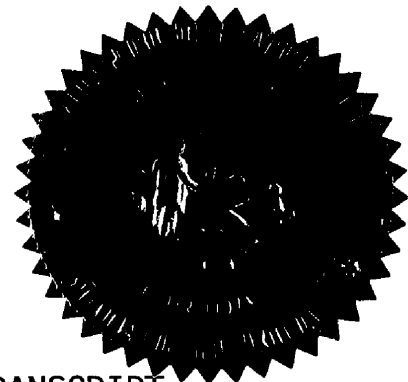


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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 BELL SOUTH
TELECOMMUNICATIONS, INC.



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VOLUME 4

PAGES 490 THROUGH 651

PROCEEDINGS: HEARING

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

DATE: Thursday, June 28, 2001

TIME: Commenced at 8:30 a.m.

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

REPORTED BY: KORETTA E. STANFORD, RPR
Official FPSC Reporter
(850) 413-6734

APPEARANCES: (As heretofore noted.)

FLORIDA PUBLIC SERVICE COMMISSION DOCUMENT NUMBER-DATE

08243 JUL-5

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NAME:

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P R O C E E D I N G S

(Transcript continues in sequence from Volume 3.)

COMMISSIONER JABER: Good morning.

ALL: Good morning.

COMMISSIONER JABER: Let's convene the hearing, hopefully the conclusion of the hearing. I think, where we left off was with BellSouth calling its first witness, but before we do that I neglected yesterday to move into evidence Exhibits 12, 13, and 14.

MR. TWOMEY: No objection.

COMMISSIONER JABER: So, let the record reflect that those are moved into evidence without objection.

(Exhibits 12, 13, and 14 admitted into the record.)

COMMISSIONER JABER: And, Mr. Twomey, call your first witness.

MR. TWOMEY: Thank you, Commissioner. BellSouth calls Cynthia Cox.

COMMISSIONER JABER: Now, are all of your witnesses in the room?

MR. TWOMEY: Well, we are shuttling them back and forth. We couldn't all fit in the same car. They will all be here soon. Ms. Cox is among the witnesses who was not sworn in yesterday.

COMMISSIONER JABER: Ms. Cox, would you please raise your right hand and answer with yes or I do. Do you affirm

1 that the testimony you're about to give is the truth?

2 THE WITNESS: I do.

3 COMMISSIONER JABER: Thank you. Go ahead,
4 Mr. Twomey.

5 MR. TWOMEY: Thank you.

6 CYNTHIA COX

7 was called as a witness on behalf of BellSouth
8 Telecommunications and, having been duly sworn, testified as
9 follows:

10 DIRECT EXAMINATION

11 BY MR. TWOMEY:

12 Q Good morning, Ms. Cox.

13 A Good morning.

14 Q Did you cause to be filed into the record of this
15 proceeding Direct Testimony on April 23rd, 2001, consisting of
16 39 pages and one exhibit?

17 A I'm sorry, what was the date you said?

18 Q April 23rd.

19 A Yes, I did.

20 Q And did you also cause to be filed into the record of
21 this proceeding May 23rd, 2001, Rebuttal Testimony consisting
22 of 35 pages and one exhibit?

23 A Yes, I did.

24 Q Do you have any additions, corrections or
25 modifications to that testimony?

FLORIDA PUBLIC SERVICE COMMISSION

1 A No, I do not.

2 MR. TWOMEY: Okay. At this time, I'd like to move
3 into the record -- insert into the record Ms. Cox's Direct and
4 Rebuttal Testimony.

5 COMMISSIONER JABER: Yes, Ms. Cynthia Cox's prefiled
6 and Direct and Rebuttal Testimony shall be inserted into the
7 record as though read.

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BELLSOUTH TELECOMMUNICATIONS, INC.
DIRECT TESTIMONY OF CYNTHIA K. COX
BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 001797 - TP
APRIL 23, 2001

Q. PLEASE STATE YOUR NAME, YOUR POSITION WITH BELLSOUTH TELECOMMUNICATIONS, INC. ("BELLSOUTH") AND YOUR BUSINESS ADDRESS.

A. My name is Cynthia K. Cox. I am employed by BellSouth as Senior Director for State Regulatory for the nine-state BellSouth region. My business address is 675 West Peachtree Street, Atlanta, Georgia 30375.

Q. PLEASE PROVIDE A BRIEF DESCRIPTION OF YOUR EDUCATIONAL BACKGROUND AND EXPERIENCE IN THE TELECOMMUNICATIONS INDUSTRY.

A. I graduated from the University of Cincinnati in 1981 with a Bachelor of Business Administration degree in Finance. I graduated from the Georgia Institute of Technology in 1984 with a Master of Science degree in Quantitative Economics. I immediately joined Southern Bell in the Rates and Tariffs organization with the responsibility for demand analysis. In 1985 my responsibilities expanded to include administration of selected rates and tariffs including preparation of tariff filings. In 1989, I accepted an assignment in the

1 North Carolina regulatory office where I was BellSouth's primary liaison with
2 the North Carolina Utilities Commission Staff and the Public Staff. In 1993, I
3 accepted an assignment in the Governmental Affairs department in Washington
4 D.C. While in this office, I worked with national organizations of state and
5 local legislators, NARUC, the FCC and selected House delegations from the
6 BellSouth region. In February 2000, I was appointed Senior Director of State
7 Regulatory.

8

9 Q. WHAT IS THE STATUS OF THE NEGOTIATIONS BETWEEN COVAD
10 AND BELLSOUTH?

11

12 A. BellSouth has negotiated in good faith with DIECA Communications, Inc.,
13 d/b/a Covad Communications Company ("Covad") both before and after
14 Covad filed its Petition for Arbitration with the Florida Public Service
15 Commission (the "FPSC" or "Commission") on December 15, 2000. Covad's
16 Petition listed thirty-five unresolved issues. The parties have resolved thirteen
17 issues since then, and twenty-one issues remain for this Commission to
18 arbitrate.

19

20 Q. WHAT IS THE PURPOSE OF THE TESTIMONY THAT YOU ARE FILING
21 TODAY?

22

23 A. The purpose of my testimony is to present BellSouth's position on many of the
24 unresolved issues in the negotiations between BellSouth and ("Covad").
25 BellSouth witnesses Jerry Kephart, Jerry Latham, Ron Pate, Bernard Shell and

1 Tommy Williams are also filing testimony in this proceeding. Specifically, my
2 testimony addresses Issues 1 – 3, 6, 8, 11(a) and (b), 12, 24, 25, 29, 31 and
3 32(a). Mr. Kephart addresses Issues 7(a) and (b), and 30. Mr. Latham
4 addresses Issues 5(a) – (c); Mr. Pate discusses issues 13 and 21; Mr. Shell
5 addresses the cost issues associated with Issues 24 and 29; and Mr. Williams
6 addresses Issues 16, 18, and 21 – 23. It is BellSouth’s understanding that
7 Issues 4, 9, 10(a) and (b), 14, 15, 17, 20, 26, 27, 28 and 32(b)-35 have been
8 closed and Issue 19 has been changed to 11(b). These issues, therefore, will
9 not be discussed in the testimony being filed today.

10

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

13

14 Q. WHAT IS BELLSOUTH’S POSITION WITH REGARD TO INCLUDING
15 LIMITATION OF LIABILITY IN THE INTERCONNECTION
16 AGREEMENT BETWEEN BELLSOUTH AND COVAD?

17

18 A. It is BellSouth’s position that this issue is not an appropriate subject for
19 arbitration. BellSouth does not dispute that parties may include in the
20 negotiation process, any issue that they choose to discuss. Section 252(a) of
21 the Telecommunications Act of 1996 (“the Act”) allows parties to negotiate
22 and enter into a binding agreement for interconnection, without regard to the
23 standards set forth in §251(b) and (c) of the Act. That is, the parties can agree
24 to terms that create obligations that are not statutorily required.

25

1 When such negotiations fail, and arbitration is sought however, Section 252(e)
2 of the Act constrains the Commission to resolve any “open issues” in a manner
3 that meets “the requirements of section 251, including the regulations
4 prescribed by the [FCC] pursuant to section 251 . . .” None of the
5 requirements of Section 251 addresses limitations of liability.

6

7 Q. WHAT IS BELLSOUTH’S POSITION WITH REGARD TO LIMITATIONS
8 OF LIABILITY?

9

10 A. Although I am not a lawyer, and without waiving the position stated above,
11 BellSouth has proposed that each parties’ liability to the other arising out of
12 any negligent act or omission should be limited to a credit for the actual cost of
13 the services or functions not performed or improperly performed. BellSouth is
14 willing to exclude from this limitation losses resulting from gross negligence
15 or intentional misconduct, and indeed such language is found in Section 8.3.4
16 of the General Terms and Conditions of the Interconnection Agreement.

17

18 BellSouth, however, is not willing to simply do away with any limitation of
19 liability and is not statutorily obligated to do so. BellSouth also is not willing
20 to agree to language that can be the subject of ongoing disputes such as a
21 provision that the limitation of liability would not apply to “material” breaches
22 of the agreement.

23

1 Q. SHOULD BOTH BELL SOUTH AND COVAD BE LIABLE IN DAMAGES,
2 WITHOUT A LIABILITY CAP, TO ONE ANOTHER FOR FAILURE IN
3 PERFORMING ANY MATERIAL PROVISION OF THE AGREEMENT?
4

5 A. No. The parties' liability should be limited as described above. It is common
6 for parties to an interconnection agreement to agree to limited liability.
7 Additionally, limitations of liability are standard in the telecommunications
8 industry. The tariffs of BellSouth and other telecommunications service
9 providers, for instance, commonly limit the service provider's liability.
10

11 Q. YOU STATED ABOVE THAT "LIMITATIONS OF LIABILITY ARE BEEN
12 STANDARD IN THE TELECOMMUNICATIONS INDUSTRY." PLEASE
13 GIVE SOME SPECIFIC EXAMPLES.
14

15 A. Both BellSouth's Florida Access Services Tariff and General Subscriber
16 Service Tariff ("GSST") include limitations of liability. With regard to access
17 customers, Section E2.1.3 of the Access Services Tariff states in part:

18 *the Company's liability shall not exceed an amount equal to the*
19 *proportionate charge for the service for the period during which the*
20 *service was affected.*

21 Also, with regard to business and residential customers, Section A2.5.1 of the
22 GSST, in part, sets forth the following:

23 *The liability of the Company for damages arising out of impairment of*
24 *service provided to its subscribers such as defects or failure in facilities*
25 *furnished by the Company or mistakes, omissions, interruptions,*

1 *preemptions, delays, errors or defects in the provision of its*
2 *services..., occurring in the course of furnishing such facilities or*
3 *services and not caused by the negligence of the subscriber, or of the*
4 *Company in failing to maintain proper standards of maintenance and*
5 *operation and to exercise reasonable supervision shall in no event*
6 *exceed an amount equivalent to the proportionate charge to the*
7 *subscriber for the period of service during which such mistake,*
8 *omission, interruption, preemption, delay, error or defect in*
9 *transmission or defect or failure in facilities or services occurs.*

10 More recently, this Commission approved an additional limitation in reference
11 to BellSouth's Y2K liability. Section A2.5.12C of the GSST states:

12 *The Company's liability for errors or damage resulting from the*
13 *inability of the Company's systems to process unusual date*
14 *requirements, shall be limited to an amount equal to the proportionate*
15 *amount of the Company's billing for the period of service during which*
16 *the errors or damages occur.*

17
18 Q. HAS THIS COMMISSION RECENTLY MADE A RULING ON THIS
19 ISSUE?

20
21 A. Yes. In its Order No. PSC-01-824-FOF-TP, issued March 30, 2001 in Docket
22 No. 000649-TP *In re: Petition by MCImetro Access Transmission Services*
23 *LLC and MCI WorldCom Communications, Inc. for arbitration of certain*
24 *terms and conditions of a proposed agreement with BellSouth*
25 *Telecommunications, Inc. concerning interconnection and resale under the*

1 *Telecommunications Act of 1996* (“MCI Order”), the Commission found in its
2 decision in Section XLVI, that while it is obligated to arbitrate “any open
3 issue”, it “may only impose a condition or term required to ensure that such
4 resolutions and conditions meet the requirements of Section 251.” The FPSC
5 went on to find that, in the case of MCI, it was “appropriate not to impose
6 adoption of any disputed terms contained in the limited liability provision
7 whereby the parties would be liable in damages, without liability cap, to one
8 another for their failure to honor in one or more material respects any one or
9 more of the material provisions of the Agreement.” (Emphasis added.)
10

11 Q. WHAT IS BELLSOUTH ASKING OF THIS COMMISSION?
12

13 A. We ask this Commission to reach the same conclusion as it did in the MCI
14 Order referenced above. None of the requirements of Section 251 addresses
15 limitations of liability. If, however, this Commission decides, as it did in the
16 MCI Order, that the issue is appropriate to be heard in this arbitration
17 proceeding, BellSouth respectfully requests that BellSouth’s position should be
18 adopted and the parties ordered to include language limiting their respective
19 liability. Covad’s proposal represents a drastic departure from this standard
20 practice. There is no reason for the Commission to allow Covad to seek more
21 damages as a result of a mistake made by BellSouth than BellSouth’s retail and
22 wholesale access customers would be allowed to seek as a result of the same
23 mistake by BellSouth. Covad’s proposal, therefore, should be denied because
24 it is inconsistent with standard practices and it would result in preferential
25 treatment of Covad.

1

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

5

6 Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

7

8 A. As with Issue 1, it is BellSouth's position that this issue is not an appropriate
9 subject for arbitration.

10

11 Q. IF THE COMMISSION CHOOSES TO ARBITRATE THIS ISSUE, WHAT
12 IS BELLSOUTH'S POSITION?

13

14 A. BellSouth's position is that it should not be required to include Covad's
15 proposed language with regard to work stoppage in the parties' Interconnection
16 Agreement. Covad is not entitled to special treatment in the event of a work
17 stoppage, or to dictate what the limited BellSouth workforce will do during
18 such a work stoppage.

19

20 Q. WHY IS BELLSOUTH TAKING THIS POSITION?

21

22 A. BellSouth believes that this is the only position that makes sense. Although
23 BellSouth hopes that neither it, nor its vendors, will experience a work
24 stoppage during the period covered by the Interconnection Agreement between
25 itself and Covad, such a result is not predictable with certainty. If such an

1 event does occur BellSouth would be obligated to organize its work force to
2 ensure the provision and continuation of service to all of its retail and
3 wholesale customers, which includes all ALECs - not just Covad. In this
4 regard, what Covad is entitled to receive, and what BellSouth proposes to
5 provide, is interconnection and access to unbundled network elements on a
6 nondiscriminatory basis during any work stoppage.

7
8 Further, if BellSouth is required to incorporate Covad's proposal into the
9 parties' Interconnection Agreement, which can be adopted by other ALECs,
10 BellSouth could be forced to use its limited resources for contingency planning
11 rather than for the provision of service.

12
13 Q. WHAT DOES BELLSOUTH REQUEST OF THE COMMISSION WITH
14 RESPECT TO ISSUE 2?

15
16 A. First, BellSouth requests that this Commission find that this issue is not
17 appropriate to be raised in an arbitration proceeding such as this. If, however,
18 the Commission decides to address the issue, BellSouth urges the Commission
19 to deny, for the reasons given above, the proposal put forth by Covad.

20
21 ***Issue 3: Should there be limitation on an ALEC's right to opt-in to an existing***
22 ***interconnection agreement that has only six months remaining before it***
23 ***expires?***

24
25 Q. WHAT IS BELLSOUTH'S UNDERSTANDING OF THIS ISSUE?

1

2 A. In the discussion in its Petition, Covad appears to have three separate issues.
3 First, Covad alleges that BellSouth is seeking to circumvent the FCC's Rule
4 51.809(a) by restricting Covad from opting-in to, or adopting, another ALEC's
5 Interconnection Agreement if there is less than 6-months remaining on the term
6 of the Agreement that Covad seeks to adopt. Second, Covad alleges that
7 BellSouth, in seeking to circumvent the same rule, is limiting "Covad's
8 adoption rights by requiring that Covad accept all clauses that are 'legitimately
9 related to or were negotiated in exchange for or in connection with' the
10 interconnection, service or network element Covad seeks to adopt." (Petition
11 at ¶14.) Finally, Covad proposes that the effective date of an Interconnection
12 Agreement that Covad chooses to adopt should be when BellSouth receives the
13 written notice that Covad wishes to adopt the agreement.

14

15 Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

16

17 A. BellSouth is not restricting Covad's right to opt-in to another ALEC's
18 Interconnection Agreement by imposing artificial limitations, as Covad alleges
19 in its Petition. With regard to Covad's first allegation, BellSouth's position is
20 that an ALEC may opt-in to, or adopt, another ALEC's existing
21 interconnection agreement so long as that agreement has at least six months
22 remaining in its term before it expires. Covad contends that BellSouth's "six
23 month" requirement is restrictive. I disagree. As a practical matter, I doubt
24 there are many instances where an ALEC would want to opt-in to an agreement
25 that has less than six months remaining in its term.

1

2

With regard to the second allegation in the issue, BellSouth's position is that

3

pursuant to Section 252(i) of the Act and FCC Rule 51.809, BellSouth is

4

required to make available any interconnection, service, or network element

5

provided under any other agreement at the same rates, terms and conditions as

6

provided in that agreement. This is commonly known as the "most favored

7

nation" or "pick and choose" option. The ALEC, however, must also adopt

8

any rates, terms and conditions that are legitimately related to, or were

9

negotiated in exchange for or in conjunction with, the portion of the agreement

10

being adopted. If Covad seeks an arrangement that BellSouth has negotiated as

11

part of an entire settlement package, Covad must be willing to agree to all of

12

the parameters associated with that particular arrangement.

13

14

Finally, with regard to when an adopted Interconnection Agreement should

15

become effective, BellSouth's position is that the adoption or substitution by

16

an ALEC of specific terms contained in a previously approved agreement

17

should be effective on the date the amendment memorializing the adoption is

18

signed by BellSouth and the adopting ALEC.

19

20

Q. WHAT IS THE BASIS FOR BELLSOUTH'S POSITION ON THE FIRST

21

PORTION OF COVAD'S ALLEGATION?

22

23

A. FCC Rule 51.809(c) requires that interconnection agreements be available for

24

opt-in by other ALECs only "for a reasonable period of time after the approved

25

agreement is available for public inspection..." See also *In re: Petition of*

1 *Global NAPS South, Inc. for Arbitration of Interconnection Rates, Terms and*
2 *Conditions*, 90 Md. P.S.C. 48 (July 15, 1999) (on appeal, Circuit Court
3 Baltimore City), at 5 (finding it unreasonable to allow a CLEC to opt into a
4 three year interconnection agreement approximately two and one-half years
5 after its approval). It is clear that the FCC agrees that some “cut-off” is
6 appropriate.

7
8 Q. WHY DOES BELLSOUTH OPPOSE COVAD’S REQUEST TO BE
9 ALLOWED TO OPT-IN TO AN INTERCONNECTION AGREEMENT
10 WITH LESS THAN SIX MONTHS REMAINING?

11
12 A. BellSouth’s interconnection agreements require, in general, that the parties
13 begin re-negotiations when six months remain in the term of the agreement.
14 The parties generally begin renegotiating at this point so that agreement can be
15 reached on as many issues as possible. If an ALEC can opt-in to a provision
16 that has less than six months remaining, that reduces the chance for resolution
17 of disputes and increases the likelihood of arbitration. Therefore, if Covad were
18 to opt-in to an existing agreement with six months or less remaining, Covad
19 would be required to immediately commence re-negotiations, even if Covad’s
20 existing contract just recently had been finalized. Taken to another extreme,
21 Covad could opt-in to a contract on the last day before it expired and then
22 begin negotiating a new contract, which certainly is not consistent with the
23 FCC’s rule noted above. Such condensed timeframes for negotiations do not
24 facilitate issue resolution. In addition, executing, filing and keeping track of

1 new agreements with less than a six-month term would simply be inefficient
2 and administratively burdensome.

3

4 Q. WHAT IS THE BASIS OF BELLSOUTH'S POSITION ON THE SECOND
5 PART OF COVAD'S ISSUE?

6

7 A. BellSouth depends on FCC Rule 51.809(a) for its position with regard to
8 Covad seeking an arrangement that BellSouth has negotiated as part of an
9 entire settlement package. This rule states:

10 *An incumbent shall make available. . .any individual interconnection,*
11 *service, or network element arrangement contained in any agreement*
12 *to which it is a party. . .upon the same rates, terms, and conditions as*
13 *those provided in the agreement.*

14

15 If BellSouth has negotiated a particular arrangement with an ALEC, and
16 included in that arrangement, or settlement, are specific rates, terms, and
17 conditions with regard to an item in the agreement that Covad is not interested
18 in, then Covad is not entitled to adopt only the portion of the arrangement, or
19 settlement, that it is interested in. The specific rates, terms, and conditions of
20 the settlement are part of a whole package, and that is the package that Covad
21 must be willing to accept.

22

23 Q. IS THERE ADDITIONAL SUPPORT FOR BELLSOUTH'S POSITION?

24

1 A. Yes. In its First Report and Order in CC Docket No. 96-98 (Order No. 96-
2 325), issued August 8, 1996, the FCC concluded, at ¶1315, that “the ‘same
3 terms and conditions’ that an incumbent LEC may insist upon shall relate
4 solely to the individual interconnection, service or element being requested
5 under section 252(i).” The FCC further stated that it requires “incumbent
6 LECs seeking to require a third party [to] agree to certain terms and conditions
7 to exercise its rights under section 252(i) to prove to the state commission that
8 the terms and conditions were legitimately related to the purchase of the
9 individual elements being sought.” *Id.* (emphasis added). Likewise, the
10 Supreme Court acknowledged that an ILEC can require an ALEC to accept all
11 terms that are legitimately related to the terms the ALEC desires to adopt for
12 itself. *See AT&T Corp. Iowa Utilities Board.*, 525 U.S. 366, 396, 119 S.Ct.
13 721, 738 (1999).

14
15 In explaining the “same rates, terms and conditions” an ILEC may require a
16 carrier to take when requesting under section 252(i) an “individual
17 interconnection, service, or network element arrangement,” the FCC provided
18 the following example:

19 *For instance, where an incumbent LEC and a new entrant have agreed*
20 *upon a rate contained in a five-year agreement, section 252(i) does not*
21 *necessarily entitle a third party to receive the same rate for a three-*
22 *year commitment. Similarly, that one carrier has negotiated a volume*
23 *discount on loops does not automatically entitle a third party to obtain*
24 *the same rate for a smaller amount of loops.*
25 (August 8, 1996 Order No. 96-325 at ¶1315).

1

2 Q. WHAT IS THE BASIS FOR BELL SOUTH'S POSITION ON THE LAST
3 POINT COVAD PRESENTS IN THIS ISSUE?

4

5 A. As stated above, BellSouth recognizes and accepts its duty to make available
6 any interconnection, service, or network element provided under any other
7 agreement at the same rates, terms and conditions as provided in that
8 agreement. When Covad selects such terms, it should be required to amend its
9 interconnection agreement to effectuate its adoption of these additional terms.
10 This amendment to the agreement should be effective on the date the
11 amendment is signed by BellSouth and Covad. This is reasonable and the
12 appropriate manner to handle changes to existing agreements.

13

14 Q. HAS THIS COMMISSION RULED ON ANY OF THE POINTS IN THIS
15 ISSUE?

16

17 A. Yes. In Section XLVIII of its MCI Order, the Commission addressed the
18 "Effective Date for Adoptions". On page 184, the Commission states "we
19 agree with BellSouth's position that new terms and conditions cannot become
20 effective until incorporated in writing by both Worldcom and BellSouth. . ."
21 The Commission went further, finding "that the effective date for these terms
22 and conditions would be the issuance date of the order approving the
23 agreement or if we fail to act, 90 days after submission of the agreement by the
24 parties for our approval."

