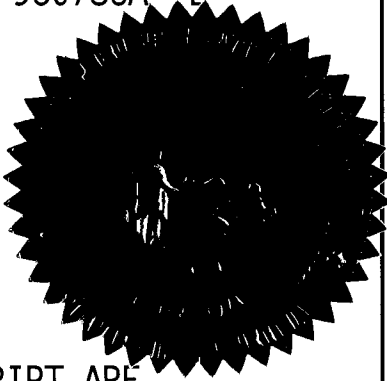


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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
TELECOMMUNICATIONS ACT OF 1996.



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VOLUME 10

Pages 1390 through 1583

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:

Wednesday, October 17, 2001

TIME:

Commenced at 9:00 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

APPEARANCES:

(As heretofore noted.)

DOCUMENT NUMBER - DATE

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EXHIBITS

NUMBER:		ID.	ADMTD.
42	(Late-filed) Universe of Appointments used to Calculate the Missed Appointment Percentage	1429	
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P R O C E E D I N G S

(Transcript follows in sequence from Volume 9.)

CHAIRMAN JACOBS: Mr. McGlothlin, you had a --

MR. MCGLOTHLIN: Yes. If the parties would allow me, I would like to go slightly out of turn at this point. ACCESS Integrated Networks is sponsoring the revised rebuttal testimony of Rodney Page. The parties have stipulated that his testimony may be inserted without his appearance, and if it appropriate, I ask that it be inserted at this point.

CHAIRMAN JACOBS: Without objection, show Mr. Page's testimony is entered into the record as though read.

MR. MCGLOTHLIN: Thank you.

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1 **Q. Please state your name and business address.**

2 A. My name is Rodney Page. My business address is 4885 Riverside Drive, Suite
3 101, Macon, Georgia 31210.

4 **Q. What position do you hold with ACCESS?**

5 A. I am Vice President for Marketing and Strategic Development.

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

7 A. The thrust of the testimony of BellSouth witness Cynthia Cox is that all is
8 healthy and well with respect to the development of competition in Florida. In
9 my testimony I will show that, to the contrary, the development of competition
10 is being hampered by overt conduct on the part of BellSouth. I will recount some
11 of ACCESS' negative experiences with BellSouth that I believe should bear on
12 the Commission's evaluation of whether BellSouth has shown the degree of
13 compliance with its obligations under the 1996 Telecommunications Act that is
14 a condition precedent to its entry into the interLATA toll market.

15 **Q. Which issues will you address?**

16 A. My testimony pertains to Issue 2, which addresses whether BellSouth has
17 provided interconnection and access in the manner required by the Act; and Issue
18 3, which addresses whether BellSouth is providing unbundled network elements
19 on terms that are just, reasonable, and non-discriminatory.

20 **Q. Please describe ACCESS Integrated Networks, Inc.**

21 A. ACCESS is a small but growing ALEC that provides alternative local exchange
22 service in the nine states in which BellSouth is the ILEC. ACCESS'
23 headquarters are in Macon, Georgia. ACCESS currently has 57,000 access lines,

1 of which some 3,000 are in Florida. ACCESS serves small to medium sized
2 business customers. Our business plan includes service to smaller communities
3 in which business customers typically do not have as many alternatives as those
4 located in larger metropolitan areas.

5 To serve its customers, ACCESS utilizes unbundled network elements
6 (the "UNE-P" platform) that it obtains from BellSouth. Accordingly, ACCESS'
7 ability to provide service of high quality to its customers is dependent upon the
8 degree to which BellSouth fulfills its obligations to ACCESS.

