

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 960786A-TL

In the Matter of

CONSIDERATION OF BELLSOUTH
TELECOMMUNICATIONS, INC.'S ENTRY
INTO INTERLATA SERVICES PURSUANT
TO SECTION 271 OF THE FEDERAL TELE-
COMMUNICATIONS ACT OF 1996.

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VOLUME 1

Pages 1 through 57

PROCEEDINGS: HEARING

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

DATE: Thursday, October 11, 20001

TIME: Commenced at 9:30 a.m.

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

REPORTED BY: JANE FAUROT, RPR
Chief, Office of Hearing Reporter Services
FPSC Division of Commission Clerk and
Administrative Services
(850) 413-6732

DOCUMENT NUMBER-DATE

FLORIDA PUBLIC SERVICE COMMISSION 3047 OCT 15 00

FPSC-COMMISSION CLERK

1 APPEARANCES:

2 NANCY B. WHITE, LISA FOSHEE, and E. EARL
3 EDENFIELD, c/o Nancy Sims, 150 South Monroe Street,
4 Tallahassee, Florida 32301, and JOHN R. MARKS, III,
5 Knowles, Marks & Randolph, 215 South Monroe Street,
6 Tallahassee, Florida 32301, appearing on behalf of
7 BellSouth Telecommunications, Inc.

8 JOSEPH A. McGLOTHLIN AND VICKI GORDON
9 KAUFMAN, McWhirter, Reeves, McGlothlin, Davidson,
10 Decker, Kaufman, Arnold & Steen, P.A., 117 South
11 Gadsden Street, Tallahassee, Florida 32301,
12 appearing on behalf of the Florida Competitive
13 Carriers Association.

14 VICKI GORDON KAUFMAN, McWhirter, Reeves
15 McGlothlin, Davidson, Decker, Kaufman, Arnold &
16 Steen, P.A., 117 South Gadsden Street, Tallahassee,
17 Florida 32301, and ANDREW M. KLEIN, Kelley, Drye &
18 Warren, LLP, 1200 19th Street, N.W., Washington,
19 D. C. 20036, appearing on behalf of KMC Telecom,
20 Inc.

21 VICKI GORDON KAUFMAN, McWhirter, Reeves,
22 McGlothlin, Davidson, Decker, Kaufman, Arnold &
23 Steen, P.A., and RORY REEVES, 117 South Gadsden
24 Street, Tallahassee, Florida 32301, appearing on
25 behalf of NewSouth Communications Corp.

1 APPEARANCES CONTINUED:

2 VICKI GORDON KAUFMAN, McWhirter, Reeves,
3 McGlothlin, Davidson, Decker, Kaufman, Arnold &
4 Steen, P.A., 117 South Gadsden Street, Tallahassee,
5 Florida 32301, and HENRY CAMPEN, JR., Parker, Poe,
6 Adams & Bernstein, First Union Capital Center, 150
7 Fayetteville Street Mall, S-1400, Post Office Box
8 389, Raleigh, North Carolina 27602, appearing on
9 behalf of XO Florida, Inc.

10 VICKI GORDON KAUFMAN, McWhirter, Reeves,
11 McGlothlin, Davidson, Decker, Kaufman, Arnold &
12 Steen, P.A., 117 South Gadsden Street, Tallahassee,
13 Florida 32301 and HENRY CAMPEN, JR., Parker, Poe,
14 Adams & Bernstein, First Union Capital Center, 150
15 Fayetteville Street Mall, S-1400, P. O. Box 389,
16 Raleigh North Carolina 27602, appearing on behalf of
17 NuVox Communications, Inc.

18 VICKI GORDON KAUFMAN, McWhirter, Reeves,
19 McGlothlin, Davidson, Decker, Kaufman, ARnold &
20 Steen, P.A., 117 South Gadsden Street, Tallahassee,
21 Florida 32301, appearing on behalf of DIECA
22 Communications, Inc. d/b/a Covad Communications
23 Company.

24

25

1 APPEARANCES CONTINUED:

2 JOSEPH A. McGLOTHLIN, McWhirter, Reeves,
3 McGlothlin, Davidson, Decker, Kaufman, Arnold &
4 Steen, P.A., 117 South Gadsden Street, Tallahassee,
5 Florida 32301, appearing on behalf of Z-Tel
6 Communications, Inc.

7 KEN HOFFMAN, Rutledge, Ecenia, Purnell &
8 Hoffman, P. A., 215 South Monroe Street, Suite
9 420, Tallahassee, Florida 32301-1841, and HENRY C.
10 CAMPEN, JR., Parker, Poe, Adams & Bernstein, L.L.P.,
11 1400 First Union Capital Center, Raleigh, North
12 Carolina 27602, appearing on behalf of US LEC of
13 Florida.

14 KAREN CAMECHIS, Pennington, Moore,
15 Wilkinson, Bell & Dunbar, P.A., 215 South Monroe
16 Street, 2nd Floor, Tallahassee, Florida 32301, and
17 HENRY C. CAMPEN, JR., Parker, Poe, Adams &
18 Bernstein, L. L .P., 1400 First Inion Capital
19 Center, Raleigh, North Carolina 27602, appearing on
20 behalf of Time Warner Telecom.

21 SUSAN A. MASTERTON, Post Office Box 2214,
22 MS:FLTLH00107, Tallahassee, Florida 32314,
23 appearing on behalf of Sprint Communications Company
24 Limited.

25

1 APPEARANCES CONTINUED:

2 MATTHEW FEIL, 390 North Orange Avenue,
3 Suite 2000, Orlando, Florida 32801, appearing on
4 behalf of Florida Digital Network, Inc.

5 JIM LAMOUREUX and SUZANNE OCKLEBERRY, 1200
6 Peachtree Street, N. E., Atlanta, Georgia 30309, and
7 TAMI LYN AZORSKY, McKenna & Cuneo, 1990 K Street, N.
8 W., Washington, D. C. 20006-11087, appearing on
9 behalf of AT&T Communications of the Southern
10 States, Inc., AT&T Broadband Phone of Florida, LLC
11 and TCG South Florida, Inc.

12 JOSEPH A. McGLOTHLIN, McWhirter, Reeves,
13 McGlothlin, Davidson, Decker, Kaufman, ARnold &
14 Steen, P. A., 117 South Gadsden Street, Tallahassee,
15 Florida 32301, appearing on behalf of ACCESS
16 Integrated Networks, Inc.,

17 NORMAN H. HORTON, JR., Messer, Caparello &
18 Self, 215 South Monroe Street, Suite 701,
19 Tallahassee, Florida 32302-1876, appearing on behalf
20 of e.spire Communications, Inc.

21 RICHARD D. MELSON, Hopping Green Sams &
22 Smith, 123 South Calhoun Street, Tallahassee,
23 Florida 32314, appearing on behalf of WorldCom, Inc.

24

25

1 APPEARANCES CONTINUED:

2 MICHAEL GROSS, 246 East 6th Avenue, Suite
3 100, Tallahassee, Florida 32303, appearing on behalf
4 of the Florida Cable Telecommunications Association,
5 Inc.

6 BETH KEATING, FELICIA BANKS and MARY ANNE
7 HELTON, FPSC Division of Legal Services, 2540
8 Shumard Oak Boulevard, Tallahassee, Florida
9 32399-0850, appearing on behalf of the Commission
10 Staff.

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1 P R O C E E D I N G S

2 CHAIRMAN JACOBS: Good morning. We will go on the
3 record for our hearing in this docket I'm sure that everyone
4 has been waiting for.

5 Counsel, read the notice.

6 MS. KEATING: By notice issued September 6th, 2001,
7 this time and place have been set for a hearing in Docket
8 Number 960786-TP, consideration of BellSouth's entry into
9 interLATA services pursuant to Section 271 of the Federal
10 Telecommunications Act. The purpose is as set forth in the
11 notice.

12 CHAIRMAN JACOBS: Take appearances.

13 MS. WHITE: I'm Nancy White appearing for BellSouth
14 Telecommunications. Also appearing for BellSouth are John
15 Marks, Kip Edenfield, and Lisa Foshee.

16 MS. MASTERTON: Susan Masterton for Sprint.

17 MR. LAMOUREUX: Jim Lamoureux for AT&T. Also
18 appearing for AT&T are Suzi Ockleberry with AT&T and Tami
19 Azorsky with the law firm of McKenna & Cuneo.

