, artificial time**  
14 **limit on when facilities issues can be resolved." Do agree that the intervals**  
15 **that Covad is requesting are arbitrary or artificial?**

16 A. Absolutely not. Covad is simply asking this Commission to set reasonable intervals  
17 for BellSouth to clear facilities issues--not arbitrary or artificial intervals. When I  
18 was at BellSouth, I remember that the internal goal for clearing facilities was 30  
19 days. You were measured by that goal as part of your performance plan. In fact,  
20 Mr. Kephart even states on page 6, lines 1-3 that BellSouth uses the same  
21 procedures for handling its own facilities.

22 **Q. What is the ultimate goal regarding clearing facilities problems on loop orders**



1           **and what do you propose as a solution?**

2       A.     The goal is to not have customers wait indefinitely for service. Although I believe  
3           that a 30-day interval is reasonable, our discussions with BellSouth have lead us to  
4           develop the following proposal. BellSouth should categorize facility issues into  
5           three types: 1) defective cable pairs; 2) facilities exhaust conditions; and 3) new  
6           construction.

7                     The interval to clear a defective cable pair to make a facility available  
8           should be no more than seven (7) calendar days. For a facility exhaust condition,  
9           one of which BellSouth should already be aware, the interval should be thirty (30)  
10          calendar days. Finally, for new construction, the interval should be the same that  
11          BellSouth quotes for its retail POTS service.

12       **Q.     On page 6, lines 1--25 of Mr. Kephart's direct testimony he also discusses other**  
13       **factors that can influence the time required to resolve facilities issues such as**  
14       **natural disasters. Please comment.**

15       A.     Covad understands that repair and maintenance after a natural disaster takes the  
16           highest priority, but natural disasters do not happen everyday. The Commission  
17           should not be persuaded by such a red herring. Covad would certainly be willing  
18           to agree to contract language indicating that the intervals for resolution of facility  
19           issues will be waived in the event of a natural disaster. BellSouth, as always, wants  
20           this Commission to base its decision on the worst possible case scenario. Covad  
21           would like this Commission to address the type of facility problems that it  
22           experiences everyday dealing with BellSouth.

1                   The issue that Covad is asking the Commission to decide is what should be  
2                   the standard interval be for clearing facilities, so that Florida consumers aren't  
3                   continually frustrated when they have to wait months to receive service.

4    **Q.    Does this conclude your rebuttal testimony?**

5    **A.    Yes.**

1 MS. BOONE: I would like to introduce the testimony  
2 into the record.

3 COMMISSIONER JABER: We've done that.

4 MS. BOONE: I'm sorry.

5 COMMISSIONER JABER: It's okay. We inserted it into  
6 the record as though read, and he's given his changes to his  
7 testimony. We're ready for him to summarize his testimony.

8 BY MS. BOONE:

9 Q Please do so.

10 COMMISSIONER JABER: Five minutes, a five-minute  
11 summary.

12 A Okay. Commissioners, I would like to briefly  
13 summarize the main issues covered in my testimony. A number of  
14 issues in this arbitration concern how long BellSouth should  
15 take to deliver Covad various types of loops and to condition  
16 those loops. It is Covad's position that a uniform  
17 installation interval for ADSL, HDSL, and UCL should be three  
18 business days from receipt of a correct LSR. As Mr. Seeger  
19 will testify to in greater detail, after Covad selects a loop  
20 for its service, BellSouth is provisioning essentially a copper  
21 voice grade loop. It can do so in three days.

22 For IDSL loops, the standard interval should be five  
23 business days. If a cooper work around, then a ten business  
24 day interval should be adequate. A work around simply means  
25 that BellSouth provides Covad a copper loop instead of a loop

1 that is fiber and copper. Finally, Covad believes BellSouth  
2 should provide conditioned loops in five business days.