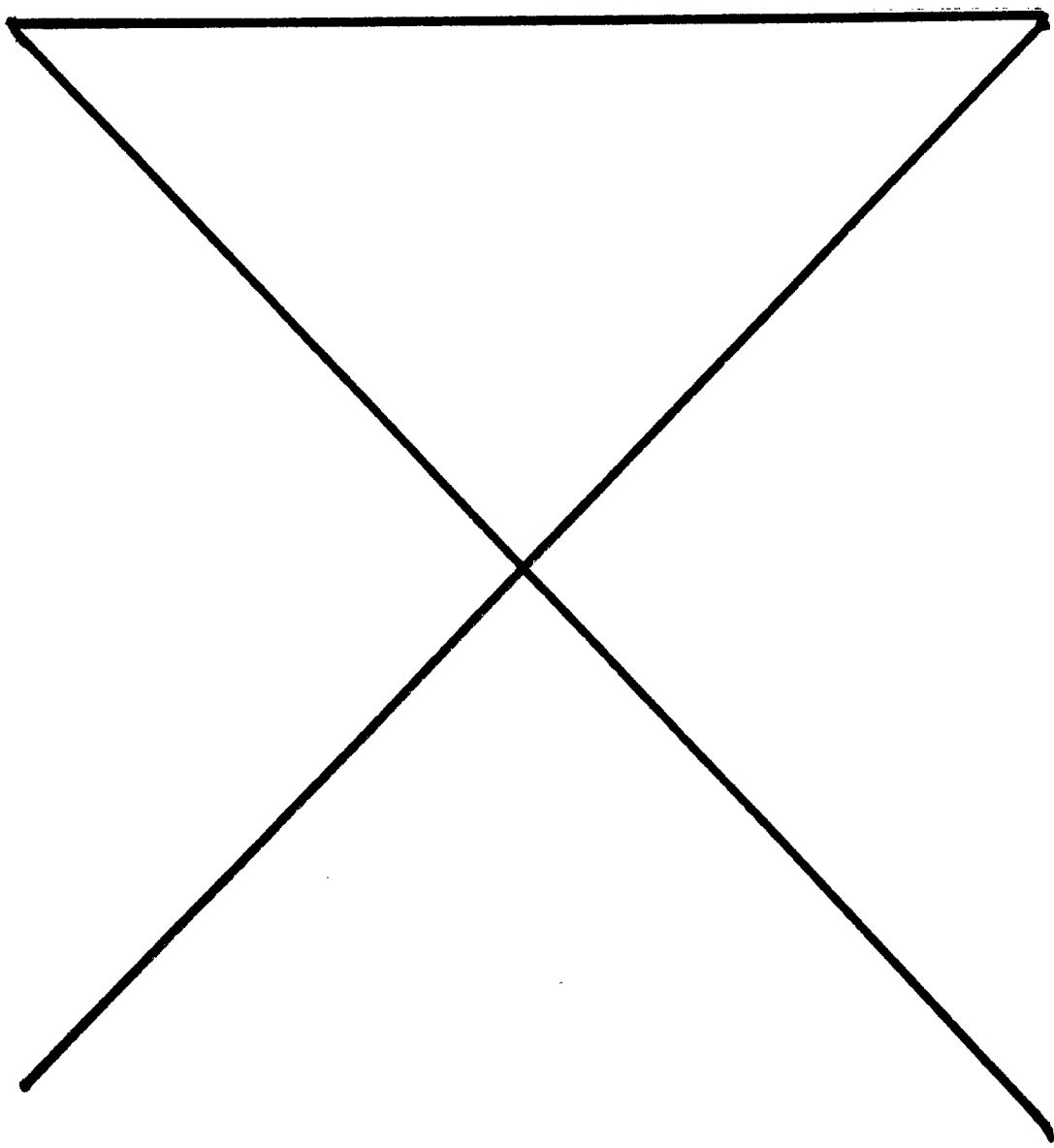
9 **Q. Describe ACCESS' experiences with BellSouth that bear on BellSouth's**
10 **application for authority to enter the interLATA market.**