25

1 Q. WHAT DOES BELLSOUTH REQUEST OF THIS AUTHORITY?

2

3 A. BellSouth asks this Commission to determine that Covad can only opt-into the
4 Interconnection Agreement of another ALEC if that agreement has more than
5 six-months remaining in its term. In addition, BellSouth asks the Commission
6 to find that if Covad wants to adopt an arrangement that has been negotiated
7 with another ALEC as part of an overall settlement package, i.e., there have
8 been gives and takes to develop the arrangement, Covad must then adopt the
9 entire arrangement. And finally, BellSouth asks the Commission to find that
10 the effective date of an agreement or portion of an agreement opted-in to by
11 Covad, be the date that the parties sign the amendment necessary to effectuate
12 such adoption. BellSouth urges the Commission to adopt BellSouth's
13 proposed language for inclusion in the interconnection agreement.

14

15 *Issue 4: Is Covad entitled to receive a discount on services it purchases from*
16 *BellSouth but does not resell to an end user, including services that it*
17 *purchases for its own use?*

18

19 Q. WHAT DOES BELLSOUTH UNDERSTAND THIS ISSUE TO BE?

20

21 A. BellSouth understands that this issue has been settled.

22

23 *Issue 6: Where a due date for the provisioning of a facility is changed by BellSouth*
24 *after a Firm Order Confirmation has been returned on an order, should*

1 *BellSouth reimburse Covad for any costs incurred as a direct result of the*
2 *rescheduling?*

3

4 Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

5

6 A. BellSouth's position is that it should not be required to reimburse Covad when
7 a provisioning due date is changed after BellSouth returns a Firm Order
8 Confirmation ("FOC") to Covad.

9

10 Q. WHAT IS THE BASIS OF BELLSOUTH'S POSITION?

11

12 A. Covad is asking that if BellSouth cannot meet the date that Covad requests on
13 its order, that Covad be allowed to impose the same charges on BellSouth that
14 Covad alleges BellSouth imposes on Covad to modify the order in any way.
15 Although, on its face, Covad's request may appear to have merit, the
16 circumstances being compared are not analogous.

17

18 First, when Covad places an order with BellSouth, Covad presumably either
19 has a customer that it wants to provide service to, or Covad has made a choice
20 to order service accepting the risk that a customer will not be available when
21 BellSouth delivers the service. In these situations, when Covad changes the
22 order that it has placed, it is appropriate that Covad compensate BellSouth for
23 the costs that BellSouth has incurred on behalf of Covad.

24

1 On the other hand, what Covad is asking is that BellSouth financially guarantee
2 that an order will be provisioned on the original due date requested by Covad.
3 In order to make such a guarantee, BellSouth would have to take additional
4 steps in the ordering phase that do not currently occur. Indeed, what Covad
5 requests appropriately occurs in the provisioning phase of the process, rather
6 than in the ordering phase. To do what Covad requests would result in
7 additional costs being incurred in the ordering phase, prior to the FOC being
8 returned to Covad. Such additional costs are not reflected in the current cost
9 studies and proposed rates that have been presented to the FPSC in the various
10 cost proceedings it has conducted. In short, if Covad wants financial
11 guarantees that the requested due date will not be missed due to facilities
12 problems, work force issues or even "Acts of God," then the rates Covad pays
13 for the services it wants would have to be adjusted to reflect BellSouth's
14 assumption of those risks.

15

16 Q. WHAT IS A FIRM ORDER CONFIRMATION OR "FOC"?

17

18 A. A FOC is used by BellSouth to notify Covad that the order placed by Covad is
19 correct in its form. The FOC provides the customer with the information
20 required for control and tracking of the request(s) for the provisioning of local
21 service.

22

23 It is important to understand that the FOC is not a firm order "commitment,"
24 because BellSouth has not, at this point in the process, for instance, dispatched
25 a technician to ensure that the facilities necessary to complete the order are in

1 place and working. The *BellSouth Business Rules for Local Ordering – OSS99*
2 *General Local Service Ordering Information* (the “Rules”), available to Covad
3 and all other ALECs at:

4 *<http://www.interconnection.BellSouth.com/guides/html/leo.html>*

5 makes abundantly clear that the FOC is not a guarantee. In part, Section 2.8.3
6 of the Rules states:

7 *The FOC does not constitute and should not be considered a guarantee*
8 *that facilities are available. The committed due date is based on an*
9 *assumption that facilities are available. If there is a post-FOC facility*
10 *problem detected, the CLEC will be informed of the estimated service*
11 *date by a supplemental FOC. (Emphasis added.)*

12 If it is determined that facilities are not available at the time service is being
13 installed, the ALEC will be notified from the BellSouth installation control
14 center.

15

16 Q. DOES THE FOC CONTAIN A DUE DATE?

17

18 A. Yes. A FOC is returned to the ALEC, either via facsimile or electronically,
19 after the LCSC processes the ALEC’s service request(s) and determines that
20 corrections or error resolutions are not required. The FOC will provide the
21 BellSouth order number, the service due date and telephone numbers.
22 Additional service specific data may also be provided. As noted above,
23 however, the date provided is based on the assumption that facilities are
24 available.

25

1 Q. PLEASE EXPLAIN YOUR REFERENCE ABOVE TO FACILITIES NOT
2 AVAILABLE, ALSO REFERRED TO AS “PENDING FACILITIES” OR
3 “PF”.

4
5 A. Although I am not an expert in this area, I am aware of correspondence that I
6 believe explains this condition well. In a July 18, 2000 letter from Darryl
7 Washington-BellSouth’s Covad Account Manager-to Catherine Boone-
8 Covad’s Regional Counsel, the following explanation was given with regard to
9 Covad’s allegation that BellSouth routinely changes FOC dates on pending
10 UNE loop orders:

11 *In your letter you state that BellSouth routinely changes Firm Order*
12 *Confirmation (FOC) dates on Covad’s pending UNE loop orders.*
13 *Without any specific orders to reference, I assume you are referring to*
14 *instances where an order is placed in a Pending Facility (PF) status.*
15 *Construction or engineering jobs, however, may require that the FOC*
16 *date be extended. There are several reasons why an order may be*
17 *placed in PF status including repair of defective cable or a need to*
18 *provide additional cable pairs or replace equipment. All CLECs are*
19 *notified of a PF status via the PF Status Report posted on the internet*
20 *as well as PF notices that are sent to the CLEC by the Local Carrier*
21 *Service Center (LCSC). BellSouth retail orders are also delayed when*
22 *facilities are not available or existing facilities are defective.*

23
24 Q. PLEASE COMMENT ON COVAD’S STATEMENT IN ITS PETITION
25 THAT “BELLSOUTH HAS REPEATEDLY AND UNILATERALLY

1 CANCELLED COVAD UNBUNDLED LOOP ORDERS—OFTENTIMES
2 ON THE DATE BELLSOUTH ORIGINALLY PROMISED TO PROVIDE
3 THE LOOP (THE FOC DATE).” (PETITION AT ¶19.)
4

5 A. Covad’s allegation is overly broad and unsubstantiated. The Petition does not
6 give any details to address such allegation. If Covad has specific instances of
7 cancellations and can provide the details to BellSouth, BellSouth will research
8 and respond.
9

10 Q. ARE THERE OCCASIONS THAT COVAD’S ORDERS ARE
11 UNILATERALLY CANCELLED BY BELLSOUTH?
12

13 A. No, BellSouth does not unilaterally cancel an ALEC’s orders. BellSouth,
14 however, does have procedures in place in the Rules where an order could be
15 cancelled. An order could be cancelled as a result of a Missed Appointment
16 (“MA”). Under these circumstances, the BellSouth technician will notify
17 Covad when an appointment is missed for end-user reasons. Covad is then
18 obligated to issue a supplement with a new desired due date. The original
19 service order will be cancelled if a new desired due date is not provided within
20 five (5) business days. Since Covad has a responsibility in the procedure, and
21 is aware of such responsibility, if Covad does not exercise its responsibility and
22 an order is cancelled, I do not consider this to be a unilateral cancellation.
23

24 Q. DOES THE FPSC HAVE A MECHANISM IN PLACE FOR COVAD’S USE
25 IF COVAD BELIEVES IT IS NOT BEING TREATED FAIRLY?

1

2 A. Yes. If Covad believes that BellSouth is not providing service at parity with
3 the service BellSouth provides to its retail customers, the Commission has a
4 complaint process in place. In addition, the Commission has a generic
5 Performance Measurements Docket (Docket No. 000121-TP) open to develop
6 permanent performance metrics for the ongoing evaluation of operation
7 support system functions provided by incumbent local exchange carriers.

8

9 Although BellSouth strives to meet all due dates, there will sometimes be
10 extenuating circumstances that prevent work from occurring as scheduled.
11 Generally, it is BellSouth's experience that, when a conversion does not occur
12 as scheduled, it is just as likely that the ALEC or the customer caused the miss
13 as it is that BellSouth caused the miss. Regrettably, an issue such as this is
14 destined to deteriorate to finger-pointing. Because there are many reasons why
15 due dates may be missed, BellSouth objects to Covad's proposal that BellSouth
16 should automatically pay Covad if BellSouth must change or modify a
17 requested date.

18

19 Q. WHAT DOES BELLSOUTH REQUEST OF THE COMMISSION WITH
20 REGARD TO ISSUE 6?

21

22 A. BellSouth requests that the Commission find that, for the reasons discussed
23 above, BellSouth should not be obligated to reimburse Covad if BellSouth
24 must modify or cancel a Covad loop order.

25

1 *Issue 8: When Covad reports a trouble on a loop where, after BellSouth dispatches*
2 *a technician to fix the trouble, no trouble is found but later trouble is*
3 *identified on that loop that should have been addressed during BellSouth's*
4 *first dispatch, should Covad pay for BellSouth's cost of the dispatch and*
5 *testing before the trouble is identified?*

6
7 Q. WHAT IS BELLSOUTH'S UNDERSTANDING OF THIS ISSUE?

8
9 A. BellSouth understands that Covad is asking that BellSouth not charge Covad
10 for the dispatch and testing necessary to determine that there is no trouble on a
11 loop.

12
13 Q. WHAT IS BELLSOUTH'S POSITION WITH REGARD TO COVAD'S
14 REQUEST?

15
16 A. BellSouth's position is when Covad causes BellSouth to dispatch a technician
17 to test a loop that Covad has reported as having a problem, and no problem is
18 found on BellSouth's facilities, it is appropriate that Covad pay BellSouth's
19 expenses incurred as a result of the unnecessary dispatch.

20
21 Q. DO THE RECURRING RATES PAID BY COVAD COVER THE COSTS OF
22 MAINTENANCE AND REPAIR?

23
24 A. Covad's petition makes claims of paying "extraordinarily high recurring
25 charges that are sufficient for all routine maintenance on the loops it orders."

1 First, although I am not a cost witness, cost-based recurring charges have been
2 proposed to this Commission in Docket No. 990649-TP. The results of that
3 proceeding will be incorporated in the parties' Interconnection Agreement.

4
5 Under the agreement being arbitrated, Covad will ultimately order various
6 types of loops to serve its customers. Over time, it would be natural that some
7 of those customers will report trouble with their service. Such trouble could be
8 in BellSouth's network, in equipment furnished by Covad, or on the Covad
9 customer's premises. BellSouth is responsible for maintaining its equipment
10 that is provided to Covad. Troubles that should be identified by BellSouth are
11 those in BellSouth's equipment that would affect the loop specifications that
12 are included in Covad's contract and BellSouth's technical reference
13 documents.

14
15 Covad claims that repair and maintenance is covered in the recurring rates it
16 pays. What Covad ignores in this claim is that the recurring rates cover
17 situations where repair and maintenance are required, or as referred to by
18 Covad-routine maintenance. BellSouth's recurring rates do not include costs
19 for dispatches when no trouble is found. These costs have not been provided
20 for in BellSouth's cost studies.

21
22 Q. DOES COVAD HAVE RECOURSE IF IT IS CHARGED FOR A "NO
23 TROUBLE" SITUATION AND A TROUBLE IS ULTIMATELY FOUND?

24

1 A. Yes. As in all instances that Covad believes it has been wrongly billed, the
2 parties' Interconnection Agreement includes a Billing Dispute Process that can
3 be used. I would note here, however, that Covad also has a responsibility in
4 this process. Covad is also responsible for some testing, and if, after
5 dispatching a service technician, BellSouth reports "no trouble found", Covad
6 is not obligated to close the trouble ticket if trouble still exists.

7

8 Q. WHAT IS BELLSOUTH REQUESTING OF THE COMMISSION WITH
9 REGARD TO ISSUE 8?

10

11 A. BellSouth requests that the Commission find it appropriate for BellSouth to
12 charge Covad for the dispatch and testing necessary to determine that there is
13 no trouble on a loop reported by Covad, therefore, denying Covad's proposal
14 on this issue.

15

16 *Issue 10 (a): Should Covad be required to pay for loop conditioning for loops less*
17 *than 18,000 feet in length?*

18

19 *Issue 10 (b): What should the rates be for conditioning a loop?*

20

21 Q. WHAT IS BELLSOUTH'S POSITION ON THESE ISSUES?

22

23 A. BellSouth understands that these are no longer issues for Covad. If this is not
24 the case, BellSouth reserves its right to state its case in rebuttal testimony.

25

1 *Issue 11: What rate, if any, should Covad pay BellSouth if there is no electronic*
2 *ordering interface available, when it places a manual LSR for:*

3 *(a) an xDSL loop?*

4 *(b) line sharing*

5

6 Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

7

8 A. Manual ordering charges should apply when Covad places an order manually,
9 either for its own business reasons or because BellSouth does not have an
10 electronic interface that will allow Covad to place orders electronically for
11 certain complex services or elements. Manual service order charges, Cost
12 Reference Number N.1.2, submitted to this Commission in Docket No.
13 990649-TP, are the appropriate rates to charge Covad under the circumstances
14 cited by Covad.

15

16 If electronic ordering were not available for access to xDSL loops or line
17 sharing, BellSouth would incur costs in providing services to Covad and to
18 other ALECs in Florida. These costs have to be recovered, and should be
19 recovered from the cost-causer, the entity placing the manual service order.

20

21 Q. IS BELLSOUTH REQUIRED TO PROVIDE ELECTRONIC ORDER
22 PROCESSING FOR ALL UNES?

23

24 A. No. In paragraph 87 of its Order on BellSouth's second 271 application for
25 Louisiana, the FCC stated:

1 . . . a BOC must offer access to competing carriers that is analogous
2 to OSS functions that a BOC provides to itself. Access to OSS
3 functions must be offered in ‘substantially the same time and manner’
4 as the BOC. For those OSS functions that have no retail analogue . . .
5 a BOC must offer access sufficient to allow an efficient competitor a
6 meaningful opportunity to compete.

7 BellSouth, therefore, is not required to provide electronic ordering for all
8 unbundled network elements (“UNEs”), but Covad proposes to be charged a
9 price for electronic ordering regardless of whether BellSouth provides that
10 capability. (See also Mr. Pate’s testimony with regard to the FCC’s UNE
11 Remand Order requirements for use of automated OSS.)

12
13 BellSouth incurs costs in providing services to Covad and to other ALECs in
14 Florida. These costs have to be recovered, and should be recovered from the
15 cost-causer, in this case, the entity placing the manual service order. BellSouth
16 rates are cost-based and BellSouth should be allowed to charge Covad the
17 approved rate for manual service orders in Florida when Covad places a
18 manual local service request.

19

20 Q. DOES BELLSOUTH OFFER ELECTRONIC ORDERING?

21

22 A. Yes. There are numerous UNEs that can be ordered electronically. BellSouth
23 provides electronic interfaces for pre-ordering and ordering associated with
24 xDSL type loops, as well as, line sharing. Since electronic access is available,
25 Covad should not have to place manual orders and it would seem, based on this

1 fact that this issue should now be settled. Apparently, however, the dispute
2 now concerns rates.

3

4 Q. HAS THE COMMISSION PREVIOUSLY ADDRESSED THIS ISSUE?

5

6 A. Generally, yes, the Commission addressed this issue in its MCI Order. In that
7 Order, the FPSC found, in its decision on IV. Nonrecurring Charges:

8 *Since this access [ordering of DS-1 combinations] presently involves*
9 *manual processes, it is reasonable for BellSouth to assess a manual*
10 *ordering charge.*

11 The Commission further found:

12 *. . .where it is determined that BellSouth has an electronic interface in*
13 *place for its retail offerings, but there is no analogous system in place*
14 *for comparable services obtained by an ALEC. . .where such a finding*
15 *is made, BellSouth should charge an electronic ordering charge.*

16

17 Q. WHAT DOES BELL SOUTH REQUEST OF THIS COMMISSION WITH
18 REGARD TO ISSUE 11?

19

20 A. BellSouth requests that the Commission deny Covad's request. Further,
21 BellSouth asks that the Commission find, as it did in the MCI Arbitration, that
22 if the ordering process for the service that Covad wants is a manual process,
23 then Covad must pay BellSouth for such manual service order processing.
24 BellSouth asserts that the appropriate rate for manual service order processing
25 is \$21.56, as proposed by BellSouth in FPSC Docket No. 990649-TP. Final

1 manual service order processing rates adopted in Docket No. 990649 – TP will
2 be included in the parties' Interconnection Agreement on a going forward
3 basis.

4

5 *Issue 12: Should Covad have to pay for a submitted LSR when it cancels an order*
6 *because BellSouth has not delivered the loop in less than five business days?*

7

8 Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

9

10 A. BellSouth's position is that once Covad submits an LSR, BellSouth begins
11 processing Covad's order and, even if Covad withdraws its request, Covad is
12 responsible for paying whatever charges are appropriate to reimburse
13 BellSouth for the work done on Covad's behalf.

14

15 Q. WHAT IS COVAD ASKING?

16

17 A. This issue is essentially a performance measures issue, addressing BellSouth's
18 loop provisioning intervals. Covad's position first assumes that BellSouth
19 should provision a loop ordered by Covad within 5 days. Covad then assumes
20 that if BellSouth cannot provision the requested network elements in the short
21 period of time that Covad has requested, Covad should be allowed to withdraw
22 its request for service, and BellSouth should either not charge Covad for the
23 work done or, if Covad has already paid, should refund the payment or, in
24 essence, pay a penalty. Issues such as this should be addressed as part of the

1 Commission's generic performance measures docket, and not in the context of
2 a two-party arbitration.

3

4 If, however, this Commission decides that the issue is appropriate for this
5 proceeding, by no means should BellSouth be required to waive the LSR OSS
6 charge. Although BellSouth may not provision a loop in the timeframe
7 requested, or deemed appropriate by Covad, various work functions will be
8 performed prior to Covad canceling an order. The LSR OSS fee charged by
9 BellSouth is appropriate to cover such work effort.

10

11 Q. WHAT IS BELLSOUTH REQUESTING OF THIS COMMISSION WITH
12 REGARD TO ISSUE 12?

13

14 A. BellSouth requests that the Commission deny Covad's proposal and find,
15 under the circumstances put forward by Covad, that Covad is responsible for
16 paying appropriate LSR OSS charges.

17

18 ***Issue 24: Are the rates proposed by BellSouth for unbundled loops and line sharing***
19 ***compliant with TELRIC pricing?***

20

21 Q. WHAT IS BELLSOUTH'S POSITION WITH REGARD TO ISSUE 24?

22

23 A. BellSouth has an obligation to provide access to unbundled network elements
24 at rates based on costs calculated in accordance with the rules of the FCC and
25 the FPSC. The FPSC has reviewed BellSouth's cost methodology and cost

1 calculations in Docket No. 990649 - TP. Final unbundled loop rates adopted in
2 Docket No. 990649 – TP will be included in the parties’ Interconnection
3 Agreement.

4
5 BellSouth is filing a line sharing cost study in this proceeding in the testimony
6 of Mr. Bernard Shell. Rates for line sharing, based on that cost study, are
7 attached to my testimony as Exhibit CKC-D1. BellSouth asks the Commission
8 to adopt these rates in this docket with the understanding that any final
9 adjustments ordered in Docket No. 990649-TP, if applicable, can be
10 incorporated at a later date. These rates should be trued-up only on a going
11 forward basis.

12
13 ***Issue 25: In the event Covad desires to terminate its occupation of a collocation***
14 ***space, and if there is a waiting list for space in that central office, should***
15 ***BellSouth notify the next ALEC on the waiting list to give that ALEC the***
16 ***opportunity to take that space as configured by Covad (such as racks,***
17 ***conduits, etc.), thereby relieving Covad of its obligation to completely vacate***
18 ***the space?***

19
20 Q. WHAT IS BELLSOUTH’S POSITION WITH REGARD TO THIS ASPECT
21 OF COLLOCATION?

22
23 A. BellSouth is obligated to notify the FPSC and the telecommunications carriers
24 on the waiting list within 2 days of BellSouth knowing that space is available.
25 BellSouth does not believe, however, that it is allowed to reveal the identity of

1 ALECs who are seeking space in specific central offices, since many ALECs
2 consider that information to be proprietary business information.
3 Consequently, BellSouth cannot provide Covad with the name of the next
4 ALEC on the waiting list for a specific central office.

5

6 Q. WHAT ARE BELL SOUTH'S OBLIGATIONS WITH REGARD TO
7 NOTIFICATION OF ALECs IN FLORIDA WHEN SPACE BECOMES
8 AVAILABLE FOR COLLOCATION WHEN THERE IS A WAITING LIST?

9

10 A. In Florida, on a first-come, first-served basis governed by the date of receipt of
11 an Application or Letter of Intent, BellSouth will maintain a waiting list of
12 requesting carriers who have either received a Denial of Application or, where
13 it is publicly known that the premises is out of space, have submitted a Letter
14 of Intent to Collocate. Sixty (60) days prior to space becoming available, if
15 known, BellSouth will notify the FPSC and the ALECs on the waiting list by
16 mail when space is to become available according to the position of the ALEC
17 on the waiting list. If not known sixty (60) days in advance, BellSouth will
18 notify the FPSC and the ALECs on the waiting list within two days of the
19 determination that space is available.

20

21 Q. WHAT IS COVAD ASKING WITH REGARD TO THIS ISSUE?

22

23 A. First, in this issue, Covad assumes that there is limited space, and therefore a
24 waiting list of ALECs that want collocation space in the central office being
25 vacated by Covad. This would be true for some central offices, but not for

1 others. Covad then, rather than removing the equipment that it no longer
2 needs, wants the opportunity to sell its equipment to the ALEC that will be
3 moving into the space that Covad is vacating.

4
5 Q. OTHER THAN THE PROPRIETARY INFORMATION ASPECT, DOES
6 BELLSOUTH HAVE A PROBLEM WITH WHAT COVAD IS
7 REQUESTING?

8
9 A. BellSouth does not have a problem with Covad selling its equipment to another
10 ALEC. What Covad does with its equipment when releasing collocation space
11 is of no concern to BellSouth. If the FPSC directs BellSouth to provide Covad
12 with the information that it is requesting, BellSouth will certainly do so.

13
14 BellSouth, however, does have two concerns of a general nature with respect to
15 Covad's request. First, BellSouth is required to provision space for collocation
16 within specific timeframes. If BellSouth is required to provide the information
17 that Covad is requesting, any time lost as a result of negotiations between the
18 ALECs should not be counted as part of BellSouth's time to provide the
19 collocation space. Second, BellSouth cannot be put in the position of
20 becoming an equipment broker for Covad, or any other ALEC. This is exactly
21 what would happen if BellSouth were placed in the middle of the type of
22 transaction that Covad is suggesting. Covad, instead, must negotiate with the
23 other ALEC regarding the potential sale of its equipment.

24
25 Q. WHAT DOES BELLSOUTH REQUEST OF THIS COMMISSION?

1

2 A. BellSouth requests that the Commission find the information that Covad is
3 requesting is proprietary in nature and that BellSouth is not required to provide
4 such information to Covad. If, however, the Commission orders BellSouth to
5 provide such information to Covad, BellSouth requests that the Commission
6 find that any time spent in the negotiating process between the ALECs not be
7 counted as part of BellSouth's provisioning time. Further, BellSouth would
8 ask the Commission to find that BellSouth is not required to handle such a
9 transaction for Covad.