3 BellSouth proposes only target intervals and wants to  
4 retain the right to change those intervals at any time. Covad  
5 wants loop delivery --

6 COMMISSIONER JABER: Mr. Allen?

7 THE WITNESS: Yes, ma'am.

8 COMMISSIONER JABER: I wasn't going to hold you  
9 exactly to five minutes, so slow down just a little bit.

10 THE WITNESS: Okay. I'm sorry, Commissioner. I was  
11 actually trying to slow down. I have been told that before.

12 COMMISSIONER JABER: I just really want to emphasize  
13 to the parties that you need to read the orders that we issue.

14 THE WITNESS: Yes, ma'am.

15 COMMISSIONER JABER: And there will be a day where we  
16 hold you to that five minutes.

17 THE WITNESS: Thank you, Commissioner. I appreciate  
18 the consideration.

19 COMMISSIONER JABER: That's fair warning.

20 A Covad wants loop delivery intervals and condition  
21 intervals set forth clearly in its contracts so that both  
22 BellSouth and Covad know their respected rights and  
23 obligations. BellSouth cannot alter those rights and  
24 obligations unilaterally.

25 Issue 6 involves an attempt by BellSouth to charge

1 Covad if Covad updates or modifies an order. In response to  
2 this proposal, Covad believes that BellSouth -- if BellSouth  
3 modifies a Covad order, then BellSouth should likewise pay  
4 Covad. This is about reciprocity. When BellSouth changes a  
5 loop delivery date, it causes Covad to incur costs. Thus, it  
6 is only fair that if BellSouth get compensated when Covad  
7 changes an order, then Covad should be compensated when  
8 BellSouth changes an order. Otherwise, neither party should be  
9 compensated.

10 Issue 7 involves BellSouth's new nondesigned xDSL  
11 loop. We have asked BellSouth to participate in joint  
12 acceptance testing of that loop just like BellSouth does on the  
13 other ADSL, HDSL, and UCL loops. Covad is entitled to a  
14 working loop every time it orders one from BellSouth. Because  
15 experience has shown that we don't always get working loops,  
16 Covad has created this process of joint testing at the time of  
17 loop delivery. This ensures that both BellSouth and Covad  
18 agree that the loop has been provisioned properly. This saves  
19 Covad from having to roll trucks to try to install service on a  
20 loop that has not been properly provisioned. It prevents Covad  
21 customers from waiting at home all day to have DSL service  
22 installed only to discover that BellSouth has not done the  
23 necessary cross-connection work to provision the loop, and it  
24 saves BellSouth from having to respond to trouble tickets  
25 merely to get a loop working that should have been working in

1 the first place.

2 Covad believes that this joint acceptance testing  
3 should not be necessary on the loops. After all, we are  
4 essentially putting Covad's time and equipment in place to  
5 ensure that BellSouth does its job to properly provision the  
6 loop. Thus, Covad proposes that BellSouth conduct joint  
7 acceptance testing on all the UCL nondesigned loops. If  
8 BellSouth delivers functional loops on time and working on  
9 90 percent of the time, Covad will pay for the joint acceptance  
10 testing. If BellSouth doesn't deliver working loops 90 percent  
11 of the time, then BellSouth should pay for the testing. Covad  
12 has a similar arrangement with SBC in Texas, and we believe our  
13 offer is a reasonable one.

14 Issue Number 7(b), Covad asks simply that technical  
15 specifications for BellSouth loops and other products that are  
16 in place at the time of the execution of Covad's  
17 interconnection agreement remain in place throughout the  
18 agreement. Here's the problem. BellSouth's technical  
19 specifications govern things like how much noise can be on an  
20 ADSL loop or what the acceptable loss levels are. The  
21 technical specifications are incorporated by reference into  
22 Covad's interconnection agreement. If BellSouth is allowed to  
23 unilaterally alter the technical specifications, it can  
24 unilaterally change Covad's contract in ways that may have a  
25 detrimental impact on Covad.