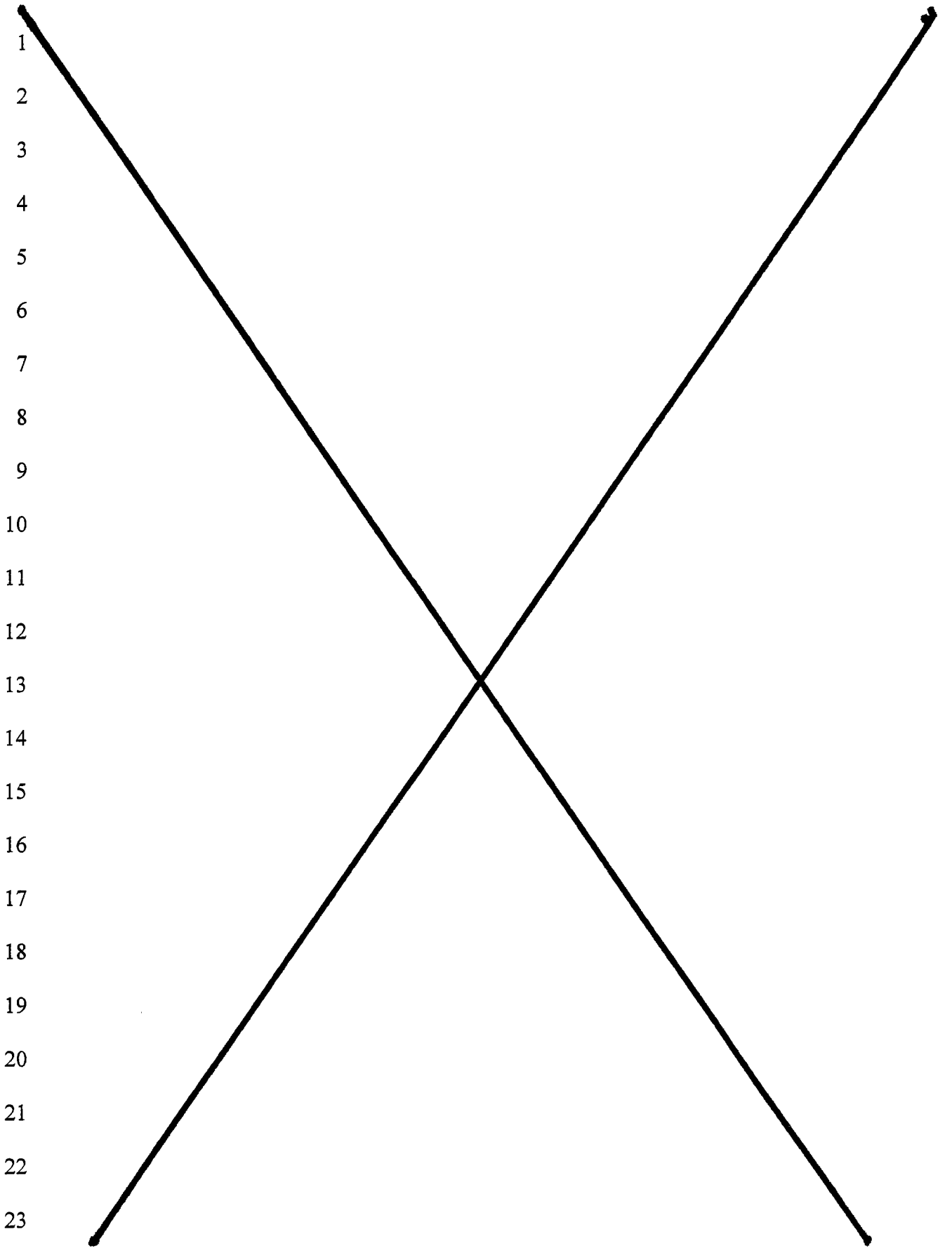
11 A. At the outset, I wish to provide the perspective from which I offer these
12 comments. My understanding is that stated in overall terms, the test to be applied
13 in this case is whether BellSouth has fully opened its network to competition. In
14 applying the test, as it has been formulated into more specific issues, I urge the
15 Commission not to take an overly mechanical approach to its task. To use an old
16 but apt phrase, there is a danger of not seeing the forest because of the trees.