20 CHAIRMAN JACOBS: Suzi -- I'm sorry.

21 MR. LAMOUREUX: Ockleberry,
22 O-C-K-L-E-B-E-R-R-Y.

23 CHAIRMAN JACOBS: I have it.

24 MR. MELSON: Rick Melson of the Hopping law firm on
25 behalf of WorldCom. Also appearing on behalf of WorldCom are

1 Donna McNulty and Dee O'Roark.

2 CHAIRMAN JACOBS: Very well.

3 MS. KAUFMAN: Vicki Gordon Kaufman of the McWhirter
4 Reeves law firm. I am appearing on behalf of the Florida
5 Competitive Carriers Association, NuVox Communications, XO of
6 Florida, Inc., COVAD Communications, NewSouth Communications.
7 And for NewSouth I would like to enter an appearance for Rory
8 Reeves, who will be joining us later this morning, and I am
9 also appearing on behalf of KMC Telecom. And on KMC's behalf I
10 would like to enter an appearance for Andrew Klein.

11 CHAIRMAN JACOBS: Very well.

12 MR. FEIL: Matthew Feil for Florida Digital Network.

13 MR. McGLOTHLIN: Joe McGlothlin, McWhirter Reeves law
14 firm. I appear today on behalf of the FCCA, ACCESS Integrated
15 Network, Inc., and Z-Tel Communications, Inc.

16 MR. GROSS: Michael Gross on behalf of FCTA.

17 MR. CAMPEN: Henry Campen with the Parker, Poe,
18 Adams, and Bernstein law firm on behalf of XO, Time Warner
19 Telecom, US LEC, and NuVox Communications. Appearing with me
20 on behalf of Time Warner Telecom is Karen Camechis and on
21 behalf of US LEC, Ken Hoffman.

22 CHAIRMAN JACOBS: I'm sorry, could I get your last
23 name again?

24 MR. CAMPEN: C-A-M-P-E-N, Campen.

25 MR. HORTON: Commissioners, Norman H. Horton, Jr. on

1 behalf of e.spire Communications.

2 CHAIRMAN JACOBS: Very well.

3 MS. KEATING: And Beth Keating appearing for
4 Commission staff. Also appearing on behalf of staff are Mary
5 Anne Helton and Felicia Banks.

6 CHAIRMAN JACOBS: Very well. Thank you. Are there
7 any preliminary matters, staff?

8 MS. KEATING: Commissioner, there are just a couple.
9 The first thing on the list is one outstanding motion. On
10 October 4th, Mpower filed a notice of withdrawal of the
11 testimony of Scott Sarem. On October 9th, BellSouth filed a
12 motion to strike the notice of withdrawal, and they are asking
13 therein just to strike some of the comments in the notice of
14 withdrawal.

15 CHAIRMAN JACOBS: Is that something you wish to
16 pursue, BellSouth?

17 MR. EDENFIELD: Well, we need to pursue it, Chairman
18 Jacobs, to the extent that the notice of withdrawal contained
19 12 paragraphs, the reasons why the withdrawal, which amounted
20 to unsubstantiated allegations, and frankly it looked like they
21 were trying to insert testimony into the record. I have no
22 problem with them withdrawing their testimony, but as far as
23 all the superfluous paragraphs that went along with it
24 explaining the rationale for why they felt like they were doing
25 it, without our ability to rebut it, I felt was improper. And

1 it is only that portion of the notice of withdrawal that we
2 move to strike.

3 CHAIRMAN JACOBS: The notice doesn't go in the
4 record, though, unless I'm mistaken, right? I mean, the actual
5 notice filed is not a part of the record, is it?

6 MR. EDENFIELD: So long as it is not a part of the
7 record, if that is --

8 MS. KEATING: It is in the docket, but unless
9 somebody moves to enter the notice of withdrawal as an exhibit,
10 it wouldn't be part of the hearing record. So I'm not sure
11 what --

12 MR. EDENFIELD: So long as it is not part of the
13 actual hearing record, I guess I'm okay with it. But, you
14 know, anyway there were a lot of unsubstantiated allegations
15 that went along with the notice of withdrawal that looked like
16 they were trying to insert some type of testimony into the
17 record that we were not going to have a chance to rebut. If
18 it's not going to be part of the record, I don't have a
19 problem.

20 CHAIRMAN JACOBS: We will state that affirmatively
21 now that that notice is not a part of the official record in
22 this docket. Anything else?

23 MS. KEATING: Just to be clear, is BellSouth
24 withdrawing its --

25 MR. EDENFIELD: BellSouth will withdraw its motion to

1 strike and response to the notice of withdrawal.

2 CHAIRMAN JACOBS: And there was one other matter?

3 MS. KEATING: I just wanted to note that there are
4 currently no outstanding confidentiality requests in the
5 hearing track at this time. I anticipate that before the close
6 of the hearing there probably will be a request that is filed.
7 And we will obviously take of that as expeditiously as
8 possible.

9 There are also some questions, I believe the parties
10 may have about appearance of witnesses. It is possible that
11 there are stipulations or possible stipulations of witnesses
12 that are out there, and I know there are some concerns about
13 certain witnesses' availability, particularly this week.

14 MR. McGLOTHLIN: I will start on that one, if I may,
15 Mr. Chairman. Joe McGlothlin. ACCESS Integrated Witness
16 Rodney Page submitted revised testimony, which is only a few
17 pages. I have checked with counsel for BellSouth. BellSouth
18 is willing to stipulate to the entry of that testimony without
19 his appearance. I have spoken to staff about it, she indicated
20 that she has been in touch with most of the Commissioners'
21 offices. I would inquire of the Commissioners and parties
22 whether there is any objection to that procedure for Mr. Page.

23 CHAIRMAN JACOBS: No objection, I assume?

24 MS. WHITE: BellSouth has no objection.

25 CHAIRMAN JACOBS: Any other parties? Very well. And

1 that is Mr. Rodney Page, correct?

2 MR. McGLOTHLIN: Yes.

3 CHAIRMAN JACOBS: Very well, then. Did you want to
4 enter his testimony at the time he is scheduled to appear or do
5 it now?

6 MR. McGLOTHLIN: I will do it at the time, yes.

7 CHAIRMAN JACOBS: Okay. Well, then we will note that
8 a stipulation has been reached and he is excused from
9 appearance.

10 MR. MELSON: Chairman Jacobs, Rick Melson for
11 WorldCom. I believe we have a similar situation with Mark
12 Argenbright. He is tied up in an arbitration proceeding in
13 Virginia, and BellSouth has agreed to stipulate his testimony
14 into the record. That was an agreement we just arrived at this
15 morning. I don't believe staff has a problem with it, but I
16 don't know whether any of the Commissioners might have
17 questions. If there is no problem, I would ask that when the
18 time comes we move his testimony into the record on a
19 stipulated basis.

20 CHAIRMAN JACOBS: If there is no -- parties,
21 Commissioners? I don't think I have any, either. Very well.
22 So show then that -- assume the stipulation Mr. Argenbright is
23 excused from appearance.

24 MS. KAUFMAN: Chairman Jacobs, I have also some
25 matters in that regard. First of all, on behalf of NuVox,

1 NuVox is withdrawing the testimony of Mr. Willis, who is listed
2 as the third witness on Page 10.

3 And you had some discussion earlier about the Mpower
4 withdrawal. Mpower is withdrawing the testimony of Scott
5 Sarem, and I see that he didn't make it onto the witness list,
6 but just so it's clear, they are withdrawing his testimony.
7 And with the withdrawal of those two witnesses, there is some
8 rebuttal testimony to their testimony that I discussed with Ms.
9 White that needs to be withdrawn, as well. And we can do that
10 now or -- both of those are in Ms. Cox's surrebuttal. However
11 you want to handle it.

12 CHAIRMAN JACOBS: So just to be, Mr. Jerry Willis'
13 testimony is withdrawn.

14 MS. KAUFMAN: Exactly. And Mr. Sarem, too. But as I
15 said, he was inadvertently omitted from your witness list.

16 CHAIRMAN JACOBS: And --

17 MS. WHITE: And we will agree to withdraw, I think it
18 is two portions of Ms. Cox's testimony. We can either do that
19 now or we can do that when she gets on the stand.

20 CHAIRMAN JACOBS: Why don't we do it when she comes
21 to the stand.

22 MS. WHITE: Okay.

23 MS. KAUFMAN: And then I have one other availability
24 problem that I will just bring up. I discussed it with Ms.
25 Keating, and it may not be a problem, but the first ALEC

1 witness is scheduled to be Mr. Fury for NewSouth, and he cannot
2 be here until Wednesday. He cannot be here this week. He
3 wasn't able to get a plane flight here. He is from South
4 Carolina.