1           For example, if BellSouth suddenly rewrote the ADSL  
2 loop specification to allow five times as much noise on an  
3 acceptable ADSL loop, it would have a huge impact on Covad's  
4 business. We would have to determine if we should order a  
5 different type of loop or if our service could function with  
6 that much noise. For all ADSL loops Covad currently has,  
7 BellSouth's change to the specifications mean that some of our  
8 customers could lose service. If we opened trouble tickets,  
9 BellSouth's response would be, the loop meets the technical  
10 specifications in the technical reference.

11           All Covad asks is that BellSouth not be given the  
12 power to unilaterally alter our contract. If it needs to make  
13 a legitimate change to the technical specifications for  
14 services covered in the interconnection agreement, BellSouth  
15 should seek Covad's approval through an amendment.

16           Issue 8 concerns trouble tickets in which BellSouth  
17 reports "no trouble found." Covad has encountered significant  
18 problems with trouble tickets coded as "no trouble found"  
19 during the repair process. Essentially, that means a BellSouth  
20 technician or the BellSouth UNE center received a trouble  
21 report, did some kind of investigation, and closed the ticket  
22 reporting that he or she could find no trouble. Covad has  
23 found on loops on which Covad must open a trouble ticket, it  
24 has to open more than one trouble ticket 40 percent of the  
25 time. Those loops are now in service. That means there was a

1 problem on the loop that was not diagnosed and cured the  
2 first time during the resolution of the first trouble ticket.  
3 That required Covad to open a second trouble ticket, and that  
4 means BellSouth charged Covad for the first trouble ticket.  
5 Covad proposes that BellSouth not be permitted to charge for  
6 trouble tickets labeled "no trouble found." This will provide  
7 the necessary incentive for BellSouth to fix the problems on  
8 the first trouble ticket.

9           Issue 11 asks what charge should be allowed when  
10 Covad has to place a manual order for a loop because there is  
11 not a mechanized system available to place orders. Covad  
12 believes it should pay only the electronic LSR charge, and it  
13 appears that BellSouth now may be agreeing with Covad's  
14 position. When mechanized systems are not functioning and  
15 Covad places a manual order as a result, Covad should not be  
16 charged -- excuse me, Covad should only be charged the  
17 mechanized order fee.

18           Furthermore, there are several types of xDSL loops  
19 for which BellSouth does not make electronic ordering  
20 available. It is important to note that BellSouth does not  
21 make electronic ordering available for IDSL loops, which are  
22 30 percent of Covad orders, and there are now -- there are  
23 problems now with placing line sharing orders through BellSouth  
24 electronic systems. And BellSouth has apparently not upgraded  
25 its systems to allow electronic ordering of the new unbundled



1 copper loop nondesigned. This continues to be a serious  
2 problem. For all of these loops for which there is no option  
3 but to place orders manually, Covad should only be required to  
4 pay the electronic order charge.

5 Issue 12 addresses when Covad should pay for  
6 cancelling an order. Covad has found that many of its  
7 customers cancelled orders -- cancel orders as a result of the  
8 time it takes BellSouth to deliver Covad's loops. Basically,  
9 they get tired of waiting. This penalizes Covad in two ways:  
10 First, we lose the customer, and second, we are forced to pay  
11 the order cancellation fee. Covad has proposed that it not be  
12 required to pay the order cancellation fee if BellSouth does  
13 not deliver the loop in the specified interval.

14 Issues 21 and 22 concern line sharing. They have to  
15 do with the process BellSouth has in place to provide Covad  
16 with information about the status of its orders and the type of  
17 test set BellSouth should use to ensure data continuity on a  
18 shared loop. A shared loop is nothing more than a BellSouth  
19 voice loop on which Covad is placing data on the high frequency  
20 portion of the loop. To enable Covad to use the high  
21 frequencies for data, BellSouth must place a few  
22 cross-connections in the central office to run the loop through  
23 a passive device called a splitter which literally splits the  
24 voice frequencies and the data frequencies. The voice  
25 frequencies are routed to BellSouth's switch, and the data

1 frequencies are sent to Covad's collocation space. This  
2 minimal cross-connection work in the central office must be  
3 done before Covad can get its DSL service to work on the line  
4 shared loop.