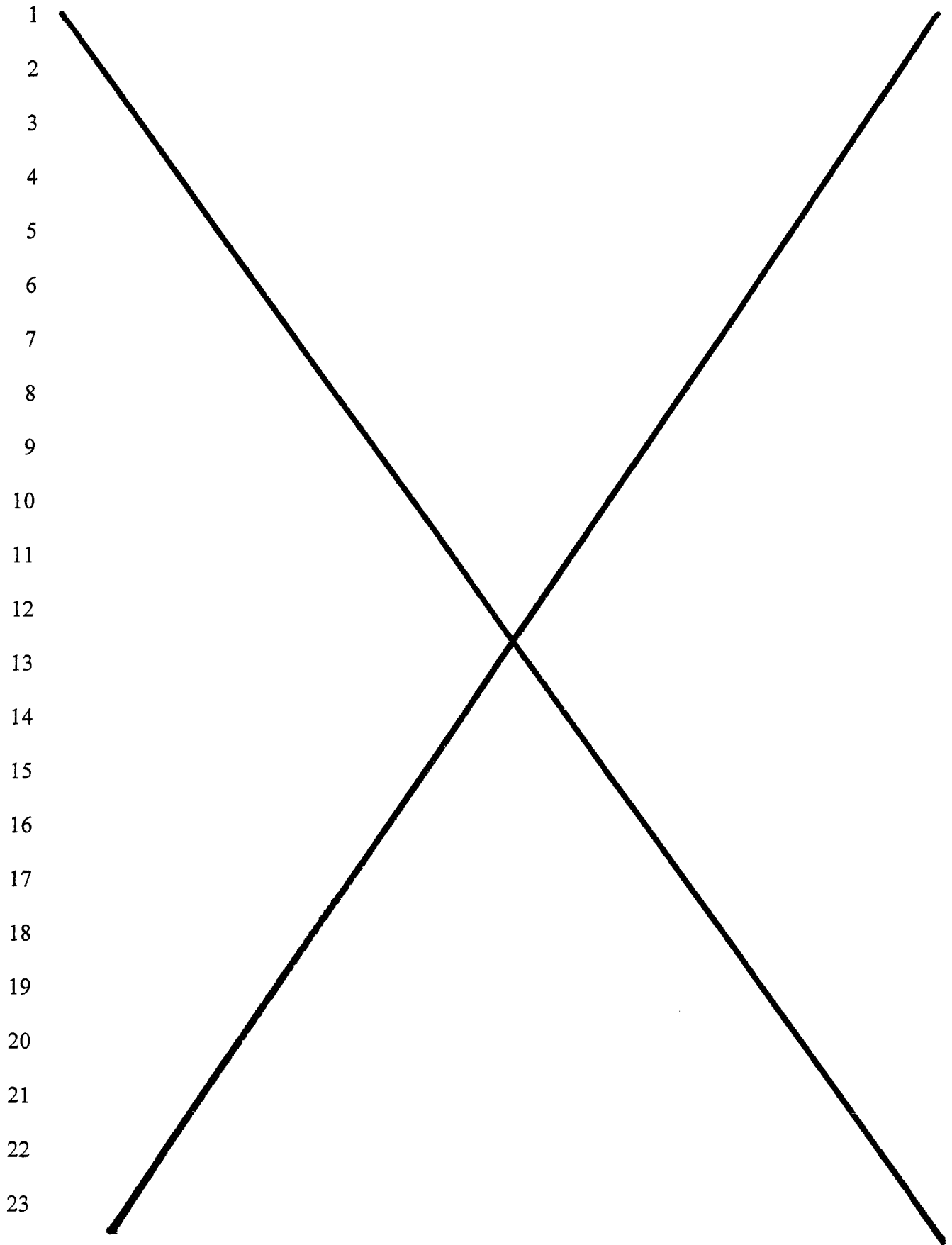
17 ACCESS' experience is that BellSouth engages in conduct that impedes
18 and stifles competition. In what follows, I am not offering a legal opinion; the
19 relationship between the facts that I will describe and the legal requirements of
20 the 1996 Act will be argued by the attorneys. However, as a businessman
21 involved in the implementation of the 1996 Act in the marketplace, I can see the
22 impact of BellSouth's behavior on the development of competition. Subissue
23 2(f) asks whether BellSouth has satisfied "other associated requirements" for the