5 CHAIRMAN JACOBS: Okay. Why don't we take a look at
6 that tomorrow morning, we will have a better idea of where we
7 are going to be standing in the stack, and make a decision then
8 about putting him in a different place.

9 MS. KAUFMAN: That's fine. I just wanted to bring it
10 up in case it might be a problem.

11 CHAIRMAN JACOBS: It may not even be necessary to
12 move him I'm thinking.

13 MS. KAUFMAN: Thank you.

14 CHAIRMAN JACOBS: Hopefully it will be. Very well.
15 Does that take care of all of the witness availability issues?
16 Great. I believe we are now probably ready for opening
17 statements. I believe there is --

18 MS. KEATING: The only other thing that I had, Mr.
19 Chairman, were a number of staff stipulated exhibits, and we
20 could take that up now or wait until after opening statements.

21 CHAIRMAN JACOBS: We can do that now.

22 MS. KEATING: Staff has identified a number of
23 discovery exhibits that we believe can be entered into the
24 record by stipulation. The parties have been made aware of
25 this list and I believe there are no concerns that have been

1 identified thus far.

2 The first exhibit is identified as Stip 1. It is
3 BellSouth's responses to staff's discovery requests. This is a
4 composite exhibit containing a number of items. We would ask
5 that this be marked as Exhibit 1.

6 CHAIRMAN JACOBS: Show that marked as Exhibit 1,
7 composite.

8 MS. KAUFMAN: Could I just ask a question? That is
9 the numbers, 1 through 15 on the list you provided to us, Ms.
10 Keating?

11 MS. KEATING: That is correct. They have simply been
12 broken up into composite exhibits.

13 MS. KAUFMAN: But Number 1 is simply the Bell
14 responses?

15 MS. KEATING: Right. Number 1 is the first seven.
16 The next exhibit is identified as --

17 CHAIRMAN JACOBS: Just a second.

18 MS. KEATING: Sorry.

19 CHAIRMAN JACOBS: And this includes a CD, correct?
20 Stip 1 includes a CD?

21 MS. KEATING: Stip 1 includes responses to staff's
22 first set of interrogatories, Items 1 through 5; responses to
23 staff's second set of interrogatories, Items 6 through 15;
24 responses to staff's third set of interrogatories, Items 16
25 through 45; responses to staff's fourth set of interrogatories,

1 Item 46 through 64; responses to staff's first request for
2 production of documents, Items 1 through 4, which is a CD
3 response.

4 CHAIRMAN JACOBS: Okay, that was my question.

5 MS. KEATING: There are actually two CDs.

6 CHAIRMAN JACOBS: I see. Right, so is there a volume
7 or indicator of some sort?

8 MS. KEATING: It is a very large volume of documents.
9 These are the responses to the production of documents
10 requests.

11 (Composite Exhibit 1 marked for identification.)

12 CHAIRMAN JACOBS: Okay. Very well. Okay. You can
13 go to the next one.

14 MS. KEATING: The next exhibit we have identified is
15 Stip 2, which are BellSouth responses to FDN's discovery
16 requests. This includes responses to FDN's first request for
17 production of documents; responses to FDN's first set of
18 interrogatories, dated June 5th; responses to FDN's first set
19 of interrogatories, dated September 6th; responses to FDN's
20 first request for production of documents dated September 6th;
21 and a response to FDN's first request for admissions, Items 1
22 through 11.

23 And, Mr. Chairman, I need to clarify that there is
24 one outstanding item. Under Subpart 1, responses to FDN's
25 first request for production of documents, we have had some

1 difficulty obtaining a copy of a particular production of
2 documents request. It is my understanding that it is on the
3 way.

4 CHAIRMAN JACOBS: So, you are going to move -- when
5 you move this into testimony, how are you going to handle that?

6 MS. KEATING: If you like, we can hold off on moving
7 Exhibit Number 2 until we actually obtain the copies.

8 CHAIRMAN JACOBS: Why don't we do that. Very well.

9 MS. KEATING: We would ask, though, that it go ahead
10 and be marked as Hearing Exhibit Number 2.

11 CHAIRMAN JACOBS: Show that marked as Exhibit 2.

12 (Composite Exhibit 2 marked for identification.)

13 MS. KEATING: The third exhibit we have is identified
14 as Stip 3. It is BellSouth's responses to AT&T's discovery
15 requests. This includes responses to AT&T's first of
16 interrogatories Items 1 through 83, and responses to AT&T's
17 first request for production of documents. This also includes
18 a CD. And we would ask that this be identified as Composite
19 Hearing Exhibit Number 3.

20 CHAIRMAN JACOBS: Show that marked as Exhibit 3.

21 (Composite Exhibit 3 marked for identification.)

22 MS. KEATING: Our fourth exhibit is identified as
23 Stip 4, which is AT&T's responses to staff's discovery. This
24 composite exhibit includes responses to staff's first set of
25 interrogatories, Numbers 1 through 6; responses to staff's

1 second set of interrogatories, Items 7 through 9; and a revised
2 response to staff's second set of interrogatories, Item 7. We
3 would ask that this be marked as Hearing Exhibit Number 4.

4 CHAIRMAN JACOBS: Show that marked as Exhibit 4.

5 (Composite Exhibit 4 marked for identification.)

6 MS. KEATING: Our fifth exhibit is identified as Stip
7 5. These are BellSouth's supplemental responses to staff's
8 third set of interrogatories, Items 37 through 39. We would
9 ask that this be marked as Hearing Exhibit Number 5.

10 CHAIRMAN JACOBS: This is BellSouth's responses to
11 staff?

12 MS. KEATING: Right. BellSouth's supplemental
13 responses to staff's third set of interrogatories, Items 37
14 through 39.

15 CHAIRMAN JACOBS: Show that marked at Exhibit 5.

16 (Exhibit 5 marked for identification.)

17 MS. KEATING: Our next exhibit is identified as
18 DDC-D. It's the deposition transcript, errata sheet, and
19 late-filed deposition exhibits of Witness Caldwell. We would
20 ask that this be identified as Hearing Composite Exhibit Number
21 6.

22 CHAIRMAN JACOBS: Show that marked as Exhibit 6.

23 (Exhibit 6 marked for identification.)

24 MS. KEATING: The next exhibit is identified as
25 AWG-D, which is the transcript, errata sheet, and late-filed

1 deposition exhibits for Witness Gray. We would ask that this
2 be marked as Composite Hearing Exhibit Number 7.

3 Our next exhibit is identified as --

4 CHAIRMAN JACOBS: Just one second.

5 MS. KEATING: Sorry.

6 CHAIRMAN JACOBS: Okay. The next one.

7 MS. KEATING: The next exhibit is identified as
8 WKM-D, and it is the transcript and errata sheet for Witness
9 Milner's deposition. We would ask that this be marked as
10 Hearing Exhibit Number 8.

11 CHAIRMAN JACOBS: I must have gotten the wrong one
12 here. Let me just make sure. It's not in order. What is the
13 exhibit description, WKM-D? Okay, I have it.

14 MS. KEATING: I'm sorry?

15 CHAIRMAN JACOBS: What is the ID for that?

16 MS. KEATING: WKM-D.

17 CHAIRMAN JACOBS: All right, I have it. And that is
18 the deposition transcript of Mr. Milner. Show that marked as
19 Exhibit 7.

20 (Exhibit Number 7 marked for identification.)

21 MS. KEATING: We also have four confidential exhibits
22 and there has been a slight change in the way we have
23 identified them from the list that you were provided with
24 earlier. There hasn't been an actual change in the exhibits,
25 just the way we have packaged them.

1 CHAIRMAN JACOBS: Okay.

2 MS. KEATING: The first one is identified as CONF-1.

3 CHAIRMAN JACOBS: Before you go to that one, I have a
4 deposition transcript for Witness Gray.

5 MS. KEATING: Gray. That was, I believe, 7.

6 CHAIRMAN JACOBS: I thought Milner was -- I got off
7 somewhere. I have 6 was Caldwell, 7 is Milner.

8 MS. KEATING: Exhibit 7 should have been Gray.

9 CHAIRMAN JACOBS: Okay.

10 MS. KEATING: But I can go back and renumber if that
11 one has already been marked.

12 CHAIRMAN JACOBS: Yes, and then we will make 8 Gray.

13 MS. KEATING: Eight is the transcript, errata sheet,
14 and late-filed deposition exhibits for Witness Gray.

15 CHAIRMAN JACOBS: Okay.

16 COMMISSIONER DEASON: Well, I'm confused now. Are we
17 changing what we did before?

18 CHAIRMAN JACOBS: I must have missed when she called
19 out Witness Gray. I didn't mark it.

20 COMMISSIONER DEASON: Okay. Well, I just want to
21 make sure I have it straight. So we will changing Gray from 7
22 to 8?