5 Covad continues to have problems with line sharing  
6 orders that it believes could be easily solved. BellSouth has  
7 devised a line sharing system that generates order completion  
8 notices and starts billing Covad, even if the work to provision  
9 the loop has not been done. The completion notice bears no  
10 relation to whatever the -- to whether, excuse me, the  
11 cross-connections have actually been performed. We need  
12 accurate order completion information. We have asked BellSouth  
13 to fix this. In the interim, Covad has to search on a  
14 COSMOS/SWITCH database to determine if the line shared loops  
15 have been provisioned. This list is very unreadable and hard  
16 to search. Moreover, BellSouth only updates it three days a  
17 week. We ask that BellSouth be required to update the  
18 COSMOS/SWITCH database every day and that BellSouth e-mail  
19 Covad a list of completed orders from the previous day. We  
20 think that's a reasonable request in light of the fact that  
21 Covad pays to have the work performed, and BellSouth should be  
22 required to tell us that that work has been done.

23 Additionally, use of the Sunset test set, the test  
24 set BellSouth uses for its own line sharing orders, would  
25 greatly increase the number of these loops delivered on the due

1 date. Use of the Sunset test set would quickly benefit both  
2 Covad and BellSouth by speeding the provisioning of these loops  
3 and by reducing troubles. By using this test set, BellSouth  
4 can confirm that it has properly completed the provisioning of  
5 a shared line loop for Covad.

6 Finally, Issue 30 concerns whether BellSouth should  
7 be allowed to place orders in a pending facilities queue for an  
8 indefinite period of time. Covad has lost many customers as a  
9 result of orders BellSouth has placed, without explanation,  
10 into a facilities bucket. We ask for a set interval for  
11 BellSouth to resolve these issues. We originally asked that  
12 BellSouth resolve all facility issues within 30 days. We have  
13 refined that proposal to address our most pressing issues. We  
14 ask that BellSouth clear defective pairs in 7 days, that it  
15 relieve facility exhaust condition in 30 days, and that it  
16 resolve pending facility issues involving new construction in  
17 the same period of time that it does for its retail POTS  
18 service. We believe this work can easily be accomplished in  
19 these time frames. That concludes my summary.

20 MS. BOONE: The witness is available for cross.

21 COMMISSIONER JABER: Ms. Boone, rather than get  
22 started with Mr. Allen's cross examination, let's go ahead and  
23 break for lunch. Let's break until 12:30 since we're taking  
24 another half an hour break at 2:30, so come back here at 12:30.  
25 Thank you.

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(Lunch recess.)

(Transcript continues in sequence with Volume 2.)

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1 STATE OF FLORIDA )

2 : CERTIFICATE OF REPORTER

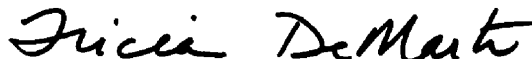
3 COUNTY OF LEON )

4  
5 I, TRICIA DeMARTE, Official Commission Reporter, do hereby  
6 certify that the foregoing proceeding was heard at the time and  
7 place herein stated.

8 IT IS FURTHER CERTIFIED that I stenographically  
9 reported the said proceedings; that the same has been  
10 transcribed under my direct supervision; and that this  
11 transcript constitutes a true transcription of my notes of said  
12 proceedings.

13 I FURTHER CERTIFY that I am not a relative, employee,  
14 attorney or counsel of any of the parties, nor am I a relative  
15 or employee of any of the parties' attorneys or counsel  
16 connected with the action, nor am I financially interested in  
17 the action.

18 DATED THIS 5TH DAY OF JULY, 2001.

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TRICIA DeMARTE

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