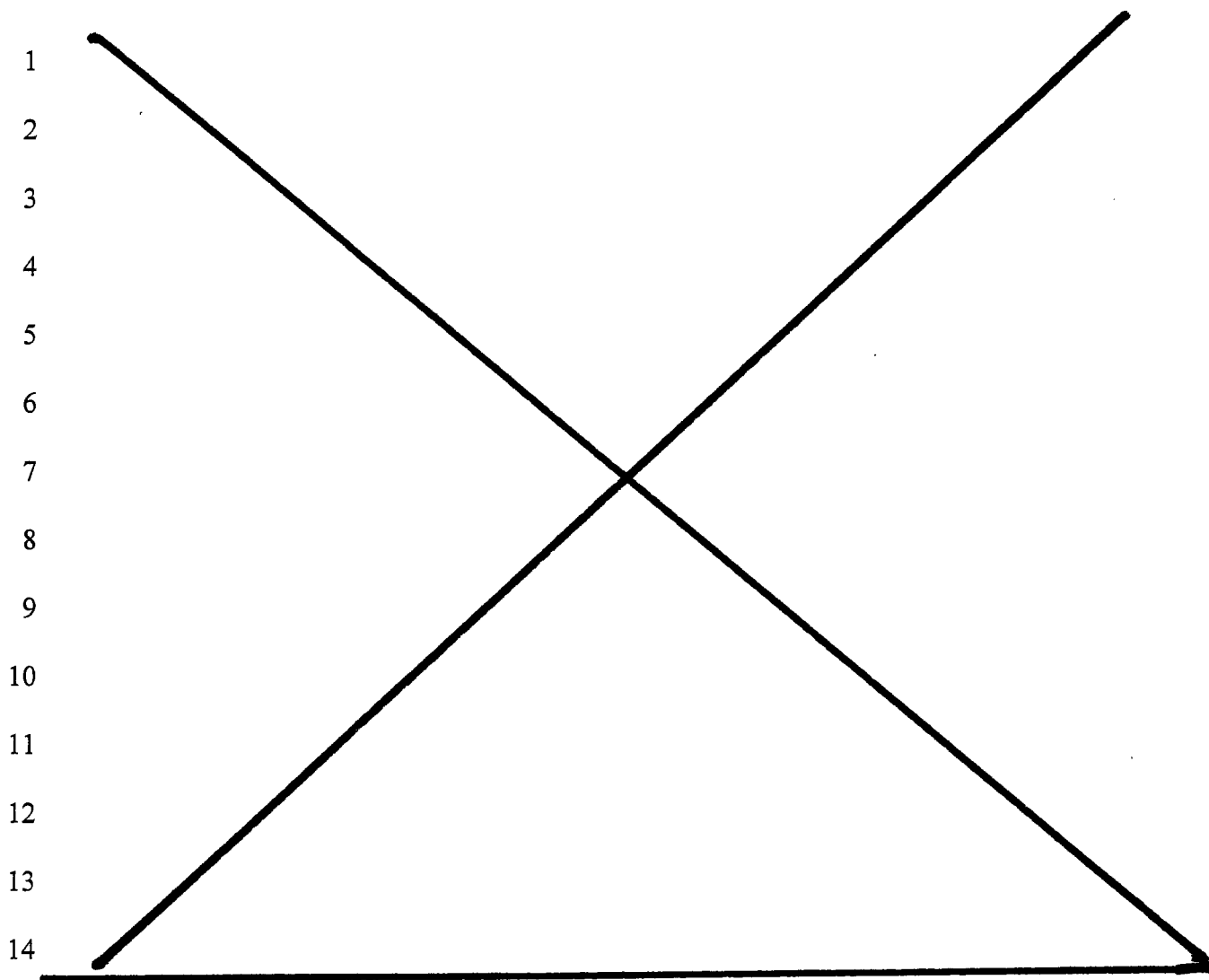
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item. One such "associated requirement" is the obligation in Section 251(c)(2) that such interconnection be of a quality at least equal to that which BellSouth provides to itself. It appears to me, for instance, that if BellSouth interacts negatively with ACCESS' customer relationships in a way it does not with its own customers, and in a manner that undermines in the marketplace the competition that the 1996 Act was intended to facilitate, then the Commission should question whether BellSouth is offering interconnection and access of a quality at least equal to that which is provides to itself.