23 CHAIRMAN JACOBS: Right. And Milner is 7.

24 COMMISSIONER DEASON: Okay. Very well.

25 (Composite Exhibit 8 marked for identification.)

1 CHAIRMAN JACOBS: And now we are on to CONF-1.

2 MS. KEATING: Yes, sir. And those are BellSouth's
3 responses to staff's third request for production of documents,
4 Items 14, 19 through 25, 27 through 34, 36 through 38, 40, 42,
5 and 43. And we would ask that this be marked as Composite
6 Hearing Exhibit Number 9.

7 CHAIRMAN JACOBS: Show that marked as Exhibit 9.

8 (Composite Exhibit 9 marked for identification.)

9 MS. KEATING: Next is CONF-2. These are BellSouth's
10 responses to staff's third request for production of documents,
11 Item 43, which is a CD. We would ask that this be marked as
12 Hearing Exhibit Number 10.

13 (Composite Exhibit 10 marked for identification.)

14 CHAIRMAN JACOBS: Okay. Did you distribute that? Is
15 that what we have here? Did we get a copy of that CD?

16 MS. KEATING: I believe there are copies that have
17 been made.

18 CHAIRMAN JACOBS: I have one, but it's not marked as
19 that.

20 MS. KEATING: We will check on that, Mr. Chairman,
21 and make sure that everyone gets copies.

22 CHAIRMAN JACOBS: Make sure the court reporter has
23 it.

24 MS. KEATING: If it is referred to at all.

25 CHAIRMAN JACOBS: Give me a description for that last

1 one again, please.

2 MS. KEATING: Responses to staff's third request for
3 production of documents, Item Number 43. And again, this is a
4 confidential exhibit, so to the extent that you do need to
5 review it we will certainly make sure that copies are made
6 available to you.

7 CHAIRMAN JACOBS: Got it. Anything else?

8 MS. KEATING: Next is CONF-3. These are BellSouth --
9 the deposition Late-filed Exhibit Number One for Witness
10 Milner. This is also another confidential exhibit. We would
11 ask that this be marked as Hearing Exhibit Number 11.

12 CHAIRMAN JACOBS: Show that marked as Exhibit 11.
13 (Exhibit 11 marked for identification.)

14 MS. KEATING: And, finally, is CONF-4, which is
15 BellSouth's responses to staff's fourth set of interrogatories,
16 Item Number 63. And we would ask that this be marked as
17 Hearing Exhibit Number 12.

18 CHAIRMAN JACOBS: Fourth interrogatories. Show that
19 marked as Exhibit 12.

20 (Exhibit 12 marked for identification.)

21 MS. KEATING: And at this time staff moves Hearing
22 Exhibits 1 and 3 through 12.

23 CHAIRMAN JACOBS: Without objection, show that
24 Exhibits 1 and 3 through 12 are admitted.

25 (Exhibits 1 and 3 through 12 admitted into the

1 record.)

2 CHAIRMAN JACOBS: Very well. That takes care of all?

3 MS. KEATING: That is all that staff has, Mr.

4 Chairman.

5 CHAIRMAN JACOBS: Very well. We are ready now for
6 opening statements. As I understand we are 30 minutes per
7 side. Mr. Marks.

8 MR. MARKS: Thank you, Mr. Chairman, Commissioners.
9 I will give part of the opening statement on behalf of
10 BellSouth and Nancy White will also give half. We understand
11 that we are 30 minutes per side?

12 CHAIRMAN JACOBS: Yes, that was my understanding, 30
13 minutes per side.

14 MR. MARKS: And to the extent there is any time left
15 over, we will use that for rebuttal.

16 CHAIRMAN JACOBS: Very well.

17 MR. MARKS: Mr. Chairman and Commissioners, BellSouth
18 is here today to ask this Commission to support its application
19 with the Federal Communications Commission under Section 271 of
20 the Telecommunications Act of 1996. Under the Act, this
21 Commission is asked to give advice, to give your opinion, to
22 act in a consultative role about what is best for the consumers
23 of the State of Florida. The decision by the Commission in
24 this case is different from the decisions you typically make
25 because the Act charges the FCC with the final decision as to

1 whether or not BellSouth should be authorized to enter the long
2 distance business.

3 The state commissions are charged with the
4 consultative role and we are asking that the Commission
5 determine that BellSouth has met the requirements of Track A.
6 We are also asking this Commission to determine that BellSouth
7 has met the requirements of the 14-point checklist. In
8 addition, we are asking this Commission to determine that
9 BellSouth's statement of generally available terms and
10 conditions meet the requirements of the Act.

11 As you well know, BellSouth was before this
12 Commission in 1997 on this same matter. But it wasn't until
13 the first long distance approval by the Federal Communications
14 Commission at the end of 1999 that any of the parties knew
15 exactly what the Federal Communications Commission expected.
16 Through that order and more recent orders, the FCC has now
17 provided a road map that BellSouth can use to meet its
18 requirements. BellSouth in this application has met those
19 requirements and that is going to be demonstrated by the
20 testimony and the exhibits of BellSouth's witnesses.

21 Now, as a result of actions taken by this Commission,
22 BellSouth and the alternative local exchange companies in this
23 room and others, ALECs in Florida serve approximately 9 to 11
24 percent of the total access lines in BellSouth's service area
25 depending on what methodology is used to calculate market

1 share. This local market share is comparable to or it exceeds
2 ALEC market shares in states where other Regional Bell
3 Operating Companies, the RBHCs as we commonly know them, have
4 gained long distance relief from the FCC.

5 Additionally, BellSouth upon demand from the ALECs,
6 and approval from this Commission voluntarily agreed to undergo
7 third party testing of Bell's operation support systems in
8 Florida, the OSS testing as we all know. That testing is
9 on-going and will, together with your findings in this hearing,
10 your findings in the generic UNE cost docket, your findings in
11 the generic collocation docket, and the permanent performance
12 measures docket form the basis for BellSouth's application to
13 the FCC for permission to enter the long distance market in
14 Florida.

15 Now, there have been some delays as we all know in
16 this entire docket over time. And for the last few years,
17 frankly some of our competitors have focused their energies on
18 delaying BellSouth from entering the long distance market and
19 you might want to ask why. First, these companies can offer
20 one-stop shopping to their customers by offering both local and
21 long distance service. BellSouth cannot do that in Florida.
22 These companies can avoid losing that favored status by
23 encouraging the Commission to wait.

24 Secondly, these companies who collectively have at
25 least 82 percent of the long distance market, want to delay the

1 entrance into their market of any of other competitor. A
2 market that is worth several hundreds of millions of dollars.
3 What are the consequences of this waiting? Who suffers by
4 BellSouth not being able to compete in this market? That
5 answer is very easy. The citizens in Florida who would
6 otherwise benefit from competition, who would otherwise benefit
7 from greater choices, who would otherwise benefit from more
8 convenience and lower prices.

9 Consider this if you will. The customers of other
10 local exchange carriers in Florida are not prohibited from
11 buying long distance service from their local exchange carrier.
12 Customers in Tampa and even in Tallahassee. The customers of
13 ALECs in the territory that BellSouth serves are not prohibited
14 from buying long distance services from that ALEC. Therefore,
15 if you think about it, every customer except BellSouth's
16 customers enjoy the benefits of one-stop shopping.

17 Additionally, in the states like New York and Texas,
18 local and long distance rates have fallen after long distance
19 relief was granted to Verizon and Southwestern Bell. Florida
20 consumers should be allowed to benefit from similar savings.
21 In fact, according to a recent economic study, Floridians are
22 losing millions of dollars a year in potential benefits from
23 competition because of barriers that are preventing BellSouth
24 from entering the long distance market. Competition, which is
25 the very linchpin of the 1996 Telecommunications Act, is

1 thwarted by BellSouth's inability to provide long distance
2 service.

3 In addition, and again in states like New York and
4 Texas, local competition has actually soared 130 percent in New
5 York, 60 percent in Texas respectively when the incumbent is
6 granted long distance relief. In other words, when the ALECs
7 decide that it is at that point in time that the local market
8 becomes attractive.