10

11 *Issue 26: In the event that Covad contracts for collocation space in an office*
12 *where there is a waiting list for space, but cancels its request for collocation*
13 *before it has occupied the space, should Covad be liable to pay for the space*
14 *preparation work that BellSouth has performed when either BellSouth or the*
15 *next ALEC benefits from that work?*

16

17 Q. WHAT IS BELLSOUTH'S POSITION ON ISSUE 26?

18

19 A. BellSouth understands that this issue has been settled in Florida.

20

21 *Issue 27: When should charges for collocated space begin?*

22

23 Q. WHAT IS BELLSOUTH'S POSITION IN THIS ISSUE?

24

25 A. BellSouth understands that this issue is settled.

1

2 ***Issue 29: What rates should Covad for collocation?***

3

4 Q. WHAT IS BELLSOUTH'S POSITION ON ISSUE 29?

5

6 A. BellSouth's position is that the rates that Covad should pay for collocation
7 must be derived in accordance with the TELRIC costing principles adopted by
8 the FCC and by this Commission. Included in the testimony of Mr. Shell,
9 BellSouth presents a cost study for collocation. Rates for collocation, based on
10 that cost study, are attached to my testimony as Exhibit CKC-D1. BellSouth
11 asks the Commission to adopt these rates in this docket with the understanding
12 that any final adjustments ordered in Docket No. 990649-TP, if applicable,
13 (and eventually Docket Nos. 981834-TP/990321-TP for collocation) can be
14 incorporated at a later date. These rates should be trued-up only on a going
15 forward basis.

16

17 ***Issue 31: Should BellSouth send a complete electronic and paper bill within ten***
18 ***business days of the bill date, and what will be the billing date of that bill?***

19

20 Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

21

22 A. Currently, for local interconnection, BellSouth provides Covad with a paper
23 bill and, at Covad's request, a magnetic tape is produced and mailed to
24 California. BellSouth will electronically transmit these same records to Covad,
25 at Covad's request.

1
2 Both paper and electronic bills are generally rendered within 10 days of the bill
3 date, and the bill will be due 30 days from that bill date. Since Covad can
4 receive an electronic bill almost instantaneously, the fact that the paper bill
5 may follow by a few days, dependent on the transport, is irrelevant. Covad
6 would have ample time from receipt of the electronic bill to review and pay its
7 bill. Covad's position that it should have 30 days after it receives the later of
8 either the paper bill or the electronic bill is simply a device to delay paying its
9 bills beyond the point when such bills are due.
10

11 Q. WHAT DOES BELLSOUTH REQUIRE OF ITS RETAIL CUSTOMERS
12 WITH REGARD TO PAYMENT OF BILLS?
13

14 A. Section A2.4.3 (C) of BellSouth's General Subscriber Service Tariff
15 ("GSST"), requires, in part:

16 *[a] Late Payment Charge. . .for residence subscribers and. . .for*
17 *business subscribers will be applied to each subscriber's bill. . .when*
18 *the previous month's bill has not been paid in full prior to the next*
19 *billing date.*
20

21 In addition, Section E2.4.1 B.3. of the Florida Access Service Tariff states, in
22 part:

23 *All bills . . . for services provided to the IC and/or End User by the*
24 *Company are due on the payment due date. The payment due date is*
25 *the date which is 31 days after the bill day or by the next bill date (i.e.,*

1 *same date in the following month as the bill date) whichever is the*
2 *shortest interval . . .*

3

4 Q. WHAT IS BELLSOUTH REQUESTING OF THIS COMMISSION?

5

6 A. Covad seeks to be treated differently than other BellSouth customers, however,
7 Covad is not entitled to such preferential treatment. BellSouth requests that
8 this Commission deny Covad's proposal on this issue.

9

10 *Issue 32(a): Should Covad be required to pay amounts in dispute as well as late*
11 *charge as late charges on such amounts?*

12

13 Q. WHAT IS BELLSOUTH'S POSITION WITH REGARD TO THIS ISSUE?

14

15 A. BellSouth agrees that Covad should not have to pay portions of bills that it
16 legitimately disputes until the dispute is resolved. It should, however, pay any
17 undisputed amounts. Moreover, once the dispute is resolved, Covad should
18 clearly pay late charges on the portion of the disputed bill that it is finally
19 determined that Covad owes. Otherwise Covad is simply given the free use of
20 money that should have been paid to BellSouth. Failing to require Covad to
21 pay late charges on disputed amounts that were actually owed to BellSouth
22 simply encourages Covad and any other ALEC that might opt-in to Covad's
23 agreement to contest its bills in order to delay payments to BellSouth.

24

25 Q. WHAT IS BELLSOUTH REQUESTING OF THIS COMMISSION?

1

2 A. BellSouth requests that the Commission deny Covad's request on this issue
3 and find that once a billing dispute is resolved, Covad should pay late charges
4 on the portion of the disputed bill that it is finally determined that Covad owes.

5

6 *Issue 32(b): How long should parties endeavor to resolve billing discrepancies?*

7

8 Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

9

10 A. BellSouth understands that this issue has been settled.

11

12 *Issue 33: Should BellSouth's Network Management Center directly inform Covad's*
13 *Network Management Center about all Abnormal Condition Reports that*
14 *directly or indirectly affect the services of unbundled network elements*
15 *purchased for BellSouth?*

16

17 Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

18

19 A. BellSouth understands that this issue has been settled.

20

21 *Issue 34: Should BellSouth notify Covad's Network Management Center when*
22 *BellSouth's Emergency Control Center is activated or placed on alert?*

23

24 Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

25

1 A. BellSouth understands that this issue has been settled.

2

3 *Issue 35: If an Abnormal Condition Report or disaster affects services or facilities*
4 *provided to Covad, should BellSouth provide Covad with documentation of*
5 *that condition and perform a root cause analysis of that situation?*

6

7 Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

8

9 A. BellSouth understands that this issue has been settled.

10

11 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

12

13 A. Yes.

14 #229269

1 BELLSOUTH TELECOMMUNICATIONS, INC.
2 REBUTTAL TESTIMONY OF CYNTHIA K. COX
3 BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
4 DOCKET NO. 001797 - TP
5 MAY 23, 2001
6

7 Q. PLEASE STATE YOUR NAME, YOUR POSITION WITH BELLSOUTH
8 TELECOMMUNICATIONS, INC. ("BELLSOUTH") AND YOUR
9 BUSINESS ADDRESS.

10
11 A. My name is Cynthia K. Cox. I am employed by BellSouth as Senior Director
12 for State Regulatory for the nine-state BellSouth region. My business address
13 is 675 West Peachtree Street, Atlanta, Georgia 30375.
14

15 Q. ARE YOU THE SAME CYNTHIA K. COX THAT FILED DIRECT
16 TESTIMONY IN THIS PROCEEDING ON APRIL 23, 2001?
17

18 A. Yes.
19

20 Q. WHAT IS THE PURPOSE OF THE TESTIMONY YOU ARE FILING
21 TODAY?
22

23 A. My testimony rebuts the testimony filed by Covad witnesses Tom Allen,
24 Thomas M. Koutsky and William Seeger. Specifically, I will address the
25 testimony filed by these witnesses on issues 1, 2, 3, 6, 8, 11 (a) and (b), 12, 25,

1 and 32 (a). I will address only the policy related portion of issue 32 (a).
2 BellSouth witness Clyde Greene will address the portion of issue 32 (a) related
3 specifically to the functions of the billing system.
4

5 Q. HAVE ANY ADDITIONAL ISSUES BEEN RESOLVED BETWEEN
6 COVAD AND BELLSOUTH SINCE THE TIME THE COMPANIES FILED
7 DIRECT TESTIMONY IN THIS PROCEEDING?
8

9 A. It is my understanding that Issue No. 13, regarding Covad's access to
10 BellSouth's loop makeup information, has been resolved.
11

12 Q. IN HIS GENERAL COMMENTS ON PAGES 6 AND 7 REGARDING
13 NEGOTIATING, MR. KOUTSKY MAKES THE FOLLOWING
14 ALLEGATION: "IT IS AN ECONOMIC FACT THAT POSSESSING A
15 MONOPOLY IS MORE PROFITABLE TO A COMPANY LIKE
16 BELLSOUTH THAN ENTERING AN AGREEMENT THAT WILL
17 FACILITATE THE DEVELOPMENT OF A COMPETITIVE MARKET. AS
18 A RESULT, BELLSOUTH ESSENTIALLY HAS 'NOTHING TO GAIN
19 AND EVERYTHING TO LOSE' BY COOPERATING IN
20 INTERCONNECTION NEGOTIATIONS." DO YOU AGREE?
21

22 A. Absolutely not. In fact, and contrary to Mr. Koutsky's allegation, BellSouth
23 has much to gain by cooperating in interconnection negotiations, as well as
24 much at stake if it does not cooperate. On page 7 of his testimony, Mr.
25 Koutsky actually makes reference to two specific loss situations if BellSouth

1 fails to cooperate in interconnection negotiations – arbitration proceedings and
2 regulatory penalties. Both of these situations can be a drain on many of
3 BellSouth’s resources, not only financial. In addition, the FCC has the ability
4 to substantially fine an ILEC for its non-cooperation.

5
6 In addition, BellSouth’s entry into the interLATA long distance market is
7 dependent upon meeting its legal and regulatory obligations, which include the
8 negotiation process for interconnection agreements. This Commission, in
9 Docket No. 000121-TP, is developing a comprehensive plan of performance
10 measurements and remedies that, by its very nature, should facilitate an
11 evaluation of BellSouth’s cooperation in the local competition process. The
12 process will also have an affect on BellSouth obtaining regulatory relief.

13

14 *Issue 1: What limitations of liability, if any, should be included in the Parties’*

15 *Interconnection Agreement?*

16

17 Q. PLEASE COMMENT ON MR. KOUTSKY’S CONCERN, EXPRESSED ON
18 PAGE 9, ABOUT BELLSOUTH BEING “PROTECTED BY A
19 LIMITATION OF LIABILITY CLAUSE IF COVAD WERE DAMAGED
20 ‘FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF
21 BELLSOUTH.’”

22

23 A. Mr. Koutsky is incorrect. As I stated on page 4 of my direct testimony:

24

25 BellSouth has proposed that each parties’ liability to the other arising
out of any negligent act or omission should be limited to a credit for the

1 actual cost of the services or functions not performed or improperly
2 performed. BellSouth is willing to exclude from this limitation losses
3 resulting from gross negligence or intentional misconduct, and indeed
4 such language is found in Section 8.3.4 of the General Terms and
5 Conditions of the Interconnection Agreement. (Emphasis added here.)

6 Q. WHAT IS THE DISAGREEMENT BETWEEN BELLSOUTH AND COVAD
7 ON THE ISSUE OF LIMITATIONS OF LIABILITY?

8 A. I am not quite sure. The quote above from my direct testimony, should leave
9 no doubt that BellSouth is not limiting its liability resulting from gross
10 negligence or intentional misconduct, which appears to be Covad's main
11 concern. In fact, Section 8.3.4 of the General Terms and Conditions of the
12 Interconnection Agreement states, in part:

13 Neither Party shall be responsible or liable for indirect, incidental, or
14 consequential damages, including, but not limited to, economic loss or
15 lost business or profits, damages arising from the use of performance of
16 equipment or software, or the loss of use of software or equipment, or
17 accessories attached thereto, delay, error, or loss of data, unless such
18 loss results from gross negligence or intentional misconduct...
19 (Emphasis added.)

20 Q. ON PAGES 9 - 10, MR. KOUTSKY SUGGESTS THAT BELLSOUTH'S
21 PROPOSAL FOR LIMITATION OF LIABILITY "WOULD GUT THE
22 OTHER SUBSTANTIVE PROVISIONS OF THE AGREEMENT" AND
23 THAT "EVEN IF THE COMMISSION IMPLEMENTED PRO-
24 COMPETITIVE RULES RELATED TO LOOP INSTALLATION
25 INTERVALS, OSS, ETC., BELLSOUTH WOULD NOT BE LIABLE TO

1 COVAD FOR ITS FAILURE TO IMPLEMENT THOSE POLICIES.” DO
2 YOU AGREE?

3

4 A. No. First, although I am not a lawyer, I am certain that if this Commission
5 implements rules related to loop installation intervals, OSS, or any other
6 element deemed necessary for opening the local telecommunications market to
7 competition, that BellSouth would be required to comply with these rules.
8 BellSouth’s proposed language certainly would not exempt BellSouth from
9 adverse ramifications should we be found not in compliance. Apparently, Mr.
10 Koutsky underestimates the jurisdiction of this Commission.

11

12 Second, Section 8.3.5 of the General Terms and Conditions section of the
13 Interconnection Agreement ensures that what Mr. Koutsky suggests, does not
14 happen:

15

16

17

18

19

To the extent any specific provision of this Agreement purports to
impose liability, or limitation of liability, on either Party different from
or in conflict with the liability or limitation of liability set forth in this
Section, then with respect to any facts or circumstances covered by
such specific provisions, the liability or limitation of liability contained
in such specific provision shall apply.

20

21

22

23

24

25

Other than simply doing away with any limitation of liability, which BellSouth
is neither willing, nor statutorily obligated to do, BellSouth is at a loss as to
what else can be done to assuage Covad’s concerns.

1 Q. PLEASE DISCUSS COVAD'S HYPOTHETICAL SITUATION WHERE
2 "BELLSOUTH HABITUALLY FAILS TO PROVIDE LOOPS TO COVAD",
3 AS PRESENTED ON PAGE 11 OF MR. KOUTSKY'S TESTIMONY.

4

5 A. First, let me say that this obviously is an extreme and most definitely
6 hypothetical situation that Covad suggests. BellSouth does not and will not
7 habitually, or as Covad insinuates, intentionally, fail to provide loops to Covad
8 or any other ALEC. And BellSouth is not seeking to "eschew itself of
9 responsibility for this behavior" as is evidenced by the proposed
10 Interconnection Agreement sections referred to above.

11

12 That being said, however, the example being discussed here is one that would
13 more appropriately be addressed in the context of performance measures, such
14 as those being addressed by this Commission in Docket 000121-TP, *In re:*
15 *Investigation into the Establishment of Operations Support Systems Permanent*
16 *Performance Measures for Incumbent Local Exchange Telecommunications*
17 *Companies*, rather than in the context of limitation of liability. For example, in
18 that docket BellSouth proposed 15 provisioning measurements, disaggregated
19 into 12 levels of loop sub-metrics that will allow this Commission to determine
20 whether BellSouth is providing non-discriminatory access to loops.

21

22 Q. DOES BELLSOUTH AGREE WITH COVAD THAT THE COMMISSION
23 HAS THE LEGAL AUTHORITY AND OBLIGATION TO ARBITRATE
24 THIS ISSUE?

25

1 A. Yes. Based on this Commission's Order No. PSC-01-0824-FOF-TP in Docket
2 No. 000649-TP, *In re: Petition of MCImetro Access Transmission Services*
3 *LLC and MCI WorldCom Communications, Inc. for arbitration of certain*
4 *terms and conditions of a proposed agreement with BellSouth*
5 *Telecommunications, Inc. concerning interconnection and resale under the*
6 *Telecommunications Act of 1996* ("MCI Arbitration"), BellSouth agrees that
7 the Commission must arbitrate this issue. We also agree, as the Commission
8 found in that same order, that it is only appropriate for the Commission to
9 impose obligations consistent with the requirements of Section 251.

10

11 Q. HAVE OTHER STATES IN BELLSOUTH'S REGION RULED ON THIS
12 ISSUE?

13

14 A. Yes. The Georgia Public Service Commission, in Docket No. 11901-U (*In Re:*
15 *Petition of MCImetro Access Transmission Services, LLC and MCI WorldCom*
16 *Communications, Inc. for Arbitration of Certain Terms and Conditions of*
17 *Proposed Agreement with BellSouth Telecommunications, Inc. Concerning*
18 *Interconnection and Resale Under the Telecommunications Act of 1996*), on
19 March 7, 2001 ordered, "The Commission finds that the parties are not
20 required to adopt language regarding a liability cap beyond what they are
21 willing to agree upon through negotiations." Since the time of that Order,
22 BellSouth has reached agreement with MCI on this issue, and has offered the
23 terms of that agreement to Covad.

24

25

1 Q. WHAT IS BELLSOUTH ASKING THIS COMMISSION TO FIND WITH
2 REGARD TO ISSUE 1?

3

4 A. BellSouth requests that the Commission find as it did in the MCI Arbitration,
5 that it is only appropriate to “impose a condition or term required to ensure that
6 such resolutions and conditions meet the requirements of Section 251.” And to
7 further find that “liquidated damages is not an enumerated item under Sections
8 251 and 252 of the Act.” And finally, to find “it appropriate not to impose
9 adoption of any disputed terms contained in the limited liability provision
10 whereby the parties would be liable in damages, without a liability cap, to one
11 another for their failure to honor in one or more material respects any one or
12 more of the material provisions of the Agreement.”

13

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

17

18 Q. EXACTLY WHAT IS COVAD ASKING FOR IN THIS ISSUE?

19

20 A. Although Covad states that its “proposal would only require that BellSouth
21 engage in” consultations, meetings and communications with Covad in the
22 event a work stoppage is eminent, what it really is asking is a good deal more.
23 Covad’s proposed contract language would require:

24

25 14.1.1 BellSouth and DIECA should begin contingency planning activities
no more than 60 days prior to the expiration of a contract. Planning

- 1 should include methodology to be employed to track potential
2 missed orders as well as new orders that come in during a work
3 stoppage.
- 4 14.2.2 BellSouth must designate single point of contact (SPOC) for
5 notification in the event of a work stoppage. This SPOC should
6 provide all "official" company notifications leading up to the work
7 stoppage and proactively provide updates as to negotiation progress.
8 DIECA to be notified within 3 hours of the declaration of a work
9 stoppage.
- 10 14.2.3 BellSouth must clearly define what labor unions represent
11 employees. Specific geographies, type of employees (technicians,
12 service representatives, etc.) as well. All contract expiration dates
13 (day, month, time of day) must be provided to DIECA.
- 14 14.2.4 BellSouth to provide detailed strike recovery plan within 3 business
15 days following the conclusion of a work stoppage. Plan should
16 include: total number of orders missed during work stoppage, total
17 number of new orders received during the work stoppage, planned
18 completion date of recovery, format and time frames for interim
19 status updates of recovery effort.
- 20 14.2.5 BellSouth should identify single point of contact in the operations
21 area for DIECA to deal with on recovery related benchmarks and
22 issues.
- 23 14.2.6 BellSouth needs to clearly define what the business rules will be in
24 the event of a work stoppage and the time frames around which they
25 apply. For example, if the BellSouth position is to only work
maintenance issues initially: after how many days will provisioning
be resumed. Once work stoppage concludes, DIECA and BellSouth
orders must be worked in a non discriminatory fashion.
- 14.2.7 BellSouth and DIECA shall agree on a mechanism to escalate
extremely sensitive installations that may be affected by a work
stoppage so that they can be worked. Such request would be at the
discretion of the BellSouth Account Team Vice President or the
Regional Operations Vice President.

1 Although BellSouth agrees with some of the issues raised by Covad, with
2 regard to a possible work stoppage, BellSouth will not, and indeed legally
3 cannot, provide the individual meetings and consultations that Covad is
4 requesting. What BellSouth provides to Covad, BellSouth must also be willing
5 to provide to other ALECs. Under Covad's proposal, BellSouth could
6 conceivably have to spend time meeting, consulting and communicating with
7 each ALEC, since needs vary from ALEC to ALEC, rather than providing
8 service. In addition, much of the information being requested by Covad is not
9 necessary for contingency planning, whether or not included in an
10 Interconnection Agreement. Further, until such time as an actual work
11 stoppage occurs, BellSouth will be unable to provide much information that
12 will answer Covad's question of what orders will be worked. If, in fact, a
13 work stoppage occurs, BellSouth will provide specific information upon
14 request, and work with customers to address any specific problems that may
15 arise.

16
17 Also, let me point out that the language being requested by Covad in this
18 proceeding is unnecessary, making the issue moot. The language proposed by
19 Covad will apply only to the new Interconnection Agreement between the
20 parties. Under the procedural schedule in effect in this docket, the
21 Commission will not issue a final order resolving the arbitration issues until
22 September 24, 2001 (nearly 2 months after the expiration of BellSouth's
23 contract with the Communications Workers of America ("CWA")), therefore,
24 making language unnecessary for the current contract period. In addition, the
25 term of the new Interconnection Agreement will be 2 years. The term of the

1 new CWA contract will be 3 years, to August 2004, again making Covad's
2 proposed language unnecessary.

3

4 Q. PLEASE COMMENT ON MR. KOUTSKY'S ALLEGATION IN HIS
5 GENERAL DISCUSSION, THAT "BELLSOUTH'S REFUSAL TO EVEN
6 CONSIDER OR DISCUSS COVAD'S SUGGESTION ABOUT HOW TO
7 MANAGE A POTENTIAL STRIKE MEANS THAT ABSENT
8 REGULATORY INTERVENTION, COVAD HAS NO ADEQUATE
9 ASSURANCE THAT IT WILL BE TREATED IN A
10 NONDISCRIMINATORY MANNER, AS REQUIRED BY LAW."

11

12 A. Covad can be assured that it will be treated in a nondiscriminatory manner
13 during any potential work stoppage, just as it is during any other time. That is
14 what is legally required of BellSouth. BellSouth is currently reviewing and
15 developing a plan to carry out its obligations to both its retail and wholesale
16 customers should a work stoppage occur. Such a plan will allocate BellSouth's
17 resources, however scarce, in a manner that will enable BellSouth to fulfill its
18 obligations in a nondiscriminatory manner.

19

20 Q. DOES BELLSOUTH AGREE WITH COVAD'S DEPENDENCY ON FCC
21 RULE 51.303(c)(7) FOR ITS POSITION ON ISSUE 2?

22

23 A. No. First, I believe the rule being referred to by Mr. Koutsky is actually
24 51.301(c)(7). Rule 51.301 addresses the ILEC's duty to negotiate. Rule
25 51.301(a) requires that "[a]n incumbent LEC shall negotiate in good faith the

1 terms and conditions of agreements to fulfill the duties established by sections
2 251(b) and (c) of the Act.” (Emphasis added.) Rule 51.301(b) requires that
3 “[a] requesting telecommunications carrier shall negotiate in good faith the
4 terms and conditions of agreements described in paragraph (a) of this section.”
5 Rule 51.301(c) describes violations of an ILEC’s duty to negotiate in good
6 faith.

7
8 Therefore, BellSouth’s obligation to “designate a representative with authority
9 to make binding representations” (Rule 51.301(c)(7)) only applies to
10 requirements of the Act. BellSouth has designated representatives with the
11 necessary authority to make any binding decisions necessary for negotiating an
12 Interconnection Agreement. BellSouth’s representative has made the “binding
13 representation” that what Covad is asking should not be included in the
14 Interconnection Agreement between the parties. What Covad is proposing, a
15 work stoppage contingency planning process, is not a requirement of the Act;
16 our duty to negotiate this issue is not subject to Rule 51.301; and therefore,
17 BellSouth is not obligated to include such in its Interconnection Agreements.

18
19 Q. WHY IS BELLSOUTH OPPOSED TO IMPLEMENTING A WORK
20 STOPPAGE CONTINGENCY PLANNING PROCESS?

21
22 A. BellSouth has not said that it is unwilling to do contingency planning with
23 regard to a possible work stoppage, at the expiration of BellSouth’s CWA
24 contract in the summer of 2001 (rather than 2002 as suggested by Mr.
25

1 Koutsky). What BellSouth has said is that it is not required, and is not willing,
2 to put a specific process in an Interconnection Agreement.

3

4 Q. PLEASE COMMENT ON MR. KOUTSKY'S STATEMENTS, ON PAGE 14,
5 "IN EVERY AREA WE ENTER, COVAD IS AMONG THE LARGEST
6 CONSUMERS OF UNBUNDLED LOOP AND TRANSPORT PROVIDED
7 BY THE ILEC. AS A RESULT, COVAD BELIEVES THAT IT SHOULD
8 BE AFFORDED CONTINGENCY PLANNING THAT OTHER LARGE
9 COMMERCIAL CUSTOMERS MAY OBTAIN."