15 Q. Does this conclude your testimony?

16 A. Yes.

1 CHAIRMAN JACOBS: And I don't believe he had any
2 exhibits.

3 MR. McGLOTHLIN: He has no exhibits.

4 CHAIRMAN JACOBS: Thank you. Very well. And I
5 believe we are now -- I had my list ready to go with the ALEC
6 witnesses, correct?

7 MR. KLEIN: Right.

8 CHAIRMAN JACOBS: And, Ms. Davis?

9 MR. KLEIN: I believe all of the other witnesses
10 prior to Mr. Sfakianos have been --

11 CHAIRMAN JACOBS: Have been stipulated?

12 MR. KLEIN: -- withdrawn.

13 CHAIRMAN JACOBS: Are withdrawn. I didn't have her
14 as being withdrawn. So Ms. Davis and Ms. Campbell are
15 withdrawn. Okay. Mr. Sfakianos.

16 MR. KLEIN: Yes. KMC Telecom would call Mr. Jim
17 Sfakianos.

18 CHAIRMAN JACOBS: Got it, Sfakianos.

19 JIM SFAKIANOS

20 was called as a witness on behalf of KMC Telecom and, having
21 been subsequently duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MR. KLEIN:

24 Q Mr. Sfakianos, please state your full name and
25 business address for the record.

1 A Jim Sfakianos. I am with KMC Telecom, Pensacola,
2 Florida, 220 West Garden Street, Pensacola, Florida.

3 Q And if you could, please, describe the nature of your
4 employment with KMC?

5 A I am the city director there. I actually started KMC
6 in Pensacola. Went there, built their network, hired the
7 people, got the -- everything that has been done in Pensacola
8 has been done through my direction.

9 Q Mr. Sfakianos, did you cause six pages of revised
10 rebuttal testimony to be filed in this proceeding?

11 A Yes, sir.

12 Q Are there any changes or corrections to your
13 testimony as filed?

14 A No, sir.

15 Q If you were asked those same questions as set forth
16 in your testimony today, would your answers be the same?

17 A Yes, sir.

18 MR. KLEIN: I would like to move to have Mr.
19 Sfakianos' revised rebuttal testimony entered into the record
20 as though read.

21 CHAIRMAN JACOBS: Without objection, show Mr.
22 Sfakianos' revised testimony is entered into the record as
23 though read.

24

25

1 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2 A. My name is Jim Sfakianos, and my business address is 220 W. Garden Street,
3 Pensacola, Florida.

4 **Q. WHAT IS YOUR POSITION AND RESPONSIBILITIES WITH KMC**
5 **TELECOM?**

6 A. I am the City Director of KMC Telecom in Pensacola, Florida, and as such am
7 responsible for all daily business functions in the Pensacola area, including sales,
8 operations, construction, customer care and business development projects.

9 **Q. PLEASE DESCRIBE YOUR BACKGROUND AND PROFESSIONAL**
10 **EXPERIENCE.**

11 A. I joined KMC Telecom in April 1998, and have worked in the
12 Telecommunication field for 22 years, serving three of those years with BellSouth. I
13 have a Bachelor of Science Degree from the University of Alabama in Birmingham.