9 Now, what are the nature of these proceedings?
10 Again, we must clearly understand the nature of why we are here
11 today. This is not a rate case. This is not a rulemaking
12 proceeding. And although some parties may like it to be, it is
13 not an inquisition. It is a fact finding, information and data
14 gathering proceeding to aid this Commission in its consultative
15 role to the Federal Communications Commission. The Commission
16 should get as much data as it possibly needs in order to
17 fulfill its role as it relates to the 1996 Telecommunications
18 Act. Congress intended a process in which this Commission
19 would act independently to make recommendations based on what
20 you believe is happening in the State of Florida and what you
21 believe is in the best interest of the citizens of the State of
22 Florida.

23 BellSouth will present several witnesses in this
24 case, and collectively they will address all of the issues in
25 this matter. BellSouth realizes it must satisfy the checklist

1 requirements in order to qualify for long distance service.
2 These witnesses will explain exactly how BellSouth has done
3 just that.

4 And now for some additional opening remarks, Ms.
5 White. Thank you.

6 MS. WHITE: Thank you, John. What is BellSouth
7 required to prove in this case? First, we have to prove that
8 we qualify for Track A under the Act. To qualify for Track A,
9 BellSouth has to demonstrate that it has interconnection
10 agreements with one or more competing providers of local
11 service to residential and business customers, and who provides
12 services using their own facilities or a combination of their
13 own facilities and BellSouth's resold services. Now, let's
14 look at that in piece parts. First of all, Track A requires
15 that BellSouth have signed interconnection agreements with
16 ALECs in Florida. BellSouth has over 500 approved, state
17 approved by this Commission interconnection resale and
18 collocation agreements with ALECs in Florida. I don't think
19 there is any party that has filed testimony in this case
20 disputing that fact.

21 Second, Track A requires that ALECs be providing
22 service to residential and business customers. The ALECs in
23 Florida provide service to over 800,000 access lines, which is
24 approximately 11 percent of the total access lines in this
25 state.

1 The last prong of Track A is that the ALECs must be
2 offering service either over their own facilities or the
3 combination of their own facilities and BellSouth resold
4 services. Of the approximately over 800,000 lines I mentioned
5 earlier, 600,000 of these belong to facilities-based providers
6 and almost 200,000 belong to resellers of BellSouth's local
7 services. Now these numbers are BellSouth estimates. We base
8 these estimates on reliable sources. Of course, it is the
9 ALECs who would have access to the actual data on the level of
10 competitive activity. So while there may be disputes over the
11 exact and specific percentages of competition, or the exact and
12 specific number of units, there is no doubt that there is
13 competition in Florida, business and residential.

14 Now, we will admit it is smaller in the residential
15 market than it is in the business market. The ALECs are going
16 to claim that they have a mere 4 to 5 percent of the
17 residential customers in Florida. But what they don't say is
18 that that percentage doesn't describe the market they focus on.
19 The target market for ALECs for the last few years has been
20 business, not residential. Now why are they targeting their
21 market on business customers? That's where the money is. It's
22 as simple as that. And how are they doing in the market they
23 are targeting? ALECs in Florida have captured over 20 percent
24 of the business market in BellSouth's territory.

25 Again, why isn't there more residential competition,

1 because if you follow the money, you will end up in the
2 business market just like the ALECs did. The business market
3 is where the profits are, and that situation will likely
4 continue until BellSouth is allowed in the long distance
5 market.

6 As John noted in his part of the opening, if you look
7 at the experience in the states that have been granted long
8 distance authority, you will see that local competition
9 increases a large percent, and a large percent of that increase
10 is in residential customers. Now, the FCC has said that
11 individual ALEC entry strategies can explain a low residential
12 customer base, and that Congress -- neither Congress nor the
13 FCC has adopted a market share test for entry into the long
14 distance market. And they have specifically said that they
15 have no intention of establishing one. So the allegation by
16 the ALECs that they haven't penetrated more of the residential
17 market proves nothing about the level of competition in
18 Florida.

19 Now, the second thing we have to show in this case is
20 that BellSouth meets the requirements of the competitive
21 checklist, the 14-point competitive checklist. Based on the
22 FCC's decisions and the Act, we must prove that we have
23 concrete, a concrete and legal obligation to furnish in state
24 approved agreements all checklist items and that we are
25 currently furnishing or ready to furnish the checklist item in

1 reasonable quantities and acceptable levels of quality. Now,
2 as you know, part of the checklist items involve BellSouth
3 operations support systems. That is being looked at in the
4 third party test. So what we are talking about here are
5 quality -- or quantities.

6 There is no dispute as far as I have been able to
7 tell from the testimony that BellSouth doesn't have state
8 approved agreements with the checklist items available. I
9 don't believe that is an issue that anybody is raising. As far
10 as the second prong, BellSouth will demonstrate that it is
11 currently furnishing each of the checklist items in reasonable
12 quantities, but it is furnishing each item in commercial
13 volumes.

14 We will demonstrate that we are furnishing each of
15 the checklist items in fairly good volumes. There are over
16 800,000 lines, ALEC lines in Florida as I noted earlier. The
17 ALECs have captured over 20 percent of the business market
18 which even they admit is their focus. There are over 130,000
19 trunks that have been installed interconnecting BellSouth's
20 network with the facilities-based networks of ALECs in Florida.
21 We provide over 1,000 E911 trunks, or 1,000 directory
22 assistance trunks, and over 1,000 operator services trunks in
23 Florida.

24 There are over 71,000 loop/port or UNE-P combinations
25 that are being provided to ALECs in Florida. We have

1 implemented over 1,500 physical collocation arrangements in 135
2 out of the 196 central offices in Florida. We are providing
3 over 100,000 unbundled loops in Florida. We have over 4,200
4 loops in place in Florida over which the ALECs are providing
5 DSL service. We have ported over 250,000 business directory
6 numbers and over 49,000 residence numbers in Florida alone, and
7 over a million numbers region-wide. We have implemented over
8 700 line sharing arrangements in Florida. And there are over
9 850,000 BellSouth retail services being resold by ALECs in
10 Florida.

11 Now, there are some things that BellSouth doesn't
12 have to prove, and doesn't have to provide in order to be
13 granted long distance relief. First, we don't have to provide
14 absolutely perfect service. As far as I know there is no
15 company in this room, there is no company in the state, and
16 there is no company in this country that operates at a
17 completely perfect standard. And there is certainly no such
18 requirement by the FCC.

19 There are going to be operational issues, and I'm
20 sure you will hear about some of them. But even the FCC has
21 said that to have as a standard the requirement to resolve
22 every operational issue would completely extinguish any
23 applicant's ability to obtain long distance relief. The
24 Commission should focus on the evidence of compliance with the
25 checklist and doesn't have to try to arbitrate each issue that

1 may be brought up. This is not an arbitration.

2 BellSouth is not required, and the Commission is not
3 required to resolve contract interpretation disputes at this
4 hearing. You may see in testimony and on cross examination
5 many differences between the ALECs and BellSouth on the
6 interpretations of the obligations in the Act and the FCC's
7 rules. But the 271 process doesn't require that every
8 interpretive dispute be addressed and resolved in favor of
9 BellSouth in order to grant a 271 application. If all an
10 opponent has to do is raise an interpretive dispute, then you
11 are going to effectively doom any 271 application until you
12 require perfect service. So in this case, while the Commission
13 may hear about interpretive disputes, none of it will show that
14 BellSouth fails to meet the legal requirements of any checklist
15 items.

16 The Commission's support of BellSouth's entry in long
17 distance will do nothing to decrease this Commission's
18 oversight of the quality of service provided by BellSouth to
19 ALECs. The Commission still has their complaint procedure that
20 is set up to air grievances. The Commission has approved a
21 permanent performance measurements plan so there will be data
22 provided every month on those performance measurements. The
23 Commission has also approved a penalty plan that will
24 automatically kick in if BellSouth doesn't meet certain
25 obligations. The Commission is in the process of the

1 independent third party test. There are collaborative
2 workshops going on between the parties and there are generic
3 dockets on various issues. So by approving long distance, or
4 recommending that BellSouth be allowed to enter the long
5 distance arena, the Commission will lose no authority.

6 Now, the FCC has provided through its decisions a
7 road map of requirements that must be met in order to grant a
8 long distance application. We believe that we are complying
9 with those requirements. The local market is open, and every
10 party in this hearing room is able to compete in the local
11 market. And although not every party here today may have
12 chosen to compete, we are serving over 800,000 lines -- excuse
13 me, ALECs are serving over 800,000 lines, which is over 20
14 percent of the business market and over 4 percent of the
15 residence market. And this is occurring in communities from
16 Miami to Jacksonville to Pensacola.

17 We request that this commission support BellSouth's
18 effort to bring additional competition in the long distance
19 market to benefit the citizens of Florida. And I would ask
20 that I would reserve five minutes for rebuttal after the ALECs'
21 opening. Thank you.