10

11 A. First, the size of the ALEC does not dictate whether BellSouth provides service
12 in a nondiscriminatory manner. BellSouth finds this request by Covad to be a
13 good example of Covad wanting preferential treatment, rather than the
14 nondiscriminatory treatment required by the Act and the FCC's rules.
15 BellSouth will commit to afford Covad the level of contingency planning that
16 BellSouth affords any other ALEC, or any of BellSouth's retail customers, as
17 is required by the Act. I would note again here, however, that if BellSouth
18 were required to participate in the type of planning process being requested by
19 Covad with even each of what Covad refers to as "large commercial
20 customers", BellSouth would very possibly be more involved in the business
21 of planning and meetings, than it would be in the performing of actual work
22 functions necessary to provide service.

23

24 Q. WHAT IS BELLSOUTH REQUESTING OF THE COMMISSION WITH
25 REGARD TO ISSUE 2?

1

2 A. Again, based on this Commission's findings in the MCI Arbitration, that it is
3 only appropriate to "impose a condition or term required to ensure that such
4 resolutions and conditions meet the requirements of Section 251", BellSouth
5 requests that the Commission find that what Covad is proposing does not
6 satisfy any requirement of the Act, and, therefore, to deny Covad's request to
7 impose specific language for a work stoppage contingency planning process in
8 the parties' Interconnection Agreement.

9

10 *Issue 3: Should there be limitation on an ALEC's right to opt-in to an existing*
11 *interconnection agreement that has only six months remaining before it*
12 *expires?*

13

14 Q. PLEASE COMMENT MR. KOUTSKY'S DEPENDENCE ON FCC RULE
15 51.809 (a) AND (b) FOR SUPPORT OF COVAD'S POSITION ON THIS
16 ISSUE.

17

18 A. Although Mr. Koutsky begins with the appropriate FCC Rule, he fails to look
19 at the entire rule. Rule 51.809(c) continues the obligations of the ILEC for
20 providing agreements to other telecommunication carriers under section 252(i)
21 of the Act. Specifically, Rule 51.809(c) states:

22

23 Individual interconnection, service, or network element arrangements
24 shall remain available for use by telecommunications carriers pursuant
25 to this section for a reasonable period of time after the approved
agreement is available for public inspection under section 252(f) of the
Act. (Emphasis added.)

1 This section negates Covad's conclusion that "[u]nder Rule 51.809, the *only*
2 restrictions upon this option are those set forth in 51.809(b)."

3

4 Also, while Mr. Koutsky cites to a Supreme Court ruling in this area, he fails
5 to point out that the Supreme Court specifically stated that an ALEC must take
6 all legitimately related provisions. Clearly, both conditions proposed by
7 BellSouth are consistent with federal rulings.

8

9 Q. PLEASE COMMENT ON MR. KOUTSKY'S DISCUSSION, ON PAGES 16
10 AND 17, CONCERNING WHY AN ALEC WOULD SEEK TO OPT-IN TO
11 AN ARRANGEMENT THAT MAY EXPIRE WITHIN LESS THAN SIX
12 MONTHS.

13

14 A. BellSouth generally agrees with Mr. Koutsky's discussion regarding why a
15 new competitor would be interested in opting-in to an existing arrangement-to
16 enable a new ALEC to get into business prior to completing the negotiation
17 process for its own agreement (which is certainly not Covad's circumstances).

18 I would note that BellSouth also provides a standard Interconnection
19 Agreement that ALECs may adopt for this same purpose. In fact, the vast
20 majority of ALECs operating in Florida execute a version of BellSouth's
21 Standard Interconnection Agreement.

22

23 Mr. Koutsky suggests that Covad may want to opt-in to an agreement that
24 BellSouth enters into with another ALEC that has a better provision than what
25 Covad has, but not as good as Covad thinks it will get from an arbitration

1 proceeding. First, if BellSouth enters into an agreement with another ALEC
2 during this timeframe, the agreement would certainly have longer than a six-
3 month timeframe, and Covad would be allowed to opt-in to that agreement for
4 the duration of that agreement, if it desired. However, when an ALEC opts-in
5 to an agreement that has longer than six months left in its duration, the ALEC
6 is not prohibited from amending that agreement, or changing its agreement to
7 be consistent with the results of continuing negotiations or its arbitration
8 proceeding, should they be more favorable to the ALEC.

9
10 Further, if the arrangement that the ALEC is interested in, although being
11 “sub-optimal”, is better than the arrangement in the ALEC’s own contract, why
12 would the ALEC wait until it begins negotiations, or until there is less than six-
13 months left until expiration, to adopt such arrangement? ALECs have the
14 ability to opt-in to provisions of another ALEC’s Interconnection Agreement,
15 but that ability is not completely unconstrained. In fact, in its April 2001
16 Order dealing with Intercarrier Compensation for ISP-bound traffic, the FCC
17 itself noted that its Rule 51.809(c) restricts the time period in which an ALEC
18 may opt-in to an approved agreement. In footnote 155 of the Order, the FCC
19 specifically draws attention to, and quotes, the 252(i) requirements that LECs
20 are required “to make available ‘[i]ndividual interconnection, service, or
21 network element arrangements’ to requesting telecommunications carriers only
22 ‘for a reasonable period of time.’”

23
24
25

1 Q. PLEASE COMMENT ON MR. KOUTSKY'S VIEW OF "BELLSOUTH'S
2 'LEGITIMATELY RELATED OR NEGOTIATED IN EXCHANGE FOR'
3 PROPOSAL" FOUND ON PAGE 18.

4

5 A. I am not a lawyer, and therefore cannot comment on several of the statements
6 made by Mr. Koutsky. I will say, however, that BellSouth's position on this
7 issue is in compliance with the FCC's Rule 51.809. BellSouth's position is
8 discussed in detail on pages 13 and 14 of my direct testimony. Both the FCC
9 and the Supreme Court have indicated that an ALEC must take all provisions
10 that are legitimately related. In fact, the FCC's First Report and Order cites an
11 example of how an ALEC must accept legitimately related provisions.

12

13 Q. WHAT IS BELLSOUTH ASKING OF THE COMMISSION WITH
14 REGARD TO ISSUE 3?

15

16 A. As referenced in my direct testimony, the Circuit Court in Maryland found it
17 unreasonable to allow an ALEC to opt into a three-year interconnection
18 agreement approximately two and one-half years after its approval. In
19 addition, as discussed above, as well as in my direct testimony, the FCC has
20 allowed for opting-in for a "reasonable period of time". BellSouth believes
21 that allowing an ALEC to opt-in to a contract provision up until the time when
22 there is only six months remaining in the term of the contract is reasonable.
23 Any thing after that would be inefficient and administratively burdensome.
24 Under Covad's proposal, BellSouth would be forced to expend additional
25 effort and resources to continually negotiate with an ALEC; input and track

1 additional rate differences in various rate bases; and re-educate customer
2 services organizations when agreements continually change. In addition,
3 ordering problems may occur because something available in the current
4 agreement could be missing in the agreement adopted, causing features to drop
5 out of the system when ordered, possibly increasing provisioning times. For
6 these reasons and reasons discussed above and in my direct testimony,
7 BellSouth would ask that the Commission deny Covad's request related to this
8 portion of the issue.

9
10 BellSouth also asks the Commission to find that specific rates, terms and
11 conditions included in a settlement package are part of a total arrangement and
12 that if Covad wants to opt-in to a portion of a total settlement arrangement, that
13 it must be willing to adopt the entire arrangement. This is consistent with FCC
14 51.809 and with the Supreme Court's view on this issue.

15
16 ***Issue 6: Where a due date for the provisioning of a facility is changed by BellSouth***
17 ***after a Firm Order Confirmation has been returned on an order, should***
18 ***BellSouth reimburse Covad for any costs incurred as a direct result of the***
19 ***rescheduling?***

20
21 Q. ON PAGE 12 OF MR. ALLEN'S TESTIMONY, COVAD ALLEGES THAT
22 BELLSOUTH "HAS REPEATEDLY AND UNILATERALLY CANCELLED
23 COVAD UNBUNDLED LOOP ORDERS. . ." PLEASE COMMENT.
24
25

1 A. Unfortunately, Mr. Allen provides no specific references or occurrences that
2 allow me to respond to his allegation. If Covad provides specific instances to
3 BellSouth, those instances are investigated and findings provided to Covad.

4

5 I can, however, respond in general to Mr. Allen's allegations. It is not
6 BellSouth's policy to unilaterally cancel loop orders of Covad, or any other
7 ALEC. As I explained in my direct testimony, page 21, there is a process in
8 place that could cause Covad loop orders to be cancelled. It is not, as I
9 explained, a unilateral cancellation. Covad has a responsibility in the process
10 that, if it does not fulfill, can result in an order being cancelled.

11

12 In addition, also as explained in my direct testimony on pages 18-20, the Firm
13 Order Confirmation ("FOC") due date is not a commitment. Due to the
14 circumstances discussed in my direct testimony, BellSouth could be forced to
15 postpone installation. This is not a cancellation, but a postponement due to
16 problems with facilities. These problems are not specific to Covad, but would
17 also affect any BellSouth orders.

18

19 Q. MR. ALLEN CONTINUES HIS REASONING FOR COVAD'S POSITION
20 ON PAGES 12-13 OF HIS TESTIMONY. PLEASE COMMENT.

21

22 A. Mr. Allen states, "In complex business relationships, parties do not generally
23 attempt to impose penalties on every possible failure point."

24

25

1 In a non-regulated, or “normal” business relationship, I would tend to agree
2 with Mr. Allen. Penalties, as Mr. Allen refers to would normally be built in to
3 the cost of doing business, and therefore reflected in the prices being charged
4 to all customers. As Mr. Allen is aware, however, BellSouth does not have
5 that flexibility with its rates. BellSouth, therefore, in order to recover its costs,
6 must charge the cost causer for the work that is done.

7

8 It also should be noted, however, that what Mr. Allen refers to as a “penalty”,
9 is not a penalty at all. Covad is charged when it cancels or changes a loop
10 order to compensate BellSouth for the costs that BellSouth has incurred on
11 behalf of Covad.

12

13 Q. PLEASE COMMENT ON MR. ALLEN’S DISCUSSION, BEGINNING ON
14 PAGE 13, OF COVAD’S ALLEGED RECEIPT OF MULTIPLE FOCs ON
15 SINGLE ORDERS.

16

17 A. Out of context, which is what Mr. Allen’s presentation is, the statistics
18 presented appear to be significant. What Mr. Allen’s discussion fails to
19 present is the reasoning behind why BellSouth had to issue more than one FOC
20 on so many of Covad’s orders. Although I cannot address the specifics of Mr.
21 Allen’s allegations, I can say that there are numerous reasons why multiple
22 FOCs may be necessary, and that many of those reasons are as a result of
23 ALEC performance. Mr. Latham discusses FOCs in more detail in his rebuttal
24 testimony.

25

1 Q. WHY IS IT NOT APPROPRIATE FOR COVAD TO CHARGE
2 BELLSOUTH FOR MODIFYING OR CANCELLING AN ORDER?

3

4 A. Due to various circumstances, orders placed by Covad must be modified after
5 BellSouth issues the initial FOC. Due to other circumstances, in which Covad
6 is a participant, orders may be cancelled. What Covad is requesting to be
7 allowed to charge BellSouth for is part and parcel of the entire ordering and
8 provisioning process for the facilities that BellSouth provides to Covad.

9

10 Q. WHAT IS BELLSOUTH ASKING THIS COMMISSION TO FIND WITH
11 REGARD TO ISSUE 6?

12

13 A. BellSouth requests the Commission to find that what Covad is asking is
14 inappropriate and, therefore, BellSouth is not obligated to reimburse Covad
15 when an order is modified or cancelled.

16

17 *Issue 8: When Covad reports a trouble on a loop where, after BellSouth dispatches*
18 *a technician to fix the trouble, no trouble is found but later trouble is*
19 *identified on that loop that should have been addressed during BellSouth's*
20 *first dispatch, should Covad pay for BellSouth's cost of the dispatch and*
21 *testing before the trouble is identified?*

22

23 Q. DO YOU AGREE WITH COVAD THAT BELLSOUTH SHOULD NOT
24 CHARGE FOR DISPATCH AND TESTING ON A LOOP IF BELLSOUTH
25 IS NOT ABLE TO IDENTIFY A TROUBLE ON THAT LOOP?

1

2 A. No. If Covad requests BellSouth to dispatch a technician to test a loop, Covad
3 should pay for that dispatch. Obviously, the result of BellSouth's test can
4 either be that a trouble is found on the loop, or that no trouble is found on the
5 loop. In either case, BellSouth has incurred a cost on behalf of Covad; Covad
6 has learned whether there is trouble on the loop, and obviously, Covad should
7 pay BellSouth.

8

9 Under the very specific and narrow circumstances defined in the wording of
10 this issue, i.e., BellSouth reports "no trouble found" and trouble is later found
11 on the loop that should have been found on the original dispatch, BellSouth
12 will either not bill Covad for the dispatch, or will credit Covad for the dispatch
13 charge.

14

15 Q. MR. ALLEN'S TESTIMONY, AT PAGE 19, STATES "COVAD SHOULD
16 CERTAINLY NOT BE CHARGED FOR TROUBLE TICKETS THAT ARE
17 PREMATURELY CLOSED." DO YOU AGREE?

18

19 A. In general, I would agree with Mr. Allen's statement. Mr. Allen, however,
20 alleges that BellSouth consistently prematurely closes trouble tickets. With
21 this, I adamantly disagree. As noted in my direct testimony, closing trouble
22 tickets is a two-party process. If, after BellSouth checks for trouble on a loop
23 and no trouble is found, yet Covad is still experiencing problems, Covad is not
24 obligated to close the trouble ticket. In fact, BellSouth keeps a trouble ticket
25 open automatically for 24 hours to allow Covad to continue testing. .

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Mr. Allen goes further, however, than what has supposedly been identified as Issue 8. On page 19, Mr. Allen proposes that “BellSouth not be allowed to charge when no trouble is found on the loop” regardless of whether trouble is found later. This would also be the result of Covad’s proposed language, or lack of language. Covad’s proposal would strike the following portion of Attachment 2, Section 2.1 (Unbundled Loops) language in its entirety:

If DIECA reports a trouble on SL1 loops and no trouble actually exists, BellSouth will charge DIECA for any dispatching and testing (both inside and outside the CO) required by BellSouth in order to confirm the loop’s working status.

Q. ARE THERE OTHER PORTIONS OF COVAD’S PROPOSED INTERCONNECTION AGREEMENT THAT WOULD SUPPORT BELL SOUTH’S POSITION ON THIS ISSUE?

A. Yes. I believe there is at least one other section of the proposed agreement that supports BellSouth’s position. Attachment 2, Section 2.11.3.4.2 (Maintenance and Repair of the High Frequency Spectrum Network Element) requires:

If a trouble is reported on either Party’s portion of the loop and no trouble actually exists, the Repairing Party may charge the Reporting Party for any dispatching and testing (both inside and outside the central office) required by the Repairing Party in order to confirm the loop’s working status.

It appears that the only difference between this section and the section under dispute (quoted above) is that in the section quoted above Covad is entitled to

1 bill BellSouth if Covad is required to dispatch and no trouble is found on the
2 loop.

3

4 Q. DOES BELLSOUTH'S PERFORMANCE MEASUREMENT PLAN
5 INCLUDE A MEASUREMENT THAT ADDRESSES COVAD'S
6 CONCERN ON THIS ISSUE?

7

8 A. Yes, BellSouth has a performance measurement that should generally address
9 Covad's concern of repeat dispatches. As part of its plan, BellSouth has
10 included Percent Repeat Troubles within 30 Days.

11

12 Q. WHAT DOES BELLSOUTH ASK THIS COMMISSION TO DO?

13

14 A. BellSouth requests that the Commission allow BellSouth to continue charging
15 for costs that it incurs as a result of work done on Covad's behalf. This is the
16 fair solution.

17

18 *Issue 11: What rate, if any, should Covad pay BellSouth if there is no electronic*
19 *ordering interface available, when it places a manual LSR for:*

20 *(a) an xDSL loop?*

21 *(b) line sharing*

22

23 Q. PLEASE COMMENT ON MR. ALLEN'S DISCUSSION, ON PAGES 19-21
24 OF HIS TESTIMONY, OF ISSUE 11.

25

1 A. BellSouth's electronic ordering systems, like any other electronic systems, are
2 going to be down from time to time. When problems with the electronic
3 ordering systems prevent Covad from placing electronic orders that BellSouth
4 normally accepts, Covad may order the services it desires manually and pay
5 only the electronic ordering rates. This is a fair and reasonable approach to
6 addressing occasional system problems.

7

8 Q. WHY IS ISSUE 11 STILL AN ISSUE BETWEEN THE PARTIES?

9

10 A. I am not sure. BellSouth offers electronic ordering interfaces for xDSL loops
11 and line sharing. BellSouth agrees with Covad that if, due to system failures,
12 Covad must place a manual order for something that could normally be
13 ordered electronically, Covad will only pay the electronic ordering rates.

14

15 Although the above is true, what Covad's suggested contract language appears
16 to propose is that a manual ordering charge is never appropriate. The
17 following is Covad's proposal for Attachment 2, Section 2.9.1 (Operational
18 Support Systems):

19

20 An individual LSR will be identified for billing purposes by its
21 Purchase Order Number (PON). LSRs submitted by means other than
22 one of these interactive interfaces (mail, fax, courier, etc.) will incur a
23 manual order charge as specified in the table below:

24

25

	AL, GA, LA, MS, NC, SC	FL, KY, TN
1 <i>OPERATIONAL SUPPORT SYSTEMS</i>		
2 OSS LSR charge, per LSR received from the 3 CLEC by one of the OSS interactive 4 interfaces	\$.10 SOME C	\$3.50 SOME C
5 Incremental charge per LSR received from 6 the CLEC by means other than one of the 7 OSS interactive interfaces	See applicable rate element*	\$00.00 SOMAN

*Until 90 days after the xDSL ordering EDI interface is commercially available, BellSouth will permit DIECA to place orders manually without charging DIECA the manual service order fee.

8 Q. WHAT IS BELLSOUTH ASKING OF THIS COMMISSION?

9
10 A. BellSouth asks the Commission to find that if the ordering process for the
11 service that Covad wants is a manual process, that payment for such manual
12 service order processing is appropriate.
13

14 *Issue 12: Should Covad have to pay for a submitted LSR when it cancels an order*
15 *because BellSouth has not delivered the loop in less than five business days?*
16

17 Q. WHY IS IT APPROPRIATE FOR BELLSOUTH TO CHARGE AN LSR OSS
18 CHARGE EVEN IF IT IS UNABLE TO DELIVER A LOOP TO COVAD IN
19 LESS THAN FIVE BUSINESS DAYS?
20

21 A. Once Covad submits an order for a loop, BellSouth begins processing that
22 request, doing work on Covad's request. BellSouth is entitled to compensation
23 for such work, and the LSR OSS charge accomplishes just that.
24
25

1 Q. HAS BELLSOUTH PROPOSED A MEASUREMENT IN DOCKET NO.
2 000121-TP, FLORIDA'S GENERIC PERFORMANCE MEASURES
3 DOCKET, WHICH WILL ADDRESS COVAD'S CONCERN?

4
5 A. Yes. BellSouth has proposed two provisioning measurements, Order
6 Completion Interval and Percent Missed Installation Appointments –
7 disaggregated by 12 levels of loop sub-metrics, which clearly demonstrate
8 BellSouth's performance for delivering loops. Covad's allegation that
9 BellSouth has a perverse incentive to delay Covad loop deliveries cannot be
10 true. BellSouth has an obligation to provide nondiscriminatory access to
11 Covad. BellSouth must demonstrate, to this Commission and the FCC, that it
12 is providing such access, prior to receiving 271 relief in Florida. Depending on
13 the loop type, BellSouth, therefore, must demonstrate that it provides loops to
14 all ALECs in the same time and manner as to its retail customers. Absent such
15 an analogue, BellSouth must demonstrate it is meeting a defined benchmark.

16
17 Q. WHAT IS BELLSOUTH ASKING OF THIS COMMISSION?

18
19 A. BellSouth is requesting that the Commission find that Covad must pay
20 appropriate LSR OSS charges, even if Covad cancels an order because
21 BellSouth is unable to provision the order within five days. If this is a
22 continual problem, as Covad seems to suggest, there are other, more
23 appropriate venues for Covad to pursue.

24
25

1 *Issue 25: In the event Covad desires to terminate its occupation of a collocation*
2 *space, and if there is a waiting list for space in that central office, should*
3 *BellSouth notify the next ALEC on the waiting list to give that ALEC the*
4 *opportunity to take that space as configured by Covad (such as racks,*
5 *conduits, etc.), thereby relieving Covad of its obligation to completely vacate*
6 *the space?*

7

8 Q. DO YOU HAVE ANY GENERAL COMMENTS ON COVAD'S POSITION
9 ON ISSUE 25, AS DISCUSSED IN THE TESTIMONY OF MR. WILLIAM
10 SEEGER (PAGES 8 – 10)?

11

12 A. Yes. As stated in my direct testimony, BellSouth does not oppose Covad
13 selling its equipment to another ALEC should Covad choose to vacate a
14 collocation space. The arguments, however, that Mr. Seeger makes in his
15 testimony, with regard to why BellSouth should be involved in the process, are
16 less than compelling. There is nothing in the Act or the FCC Rules to require
17 BellSouth to provide the service that Covad is seeking and, therefore,
18 BellSouth asks the Commission to deny Covad's request.

19

20 In addition, what is defined above as the issue is not what Covad's proposed
21 language or continued negotiations between the parties seem to indicate.
22 Covad's proposed language, Section 4.3.2 of Attachment 4, requires that:

23

24 When CLEC-1 gives notice of termination of a collocation
25 arrangement, BellSouth shall alert all CLECs on the waiting list for
collocation space, if any, that prepared space is becoming available. If
BellSouth is able to place another CLEC in the vacated CLEC-1 space,

1 CLEC-1 shall not be required to return the space to its original
2 condition. CLEC-1 shall be responsible for the cost of removing any
3 enclosure, together with all support structures (e.g., racking, conduits),
4 at the termination of occupancy and restoring the grounds to their
5 original condition. If BellSouth is able to rent the vacated collocation
6 space within six months, CLEC-1 shall be reimbursed for the pro rata
7 share of the collocation space preparation it paid. (Emphasis added.)

8 Covad's proposed contract language goes far and above what is defined in this
9 issue. In addition, through further examination of this issue in the negotiation
10 process, it appears that the more the parties discuss the issue, the more
11 involved Covad's request becomes. Contrary to the issue which states that
12 Covad wants BellSouth to notify the next ALEC on the list, not only does
13 Covad want BellSouth to notify all of the ALECs on the list, but Covad also
14 has suggested that if the first ALEC is not interested, it would be appropriate to
15 allow the second ALEC to use Covad's space.

16 Q. WHAT ARE THE IMPLICATIONS OF COVAD'S POSITION?

17 A. It is my understanding that Covad has even suggested that when Covad
18 submits its notice that it intends to vacate space, BellSouth could relook at the
19 entire central office collocation plan. Under Covad's proposal, if BellSouth is
20 aware that space, in addition to Covad's, is to become available shortly, and
21 the second ALEC on the waiting list is interested in Covad's space, BellSouth
22 could make the first ALEC on the list wait for the additional space to become
23 available, and let the second ALEC take Covad's space immediately.

1 Covad's proposal does several things, all of which BellSouth opposes. First, it
2 interferes with the FCC's and this Commission's "first-come, first-served"
3 requirement. Second, as discussed in my direct testimony, page 33, the
4 process would have to lengthen the intervals required for collocation. Any
5 time lost as a result of the negotiating process among, or between, the parties
6 should not be counted as part of BellSouth's time to provide the collocation
7 space. Finally, and regardless of what Covad may assert to the contrary, this
8 proposal does put BellSouth right in the middle of a brokering transaction.

9

10 Q. PLEASE COMMENT ON THE SPECIFIC ARGUMENTS, PAGES 8-10 OF
11 HIS TESTIMONY, THAT MR. SEEGER MAKES ON THIS ISSUE.

12

13 A. Mr. Seeger addresses two main ideas in his testimony. First, he suggests that
14 BellSouth should "act as a reasonable landlord". Second, he touches briefly on
15 the actual equipment removal process necessary for Covad to vacate a
16 collocation arrangement.