14 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS**
15 **PROCEEDING?**

16 A. I am testifying in opposition to BellSouth's draft application for authority to
17 provide in-region InterLATA services, in response to the Direct Testimony filed by
18 BellSouth on May 31, 2001.

19 **Q. PLEASE DESCRIBE THE NATURE OF YOUR TESTIMONY.**

20 A. My testimony will address the nature of KMC's relationship with BellSouth in the
21 State of Florida, from the perspective of my job as City Director for one of KMC's cities
22 within the state. From that perspective, I will address BellSouth's performance in
23 provisioning facilities and services to KMC.

24

1 **Q. CAN YOU SUMMARIZE THE NATURE OF KMC'S ACTIVITIES IN**
2 **PENSACOLA?**

3 **A.** KMC provides local, long distance and data services to customers in the
4 Pensacola area, utilizing a fiber network with SONET technology and a Lucent 5ESS
5 switch.

6 **Q. PLEASE PROVIDE EXAMPLES TO ILLUSTRATE SOME OF THE**
7 **CHECKLIST-RELATED PROBLEMS YOU ARE EXPERIENCING.**

8 **A.** Four particularly large KMC customers in Pensacola, which represent significant
9 revenue in our operation, lose their T-1 service virtually every time it rains. Over a three-
10 week period spanning late June and early July, 2001, the Pensacola-Bayview location of
11 a large hotel chain experienced *eight* outages, representing a total of 93 hours that the T-1
12 line was either down or experiencing trouble. Similarly, a Tractor and Equipment retailer
13 experienced *seven* outages, representing a total of 46 hours that their T-1 was either down
14 or experiencing trouble. A Credit Union experienced *five* outages totaling 36 hours that
15 their T-1 was down or experiencing troubles. Finally, a door company experienced *four*
16 outages that represented a total of *230* hours that their T-1 was either down or
17 experiencing problems. Unfortunately, there are numerous other examples.

18 **Q. WHAT IS THE EFFECT OF THESE PROBLEMS ON KMC'S ABILITY**
19 **TO COMPETE?**

20 **A.** These four particular customers have stated that they plan to switch back to
21 BellSouth. Even though these are knowledgeable customers, who know that the outages
22 are caused by BellSouth, they simply cannot be out of service every time rain clouds
23 appear. Although I never point the finger of blame at BellSouth, one of these customers
24 told me straight out, "I understand that it is BellSouth's problem, Jim, but when I was

1 their customer I did not experience these problems,” while another asked me whether I
2 “think that they [BellSouth] are doing this to you intentionally?” The loss of these
3 customers will mean the loss of thousands of dollars in revenue each month. While KMC
4 invested heavily in facilities, it is simply too expensive to replicate the last mile in many
5 instances. So even with the investment KMC has made in my city, we cannot compete
6 given the poor quality of the loops BellSouth provides.

7 **Q. BASED ON YOUR EXPERIENCE IN THE INDUSTRY, DO YOU FEEL**
8 **THAT KMC IS RECEIVING NON-DISCRIMINATORY ACCESS TO LOOPS?**

9 **A.** Absolutely not. During my years with BellSouth, T-1 loops almost never went
10 down. While I was with another CLEC in Birmingham, Alabama, we had more installed
11 T-1s but fewer outages; this leads me to believe that the BellSouth outage problems may
12 be worse in Florida, which is very costly for Florida business, or are targeted at KMC.
13 For the circuits to fail with the frequency that they do for KMC should make the
14 Commission, and any other neutral party, extremely suspicious. Based on my
15 understanding of the Telecommunications Act, there is simply no way BellSouth can
16 claim to be in compliance.