22 CHAIRMAN JACOBS: Very well. You have that time
23 available. And, what is the order?

24 MS. KAUFMAN: Commissioners, I am going to begin if
25 that is all right.

1 CHAIRMAN JACOBS: I'm sorry?

2 MS. KAUFMAN: I'm sorry. I think I'm going to begin
3 for the ALECs. I thought you were --

4 CHAIRMAN JACOBS: That's all right. I was trying to
5 figure out what the order was going to be. You are in perfect
6 timing. You may proceed.

7 MS. KAUFMAN: Thank you. The ALECs have divided
8 their time understanding that we have 30 minutes per side, so
9 I'm going to go first. I'm going to share my time with Mr.
10 Melson, Mr. Lamoureux, Mr. Feil, and Ms. Masterton. We are
11 going to stick probably to under 30 minutes.

12 CHAIRMAN JACOBS: Very well.

13 MS. KAUFMAN: Commissioners, what I want to do, as I
14 begin my remarks is ask you to take a step back perhaps and
15 look at the big picture here. But before I do that, I just
16 want to discuss a preliminary matter for a moment that was
17 touched on by BellSouth, and that's what we have come to view
18 as the somewhat bifurcated nature of this proceeding. And my
19 remarks are not here to address the wisdom of that. We had
20 enough discussion about that last week, but just to perhaps
21 remind you or to caution you that at this juncture you are
22 going to be having only part of the 271 story before you. And
23 a very important part of that story is being addressed in what
24 has come to be known as Track B, the third party test track.
25 And so you can't make any determination on whether BellSouth

1 has complied with the competitive checklist until that test is
2 complete and until we have had workshop comments or whatever
3 process it is you decide to follow at the conclusion of the
4 test. And I just want you to bear in mind that we need to
5 reserve judgment on that other piece of the puzzle as we
6 proceed here today. And as we discussed last week, OSS
7 permeates just about every checklist item, so it is critical
8 and it is something that will be looked at in another type of
9 forum. Those are my preliminary remarks on that.

10 Now the big picture. I think that we all know and we
11 have heard over and over again that the broad purpose of the
12 Telecommunications Act of 1996 is to open the local markets to
13 competition, to broad-based competition so that consumers have
14 choices in the marketplace, choices for local providers. Some
15 of the testimony that you are going to hear this week and next
16 is going to be about whether or not that has happened here in
17 Florida. And as you listen to the testimony, I would ask you
18 to keep in the back of your mind the broad purpose of the
19 Telecom Act and to look beyond the trees into the forest.

20 The purpose was to open local markets, to provide
21 widespread alternatives to the incumbent. If the goal of the
22 Act had been met at this time I believe you would see broad
23 competition for local service throughout the state, but you
24 don't see that. You would see actual results or evidence of
25 broad-based competition in the marketplace, but you don't see

1 that. If Bell's network were truly being made available to
2 competitors on the nondiscriminatory basis as the Act requires,
3 you would see visible tangible confirmation that Bell's network
4 was open and that providers had nondiscriminatory access
5 because there would be this widespread competition. But you
6 don't see that.

7 In our view -- and you will hear our witnesses
8 describe this -- the Act's primary goal has not been met and
9 consumers don't have the broad choice that Mr. Marks and Ms.
10 White seem so eager to give them. So from the broad
11 perspective I don't believe you can find that the competitive
12 checklist has been met.

13 Now FCCA's Witness Mr. Gillan is going to provide
14 evidence to you in this proceeding that of the three entry
15 methods that the telecom act requires, resale, UNEs, and
16 facilities-based, none is making significant in-roads into the
17 competitive market. His testimony shows you that resale is
18 actually in decline and that while we believe UNE competition
19 is probably the best hope for the competitive market, currently
20 ALECs have at best, at the most optimistic analysis a slim two
21 percent of the market some six years after the Act's passage.
22 Mr. Gillan calculates that facilities-based carriers have a
23 minimal 1.7 percent share of the market. These numbers are
24 nowhere near the inflated numbers that BellSouth quoted to you
25 in their opening. And I would refer you to Mr. Gillan's

1 Exhibit 5 for that analysis. And I would say to you that his
2 analysis certainly belies any motion that there is this
3 broad-based wide-spread competition for local -- in the local
4 market that the Act contemplated at its passage.

5 In addition, Mr. Gillan puts in an analysis that will
6 demonstrate to you that if the ALECs had to lease UNE rates,
7 UNE elements at the rates that BellSouth charges its
8 competitors today it would be in the red. So for any sort of
9 broad-based competition to occur we have to have continued
10 attention to cost-based UNE rates. BellSouth couldn't operate
11 at the current UNE rates, so it is probably not surprising that
12 we are not seeing the broad-based competition that the Act
13 requires.

14 Additionally, new combinations have to be made
15 available and Bell has to permit resale of advanced data
16 services as required by the recent ASCENT decision, none of
17 which is currently occurring. That is the big picture that I
18 would ask you to keep in mind as you look at or listen to the
19 trees that I want to talk to you about briefly.

20 I just want to preview for you some of the testimony
21 that you will hear from my witnesses, and the folks that follow
22 me I'm sure will discuss the points that their witnesses will
23 touch on, and these go to the 14-point checklist and whether
24 there has been compliance. Contrary to, I believe, what Ms.
25 White was suggesting to you, I don't think you can view these

1 as individual carrier disputes and say, well, that is a
2 discreet dispute and that doesn't really relate to whether or
3 not there has been checklist compliance. Because how Bell
4 deals with competitors, how it provides or doesn't provide
5 access is the whole point of the Act. So when carriers come
6 before you and say this has been our experience, I don't think
7 that it is appropriate to dismiss that and say, well, you know,
8 that is a discreet disagreement that Bell may be having with
9 this one carrier. I think it is evidence of and it is
10 cumulative evidence of the lack of nondiscriminatory access.

11 Just as an example, you are going to hear NewSouth's
12 Witness Mr. Fury talk to you about problems that his company
13 has experienced in regard to collocation, and the fact that
14 Bell does not appropriately provision collocation space, and
15 that it requires ALECs who want to collocate to pay for power
16 that they don't use. It overcharges them and it requires them
17 to take the power and pay more for it. That is a violation of
18 checklist item one, the interconnection checklist item.

19 Mr. Fury is also going to talk about problems that
20 his company has experienced due to Bell's failure to properly
21 augment their trunk groups so that NewSouth experiences trunk
22 blockage. Its customers' calls can't get through. Again,
23 another violation of checklist item number one. Mr. Sfakianos,
24 who is the City Director for KMC Telecom in Pensacola, is going
25 to talk to you about the experience his company has had with

1 Bell's provisioning of T-1 loops and the problems he encounters
2 and customers encounter when they have selected a competitive
3 alternative when there are extensive outages due to BellSouth's
4 failure to provision these loops, and how KMC's experience in
5 this regard is in diametric contrast to what BellSouth
6 customers experience when they purchase T-1 loops.

7 Again, I think this is evidence that we are not
8 seeing nondiscriminatory access in the marketplace. And so as
9 you keep in mind the forest of whether we have this board-based
10 local competition and then you listen to people tell you about
11 the trees, the way that they believe their individual
12 experiences, or their company's experiences relate to the
13 checklist items, I think that you will have to conclude that
14 BellSouth has not complied with the 14-point checklist and that
15 they have not complied with the requirement that the local
16 markets be open to competition.

17 And Mr. Melson will continue.

18 MR. MELSON: Commissioners, before I begin the
19 remarks that I had prepared, I would like to respond just
20 briefly to two things I heard in BellSouth's opening. Mr.
21 Marks talked quite a bit about the benefits to BellSouth
22 customers if BellSouth was allowed into the long distance
23 market. My understanding is that is an element in a public
24 interest determination that the FCC is going to make, but that
25 the public interest determination is not something that the FCC

1 seeks your consultation on. And, in fact, the public -- at one
2 point there was an attempt to put a public interest issue into
3 this proceeding and that was denied, so while many of Mr.
4 Marks' comments were interesting, I don't believe they address
5 the job before you today, which is to consider BellSouth's
6 compliance with the checklist.

7 Ms. White in her opening posed the question and then
8 answered it, why don't you see residential competition in
9 Florida today. I would give you a slightly different answer in
10 two parts. The first part is UNE prices are too high, and I'm
11 going to touch on that later in my summary. The second part I
12 don't know if I'm supposed to talk about today because it is
13 the subject of Track B, which is the adequacy of BellSouth's
14 OSS systems. But I think when you have heard the testimony
15 today and when you have taken into consideration what you will
16 hear as a result of that third party test, you will see there
17 are very good reasons that lay in BellSouth's lap that you
18 don't see residential competition in Florida.