17

18 Mr. Seeger refers to a normal landlord being interested in filling empty
19 apartments. Mr. Seeger's comparison is wrong. The relationship between
20 BellSouth and Covad more closely resembles an occupied apartment that the
21 renter desires to sublet. In this case, the landlord is not responsible for finding
22 the new tenant. It is the renter's responsibility to find someone to sublet the
23 space, and that is what BellSouth is asking the Commission to require here.

24

25

1 With regard to equipment removal, Mr. Seeger's discussion is not relevant.
2 Addressing Covad's specific example, that of BellSouth putting "Covad in the
3 very end of a huge unprepared space", two things come to mind. First, it
4 would seem that if there is a huge unprepared space there would be space
5 available in the central office for other collocators, therefore, there would be
6 no waiting list, and Covad's argument is unpersuasive. Second, although I am
7 not a collocation expert, it is my understanding that, unless there is a caged
8 arrangement, the cable racking that Mr. Seeger refers to on page 9, belongs to
9 BellSouth, and would not be removed by Covad.

10

11 Q. PLEASE COMMENT ON MR. SEEGER'S STATEMENT THAT "COVAD
12 MERELY WANTS TO RETAIN THE RIGHT TO FIND ANOTHER ALEC
13 INTERESTED IN ACQUIRING THE SPACE FROM COVAD."

14

15 A. Covad has the right it is requesting today. Until Covad sends an application to
16 terminate its collocation arrangement, Covad retains the right to share the
17 collocation space with another ALEC or, alternatively, transfer its space to
18 another ALEC provided that the premises is not in a space exhaust situation.
19 Other ALECs have exercised that right. Although I cannot say how those
20 companies have made their arrangements with other ALECs, I do know that
21 BellSouth has assigned collocation space from one ALEC to another and
22 would be willing to permit this to be done in conjunction with Covad selling its
23 in-place equipment to the same ALEC. Covad, however, should be
24 responsible for brokering its own space reassignment or sale of equipment, just
25 as these other ALECs have done.

1

2 Q. WHAT PROBLEMS DO YOU FORESEE WITH COVAD'S "SIMPLE
3 EMAIL" PROPOSAL?

4

5 A. First, despite what Covad may assert, Covad's proposal does put BellSouth in
6 the middle of the transaction. Covad proposes that "BellSouth send a simple
7 email to ALECs on the waiting list, asking them to contact Covad about
8 acquiring Covad's space." This would be just one more administrative step in
9 BellSouth's collocation process that is unnecessary and not required to meet
10 BellSouth's collocation obligations.

11

12 Second, if BellSouth is required to send an email to all of the ALECs, the first-
13 come, first-served requirement associated with the waiting list is jeopardized.

14 An additional specific concern that arises should Covad's proposal be
15 implemented is if an ALEC, other than the first ALEC on the waiting list, is
16 allowed to take Covad's space because there is also additional space becoming
17 available, and, for some reason, the additional space does not become
18 available. BellSouth foresees Covad's proposal leading to more problems than
19 it solves.

20

21 Q. WILL THE STANDARDIZED RATES FOR COLLOCATION BEING
22 IMPLEMENTED IN FLORIDA RESOLVE COVAD'S CONCERNS
23 EXPRESSED IN THIS ISSUE?

24

25

1 A. The standardized rates for collocation being implemented in Florida should
2 resolve Covad's concerns with regard to large upfront space preparation
3 charges on a going-forward basis. In response to numerous ALEC requests,
4 BellSouth is implementing standardized collocation rates. BellSouth has
5 provided to this Commission a cost study that moves Space Preparation
6 charges from all non-recurring rates to the recurring rates for the Central
7 Office Modifications and Common Systems Modifications rate elements. This
8 will allow the space preparation charges, rather than being paid as a lump sum
9 upfront, to be paid over the life of the collocation space.

10

11 Q. WHAT IS BELLSOUTH REQUESTING OF THIS COMMISSION?

12

13 A. BellSouth requests that the Commission deny Covad's request.

14

15 *Issue 32(a): Should Covad be required to pay amounts in dispute as well as late*
16 *charge as late charges on such amounts?*

17

18 Q. WHY IS THIS AN ISSUE BETWEEN COVAD AND BELLSOUTH?

19

20 A. I am not quite certain. BellSouth has agreed that Covad should not have to pay
21 portions of bills that Covad legitimately disputes until such time as the billing
22 dispute is settled. BellSouth has agreed that late charges are only due if the
23 dispute is resolved in BellSouth's favor. Moreover, BellSouth also agrees that
24 Covad should not be subject to suspension or termination of service for
25 "nonpayment" due to a legitimate billing dispute.

1

2 Q. DOES BELLSOUTH HAVE AN ESTABLISHED BILLING DISPUTE
3 PROCESS?

4

5 A. Yes. BellSouth's proposed language with regard to the Billing Dispute
6 Process is included in Attachment 7 of the parties' Interconnection Agreement.
7 The language is consistent with the process that I have just described.

8

9 Q. ON PAGE 25, MR. KOUTSKY SUGGESTS THAT, "UNDER
10 BELLSOUTH'S PROPOSAL, BELLSOUTH WOULD BE ABLE TO
11 COLLECT INTEREST ON THE DISPUTED AMOUNT PENDING
12 RESOLUTION." IS THIS TRUE?

13

14 A. No. Nothing is paid on disputed amounts until the dispute is resolved. If it is
15 determined that Covad is correct, then the disputed amount is not due. If it is
16 determined that BellSouth is correct, only then does Covad pay the disputed
17 amount plus interest.

18

19 Q. FINALLY, MR. KOUTSKY ALLEGES THAT BELLSOUTH TREATS ITS
20 RETAIL CUSTOMERS DIFFERENTLY, WITH RESPECT TO BILLING,
21 THAN IT DOES ITS ALEC CUSTOMERS. PLEASE COMMENT.

22

23 A. Mr. Koutsky is absolutely wrong. Section A2.4 of BellSouth's Florida General
24 Subscriber Services Tariff ("GSST"), and Section E2.4 of the Florida Access
25 Service Tariff address "Payment Arrangements and Credit Allowances." The

1 appropriate portions of these sections are attached to my rebuttal testimony as
2 Exhibit CKC – R1. As shown in both the GSST and the Access Service Tariff
3 sections, BellSouth has the same type of payment requirements for both its
4 retail service and access service customers as BellSouth proposes for its ALEC
5 customers. These sections also show that late payment and interest charges
6 apply when BellSouth does not receive payments in a timely manner. Also
7 included in these sections are the BellSouth processes for handling disputes.
8
9 BellSouth presents these tariff sections to ensure Covad, and this Commission
10 that BellSouth treats Covad, and all ALECs, in a nondiscriminatory manner
11 with relation to its billing practices.

12

13 Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?

14

15 A. Yes.

16 PC DOCS #264753

17

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25

1 MR. TWOMEY: And if the Commission -- this is the
2 appropriate way to do it, I'd like to take her exhibit from the
3 Direct Testimony, which was CKC-D1 and the exhibit from the
4 Rebuttal Testimony which was CKC-R1, make that composite
5 Exhibit Number 15.

6 COMMISSIONER JABER: CKC-D1 and CKC-R1 shall be
7 identified as composite Exhibit 15.

8 (Exhibit 15 marked for identification.)

9 BY MR. TWOMEY:

10 Q Ms. Cox, if I ask you all the questions that are in
11 your Direct and Rebuttal Testimony from the stand this morning,
12 would your answers be the same?

13 A They would.

14 Q Okay. Do you have a summary of your testimony?

15 A Yes, I do.

16 Q Please give it.

17 A Hello. I'm here today to present BellSouth's
18 position on several of the disputed issues that remain between
19 BellSouth and Covad. However, first, I would like to say that
20 BellSouth and Covad have worked to resolve as many issues as
21 possible. BellSouth has approached these negotiations keeping
22 in mind our obligations, including our obligation to provide
23 nondiscriminatory access to all ALECs.

24 Our positions on the disputed issues are consistent
25 with these obligations. The Commission has heard some of these

1 issues, and in the case of Issues 1, a portion of Issue 3 and
2 Issue 11 has reached a conclusion in previous arbitrations.
3 Therefore, I'll focus on the new issues in my summary.

4 The first is Issue 3. BellSouth's position on this
5 is reasonable and consistent with the FCC statement on this
6 issue. The FCC has agreed that some cut-off time frame is
7 appropriate for allowing an ALEC to opt into an existing
8 agreement. BellSouth's proposal that Covad only adopt --
9 excuse me -- only opt into an agreement with six months
10 remaining is a reasonable time period.

11 The FCC's first report and order in docket number
12 9698, as well as the courts, give BellSouth the right to
13 require an ALEC to adopt any rates, terms, and conditions that
14 are legitimately related to or were negotiated in conjunction
15 with the portion of an agreement being adopted in order for the
16 ALEC to take advantage of the most-favored nation or pick and
17 choose, as it's sometimes referred to, option of the FCC's
18 rules.

19 On Issue 6, what Covad is really asking in this issue
20 is for BellSouth to be penalized if it cannot meet a due date
21 that is included on the Firm Order Confirmation or the FOC, as
22 you'll hear it referred to. As Covad has been made aware and
23 BellSouth's business rules make clear, the FOC is not a
24 guarantee of a due date. It is only designed to let the ALEC
25 know that its order has been accepted into BellSouth's systems

1 and there are various reasons why the date on the FOC or
2 Covad's requested date may change.

3 On Issue 8, BellSouth agrees that if Covad reports a
4 trouble on a loop, BellSouth dispatches a technician and no
5 trouble is found but a trouble is found later that, in fact,
6 should have been found in the first place, that Covad should
7 either not be charged or should be credited for the charge of
8 the original dispatch. BellSouth has a billing dispute process
9 that will accommodate this circumstance. Covad's proposal,
10 however, would not allow BellSouth to charge for a dispatch
11 where no trouble is found, regardless of whether trouble is
12 found later.

13 On Issue 12, once Covad submits an order for a loop,
14 BellSouth begins processing that request doing work on Covad's
15 behalf. BellSouth is entitled to be compensated for that work.
16 This is the purpose of the LSR charge. Covad is trying to
17 establish another performance measurement and penalty. Covad
18 should pay for the work done and use the appropriate venue for
19 pursuing metrics and performance.

20 On Issue 25, Covad's proposed language states that
21 BellSouth should alert all of the ALECs on the waiting list in
22 a central office with no collocation space. It goes on to say
23 that if BellSouth is able to rent the vacated space of Covad's
24 within six months that Covad should be reimbursed for a share
25 of the space preparation that it paid. This Commission and the

1 FCC have established a first come, first serve requirement.
2 BellSouth asks that Covad be required to adhere to that
3 requirement, that the collocation process not be lengthened,
4 and that BellSouth not be required in any way to act as a
5 broker of collocation space.

6 And finally, Issue 32-A. BellSouth has agreed that
7 Covad should not have to pay portions of the bill that Covad
8 disputes until the billing dispute is settled. BellSouth
9 agrees that late charges are only due if the dispute is
10 resolved in BellSouth's favor. BellSouth also agrees that
11 Covad should not be subject to suspension or termination of
12 service for nonpayment of a disputed amount.

13 This type of payment arrangement for billing dispute
14 settlements is the same as what BellSouth offers for both its
15 retail service and access service, as well as to all other
16 ALECs, and BellSouth requests that Covad's request for
17 preferential treatment be denied.

18 And thank you, that concludes my summary.

19 COMMISSIONER JABER: Thank you, Ms. Cox.

20 MR. TWOMEY: Ms. Cox is tendered for cross.

21 COMMISSIONER JABER: Ms. Boone.

22 CROSS EXAMINATION

23 BY MS. BOONE:

24 Q Good morning, Ms. Cox.

25 A Good morning.

1 Q My name is Cathy Boone, and I represent Covad
2 Communications.

3 A Good morning.

4 Q The first thing I want to ask you about was something
5 you just said in your opening statement, that if Covad wants to
6 improve performance, we should seek the appropriate venue or
7 metric for performance. Do you think that BellSouth's contract
8 with Covad has nothing to do with performance?

9 A No, I wouldn't say that and, I believe, what I said
10 in my summary was to the extent Covad wants to establish what
11 is, in fact, a performance measurement and penalty that the
12 generic docket that's under way would be a more appropriate
13 venue to do that.

14 Q Do you agree that the material terms that govern the
15 relationship between Covad and BellSouth should be set forth in
16 the interconnection agreement between the two parties?

17 A Yes, and I believe they are.

18 Q Do you believe that material terms to a contract of
19 business partners should be subject to unilateral change by one
20 party?

21 A Well, I'm not a lawyer, so I can't really answer
22 legal contractual questions. I'm not aware of any proposal
23 here that would be a unilateral change.

24 Q Do you believe that parties to a contract that one
25 party should be able to unilaterally change material terms of

1 that contract?

2 A I'm not aware of any case where that's in discussion
3 here or even an issue.

4 Q But my question is really a yes or no one. Do you
5 believe they should be able to?

6 A I don't know. I guess, it depends on how the
7 contract is written. It's hard for me to say necessarily.

8 Q Well --

9 A I mean, I would say my understanding is, for the most
10 part, the contract is written to be the contract and it is what
11 it is. And so, the terms -- I mean, I would envision that they
12 would be jointly negotiated and agreed upon.

13 Q Okay. Do you believe that one party to a contract
14 should be able to change terms of that contract unilaterally?

15 A Not unless that is in the contract, I mean, if that
16 is what is envisioned in the contract.

17 Q Okay. You are -- do I understand then from your
18 statements that you're not familiar with Covad's view in this
19 proposal there are a number of material terms that BellSouth is
20 attempting to retain the right to unilaterally change?

21 A I believe, Covad has expressed that view on some of
22 these issues. What I would say is I'm not aware that that is
23 what BellSouth is attempting to do.

24 Q Okay. But I believe, you've just said that if in the
25 contract there is language that allows BellSouth to

1 unilaterally change the contract, then that would be okay.

2 A Well, again, I'm not a lawyer, but it seems to me if
3 that's the term of the contract, that's the term of the
4 contract.

5 Q And if what --

6 A And if that's --

7 Q Oh, sorry.

8 A No, go ahead.

9 Q And if what Covad is trying to do is remove the
10 ability for BellSouth to unilaterally change an aspect, you'd
11 understand that that is a disagreement between the parties?

12 A Oh, certainly, yes. I mean, those are the kinds of
13 reasons we're here is things we can't agree to.

14 Q I'd like to talk about Issue 3 first, that's the
15 opt-in provision.

16 A Okay.

17 Q Now, it's BellSouth's position that a CLEC should not
18 be allowed -- that Covad should not be allowed to opt into a
19 contract with less than six months left on it; is that correct?

20 A Yes.

21 Q Now, how did BellSouth arrive at the six-month mark?

22 A Well, generally, we begin renegotiating contracts at
23 about that point. And so, to the extent that we would be at a
24 point of renegotiating contracts, it doesn't seem realistic for
25 someone to opt into a contract that is then immediately going

1 to start being renegotiated.

2 Q What percentage of BellSouth's contracts are two-year
3 contracts?

4 A You know, I don't know specifically. Generally, our
5 practice is for complete agreements, we negotiate those for a
6 two-year term.

7 Q Would you say it's the majority?

8 A I just don't know.

9 Q Now -- and I believe that your position is that
10 BellSouth's right to set this six-month limit is supported by
11 the FCC rules; is that right?

12 A Yes. The FCC rules, specifically, state that there
13 should be a reasonable period of time within which an ALEC can
14 opt into an agreement.

15 Q And if Covad wants to opt in after that six-month
16 window has started to tick, then it's just too bad for Covad,
17 we're out of luck.

18 A We would say, then, that is not a reasonable period
19 of time anymore. The agreement has been out there. If it was
20 a two-year agreement, it would have been out there for a year
21 and a half already.

22 Q But doesn't that assume that all the CLECs know about
23 all of the provisions in -- what if Mr. Allen were at a
24 convention and met someone from Intermedia who told him, "Hey,
25 we got a three-day loop delivery interval," and so he rushes

1 back to my office and says, "We've got to find that contract
2 and opt in," then as soon as I find it, it turns out that
3 there's only five months and 15 days left on it. In that case,
4 Covad is not entitled to that three-day interval; is that
5 right?

6 A That would not be available for opt-in, yes.

7 Q And BellSouth would be under no compulsion to give
8 Covad loops in three days, right?

9 A Not subject to that -- the provision of that opt-in.

10 Q Even though Intermedia is getting loops in three
11 days.

12 A Yes, that's our position.

13 Q Now -- and one of your reasons you believe this is
14 reasonable is because the contract has been out there; is that
15 right?

16 A Yes.

17 Q But you assume that then CLECs know what is in
18 everybody's contract, right?

19 A Well, I think, that's what is presumed by the whole
20 availability of this provision to opt in is that ALECs are
21 aware of what are in other contracts and want to avail
22 themselves. If there was no awareness, then there would be no
23 opt-in.

24 Q Do you -- were you here for Mr. Oxman's testimony
25 yesterday?

1 A Actually, I was not.

2 Q Okay. Are you familiar with the first report and
3 order of the FCC?

4 A Yes.

5 Q I would like to hand you a document that was
6 discussed but, unfortunately, I only have my copy. It's
7 Exhibit 9, which is the section of the first report and order.
8 I wonder if you could read Paragraph 1319.

9 A You want me to read the whole paragraph?

10 Q Yes, please.

11 A Okay.

12 Q Out loud.

13 A "We agree that those commenters who suggest that
14 agreements remain available for use by requesting carriers for
15 a reasonable amount of time. Such a rule addresses incumbent
16 LEC concerns over technical incompatibility while at the same
17 time providing requesting carriers with a reasonable time
18 during which they may benefit from previously negotiated
19 agreements. In addition, this approach makes economic sense
20 since the pricing of network configuration choices are likely
21 to change over time, as several commenters have observed.
22 Given this reality, it would not make sense to permit a
23 subsequent carrier to impose an agreement or term upon an
24 incumbent ILEC if the technical requirement of implementing
25 that agreement or term have changed."

1 Q Okay. Would you agree with me that the thrust of
2 that paragraph is that the technical requirements may change
3 and, thus, the ability to opt in should be restricted or could
4 possibly be restricted on that basis?

5 A That's one thing mentioned. They also mention the
6 economics of it.

7 Q Okay. Do they mention anything about the ILECs'
8 administrative burdens?

9 A No.

10 Q Do they mention anything about the fact that you
11 start to renegotiate six months into the -- before the end of a
12 contract?

13 A No, that's not mentioned specifically. However, I
14 mean, the end result of the rule is that it clearly allows for
15 an ALEC to have a reasonable period of time with which to opt
16 in, and there was a court decision referenced in my testimony
17 that said, you know, up to a point where there's six months
18 remaining seems to be a reasonable interpretation.

19 Q Yes, that one decision from Maryland, were you not
20 able to find any other decision supporting your position?

21 A No. And I found no other decisions that went counter
22 to it.

23 Q Okay. Do you know of any other ILECs that tried to
24 deprive CLECs of the right to opt into contracts with less than
25 six months on them?

1 A Well, first of all, BellSouth is not trying to
2 deprive Covad or any ALEC of their ability to opt in. We're
3 just structuring the conditions so they're consistent with the
4 FCC's rules. And in this particular case it was -- I believe,
5 it was Bell Atlantic at that time, now Verizon, that was using
6 the six-month cut-off.

7 Q And that was on a three-year contract, correct, so it
8 would have been in place for 30 months?

9 A Yes, I believe, that's the case.

10 Q Well, now -- and you said you're not trying to
11 deprive Covad of any rights, but you would agree with me that
12 it will work to limit Covad's opt-in rights, if you are
13 successful in this issue?

14 A Subject to the limitations that are already in the
15 FCC's rules, yes.

16 Q And if this Commission determines that what the FCC
17 intended was that BellSouth come forward and, for specific cost
18 or technical reasons, indicate why an opt-in is not provided on
19 a case-by-case basis, then you would agree that a hard and fast
20 rule would not be appropriate.

21 A Well, obviously, to the extent this Commission
22 reaches a decision, then we are bound by that decision. What
23 our position is trying to put some clarity around this issue so
24 that hopefully the Commission will not be faced with making
25 decisions on this issue over and over. So, to the extent that

1 six months, which we believe is reasonable, if there's more
2 than six months left, we're perfectly willing for an ALEC to
3 opt in, so it's one less reason to have to come back and debate
4 the issue.

5 Q What about five months, is that reasonable?

6 A No, we would have -- it's past the point of
7 negotiation. I mean, our position is six months is reasonable.

8 Q What about seven months?

9 A Well, obviously, seven months is within our time
10 frame.

11 Q Okay, so five months is not reasonable, six months is
12 not reasonable, but seven months is reasonable?

13 A No, I didn't say six months wasn't reasonable. Six
14 months is our proposal.

15 Q Okay. One day less than six months, is that not
16 reasonable?

17 A I don't know. I don't know. We've put forward a
18 proposal here. If you want to say is five months and 29 days a
19 cut-off, I don't know. Maybe that's -- if you want to look at
20 that, that might be something, but there needs to be a point,
21 and the debate we've been having is Covad's position is there
22 should be no cut-off, there should be no restriction as to when
23 they should opt in.

24 COMMISSIONER JABER: Ms. Cox, what's it to you
25 really? It's not that you are prevented from negotiating with

1 the new company that's opted into an existing interconnection
2 agreement.

3 THE WITNESS: Well, it's really -- it comes down a
4 lot to the administration. If we -- we will need to go through
5 and set up the contract with the company opting in. We've got
6 to immediately start negotiating. There's really no time for
7 sort of contracts to be in place and operating and for the
8 parties to be operating under it. It's going to almost result
9 in continual negotiations and renegotiations. And what we're
10 hoping is to get a contract in place and let it play out in the
11 marketplace before we need to come back and start
12 renegotiating. So, it -- that's a big part of it.

13 COMMISSIONER JABER: But you aren't -- with contracts
14 that have different intervals, I'm assuming some of these
15 contracts are for a year, some are two, like the Maryland case
16 it was three and a half. You are constantly negotiating and
17 renegotiating anyway; isn't that correct?

18 THE WITNESS: Well, not necessarily, not with a
19 particular ALEC. To the extent that we set up a two-year
20 contract, we've got at least 18 months for that contract to be
21 in effect, and then we would begin negotiating. However, if
22 what's going to happen is we're going to opt into a six-month
23 contract or provision, then we're just going to be every six
24 months renegotiating.

25 COMMISSIONER PALECKI: So on this particular issue,

1 you are looking for a time certain so you don't have to
2 evaluate each situation on a case-by-case basis. You have six
3 months, and you know that if it's a time longer than six
4 months, a company can opt in, if it's a time shorter, they
5 cannot; is that your thinking on this?

6 THE WITNESS: Yes, that really is and, I think,
7 that's to the benefit of both parties. I mean, both parties
8 would have that knowledge.

9 COMMISSIONER PALECKI: It almost seems that your
10 argument on Issue 3, that you want a time certain though, is
11 inconsistent with your arguments in several other issues. For
12 example, Issue 6 where Covad is asking for a time certain where
13 they want certain activity to occur and they want to know what
14 the cut-off date is, and that's the same argument you're making
15 on Issue 3, but you're making an inconsistent argument on these
16 other issues.

17 THE WITNESS: Well -- and let me address that just
18 briefly. On Issue 3, we're talking about an FCC rule and the
19 language around that. And what we're trying to develop are
20 some specific parameters for the parties to operate under. And
21 I'm not going to say that under Issue 3 there will never be a
22 dispute between Covad and BellSouth on opt in. To the extent
23 there's a date cut-off, that would be one area there would not
24 be.

25 COMMISSIONER PALECKI: But right now there's no

1 specific date. Opt-in is determined on a case-by-case basis
2 and, I believe, there was an exhibit that was handed out
3 yesterday. I think, it may have been out of Texas where the --
4 I believe, the FCC had stated that in that particular case six
5 months was unreasonable, that it was too short of time to allow
6 an opt in, but it appeared from that decision that that was
7 something that was determined on a case-by-case basis based on
8 individual circumstances.

9 THE WITNESS: Yes. And I believe that the parties
10 would still have that ability if, for example, on the issue of
11 whether terms and conditions are legitimately related, there
12 is -- the burden is on the ILEC, clearly should Covad in this
13 case dispute whether terms and conditions are legitimately
14 related, the burden is on the ILEC, you know, per the FCC to
15 demonstrate that that's the case.