19 As you know, the checklist requires BellSouth to
20 prove that it is providing interconnection and UNEs in
21 connection -- in compliance with the Act as that has been
22 interpreted through the FCC's rules. The testimony of
23 WorldCom's witnesses deals with two categories of issues which
24 cause BellSouth to fail several checklist items. I'm going to
25 group them into two categories, what I will call technical and

1 financial responsibility issues on the one hand and then
2 pricing issues.

3 And just briefly, I'm going to enumerate what I call
4 the technical and financial responsibility issues. They are
5 BellSouth's failure to accept financial responsibility for
6 delivering its traffic to an ALEC's single point of
7 interconnection in the LATA. It is BellSouth's failure to date
8 to pay reciprocal compensation at the tandem interconnection
9 rate based on the FCC's geographic comparability rule. It is
10 BellSouth's position that it is not required to pay reciprocal
11 compensation when an ALEC provides competing foreign exchange
12 service. It is BellSouth failure to provide interconnection
13 trunks in an efficient manner that allows all types of traffics
14 to be exchanged over a single efficient trunk group. It is
15 their failure to provide dedicated transport between locations
16 required by the FCC's rule, and it is their refusal to
17 interconnect with ALECs in a way that lets those LECs offer
18 competing terminating access service to long distance carriers.

19 Now, BellSouth's witnesses will tell you that you can
20 ignore all of these issues because some of them were ruled on
21 in the WorldCom/BellSouth arbitration and because others are
22 still awaiting a ruling in Phase II of your intercarrier
23 compensation docket. But we believe for 271 purposes you
24 cannot ignore them. Until the Commission rules on those issues
25 in a way that complies with the Act and the FCC rules, and

1 until BellSouth incorporates those rulings in compliance with
2 the Act into its approved interconnection agreements, it simply
3 doesn't meet the applicable checklist items.

4 As important as those technical issues are, I believe
5 the pricing issues are even more critical. Under the
6 checklist, BellSouth is required to provide UNEs at prices that
7 meet the TELRIC pricing standards of the Act and the FCC's
8 rules. The rates that BellSouth relies on to meet that, to
9 show checklist compliance don't meet that standard.

10 Why do we say that? Because we believe there are
11 some fundamental flaws in the studies that were used by
12 BellSouth as a basis to set those rates. The FCC's rules
13 require that UNE rates be based on a number of TELRIC
14 principles, two of them are BellSouth has to use
15 forward-looking technology in the lowest cost network
16 configuration, and, second, it has to use a reasonable
17 projection of the total number of units of each element that
18 will be provided to ALECs and used by BellSouth in order to
19 calculate specific unit rates.

20 Now, some of what I'm going to say here is going to
21 be familiar to the three of you Commissioners who sat in the
22 UNE cost docket, it is going to be new to the two of you who
23 were not in that docket. We believe BellSouth's cost studies
24 violate those two FCC principles. Instead of using a single
25 forward-looking lowest cost network configuration to set prices

1 for all UNEs, BellSouth used a three scenario modeling
2 approach. Under that it designed a statewide network to
3 develop costs for the UNE platform or UNE-P, it then designed a
4 separate statewide network to develop costs for stand-alone
5 UNEs loops, and it then designed a third statewide network to
6 develop prices, costs for DSL capable loops.

7 That three scenario requirement simply violates both
8 the FCC's requirement to use a single network and the
9 requirement to use forward-looking technology, since two of
10 those networks that BellSouth designed were based on technology
11 that you would not see deployed in a forward-looking
12 environment. As a result of that flawed modeling approach,
13 BellSouth also failed to meet the requirements of the second
14 FCC rule I mention in that it didn't make a reasonable
15 projection of the total number of units of each type of UNE for
16 which it established prices.

17 Now, the BellSouth witnesses will tell you that the
18 Commission panel that heard the UNE cost case found that that
19 three scenario approach was reasonable for purposes of that
20 docket, and they did. What BellSouth doesn't tell you is that
21 the Commission's order also found that the use of a single
22 network was more appropriate in principle, but that the record
23 in front of them did not have enough information to allow them
24 to set rates on that basis.

25 Commissioners, a single network design is not only

1 the most appropriate in principle, it is required by the TELRIC
2 pricing rules. And WorldCom respectfully suggests that until
3 BellSouth submits a proper study that gives the Commission the
4 information it needs to set rates in accordance with the rules,
5 Bell has not met its obligation of demonstrating that its rates
6 are TELRIC compliant, and, therefore, cannot show that it has
7 met the checklist requirement for UNEs.

8 WorldCom's testimony addresses several other reasons
9 that BellSouth's UNEs rates are not TELRIC compliant, probably
10 the most important of which is that we believe they improperly
11 double count the effect of inflation. And in addition you are
12 going to hear some testimony about some particular rates for
13 billing information that appear to be totally out of line with
14 any reasonable assumptions.

15 The practical effect of the flaws in BellSouth cost
16 studies is that the rates that are set, and particularly the
17 rates set for the UNE platform, are simply too high. They
18 don't comply with TELRIC and they are high enough that they
19 don't provide ALECs with a meaningful opportunity to enter the
20 Florida residential market on a widespread basis. While you
21 may not like to hear this, we believe BellSouth's failure to
22 file a cost studies that comply with those rules left your
23 staff with no alternative but to recommend that rates be
24 adopted based on a fundamentally flawed approach because that
25 was the only approach in front of them. We believe this case

1 is your opportunity to tell BellSouth that it can't get 271
2 approval until it fixes those flaws and until it submits cost
3 studies that comply with the TELRIC requirements.

4 Until you set rates that will allow economically
5 viable residential competition, you are simply going to have a
6 situation where Florida consumers never see the benefits of
7 competition that Congress and the Florida legislature have
8 encouraged. Thank you.

9 MR. FEIL: I'm next in the line-up, Commissioners.
10 Matthew Feil with Florida Digital. I'm going to focus for my
11 opening on just one issue. For three Commissioners,
12 Commissioners Palecki, Jaber, and Deason that issue is somewhat
13 redundant of an issue they heard in Florida Digital's
14 arbitration case against BellSouth heard in early August. That
15 case, like this one, is yet to be decided. The issue is vital
16 to competition, and the Telecom Act recognizes this because it
17 is a checklist item. Checklist Item Number 14. Specifically,
18 the issue is whether BellSouth has met its obligation to resell
19 its DSL service. FDN maintains that BellSouth has not.

20 BellSouth rejects that it must provide its own or
21 anyone else's DSL service over CLEC UNE or UNE-P voice loop.
22 Hence, BellSouth refuses to resell to CLECs BellSouth's ADSL
23 service when provided over a CLEC UNE or UNE-P voice loop. The
24 result, when a customer with voice and ADSL on the same line
25 converts to a UNE-based CLEC, BellSouth shuts off the ADSL

1 service.

2 To compete and survive in Florida's telecom market,
3 carriers must have a voice plus data strategy. Bell recognizes
4 this because it is deploying ADSL equipment or DSL equipment
5 throughout its unique Florida network, and Bell provides its
6 own customers a combined line voice plus data service. This is
7 the sort of one-stop shopping that Mr. Marks referred to in his
8 opening. But, ironically, BellSouth thwarts that effort in
9 this regard.

10 As competition edges into the residential market
11 where per customer line counts are lower, one can readily see
12 how much more valuable that voice plus data strategy becomes.
13 There may be some confusion reflected in the record of this
14 proceeding regarding BellSouth's rationale and the BellSouth
15 entities involved, whether or not in the transaction for a
16 voice plus data issue it is BellSouth Telecom or BellSouth.net,
17 but I believe the record will know in this proceeding is this,
18 that BellSouth argues that it does not sell ADSL at retail to
19 end users. Rather, BellSouth argues it sells DSL only to ISPs.
20 Under an FCC order and a court case known as ASCENT II,
21 BellSouth argues that it has no obligation to resell wholesale
22 services sold to ISPs.

23 The flaw in this argument is that BellSouth sells DSL
24 to itself in a scheme to evade the resale obligation.
25 BellSouth's supposed wholesale product has all the earmarks of

1 a retail product. BellSouth Telecom, the incumbent LEC,
2 advertises DSL directly to end users, owns and maintains all
3 the facilities for providing the DSL service, bills and
4 collects customers, end users for the service. BellSouth
5 Telecom packages the service with local exchange services and
6 features and so on.