16 So, there is still going to be some case-by-case
17 determinations, and I would say that absent a specific time
18 period that that would also be an issue that would be subject
19 and could be subject to disputes. I mean, this is an issue
20 that, I think, we have offered some proposed language on that
21 would be a little more general and, you know, this is probably
22 one that we --

23 COMMISSIONER PALECKI: I just think it's interesting
24 that the argument that you make on Issue 3 is so similar to the
25 argument that Covad makes on Issue 6, and perhaps the parties

1 should be a little more flexible and Covad could say we'll give
2 you a time certain on Issue 3, BellSouth, six months is
3 reasonable. And on Issue 6, BellSouth could give Covad a time
4 certain, and that way you're both getting something.

5 THE WITNESS: And I'll just address Issue 6, briefly.
6 Issue 6 is the issue about the Firm Order Confirmation, and
7 that's really an issue of our processes and how we provide
8 service. It's the same mechanism that we use for our retail
9 customers. And to the extent that there are metrics set up
10 that measure that kind of thing, I mean, it'll be picked up
11 there. However, really what Covad is asking there is for a
12 change in our provisioning methodology, if you will, and I'm
13 sure we'll get into that more.

14 COMMISSIONER PALECKI: Thank you.

15 THE WITNESS: You're welcome.

16 BY MS. BOONE:

17 Q Just to clarify, Covad has a right to opt-in to
18 contracts; you agree with that?

19 A Yes.

20 Q And there's nothing setting forth in any FCC rule
21 that you have the right to set a hard and fast deadline for
22 limiting that right to opt-in; is that correct?

23 A Well, I wouldn't say that necessarily. The FCC rule
24 allows for contracts to be available for a reasonable period of
25 time, and what we have put forward is our proposal for how that

1 could be determined.

2 Q And just like Commissioner Palecki said with respect
3 to the Maryland case, that language, a reasonable time, could
4 either be interpreted to mean that you have to decide it on a
5 case-by-case basis or that an ILEC has the right to
6 unilaterally limit a CLEC's rights?

7 A Yes, I think, it could be done either way and I would
8 just, you know, for the reasons I've discussed, we've put
9 forward a time frame.

10 Q And, I think, following up on Commissioner Jaber's
11 question, I'd like to mark an exhibit which would be Exhibit
12 15.

13 COMMISSIONER JABER: 16, but what is the exhibit?

14 MS. BOONE: It is BellSouth's response to Covad's
15 second set of Interrogatories Number 36. I'm sorry my lovely
16 assistant has departed me.

17 COMMISSIONER JABER: BellSouth's response to
18 Interrogatory Number 36 is marked as Exhibit 16.

19 (Exhibit 16 marked for identification.)

20 BY MS. BOONE:

21 Q Can you take a look at that, please, Ms. Cox. Now,
22 in this discovery request Covad asked to please explain what
23 the administrative burdens were that were generating this rule.
24 Do you see that?

25 A Yes.

1 Q And in about three paragraphs there you describe what
2 some of the problems are, inefficiencies, difficulty in keeping
3 the order straight. And then, would you turn to the last
4 paragraph on the second page. Do you see the first line where
5 you say, "Although this work effort is not substantially
6 different than it would be for an agreement with longer than a
7 six-month term remaining, in a short-lived agreement, less than
8 six months, BellSouth is forced to go through the effort of
9 change and clean up only to be faced with a similar effort when
10 renegotiations are completed and a new agreement is in place."
11 Do you see that?

12 A Yes.

13 Q Now, would you agree with me, then, that the question
14 for this Commission is not whether allowing Covad its full
15 rights to opt in is an administrative burden, it's whether the
16 degree of additional burden of allowing us full opt-in rights
17 justifies BellSouth's hard and fast rule?

18 A I'm sorry, could you repeat your question?

19 Q Yeah, I'm sorry, that was a long one.

20 The question is not whether -- would you agree with
21 me that the question before this Commission is not whether
22 allowing Covad to opt in is an administrative burden. The
23 question is whether the additional degree of administrative
24 burden justifies BellSouth's hard and fast rule?

25 A Well, I would say really the question for this

1 Commission is what are Covad's rights to opt in and is the
2 proposal put forward by BellSouth consistent with those rights?
3 And I propose that it is.

4 Q Do you think the Commission should weigh the
5 difference between -- do you think that the administrative
6 burden should play any role at all, then, in their decision?

7 A To the extent that it's rational for BellSouth's
8 proposal, then I imagine they will take it into consideration.

9 Q Okay, but you'd agree with me that there's no
10 administrative burden to administer every contract, right, and
11 that's what you say in here?

12 A Yes. And, I think, that's what I was trying to
13 explain to Commissioner Jaber. It's just -- it's constant
14 absent a cut-off.

15 Q And because of that additional marginal
16 administrative burden, you want to prevent Covad from opting
17 into contracts with less than six months?

18 A Yes, that's one of the reasons.

19 Q Now, Commissioner Palecki was asking you about --
20 Commissioner Palecki was asking you whether BellSouth does this
21 on a case-by-case basis. Would you agree with me that
22 BellSouth has an internal policy now of limiting CLECs' right
23 to opt into contracts with longer than six months. That is a
24 policy in place at BellSouth today.

25 A Yes, that is our policy.

1 Q And what you'd like to do here is get it into our
2 contract, right?

3 A Yes. We are attempting to get the language, the
4 clarity of the language into the contract.

5 Q Are you aware that Covad and BellSouth had a
6 collocation dispute last summer in which Covad sought to opt
7 into another CLEC's agreement?

8 A No, I'm not.

9 Q Are you aware of whether that agreement had less than
10 six months remaining?

11 A No, I'm not, because I wasn't aware of the dispute.

12 Q Okay. I'd like to talk about limitation of liability
13 now.

14 A Okay.

15 Q You don't happen to have Mr. Oxman's testimony, do
16 you?

17 A I don't.

18 Q Okay, let me give you my copy. Is that okay? If you
19 would turn to Page 3 --

20 A Okay.

21 Q -- of the Rebuttal Testimony. Now, you'll agree with
22 me that the language that governs Covad's and BellSouth's
23 agreement right now is the language that Covad is proposing on
24 limitation of liability, right?

25 A That is my understanding.

1 Q So, what we have in place now is an agreement that
2 caps liability to the cost of the service with three
3 exceptions. Would you agree the first exception is gross
4 negligence?

5 A Yes. From reading this language, I would agree.

6 Q Okay. Would you agree the second exception is
7 willful misconduct?

8 A Yes.

9 Q And would you agree that the third exception is
10 material breaches of the contract?

11 A Well, I'm not a lawyer. I don't see those words, but
12 what it says appears to --

13 Q Okay. Would --

14 A -- that point.

15 Q Would you read the underscored and bolded part there?

16 A Yes. "Notwithstanding the foregoing claims for
17 damages from the gross negligence or willful misconduct of
18 BellSouth and claims for damages by --" how do you pronounce
19 that?

20 Q DIECA.

21 A "-- DIECA --" sorry.

22 Q I know, I'm sorry, too. It's our d/b/a.

23 A "-- resulting from the failure of BellSouth to honor
24 in one or more material respects, any one of more of the
25 material provisions of this agreement shall not be subject to

1 such limitation of liability."

2 Q Okay. So, that's the contract that currently governs
3 our interconnection agreement, right?

4 A That's what it says here.

5 Q And that's been in place since we signed it, which
6 was the end of 1998. Does that sound right? Do you accept
7 that, subject to check?

8 A Yes, I will.

9 Q Now, BellSouth is proposing to change that liability
10 cap; is that right?

11 A Yes, in the course of this negotiation.

12 Q Now, you've agreed that although that was not your
13 original proposal, you've now agreed that you will be -- you
14 will remove the cap for gross negligence or willful misconduct;
15 is that right?

16 A Yes, I believe, we've said that since we filed the
17 response to the petition at least.

18 Q Okay. And what about material breaches?

19 A No. We would -- but still we do not want to have
20 that language in there.

21 Q Okay. So, the language that Covad and BellSouth have
22 had for two years is not good enough for BellSouth anymore?

23 A We would like it to be revised.

24 Q And the way you'd like it to be revised is to ensure
25 that your liability is capped; is that right?

1 A Except in the cases of gross negligence and
2 misconduct, willful misconduct, I think, is the term.

3 Q Okay. And, I believe, one of the reasons you state
4 in your testimony for this change is that the current provision
5 is subject to dispute; is that right?

6 A We believe there's potential for dispute, and it
7 seems to us if there's not a liability cap for material breach
8 there is, in effect, not a liability cap.

9 Q Right, good point. Now, you think that there might
10 be disputes. Have there been disputes?

11 A Not that I'm aware of. I don't know if there have
12 been.

13 MS. BOONE: Okay, I'd like to mark this as exhibit --
14 is this 17? This is a BellSouth response to Interrogatory 35.

15 COMMISSIONER JABER: BellSouth's response to Covad
16 Interrogatory Number 35 is marked as Exhibit 17.

17 (Exhibit 17 marked for identification.)

18 BY MS. BOONE:

19 Q If you'd take a look at that, please. Now, would you
20 agree with me in this question Covad asked BellSouth exactly
21 that, how many disputes have there been based on the language
22 we've had in this contract based on the fact that other CLECs
23 can opt into our contract and all those scary things. And
24 would you read BellSouth's response, please?

25 A I'm sorry, what did you say? You didn't really ask

1 anything about opt-in in this question.

2 Q Did I say opt in?

3 A I thought you did.

4 Q Oh, no, I'm sorry. What I meant was -- well, let me
5 back up. You would agree that the contract that Covad has with
6 BellSouth now other CLECs are entitled to opt into it, right?

7 A Not if it is expired.

8 Q And they're, obviously, not six months left on it, so
9 let's say before the six-month time frame came into play. From
10 1998 until six months left on the term did CLECs have the right
11 to opt into our contract?

12 A Yes, they could have opted into that provision and
13 any that were related to it.

14 Q Okay. And in this discovery question Covad asked
15 BellSouth how many disputes have there been about this
16 limitation of liability provision. And would you read that
17 response, please?

18 A "BellSouth has not been involved in any disputes with
19 ALECs regarding the limitation of liability provision in the
20 agreement in which the materiality of the dispute was raised as
21 an issue." And I would point out, and I know the Commission
22 heard this in the MCI arbitration. Another one of our
23 arguments in this testimony is that this is really not an issue
24 under 251. It's not an obligation on BellSouth to have any
25 particular language about limitation of liability. Our

1 position in this arbitration is the same as it has been in the
2 other -- where we have arbitrated this issue and it's the same
3 in all of the negotiations.

4 Q Well, let me ask you about that. I mean, if this
5 Commission doesn't rule for your language or for Covad's
6 language, then there's not going to be a limitation cap at all,
7 right?

8 A Unless we can agree on language, which is what
9 happened in the other case.

10 Q And where would that leave the parties, in your mind?

11 A I don't know.

12 Q Well, is it more damaging for BellSouth to have no
13 language limiting its liability or the language that Covad's
14 proposed?

15 A I'm not a lawyer. I really can't address what would
16 be better or worse.

17 Q Well, I mean, you've given testimony on what are the
18 proper provisions for limitation of liability, so I'm not
19 asking for a legal conclusion, I'm just asking you to say
20 between having absolutely no cap on liability and no language,
21 wouldn't you prefer to have Covad's language?

22 A No, but I think the end result of Covad's language is
23 that there is no cap.

24 Q Well, there's a cap if it's not a material breach of
25 the contract, right?

1 A But, I mean, my reading of that as a layperson is
2 that, in effect, the practical effect could be that there is no
3 cap.

4 Q Now, I believe, you talked about the MCI agreement,
5 and yesterday I gave out the MCI language and that was Exhibit
6 8. You don't have that copy up there, do you?

7 A No, I sure don't.

8 Q Okay. Let me give you my copy again.

9 A Okay.

10 Q I'd like to get it back, though.

11 A Are you done with --

12 Q Yeah, thank you.

13 A Okay.

14 Q Would you take a look at that? Now, one of the
15 things BellSouth proposed, apparently, and MCI agreed to was
16 that you would -- your liability would be capped if you refused
17 to comply with the contract but you did it in good faith; do
18 you see that at the top of that second page?

19 A Yes, and the next paragraph has the same provision
20 for MCI.

21 Q Okay. Would you agree with me that whether or not
22 BellSouth had acted in good faith is, likewise, subject to
23 dispute?

24 A It could be.

25 Q And would you agree with me that there are no other

1 contracts in which a breach of contract is excused for acting
2 in good faith?

3 A I don't know.

4 Q But you'd agree with me that just because MCI agreed
5 to something doesn't mean Covad has to agree?

6 A Oh, certainly. I mean, this was just the other
7 instance where this issue came up. I mean, the -- we've always
8 been able to reach an agreement with other ALECs on this
9 particular point. This was just a case where it came up, and
10 based on how the Commission ruled on that the parties were able
11 to reach an agreement, and so we thought that this might be
12 something that BellSouth and Covad could also reach an
13 agreement on.

14 Q Well, what prompted BellSouth's desire to change the
15 existing Covad language?

16 A Well, I think, you know, reasons to change language
17 can happen for both parties for different aspects of the
18 contract. I would say one thing that's changed since the
19 original contract is this Commission, and a number of other
20 Commissions, are looking at the whole issue of performance
21 measures and performance penalties, and so there is mechanisms
22 that are being established to also address these types of
23 issues.

24 Q But whatever this Commission does with performance
25 measures certainly doesn't deprive any ALEC of its right to

1 pursue other forms of remedies from BellSouth; is that right?

2 A Certainly not.

3 Q And it's likely that BellSouth's desire to change
4 this language was a desire to insulate itself from potential
5 monetary damage; is that right?

6 A I don't know. That could be.

7 Q Let me get that back.

8 A Do you want any of these back?

9 Q No. Okay. Let's talk about Issue 6 very quickly.
10 Now, there was a lot of discussion yesterday, and I don't know
11 if you were here for it or not, but about the FOC date and what
12 that meant and what BellSouth might -- what reasons BellSouth
13 might have to change that. Are you familiar -- were you here
14 for any of that?

15 A I wasn't, no, sorry. I was traveling yesterday.

16 Q But you're familiar with this issue?

17 A Yes, generally.

18 Q Now, you'd agree with me that in this issue Covad is
19 not asking that BellSouth check facilities before it issues a
20 FOC date, right?

21 A Well, I'm not sure. I believe, in Mr. Allen's
22 testimony, I think it was. He mentioned that -- you know, he
23 didn't understand why we couldn't do that.

24 Q Okay, but the issue is not one of whether BellSouth
25 should check facilities before it issues a FOC date, right?

1 A I agree, yes.

2 Q Now, the issue is that BellSouth wants to charge
3 Covad for every change and every modification of an order; is
4 that right?

5 A I don't know about every change, but yes, we do want
6 the right to charge for order changes and cancellations.

7 Q Okay. And in response to that proposal Covad has
8 said, well, we'd like you, BellSouth, to pay us when you change
9 an order. You agree that's the issue?

10 A Generally, yes.

11 Q So, one way to solve this would be for you not to
12 charge Covad when we change or modify an order, right?

13 A I suppose that would be one resolution that would be
14 amenable to Covad.

15 Q Now, without requiring you to change all your
16 processes and to live or die by the delivery date, you will
17 acknowledge that Covad does incur costs when BellSouth changes
18 that delivery day, won't you?

19 A Well, I don't know. I don't know if they do or not.

20 Q You haven't read that in Mr. Allen's testimony?

21 A Yes. All I'm saying is that I don't know if in every
22 case they would have incurred cost, I just don't know.

23 Q Do you know if in every case that we change or modify
24 an order BellSouth incurs cost?

25 A For every one that we would charge for, yes.

1 Q Well, which ones wouldn't you charge for?

2 A If you send in a sup for a due date, we wouldn't
3 charge for that.

4 Q Okay. But you don't charge for that only if it's a
5 BellSouth cause to change the due date; is that right?

6 A No, that's not my understanding.

7 Q Okay. What about -- well, let me ask you this:
8 Mr. Allen has said in his testimony that it does cause Covad to
9 incur cost when BellSouth does change the delivery due date.
10 That being the case, do you believe that BellSouth has any
11 responsibility for compensating Covad for those costs?

12 A I believe that we will, in fact, and it'll be picked
13 up in the performance measures we have, metrics that they're
14 designed to capture this and their penalties associated with
15 those measures.

16 Q Okay.

17 A So, to the extent that --

18 Q I'm sorry.

19 A Go ahead.

20 Q No, go ahead.

21 A To the extent that our provision of service to Covad
22 is not at parity with the retail analog, then there will be
23 compensation through the penalty plan when it goes into effect.

24 Q And which exact metric is that?

25 A I believe, there's two. And bear with me, I'm not a

1 performance plan expert, but my understanding is the missed
2 installation measure would pick that up and the order
3 completion interval would pick that up.

4 Q Okay. The missed installation metric, for example,
5 only picks up the first time that BellSouth misses an
6 appointment, not if, say, BellSouth changed the due date two,
7 three, or four times; would you agree with that?

8 A I'm not sure exactly how the metric is set up, but it
9 is set up to pick up the missed due date, the original due
10 date.

11 Q Okay, so you're not really sure whether it would be
12 captured in that metric or not?

13 A No, I'm sure that when we miss that due date, it
14 would be captured.

15 Q You're sure that some of the costs Covad incurs would
16 be captured, but not whether all of the costs?

17 A Well, I'm sure that we would be -- if we missed that
18 due date, it would be picked up in that measure and then there
19 would be a payment of penalty based on that, and then the order
20 completion interval would also pick it up.

21 Q Based on BellSouth's -- based on whatever statistical
22 analysis this Commission rules on, right?

23 A Oh, yeah, obviously, based on whatever plan they
24 establish.

25 Q What is the charge that BellSouth is proposing in

1 Issue 6? How much money is it?

2 A Well, the language -- and, I think, the language, to
3 a certain -- to the extent that we've agreed on, they both
4 refer to the expedite request; for example, on expedite
5 charges, we refer to the FCC tariff section, and for cancelling
6 an order we also refer to the FCC tariff section.

7 Q Do you know how much that is?

8 A No, I don't off-hand.

9 Q So, if you don't know how much it is that we would be
10 paying you or how much it is that we're asking that BellSouth
11 pay us, how can you be sure we'll be compensated by the
12 performance metric?

13 A Because this Commission is going to evaluate the
14 performance measures in the plans and it's designed to assure
15 that we provide nondiscriminatory access.

16 Q Right, but I'm talking about a very specific issue
17 here and that is if we incur costs because you've changed the
18 delivery date, and you may have legitimate reasons, and it may
19 be a facilities issue, it may be workforce load issue,
20 whatever, but all we're trying to recognize is that Covad also,
21 just like BellSouth, Covad incurs cost. That doesn't have
22 anything to do with whether or not you're performing at parity;
23 do you agree with that?

24 A Well, not necessarily. This is the same process that
25 we use for our end users, and our obligation, first of all, is

1 to provide nondiscriminatory access, and we provide this
2 service in the same way. When we provide a due date to an end
3 user, it still is there's a chance that that due date will have
4 to change if there are no facilities available, for example.
5 That's the case that we're talking about here with Covad.

6 COMMISSIONER JABER: How do you determine when --
7 first of all, how do you determine what due date to give to the
8 residential end user for your own system?

9 THE WITNESS: When a residential end user calls in,
10 the service rep has access that can give a due date. To a
11 certain extent, we can give a due date based on really manpower
12 resources and, generally, we have set up the target intervals,
13 and that's the same way we would give a due date to Covad.
14 There could be cases, though, where we're swamped, we've had a
15 hurricane or something and we can then sometimes extend those
16 due dates for end users, because we know from a manpower
17 standpoint we're tight in that central office or something like
18 that.

19 COMMISSIONER JABER: How long does it take you to
20 give that target due date to your residential end user? Is
21 that something that you do immediately when -- if Lila Jaber
22 called BellSouth and said I need you to connect service to my
23 home, do you immediately give me a target due date?

24 THE WITNESS: I think, for the most part, yes, unless
25 there would be some extenuating circumstance where we would

1 need to get back to them.

2 COMMISSIONER JABER: And do you immediately know if
3 there's an extenuating circumstance?

4 THE WITNESS: Yes, I think, they would immediately
5 know that.

6 COMMISSIONER JABER: Okay. Now --

7 THE WITNESS: Now, that -- I should point out that
8 extenuating circumstance wouldn't be -- we wouldn't know a
9 facility issue immediately. We just might know -- again, the
10 hurricane just hit and we really can't tell you when we'll get
11 out to you. That's the kind of extenuating circumstance I'm
12 talking about.

13 COMMISSIONER JABER: But when you talk to me for the
14 first time on the phone and I just moved to Tallahassee and I
15 need service from -- just moved to Orlando and I need service
16 from BellSouth, you don't know if facilities exist or not.

17 THE WITNESS: That's correct.

18 COMMISSIONER JABER: But you can still give me a
19 target due date?

20 THE WITNESS: Yes. And that is the same concept of
21 the target due date that we return on the Firm Order
22 Confirmation for an ALEC.

23 COMMISSIONER JABER: So, it's your understanding that
24 BellSouth gives a target due date to the ALEC on a Firm Order
25 Confirmation?

1 THE WITNESS: Yes.

2 COMMISSIONER JABER: Okay.

3 BY MS. BOONE:

4 Q Are you aware that it's BellSouth's policy to cancel
5 conditioning -- orders that require conditioning and then
6 require Covad to supplement the order, if we want to continue?

7 A My understanding is that an order for conditioning is
8 going to have to have a service inquiry or something to go with
9 the conditioning, so if an order comes in and a loop needs
10 conditioning then, I believe, there is a requirement to -- I
11 don't know if it's another order or what, but we need some more
12 information.

13 Q Okay. Well, my question is if we've put an order in
14 and then somewhere down the pipeline you determine that it
15 needs conditioning, do you understand that the BellSouth policy
16 is to cancel that order?

17 A I don't know if it's considered cancelled. My
18 understanding is we would get back with the ALEC or Covad in
19 this case and say, look, we can't work this order the way it
20 is, so I don't know if that means it gets cancelled or not, but
21 there would be more information we would need.

22 Q Well, one of the contentions that Covad has made is
23 that BellSouth unilaterally cancels its orders, and we've given
24 an example of this type of order as one of the orders. Now, is
25 it your testimony that that is correct or incorrect?

1 A I can't say whether it's actually cancelled. You
2 might ask Mr. Latham.

3 COMMISSIONER JABER: Ms. Cox, do you have an internal
4 database that allows you to determine whether facilities exist?

5 THE WITNESS: I don't know. I know that sometimes we
6 can determine and, for the most part, I think, we determine
7 before the target due date if we have a facilities problem.
8 There are some cases, though, where we don't actually find out
9 until we get out there to install the service. So, I believe
10 -- I just don't know what kind of database is available.

11 COMMISSIONER JABER: And I should have prefaced it
12 with I'm still on your end retail customer. For your retail
13 residential end user, do you have an internal database that
14 allows you to determine whether facilities exist?

15 THE WITNESS: I don't know.

16 COMMISSIONER JABER: Okay.

17 BY MS. BOONE:

18 Q Let me follow-up on those retail customers.

19 MS. BOONE: I'd like to mark this Exhibit 18.

20 COMMISSIONER JABER: What is it? I get to mark, you
21 get to tell me what it is.

22 MS. BOONE: Sorry.

23 COMMISSIONER JABER: That's okay.

24 MS. BOONE: This is a number of BellSouth's responses
25 and objections to Covad's first set of interrogatories.

1 COMMISSIONER JABER: Okay. BellSouth's response and
2 objections to Covad's first set of interrogatories filed April
3 25th, 2001, is marked Exhibit 18.

4 (Exhibit 18 marked for identification.)

5 BY MS. BOONE:

6 Q I just want to preface that these are just selected
7 pages. I do not intend to represent that this is the entirety.
8 I believe, Staff's already put that in. I was just going to
9 ask you about a few selected pages. Could you turn to request
10 number 13, please. And would you agree with me that in this
11 request, BellSouth -- I mean, Covad asked BellSouth whether its
12 retail DSL customers were charged for cancelling Local Service
13 Requests? Do you see that?

14 A Yes.

15 Q And the first response is that if -- I'm
16 paraphrasing, but you see if you agree with this.

17 A Okay.

18 Q If the order's been completed and then is cancelled,
19 yes, there's a charge, right?

20 A Yes.

21 Q But the second paragraph says if an ISP customer
22 places an order with BellSouth that BellSouth cancels before
23 completion due to technical limitations, then BellSouth does
24 not charge the ISP customer, okay?

25 A Yes, I see that.

1 Q Do you agree?

2 A I see that.

3 Q Now, so BellSouth doesn't charge its ISP customers
4 when they cancel an order before it's provisioned?

5 A Yes.

6 Q But BellSouth charges Covad if it cancels an order
7 before it's provisioned.

8 A Well, I think, it's going to depend on the service.
9 The language that we've proposed is that this -- cancellation
10 charges would be as described in our FCC tariff. And my
11 reading of that was there could be certain circuits, sort of
12 private line kind of services, that might be more of a design
13 type circuit. And those, even if the service is cancelled
14 before the due date, there are certain costs that would still
15 be due to BellSouth, circuits that would be more of a
16 nondesigned type than that tariff is consistent with how this
17 is described. If generally, it's cancelled before the due date
18 there's no charge. If it's cancelled after the due date then
19 nonrecurring charges would apply.

20 Q Okay. I don't think I followed that. My question is
21 this tells me that you don't charge cancellation charges to ISP
22 customers when they cancel prior to provisioning; would you
23 agree with that?

24 A Yes.

25 Q But you do charge Covad when it cancels an order

1 prior to provisioning?

2 A And we do charge other customers as well if they
3 cancel a designed type circuit, a private line type circuit.

4 Q Okay. Well, you keep saying a designed type circuit.
5 Is there something in here to tell me whether the ISP customer
6 is buying a designed circuit, something I'm not seeing?

7 A Well, if you looked in the tariff section, it has a
8 specific reference to customers buying our wholesale ADSL
9 services, which is what the ISP would be buying, in that case,
10 and it lays out when cancellation charges would apply and what
11 they would be, and it is as described here.

12 Q Okay. Would you agree with me that a line shared UNE
13 loop that Covad would buy is also a nondesigned service?

14 A I don't -- yeah, based on my understanding.

15 Q Okay. So that service, at least, should be treated
16 the same way as the ISP customer service, right?

17 A And that would be our intent. I mean, that's our
18 intent by having the language refer to the FCC tariff. Our
19 intent is that there might be cases where there would be no
20 cancellation charges if it's before the due date and there
21 would be cases where there would be. And our intent was to use
22 that tariff language as the guide.

23 Q Now, on Issue Number 8, it seems like we're close to
24 an agreement here, but I think we've got a question about how
25 we're going to do this. You agree that BellSouth shouldn't

1 charge Covad for no trouble found on a loop if there's later
2 trouble found; is that right?

3 A That is determined -- should have been found the
4 first time.

5 Q Okay. Now, how -- the reason Covad has proposed that
6 it not be charged at all in no trouble found is as a result of
7 negotiations with BellSouth. Are you aware of whether
8 BellSouth can put in place a mechanism to not charge Covad for
9 those trouble tickets or to somehow credit it automatically?

10 A To my knowledge, today there is no such mechanism.
11 It really needs to -- has to come through the billing dispute
12 process. It's something we're looking at, but to my knowledge
13 today no, there is no mechanism for that.

14 Q Okay. Well, that's the whole problem, then, because
15 essentially what you've said is that BellSouth should not have
16 charged Covad for those trouble tickets; is that right?

17 A Well, what we're acknowledging is if we go out and
18 Covad -- and this is premised that Covad has done the testing
19 and they've determined that this problem must be in BellSouth's
20 loop. And if we send someone out there and they don't find a
21 trouble, then we charge Covad for that. If in the fact there
22 was a trouble there that we should have found, then, yes, we
23 should not have charged you for that.

24 Q Well, why is it Covad's obligation to route that
25 through the bills and find out where you shouldn't have charged

1 us?

2 A Well, I don't know that you have to route back
3 through the bills, necessarily, but the only mechanism we have
4 to get charges off of a bill is the billing dispute mechanism,
5 and that's how the charges get removed.

6 Q Unless this Commission rules you can't charge us for
7 no trouble found.

8 A Well, and, I think that I would urge the Commission
9 to think about the implications of that, because another sort
10 of what I heard in Covad's testimony was the issue was not just
11 about this billing issue, and I believe that is an issue of
12 dispute, but there was also almost an implication that we're
13 cavalierly closing trouble tickets, and that's not the case.
14 And so, I think that if there is not -- if BellSouth doesn't
15 have the right to charge when they are sent out, there's no
16 incentive for Covad to not just keep sending us out.

17 Q Except that why would we do that if we want to get
18 the loop up and working? If the loop's working, why would we
19 send you on a trouble ticket?

20 A I don't know.

21 Q Well, if you can charge us for no trouble found again
22 and again and again and again and you may run the risk that
23 Covad might catch that and make you credit us in a billing
24 dispute but you also run -- the other side of that risk is that
25 we won't catch it, right?

1 A No, I don't agree with that. It's not in BellSouth's
2 interest to have -- to keep sending people out to check on
3 loops and say that they're working when they're not. I mean,
4 that's just -- that's not in our best interest and there's also
5 performance measures that are going to pick up that so no, I
6 don't think that's what we're doing at all.

7 Q Well, if we're going to be paying you everytime you
8 go out there, why does it matter?

9 A Well, it's an expense to us to have to send people
10 out.

11 Q That you charge us for?

12 A Yes. But it's still an expense to us to have to send
13 people out and we also -- it's going to affect our performance.
14 We have to provide nondiscriminatory access. We treat Covad
15 just like we treat our end users. We don't just keep sending
16 people out to check on end user loops and not have them
17 working, so to the extent that we have repeat troubles, that's
18 going to be picked up in a measure. To the extent even that we
19 have a loop that doesn't get up right and we have a trouble
20 within 30 days, these are all things that are picked up in
21 performance measures to prevent the kinds of things that you're
22 talking about.

23 Q But you'd agree with me that -- I mean, whether it's
24 picked up in the performance measure or not, I mean, that's a
25 question based on which statistical plan this Commission adopts

1 and what the Delta factor is and what the z score is and a
2 bunch of things I don't even know about. I mean, you'd agree
3 with me to that, right?

4 COMMISSIONER JABER: That she doesn't know about it.

5 A Okay, I'll agree.

6 MR. TWOMEY: Yeah, what's the question?

7 A I'll agree that you don't know about that; that no
8 one knows about that, that no one understands.

9 COMMISSIONER JABER: Here's -- Ms. Cox, here's the
10 question, as I understand it, and this is the question I have
11 in my own mind, but penalty measures aside, performance
12 measures and appropriate penalties aside, if you are
13 compensated for the cost of the dispatch what does it matter
14 how many times there is a dispatch?

15 THE WITNESS: Well, you know, each time -- I can't
16 really say that each time we have to send out a dispatch what
17 we get paid is going to necessarily even compensate for what
18 has to be done, but it's just not a good business practice to
19 just have your service not working to your customers and keep
20 sending people out and say there's no trouble found.

21 We've even set up a group, it's called a Chronic
22 Trouble Group, I think, it is and either party can initiate if
23 we keep seeming to have a problem on a particular loop; for
24 example, either party can say, look, let's try to figure out
25 what's going on here. And so, we have that option, too, for

1 either party, because I don't think either party wants service
2 to not be working to end users.

3 COMMISSIONER JABER: But you would much more -- any
4 company, not just BellSouth, much more be inclined to mitigate
5 that expense to you if it was an expense you were responsible
6 for solely.

7 THE WITNESS: Well, I don't know. If we could
8 mitigate the expense in the other scenario; if, for example,
9 Covad could insist that we send someone out to the end user
10 premise, for example, and we keep finding no trouble found but
11 we can't ever bill Covad or the ALEC for that. We want --
12 there's a balance of responsibility here and Covad should be
13 checking and really be sure that the problem is in the
14 BellSouth network. And the reason that they want to do that
15 and one reason for them to do that is because if we go out and
16 we don't find anything then they're charged for that, because
17 it's as if they really didn't do the proper diagnostics, let's
18 say, for example, but the problem is not us, but without --

19 COMMISSIONER JABER: How can you be absolutely sure
20 that the problem would not be a BellSouth problem if you can't
21 find anything?

22 THE WITNESS: Well -- and I can't go into great
23 details, but generally when the technician will go out they
24 will test the loop to all the specifications. That's really
25 all they can do. If the loop is meeting the specifications

1 that it is intended and described to have, then they will say,
2 look, you know, I've run these parameters, I've done this, and
3 they'll say it's meeting the specs, it should be working.

4 COMMISSIONER JABER: Let me ask you a couple more
5 questions. When a residential end user sends you out, is there
6 a dispatch charge to the residential end user?

7 THE WITNESS: Not generally. There could be a case
8 if we go out and we find that the problem is actually in the
9 inside wire, we have a trouble determination charge that we
10 would apply there for the end user.

11 COMMISSIONER JABER: If it's an inside wire problem.
12 But Lila Jaber calls you out to her house five times, BellSouth
13 can't figure out what the problem is, Lila can't figure out
14 what the problem is; five dispatches, is there a charge?

15 THE WITNESS: No, there would not be to my knowledge.

16 COMMISSIONER JABER: I asked a question to, I think,
17 Witness Allen yesterday, it was either Oxman or Allen, with
18 regard to would it be acceptable to BellSouth if there was some
19 sort of threshold that's similar to a fire alarm charge, you
20 know, if your fire alarm goes off five times, you start
21 incurring a charge. That sends me an incentive to make sure my
22 kids don't open the door before we turn off the alarm. It
23 should incent -- well, I don't know what it does for the law
24 enforcement agency other than allowing them to collect money
25 everytime we open the door, but is that an appropriate

1 mechanism to establish some sort of threshold prior to the
2 charge being incurred?

3 THE WITNESS: I don't know. I'd have to think about
4 that and --

5 COMMISSIONER JABER: And in thinking about that, what
6 should that threshold be?

7 THE WITNESS: Okay.

8 BY MS. BOONE:

9 Q I'm about ready to move on past this issue, but let
10 me just ask you one question. You agree that if -- if
11 BellSouth is charged for no trouble found and then on the
12 second or third or fourth or fifth time Covad has to open a
13 trouble ticket, it finally finds the problem, it resets the
14 cards or does whatever it has to do, you agree that all of
15 those earlier trouble tickets were wrongfully charged to Covad?

16 A Well, I don't know about that particular scenario
17 but, I mean, BellSouth's position is if we should have found it
18 the first time, then you should not have been billed. And if
19 we should have found -- you know, if there's one, two, three,
20 four before we find it and we clearly can see, oh, this is
21 something we should have found the first time, yes, you should
22 not have been charged for any of this.

23 Q Okay. And BellSouth's way of dealing with this for
24 the past two years of our contract has been to require Covad to
25 be the one to identify that and root through the bills and file

1 a billing dispute, if we could do it and then prove that to
2 you; is that right?

3 A Well, what I know is the billing dispute mechanism is
4 how that credit or the bill adjustment gets done. I can't
5 address the routing through the bills and what all goes into
6 that.

7 Q Well, I mean, I hate to get into the nitty-gritty,
8 but that's what we have to do. I mean, that's important, don't
9 you think, who has to find, figure out and pick out and spend
10 the time going through the pages and pages and pages of bills
11 to find out, you know, where the problem is? That's important,
12 isn't it?

13 A Yes, I guess, it could be. I mean, I think, that's
14 probably where we're coming down to is the real issue here.

15 Q And since we've done it for the past two years, don't
16 you think it would be fair for you to do it for the next two?

17 A Well, right now we don't have a mechanism. And as I
18 said, you know, we're looking at that but we just don't have a
19 mechanism right now.

20 Q Now, let's talk about Issue 11, which is the Local
21 Service Request rate when electronic systems aren't available.
22 Now, I take from your testimony that you agree that when an
23 electronic system is not functional, like LENS is down for the
24 day or TAG is down for the day and we have to submit a manual
25 order, you're not going to charge us for a manual order; is

1 that right?

2 A That's correct.

3 Q Now, how will your billing people know that?

4 A I don't know.

5 Q So, again, we could be to another billing situation
6 where we have to, once again, route through and say on Tuesday,
7 January 16th, LENS was down in the afternoon.

8 A No, that's not my understanding.

9 Q Well, how would it work?

10 A I don't know.

11 Q Well, how can we have any assurance that what you're
12 saying BellSouth is willing to do we'll actually be able to
13 accomplish in a meaningful way?

14 A Because this is our policy and our position in all
15 our interconnection agreements.

16 Q Okay. So, it's your position if there's not
17 electronic systems available, then we shouldn't have to pay for
18 the manual service order, right?

19 MR. TWOMEY: Well, let me object to the form of the
20 question. Are you asking whether it's available or are you
21 restating the question you just asked about it being down?

22 MS. BOONE: I used the word I meant to use,
23 available.

24 MR. TWOMEY: Okay.

25 COMMISSIONER JABER: Restate the question.

1 BY MS. BOONE:

2 Q The question is if an electronic system is not
3 available, should we pay the manual service order charge?

4 A Yes. If there is no electronic interface then yes,
5 you would pay the manual interface charge. The issue we were
6 talking about earlier was there is an electronic interface, but
7 it's down.

8 Q Okay. So, let me make sure I understand this. Where
9 BellSouth has decided to put in place electronic ordering,
10 you'll be responsible for whether the systems work or not; is
11 that right?

12 A Yes.

13 Q But where you've chosen not to put in place
14 electronic ordering, that's just too bad for Covad?

15 A Well, it's not that it's too bad for Covad. There's
16 a manual system for them to use, and they would pay the
17 appropriate cost.

18 Q Okay. We're having an issue right here today with
19 sending line shared orders through LENS. Now, what service
20 order rate would we -- electronically through LENS. What
21 service order rate would we pay?

22 A You would pay the electronic rate.

23 Q Okay. Even if we're submitting manual?

24 A Okay, I'm confused. I thought you said you were
25 using LENS, the electronic interface.

1 Q That's right, and we're having trouble getting orders
2 to pass through LENS.

3 A To the extent that LENS is down and you need to send
4 in an order manually that you can't through electronically, you
5 would pay the electronic charge.

6 Q Okay. And for BellSouth's iDSL loop that cannot be
7 ordered electronically, what rate would we pay?

8 A You would pay the manual rate.

9 Q Why has BellSouth chosen not to make electronic
10 ordering available for the iDSL loop?

11 A I can't speak to the reasons exactly. Generally,
12 what we have done is that -- and our obligation is to the
13 extent we have electronic ordering capability ourselves, we
14 make it available for ALECs, there are certain services where
15 we also do not have that capability, and would also have a
16 manual option for the ALECs.

17 Q So, anywhere you have electronic systems available
18 for retail you should have electronic systems available for
19 wholesale, right?

20 A Yes, that's my understanding.

21 Q Can you order electronically an ISDN loop for your
22 retail services?

23 A I don't know.

24 Q Who would know that?

25 A Maybe Mr. Wilson.

1 Q Do you have any reason to believe that you cannot
2 order an ISDN loop electronically?

3 A I don't know.

4 Q How about the UCL nondesign. That's an issue in this
5 arbitration. Can you order that loop electronically?

6 A I don't know.

7 Q Well, if BellSouth chooses not to make things
8 available electronically, isn't BellSouth forcing Covad to
9 order things manually?

10 A Well, I mean, I thought the issue really between us
11 and the issue language was specific about line sharing and xDSL
12 type loops. And what we have said is we have electronic
13 ordering capability for line sharing and for xDSL-capable
14 loops, and so Covad would pay the electronic ordering charge.

15 Q Do you not understand the iDSL loop to be one of the
16 -- I mean, the xDSL loops, do you understand that the "x" in
17 xDSL loop is a place holder for different types of DSL service?

18 A Yes, but I'm not an expert on all the different loop
19 types.

20 Q Okay. So, you don't consider the iDSL loop to be in
21 that group of all DSL loops?

22 A I don't know.

23 Q And how about the UCL nondesigned, do you consider
24 that to be in the group of all the DSL loops?

25 A Probably. Generally, it's not a designed loop but I

1 would say that generally, yes.

2 Q So, if those two loop types are in the group of all
3 the DSL loops, then you'd agree it's encompassed in this issue?

4 A Yes.

5 Q Now, does BellSouth have retail services in which it
6 offers service guarantees?

7 A I don't know what you mean by service guarantees.

8 Q Like commitment date guarantees that will be
9 delivered on a certain date?

10 A I believe, we do have a program, something like that.

11 Q And what about guarantees about how long it will take
12 to install the loop. Does BellSouth have those for some of its
13 services?

14 A I'm not sure.

15 Q Okay. I'd like to show you a provision of
16 BellSouth's private -- this will be -- this is BellSouth's
17 private line service tariff, if you would mark it, please,
18 Commissioner Jaber?

19 COMMISSIONER JABER: 19, BellSouth Service Tariff.

20 (Exhibit 19 marked for identification.)

21 BY MS. BOONE:

22 Q If you'd just take a look at that, I'd like to draw
23 your attention to Page 32. And do you see at the very bottom
24 where BellSouth is discussing the commitment guarantee program?

25 A Yes, I do.

1 Q It will provide a credit to private line service
2 customers should the company fail to meet its commitment in
3 connection with the installation or repair of a service. Do
4 you see that?

5 A I do.

6 MR. TWOMEY: Ms. Boone, I just have one question --
7 this is Mike Twomey -- about Exhibit 19.

8 MS. BOONE: Sure.

9 MR. TWOMEY: This indicates that it was printed out
10 on January 19th, 1997. Do you -- is it your understanding this
11 is your most current version of the tariff?

12 MS. BOONE: It was printed out two days ago.

13 MR. TWOMEY: Okay.

14 MS. BOONE: Yes, I will represent that we have just
15 pulled this off the web site.

16 MR. TWOMEY: Okay.

17 MS. BOONE: I don't know why it's dated that way.

18 MR. TWOMEY: Thank you.

19 BY MS. BOONE:

20 Q Okay. And if you'd look at Page 33, you see that
21 under application number one, it says, "In the event the
22 company contact is initiated by the customer in reference to
23 Provision A, the company will arrange a credit of \$100 for a
24 missed commitment"; do you see that?

25 A Yes.

1 Q Okay.

2 A It says, "unless an exception is applicable."

3 Q Right, and then there's a list of these exceptions at
4 the bottom. Now, would you look at Page 34. And under that
5 Section B2.4.17, it says Service Installation Guarantee. You
6 see subsection A says, "The company assures that orders for
7 services to which the service installation guarantee applies
8 will be installed and available for customer use no later than
9 the service date." And it says at the bottom of B, "The
10 nonrecurring charges will be credited at the rate in which they
11 were billed," and that's if you don't meet the service
12 guarantee. Do you see that?

13 A I'm sorry, where were you?

14 Q At the second to last line on B.

15 A On B, yes, I see it.

16 Q And the sentence before that says, "The credit will
17 include only nonrecurring charges associated with the subject
18 services." Do you see that?

19 A Yes.

20 Q Now, in Issue 12, Covad is not even asking for one of
21 these commitment or service guarantees. Would you agree Covad
22 is simply asking that if you don't deliver the loop in the
23 delivery date by the interval and our customer cancels, then
24 you don't charge us the cancellation fee. Do you understand
25 that to be the issue?

1 A Yes, I do understand that to be the issue. However,
2 I mean, part of the issue is you established, I think, a
3 specific date of five days, that's an issue. Another issue is,
4 you know, on the Firm Order Confirmation date that's a target
5 date and we are always clear that is not a specific due date,
6 because we did not know about facilities yet.

7 Q Okay. And that goes to the intervals you've proposed
8 in general. I mean, you're not -- all of your intervals are
9 target intervals, right?

10 A Yes, except the intervals that will be established in
11 association with performance measures.

12 Q So, and the five days here in this issue, that's what
13 Covad -- that's Covad's proposal for conditioned loops and for
14 iDSL loops, right?

15 A Correct.

16 Q So, if the Commission decided to set a different
17 interval, then they could change this issue as well to match
18 that interval; is that right?

19 A Yes.

20 Q Now, so we're not asking for \$100 credit or a return
21 of all our nonrecurring charges. What we're saying is our
22 customers get tired of waiting. You can understand that,
23 right?

24 A Potentially, yes.

25 Q And as a result, they may cancel an order, because

1 they're tired of waiting.

2 A Yes, as might our customers.

3 Q That's absolutely true. Now, all we're saying is
4 don't charge the cancellation rate, in that event, and
5 BellSouth's response to that is no.

6 A Well, our response to that is that you would pay the
7 OSS charge for submitting the LSR and there's also the tariff
8 that I referenced earlier that lays out how cancellation
9 charges would apply.

10 Q And they would apply in this case?

11 A Well, it would depend. What is this case?

12 Q Any loop order that we cancel.

13 A After the due date?

14 Q Right.

15 A Yes.

16 COMMISSIONER JABER: Ms. Boone, how much longer do
17 you need with this witness?

18 MS. BOONE: One more page, that's it. I told Ms. Cox
19 yesterday I was cutting, cutting, cutting. We're going to be
20 done by 3:30, I'm telling you right now.

21 COMMISSIONER JABER: See, now that's a promise now.

22 THE WITNESS: Yeah, I heard it.

23 MS. BOONE: It is a commitment due date. It's not a
24 FOC. It's -- I don't check facilities.

25 COMMISSIONER JABER: It's not a target interval or --

1 MR. TWOMEY: We understand that there are extenuating
2 circumstances, and I won't hold you to the due date.

3 COMMISSIONER JABER: But we're going to arbitrate
4 that matter that we be done by 3:30, so go ahead.

5 MS. BOONE: Exactly.

6 BY MS. BOONE:

7 Q Now, I want to talk just very briefly about Issue 25.

8 A Okay.

9 Q Now, that's that little collocation issue.

10 A Yes.

11 Q You understand that what we'd like to do is save a
12 little bit of money when we're trying to move out of a
13 collocation space, right?

14 A Yes, I think, generally, that's what you're trying to
15 do.

16 Q And you don't mind if we try to save a little money,
17 do you?

18 A No, and we've never said that we would prevent that.
19 We would be glad for -- to the extent you can work out an
20 agreement with another ALEC, that's fine.

21 Q And all we're asking in this issue is if there
22 happened to be some ALECs on a waiting list, waiting to get
23 into an office, that you either send them an e-mail or you give
24 us their name or you do something so that we can contact them,
25 because we don't know who they are, right?

1 A Probably not. And we do not feel that we can, first
2 of all, give you the names of ALECs that are waiting for a
3 particular central office. They could consider that
4 proprietary information. We have some concerns with sending it
5 out to all ALECs, because really it's a first come, first serve
6 process, so the ALEC who is first on the list should get the
7 next available space. And so, I mean, those are the types of
8 issues that we're running into for something that might sound
9 very simple on the surface.

10 Q But surely, you don't object to sending a single
11 e-mail to the first ALEC on the waiting list?

12 A We would rather not be in the middle of this really,
13 quite frankly, at all.

14 Q Well, then, how are we supposed to know who is on the
15 waiting list? We won't.

16 A I don't know. I mean, you would -- my understanding
17 is that ALECs have brokered these deals in the past, and I
18 don't know how that occurs; talking to each other, I guess.

19 Q Well, but I think you've raised some concerns about
20 the first come, first serve issue. You know, if we find an
21 ALEC and say, hey, we've got this great space, we can't jump
22 him off the bottom of the list, can we, and broker our space?

23 A I don't believe you could in a space -- in a central
24 office that's full. Now, in a central office that's not,
25 obviously, that wouldn't be an issue.

1 COMMISSIONER JABER: Ms. Cox, if Covad makes a
2 commitment to you to keep the names confidential and also
3 guarantees a time certain where their own negotiations would
4 end with the ALEC that's next on the list, you wouldn't have a
5 problem with that, would you?