7 In order to facilitate the record in this case, I
8 have used some requests for admission that I intend to submit
9 here that are documents that were produced in the FDN
10 arbitration case. I'm hoping that things go a little bit more
11 smoothly in this proceeding and more quickly. But the
12 authority that BellSouth cites in support of its position may
13 make sense where a telecommunications company sells wholesale
14 DSL to an unaffiliated ISP, like AOL or Earthlink, but it does
15 not and cannot apply where the DSL provider and the ISP are the
16 ILEC. To decide otherwise make no more sense than permitting
17 an ILEC to evade the Telecom Act's obligations by having an
18 ILEC affiliate provide the telecom services. Both are shell
19 games.

20 Today, here in this case, and in Florida Digital's
21 arbitration against Bell, the issue is timely and fairly before
22 you. BellSouth has had the opportunity to address the issue
23 and all of its ramifications in this case. As with Mr.
24 Melson's issues, this issue is one that you can't ignore. I
25 ask that you pierce the flimsy wholesale veil that BellSouth

1 has draped over this issue and find that BellSouth has not met
2 Checklist Item Number 14. And with that I will turn it over to
3 Mr. Lamoureux.

4 MS. MASTERTON: In the interest of time, Sprint would
5 just like to express its support for the remarks by the other
6 ALECs and defer to Mr. Lamoureux to make the concluding
7 remarks.

8 CHAIRMAN JACOBS: Mr. Lamoureux.

9 MR. LAMOUREUX: I would like to begin with the
10 somewhat unusual proposition of reintroducing you to my company
11 to dispel some myths that apparently have been propagated about
12 my company as well as other ALECs sitting here at the table and
13 providing service in Florida. My company and all the other
14 companies sitting here represented at the table have chosen to
15 compete in the local market in Florida. This proceeding is not
16 some abstract or academic proceeding dealing with some words on
17 paper and whether a company on paper has fulfilled those
18 obligations on paper. My company is in this market and my
19 company as well as the other ALECs at this table is trying and
20 has been trying over the last five years to get BellSouth to do
21 what it is required to do under the Act so that we can compete
22 in the local market in Florida.

23 My company provides service, local service in
24 Florida. My company provides service to residential customers
25 in Florida. My company provides service to business customers

1 in Florida. My company uses its own facilities, including our
2 own outside plant, our own switches, and our own transport to
3 provide local service in Florida. My company also buys
4 unbundled elements from BellSouth, including discreet loops as
5 well as the UNE platform in Florida to provide local service in
6 Florida.

7 My company is not simply some interexchange carrier
8 that is sitting back trying to keep BellSouth out of the long
9 distance market in Florida. My company is an ALEC and we are
10 trying to do what we can to compete in Florida, and we are
11 trying to do -- to get BellSouth to do what it is required to
12 do under the Act so that we can compete and continue to compete
13 in Florida. That is what the last five years have been about
14 under the Act, and that is what our proceedings in Florida and
15 elsewhere have been about.

16 Along those lines, I want to address the idea that my
17 company and all the other ALECs sitting at this table are here
18 to do nothing but delay BellSouth from getting into long
19 distance. The fact of the matter is the Act is set up in a
20 particular sequence. What BellSouth calls a barrier to it
21 getting into the long distance market is actually the
22 requirement under the Act that it must first open its local
23 markets to competition before it is allowed to enter the long
24 distance market. It is not a barrier, it is a requirement of
25 the Act.

1 What BellSouth calls delay is simply the time that
2 itself has taken to open its own markets to competition in
3 Florida. If there is a barrier, that barrier is the Act. If
4 there is delay, that delay is on the part of BellSouth in not
5 doing what it has been required to do the last five years under
6 the Act to open its local markets to competition. In fact, you
7 will see from the testimony in this case by my company and by
8 other ALEC witnesses, as well, that five years after the Act
9 there are still requirements under the Act, specifically
10 requirements under the 14-point checklist of the Act that
11 BellSouth has not met and that BellSouth still does not comply
12 with.

13 The suggestion that all of these complaints by the
14 ALECs, both in this proceeding and apparently in the last five
15 years are merely interpretive disputes is simply a rhetorical
16 device to allow BellSouth to shrug off its obligations under
17 the Act. The fact is every time we have to litigate with
18 BellSouth to get it to do what it is required to do under the
19 Act it is an interpretive dispute. We interpret the Act to
20 impose an obligation on them, they interpret the Act not to
21 have that obligation on them.

22 Interpretive dispute is a meaningless phrase. The
23 fact is there are requirements under the Act, the fact is that
24 BellSouth is not meeting those requirements. The fact is that
25 until BellSouth meets those requirements, you should not

1 recommend that BellSouth be permitted for long distance entry
2 in Florida.

3 Lastly, I want to tie together something that Ms.
4 Kaufman started with and that is the context of this hearing in
5 the big picture. This hearing addresses what BellSouth offers
6 or fails to offer and whether those offerings comply with the
7 Act's 14-point checklist. There still remains the question
8 which is at least as important as what BellSouth offers, as to
9 whether in the marketplace and in its interactions with ALECs
10 BellSouth is actually providing and performing up to what it
11 says it offers.

12 I'm not going to address any details about that and
13 you will not hear any information about that in this hearing.
14 That has been decided. I just want to let you know that this
15 information is important. I think we have all agreed that --
16 and pursuant to what we discussed at the agenda conference last
17 week we will be filing a motion today requesting that the
18 Commission set up some sort of mechanism to let the ALECs talk
19 to you about the real world experiences with how BellSouth is
20 performing under the Act as to what it offers under the
21 14-point checklist. And we hope that you will take that
22 evidence into account as well as what you hear in this hearing
23 in making your ultimate determination as how you will fulfill
24 your consultative role to the FCC. Thank you.

25 CHAIRMAN JACOBS: Does that conclude presentations

1 from this side? Ms. White.

2 MS. WHITE: Yes. Thank you, Chairman. Let me say at
3 the outset that BellSouth wants this Commission to look at the
4 forest and the trees. Every single issue that has been raised
5 by the ALECs is something that has either been ruled on by this
6 Commission or is in the process of being ruled on by this
7 Commission. These are not new issues. The ALECs complain
8 about the UNE rates, rates that have been set by this
9 Commission after extensive evidentiary hearings on at least two
10 different occasions.

11 Mr. Melson recited so-called failures of BellSouth.
12 These are valid issues that have been heard in other dockets.
13 Mr. Feil is rearguing something that was just recently heard in
14 FDN's arbitration. There is competition in Florida and the
15 ALECs will present no actual data to refute that. So Ms.
16 Kaufman is wrong, the Commission can make decisions in this
17 hearing. They can make a decision that BellSouth has met Track
18 A.

19 No ALEC, including the ones that Mr. Gillan is
20 testifying for, has challenged BellSouth's competition analysis
21 which is based on the 911 listings the ALECs themselves
22 provide. My company cannot make companies enter the local
23 market. My company cannot guarantee the success of every ALEC.
24 My company only provide the tools an ALEC needs to compete. My
25 company has done that and my company deserves your

1 recommendation to the FCC in support of long distance relief.

2 Thank you.

3 CHAIRMAN JACOBS: Very well. That completes opening
4 statements. I believe we are now prepared to swear witnesses
5 and begin.

6 Would all of those who are here to testify please
7 stand and raise your right hand.

8 (Witnesses sworn.)

9 CHAIRMAN JACOBS: Before we start, why don't we take
10 a break for ten minutes and we will come back with the first
11 witness.

12 (Recess.)

13 (Transcript continues in sequence in Volume 2.)

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1 STATE OF FLORIDA)
2 : CERTIFICATE OF REPORTER
3 COUNTY OF LEON)

4
5 I, JANE FAUROT, RPR, Chief, Office of Hearing Reporter
6 Services, FPSC Division of Commission Clerk and Administrative
7 Services, do hereby certify that the foregoing proceeding was
8 heard at the time and place herein stated.

9 IT IS FURTHER CERTIFIED that I stenographically
10 reported the said proceedings; that the same has been
11 transcribed under my direct supervision; and that this
12 transcript constitutes a true transcription of my notes of said
13 proceedings.

14 I FURTHER CERTIFY that I am not a relative, employee,
15 attorney or counsel of any of the parties, nor am I a relative
16 or employee of any of the parties' attorney or counsel
17 connected with the action, nor am I financially interested in
18 the action.

19 DATED THIS 15th day of October, 2001.

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JANE FAUROT, RPR
Chief, Office of Hearing Reporter Services
FPSC Division of Commission Clerk and
Administrative Services
(850) 413-6732