6 THE WITNESS: That would certainly make us feel
7 better, especially if it came from the auspices of the
8 Commission. The only other issue I would bring up, we would
9 not want whatever time that took to count in our intervals for
10 having to provide the collocation.

11 COMMISSIONER JABER: Okay. So, if this Commission
12 required BellSouth to notify Covad of the next ALEC on the
13 list, required Covad to maintain that information as
14 confidential, and required Covad to get back to BellSouth with
15 respect to when their negotiations when the subsequent ALEC
16 ends, BellSouth would be fine with that? Because from the
17 testimony yesterday, it occurred to me that one of the problems
18 BellSouth has is that you don't want Covad to continue to
19 negotiate with the next ALEC forever --

20 THE WITNESS: Correct.

21 COMMISSIONER JABER: -- and keep the one after that
22 off the list. But let's say two weeks, Covad gets to negotiate
23 with the ALEC on the list for two weeks and then says to
24 BellSouth we're done. You would have no objection to that?

25 THE WITNESS: Again, with the protection, especially

1 of the Commission, we also have a concern about giving out the
2 name, obviously, and I guess to the extent that ALECs could be
3 made aware that this is going to happen that, you know,
4 somebody could be given their name, then that could be
5 something that could be accommodated to meet what Covad is
6 attempting to do.

7 COMMISSIONER JABER: Okay.

8 BY MS. BOONE:

9 Q Okay, I'd like to talk about billing really quickly.
10 This is my last exhibit. If you -- let's see, this is the
11 BellSouth proposal on billing disputes. We're on 20?

12 COMMISSIONER JABER: Do you need an exhibit number?

13 MS. BOONE: Yes, ma'am.

14 COMMISSIONER JABER: Exhibit 20.

15 (Exhibit 20 marked for identification.)

16 BY MS. BOONE:

17 Q Now, we talked a little bit about billing disputes
18 here, and I just want to be clear that we all understand what
19 it is that BellSouth has proposed about billing disputes.
20 Could you turn to 3.2, okay? Are you familiar with this at
21 all? Have you looked --

22 A Yes, I've seen this.

23 Q Okay. Now, one of the things that Covad has raised
24 here is there's concern about having enough time to adequately
25 review and audit the bill. You'd agree with that, right?

1 A Yes, I believe, especially under Issue 31 you have
2 raised that.

3 Q And one of the reasons is because in order to review
4 and audit the bill, we need to do that so that we can give
5 BellSouth specific information to dispute a bill; is that
6 right?

7 A Yes.

8 Q And if we don't dispute a bill, would you agree with
9 me that we are subject to late penalties?

10 A Yes.

11 Q And if Covad pays BellSouth because it doesn't have
12 time to dispute a bill, you would agree with me that Covad is
13 giving money to BellSouth that even if it's later credited,
14 BellSouth won't pay any interest or anything on that?

15 A I think that's correct, yes, I think that's my
16 understanding.

17 Q So, if for some reason, you know, if we were in a
18 rush and just had to pay you \$500,000 and later you credited
19 it, you would have our money, and we wouldn't be earning any
20 interest on that.

21 A But you would also get -- but you're saying you would
22 pay this before the due date. I believe, that's correct.

23 Q Okay.

24 A I think that is what is in the retail tariff.

25 Q Now, I think, what BellSouth has proposed is that we

1 won't be subject to termination if it's a bonafied dispute. Do
2 you see that here in 3.2?

3 A Yes.

4 Q Okay. Do you see about halfway down there, it says
5 "For the purposes of this Attachment 7, bonafied dispute means
6 dispute of a specific amount of money actually billed." Do you
7 see that?

8 A Give me some time. This is a long paragraph here.
9 Is it toward the bottom?

10 Q Yes, about five lines up.

11 A I'm sorry, I don't see that language. Would you read
12 it again?

13 Q It's one, two, three, four, five, six lines from the
14 bottom. It starts, "For purposes of this attachment..."

15 A In 3.2?

16 Q Mm-hmm.

17 A Maybe I need to put my glasses back on.

18 Q It's at the bottom of my page. Are you looking at my
19 handout?

20 A Yeah.

21 Q Page 8.

22 A Oh, I'm sorry. I was looking at the bottom of the
23 paragraph that goes on to the next page. I'm sorry. Yes,
24 okay, I'm with you.

25 Q This is not a reading test, I'm sorry.

1 A Thank you; good, I'm glad.

2 Q Okay. So, let's talk about what a bonafied dispute
3 means to BellSouth. Now, would you agree with me that it means
4 the dispute must be clearly explained by DIECA, that's Covad,
5 right?

6 A Yes.

7 Q Must be supported by written documentation, right?

8 A Yes.

9 Q It must be itemized to show the Q account, right?

10 A Yes, that's what the language says.

11 Q And to show the earning number against which the
12 disputed amount applies, right?

13 A Yes, that's how it reads.

14 Q And then it says, "A bonafied dispute does not
15 include a refusal to pay all or part of the bill or bills when
16 no written documentation is provided to support the dispute,"
17 right?

18 A Yes.

19 Q And it doesn't include a refusal to pay other amounts
20 owed by us, right?

21 A Correct.

22 Q So, in order to get into that category of a bonafied
23 dispute, Covad has to do quite a bit of work on the bill,
24 right?

25 A Well, I'm not sure what -- how much work Covad would

1 have to do. It would depend, I'm sure, on how they receive
2 their bills and how they process their bills.

3 Q Okay. But you agree there's some process -- there
4 would have to be some process in place, whether it's
5 electronic, manual, or whatever to generate the kind of
6 specificity BellSouth requires here?

7 A Yes.

8 Q And if we don't do that, then we are subject to late
9 payment penalties, right?

10 A Yes, if we did not receive a dispute, yes.

11 Q And if we pay without disputing, we don't get any
12 interest on our money, right?

13 A That's my understanding.

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

15 COMMISSIONER JABER: Okay. Let's take a 10-minute
16 break, and we'll come back for Staff cross examination.

17 (Recess taken.)

18 COMMISSIONER JABER: Staff, do you have cross
19 examination for Ms. Cox?

20 MS. BANKS: Yes.

21 CROSS EXAMINATION

22 BY MS. BANKS:

23 Q Good morning, Ms. Cox.

24 A Good morning.

25 Q I'm Felicia Banks, and I will be asking questions on

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1 behalf of Commission Staff. I know that you are -- as I
2 understand, been participating in other hearings in other
3 jurisdictions, so we're going to try to make this as painless
4 as possible.

5 A Okay. I appreciate that.

6 Q I want to begin with Issue Number 6. And, I guess,
7 before we begin, do you still have a copy of your Direct and
8 Rebuttal that you filed in this proceeding in front of you?

9 A I do.

10 Q Okay. The first -- if you could reference or get to
11 Page 17 of your Direct Testimony and looking at Lines 6 through
12 8.

13 A Yes, I'm there.

14 Q Okay. You had testified that it's BellSouth's
15 position is that it should not be required to reimburse Covad
16 when a provisioning due date is changed after BellSouth returns
17 a FOC or a Firm Order Confirmation to Covad; is that correct?

18 A Yes, that's correct.

19 Q So, when an installation date is set using a FOC,
20 what are the work processes that BellSouth and Covad must
21 undertake in order to be ready for the loop installation?

22 A I won't be able to really address Covad's.
23 Generally, BellSouth would need to check the facilities at that
24 point, make a determination that the service can be provided
25 and then depending on the circumstances, a dispatch may or may

1 not be required to get the service up and running.

2 Q Okay. Would those same processes you just outlined
3 be repeated for a rescheduled loop installation?

4 A Yes. In fact, the result of the facilities check is
5 what could result in the date that was originally sent on the
6 FOC being changed, for example.

7 Q Okay. And looking on that same page of your Direct
8 Testimony, Page 17, referencing Lines 14 through 16, you had
9 testified that BellSouth imposes a charge on Covad when Covad
10 modifies an order. What is this cost or this charge? What
11 does it recover? What's the purpose of the charge?

12 A For modifying an order?

13 Q Yes.

14 A It could be to the extent that we have -- the
15 original order was for a designed circuit, let's say, and we'd
16 begun the process to provide the designed circuit, we would
17 come up a with a design record layout, those types of things.
18 If the order is then changed to another type of loop type, we
19 would have expended cost to begin working on that first order.

20 Q Okay. If you could turn over to Page 18, and I'm
21 still in your Direct Testimony, referencing Lines 10 through
22 14.

23 A Yes, I'm there.

24 Q Okay. And you state, "If Covad wants financial
25 guarantees that the requested due date will not be missed due

1 to the facilities problems, workforce issues, or even acts of
2 God, then the rate Covad pays for the services it wants would
3 have to be adjusted to reflect BellSouth's assumption of those
4 risks"; is that correct?

5 A Yes, that's what it says.

6 Q And could you provide -- I guess, give me some
7 examples of those types of facility problems that would
8 necessitate BellSouth missing a due date?

9 A Yes. There could be a case where we thought the
10 facilities were available but they had to have been reused
11 prior to that and so facilities would not be available would be
12 an example.

13 Q Okay. And could you, along that same line, give me
14 some example of some of the workforce issues that might be or
15 necessitate BellSouth missing a due date as well?

16 A Yes, and that could be an example of, let's say, a
17 natural disaster and the workforces are busy trying to put
18 service back to customers who have been disrupted from service,
19 for example, because that is always a priority to get customers
20 back in service, so that could be an example of that.

21 Q Okay. I'm referencing now -- still in your Direct,
22 but I'm referencing on Page 36 and Lines 2 through 9.

23 A Yes, I'm there.

24 Q Okay. You had testified that both the paper and the
25 electronic bills are generally run within ten days of the bill

1 date; is that correct?

2 A That's correct.

3 Q And the bill date would be due 30 days from that bill
4 date?

5 A Correct.

6 Q Okay. Since Covad can receive an electronic bill
7 almost instantaneously, the fact that the paper bill may follow
8 a few days depending on the transport, isn't that irrelevant?

9 A Yes, I would agree.

10 Q Okay. Covad would have an ample time from the
11 receipt of the electronic bill to review and pay its bill,
12 correct?

13 A Correct.

14 Q So, isn't it your assertion that Covad's position is
15 that it should have 30 days after it receives the later of
16 either the paper or the electronic bill?

17 A I'm sorry, could you repeat your question?

18 Q So, isn't it your assertion that it's Covad's
19 position that it should have 30 days after it receives the
20 later of either the paper or the electronic bill?

21 A That's my understanding of Covad's position, yes.

22 Q Okay. And then simply, this bill device is -- would
23 you say that you think this is a delay tactic by Covad?

24 A Well, what I would say is that I think it -- the
25 reason they say they need this extra time to meet doesn't

1 really seem to be warranted. The bills will get there -- they
2 can get an electronic bill and, I think, Mr. Greene talks about
3 this in more detail, almost instantaneously. I mean, there
4 wouldn't even be the delay of receiving it in the mail, so I
5 don't -- I just don't see why the fact that they then didn't
6 get another bill later should delay when they pay the bill.

7 Q Okay. Are both the electronic and paper bills in the
8 same format?

9 A That I don't know specifically. Mr. Greene would be
10 able to tell you that.

11 Q Now, I'm going to be referencing your Rebuttal
12 Testimony. I'm sorry, not your Rebuttal -- yes, your Rebuttal
13 Testimony in Lines 4 through 6, and that's Page 20.

14 A 4 through 6 lines?

15 Q Yes, Lines 4 through 6, Page 20. In this Rebuttal
16 you have responded to Mr. Allen's comments on the subject of
17 access and charges for postponed loop orders. And what you've
18 basically stated is that "BellSouth does not have that
19 flexibility with its rates. BellSouth, therefore, in order to
20 recover its cost must charge the cost causer for the work that
21 is done"; is that correct?

22 A Yes, that's what it states. And that's, obviously,
23 as you know and this Commission knows, the rates that we charge
24 for unbundled network elements, for example, are set pursuant
25 to the FCC's pricing methodology.

1 Q So, if BellSouth issues a FOC and Covad does not make
2 a modification to its loop order, is it possible to still have
3 a loop installation postponed?

4 A Yes, it could still be possible because of a
5 facilities issue.

6 Q Okay. Moving on to issue -- I guess, let me back up
7 one moment. As it relates to that, who is the cost causer in
8 that scenario? Who would be the cost causer?

9 A In which scenario?

10 Q The scenario when there is a modification to the
11 loop, when it's postponed, who is the cost causer?

12 A Well, the -- Covad, for example, would have placed
13 the order for the loop, so they are causing BellSouth to incur
14 the cost to install the loop.

15 Q So, in your -- as you envision it, Covad, in that
16 scenario, would be the cost causer?

17 A Yes.

18 Q Okay. Moving on to Issue Number 8, and in this
19 instance I'm going to be referencing your Direct Testimony,
20 Page 25 in Lines 5 through 6.

21 A Yes.

22 Q Okay. And this issue mainly deals with the process
23 relating to reporting trouble. Is it BellSouth's practice to
24 consult with a reporting client or party prior to closing a
25 repair ticket?

1 A Yes, it is. And in the case of designed circuits,
2 for example, then Covad would have the opportunity for us to
3 hold that trouble ticket open as would be the case for a
4 similar retail customer with a similar service.

5 Q And how long would that trouble ticket be open
6 pending --

7 A It's generally for up to 24 hours.

8 Q Okay. There is one point that I would like some
9 clarification on, and it relates to what you referenced in your
10 Direct Testimony, same Page 25, regarding Lines 5 through 6
11 and, I think, you also reference this same issue in your
12 Rebuttal. Your testimony infers that there is a process that
13 exists for Covad to instruct BellSouth not to close a trouble
14 ticket, and that's correct?

15 A Yes, for designed services, that's correct.

16 Q Okay. Could you just discuss, to some extent, that
17 process that Covad should follow to instruct BellSouth to keep
18 a trouble ticket open, if requested?

19 A Yes, and I'll just discuss it generally. I can't
20 really go into the specifics, but let's say for an ADSL-capable
21 loop, Covad has done the testing and they feel that the problem
22 is in the loop, and we dispatch and we find no trouble. This
23 is out to the end user premise, because on the design circuits
24 we can do some testing at the central office through a test
25 point.

1 We go out to the end user premissis and we don't find
2 a trouble and we always try to close it out with the ALEC, so
3 let's say we're talking to Covad and they say that we think
4 there's still a problem and, basically, at that point we would
5 agree for a time period; we'd say, okay, do you want to keep it
6 open for four hours, for eight hours, for ten hours, for 24
7 hours and resolve it or see if we can get it resolved. That's
8 generally the process.

9 Q Is it the same for nondesigned?

10 A No, we do not have that option on nondesigned.

11 Q Okay.

12 A And we would not have it -- excuse me -- on similar
13 retail services that would be nondesigned.

14 Q Can you tell me how it would differ?

15 A Well, not specifically other than to say we don't
16 have a process for a nondesigned loop to keep a trouble ticket
17 open. It's a process issue.

18 Q Okay. Is that something that you're willing to
19 explore, develop at this point?

20 A I don't know. I don't know what it would entail. I
21 mean, I could certainly go back and investigate.

22 Q Okay. Moving on to Issue Number 31, and I'm
23 referencing your Direct on Page 36 Lines 2 through 9.

24 A I'm there.

25 Q I'm sorry. I'm sorry, I'm actually looking at Issue

1 32-A.

2 A Oh, okay.

3 Q And that's Page 37, Line 17 through 19, of your
4 Direct.

5 A I'm there.

6 Q You testified that once the dispute is resolved Covad
7 should clearly pay late charges on the portion of the disputed
8 bill that it finally determines that Covad owes; is that
9 correct?

10 A Correct.

11 Q So, is it your testimony that regardless, Covad would
12 have incurred late payment charges on that portion of disputed
13 bill that is finally determined that Covad owes to BellSouth?

14 A Yes. And I really think that that point was the
15 issue that was in dispute here; and that is, what happens if
16 there is a dispute and, obviously, we don't require any
17 customers to pay a disputed charge, but once the dispute is
18 resolved it's determined that those amounts should have been
19 paid or some portion of those amounts should have been paid,
20 then the late payment would only apply to those amounts, and
21 that's consistent with how we treat our other customers.

22 Q Okay. Still referencing your Rebuttal, but on Page
23 33, Lines 20 through 23.

24 A What line number again? I'm sorry.

25 Q Lines 20 through 23 of Page 33 of your Rebuttal.

1 A I'm there.

2 Q You had testified that BellSouth has agreed that
3 Covad should not have to pay portions of the bills that Covad
4 legitimately disputes until such time as a billing dispute is
5 settled; is that correct?

6 A Correct.

7 Q And BellSouth has agreed that late charges are only
8 due if the dispute is resolved in BellSouth's favor; is that
9 correct?

10 A Correct.

11 Q Okay. Should a dispute be resolved in Covad's favor?
12 Is it your testimony that Covad be compensated for the
13 resources it has employed to rectify the dispute?

14 A No, I don't even believe that's been an issue that's
15 been discussed among the parties.

16 Q Okay. There was a question that I had. Backing up
17 just a little bit, and this was actually regarding Issue Number
18 25, kind of wanted to touch on something earlier that
19 Commissioner Jaber had referenced, and she'd asked you about
20 some specific conditions that would settle Issue 5; do you
21 recall that?

22 A Yes, I do.

23 Q Okay. We recognize that Covad would be agreeable to
24 any proposed language, but can you identify any additional
25 concerns other than the ones that Commissioner Jaber discussed?

1 A From BellSouth's perspective?

2 Q Yes.

3 A Other than, you know, the one I mentioned about we
4 have specific performance measures and intervals that we must
5 meet for providing collocation and we wouldn't want any
6 mechanism that was developed to accommodate what Covad's
7 attempting to do to interfere with those or be counted against
8 those.

9 And, I guess, the other is that we wouldn't want, I
10 guess, ALECs to sort of be caught off-guard by getting a call
11 from Covad and saying, oh, I hear you're first on the list
12 that, you know, we would want to make sure that we were, I
13 guess, covered in giving out that name.

14 Q Okay. And earlier, during Ms. Boone's cross, you
15 mentioned BellSouth has a group that's called a Chronic Trouble
16 Group. Do you remember making that statement?

17 A I do.

18 Q Okay. Can Covad directly contact this group to
19 investigate repeat tickets?

20 A Yes, that's my understanding or they could contact
21 their account rep or whoever.

22 Q So, you're saying they have an option of contacting
23 one or the other?

24 A That's my understanding.

25 Q And they're provided that option up front, I presume?

1 A Yes. My understanding is they're aware of that.

2 MS. BANKS: Okay. I think, that's all that I have at
3 this time. Thank you.

4 THE WITNESS: Thank you.

5 COMMISSIONER JABER: Ms. Cox, before we do Redirect,
6 is BellSouth doing on-line billing yet for its residential
7 customers?

8 THE WITNESS: Yes, I believe so. You mean, paying
9 bills on-line?

10 COMMISSIONER JABER: Yes.

11 THE WITNESS: To customers who pay their bills
12 on-line?

13 COMMISSIONER JABER: Yes.

14 THE WITNESS: I think, so.

15 COMMISSIONER JABER: How do you determine the due
16 date for on-line billing?

17 THE WITNESS: It would be printed on the bill. It
18 would be the same bill date.

19 COMMISSIONER JABER: And it's how many days from the
20 bill date?

21 THE WITNESS: Mr. Greene could probably answer this
22 better. I think it's, you know, 30 days or whatever -- some
23 number of days that it will -- from, you know, the first date
24 to the bill date. And I don't think it's any different time
25 period, whether it's on-line or electronically sent, as we

1 discussed with Covad, or send in the mail.

2 COMMISSIONER JABER: Okay.

3 COMMISSIONER PALECKI: And would that be available to
4 a large customer like Covad?

5 THE WITNESS: I don't know specifically,
6 Commissioner. Mr. Greene could probably tell you. He's really
7 the billing expert, if you will, in the case.

8 COMMISSIONER PALECKI: Are you aware of any reason
9 that it could not be made available to Covad? I know that for
10 residential customers it's available free of charge, correct?

11 THE WITNESS: That's my understanding, yes.

12 COMMISSIONER PALECKI: What's the rationale of
13 charging Covad for on an electronic bill when you don't charge
14 residential customers?

15 THE WITNESS: I'm sorry, I misunderstood you. I
16 thought we were talking about the ability for a customer to pay
17 their bill on-line. I don't know about if we send bills out
18 electronically.

19 COMMISSIONER PALECKI: Well, they pay it and they
20 also see it on-line, I mean, it's available to the customer.

21 THE WITNESS: I just don't know the specifics of it,
22 I'm sorry.

23 COMMISSIONER PALECKI: It would seem to me if Covad
24 could do the same, whether you sent it out or just had it
25 available for them in a database that was accessible to them,

1 it seems as if that would completely solve this issue or it
2 would go a far way towards solving it.

3 THE WITNESS: And I don't know. I just don't know
4 the specifics of the different billing options.

5 COMMISSIONER PALECKI: This may be in the record, but
6 I just couldn't pinpoint where. What would be the additional
7 charge to Covad if it does proceed or opt to receive its bill
8 electronically?

9 THE WITNESS: You know, I don't have that. I
10 believe, Mr. Greene has that information. He's going to be a
11 witness on this issue specifically.

12 COMMISSIONER PALECKI: Thank you.

13 THE WITNESS: Thanks. Sorry, thanks.

14 COMMISSIONER JABER: Let me just say this. We've
15 heard a lot of testimony so far on that issue. It's -- I
16 think, it's 32-A, correct? It seems to me -- we're going to
17 take a normal lunch break. It seems to me the parties can take
18 that opportunity to talk about that issue, because I did notice
19 -- I was just looking at the witnesses. Mr. Greene will be the
20 only rebuttal witness left when we're done with direct and
21 rebuttal, and perhaps there's a way that a stipulation could be
22 reached on that issue so that we don't even have to have
23 Mr. Greene testify, but just a thought.

24 THE WITNESS: And I would just say, I think that the
25 bill date issue is really Issue 31.

1 COMMISSIONER JABER: Okay.

2 THE WITNESS: Just so we're clear.

3 COMMISSIONER JABER: And Mr. Greene is testifying
4 only on Issues 31 and 32-A.

5 THE WITNESS: Correct.

6 COMMISSIONER JABER: Redirect?

7 MR. TWOMEY: I have no redirect.

8 COMMISSIONER JABER: Thank you. Ms. Cox, thank you
9 for your testimony.

10 THE WITNESS: Thank you.

11 (Witness excused.)

12 MR. TWOMEY: Commissioner Jaber, two things: One, I
13 have gotten all of the BellSouth remaining witnesses
14 congregated in the room if you want to swear them in at a
15 single time. And on witness order, I was planning to call
16 Mr. Greene -- if you look at our rebuttal, list of rebuttal
17 witnesses on the prehearing statement, I believe, he is
18 immediately after Mr. Shell.

19 COMMISSIONER JABER: Yes.

20 MR. TWOMEY: I realize he only has rebuttal, but we
21 were planning on calling him after Mr. Shell. And, I think,
22 the comment you just made, at least to me, expressed some
23 expectation that he would actually be our very last witness.
24 And I don't know if that makes any difference to the
25 Commission. I will reorder him, if you want me to.

1 COMMISSIONER JABER: Well, why don't we reevaluate
2 that after lunch.

3 MR. TWOMEY: Okay.

4 COMMISSIONER JABER: But right now, Ms. Boone, you
5 wanted to move some exhibits into the record?

6 MS. BOONE: Yes.

7 COMMISSIONER JABER: Exhibits 15 through 20 or yours?

8 MS. BOONE: Yes, 15 through 20, please.

9 COMMISSIONER JABER: Okay. Exhibits 15 through 20
10 are moved into the record.

11 (Exhibits 15 through 20 admitted into the record.).

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13 (Transcript continues in sequence in Volume 5.)

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STATE OF FLORIDA)

: CERTIFICATE OF REPORTER

COUNTY OF LEON)

I, KORETTA E. STANFORD, RPR, Official Commission Reporter, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorneys or counsel connected with the action, nor am I financially interested in the action.

DATED THIS Thursday, July 5, 2001.


 KORETTA E. STANFORD, RPR
 FPSC Official Commissioner Reporter
 (850) 413-6734