17 **Q. DO YOU ALSO EXPERIENCE ANY INSTALLATION PROBLEMS**
18 **WITH BELLSOUTH T-1 LINES?**

19 **A.** Yes. The major problem in this regard relates to a claimed lack of facilities by
20 BellSouth. In other words, BellSouth will fail to provision a T-1 line in accordance with
21 a previously issued Firm Order Confirmation (FOC), and will instead hold the order
22 Pending Facilities (PF).

23

24

1 **Q. DOES YOUR EXPERIENCE ACCORD WITH THAT OF OTHER KMC**
2 **FLORIDA CITY DIRECTORS REGARDING INSTALLATION PROBLEMS?**

3 A. Yes, it appears that we all suffer the same poor installation performance. Based
4 on conversations with Art Webb, City Director for Brevard, it appears that he too suffers
5 from an unacceptably high BellSouth missed appointment percentage in the 25-35%
6 range, which accords with the BellSouth reported percentage.

7 **Q. HAVE THESE ISSUES BEEN RAISED WITH BELLSOUTH CARRIER**
8 **MANAGEMENT?**

9 A. Yes, but BellSouth's performance has remained consistently poor. It is my
10 understanding that BellSouth has even created a chronic trouble team, ostensibly to
11 address KMC and CLEC-wide outages. Obviously, this apparent effort has been
12 ineffective, and the BellSouth Direct Testimony is noticeably silent regarding the
13 adequacy of BellSouth's repair performance.

14 **Q. WHAT TYPE OF WINBACK ISSUES HAS KMC BECOME AWARE OF?**

15 A. I am informed that BellSouth is utilizing questionable tactics in its effort to attract
16 former BellSouth customers that have switched to competitive providers. I am told that
17 these marketers are questioning KMC's viability and misrepresenting its status as a
18 facilities-based competitor. One customer relayed that he had been told by a BellSouth
19 representative that KMC did not have a switch in Pensacola and was backhauling traffic
20 to Mobile, Alabama – an obvious falsehood.

21 **Q. DOES KMC PROVIDE SERVICE IN ANY OTHER AREAS OF THE**
22 **STATE AND IN OTHER JURISDICTIONS?**

23 A. Yes. KMC has built out facilities in seven Florida cities, competing against
24 Verizon and Sprint in Tallahassee, Greater Pinellas, Sarasota and Fort Myers. KMC and

1 its affiliates are also authorized to provide facilities-based and/or resold local exchange,
2 switched and special access, and resold interexchange services throughout the United
3 States. KMC has a region-wide interconnection agreement with BellSouth, and has
4 operations in eight of the nine BellSouth monopoly states.

5 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

6 **A.** Yes, it does.

1 BY MR. KLEIN:

2 Q Mr. Sfakianos, have you prepared a summary of your
3 testimony?

4 A Yes, sir, I have.

5 Q Can you please provide us with that?

6 A Yes, I will. Like I said, I am Jim Sfakianos, I
7 started KMC Telecom in Pensacola, Florida, built their network.
8 We have built approximately 40 miles of fiber that we have put
9 there, spent approximately \$20 million in the community, which
10 is a nice investment in a small community like Pensacola,
11 Florida.

12 I have been with them for about three and a half
13 years, which we have been doing that. KMC is facilities-based,
14 as I said. We have put a SONET ring in there. And all told,
15 you know, I'm here to testify against BellSouth since I feel
16 that they have prohibited us from fair competition and
17 advantages that BellSouth is consistently not meeting the
18 checklist of the Telecommunications Act.

19 Several of those items that I would like to
20 highlight, and that I have highlighted in my deposition is the
21 chronic service outages that we have had in Pensacola. We
22 have, especially when there is rain, because of the facilities
23 that are there and it's old, and we have had numerous customers
24 that have been out for not one hour, two hours, but as long as
25 24, 48, and 72 hours. And I have identified in my deposition

1 four separate cases of this. As a result, we have lost
2 customers because of these outages.

3 The second problem that I have had is I feel it's
4 discriminatory access to loops that we have. Numerous times we
5 have had where we have not been able to get facilities. We
6 have been delayed for weeks or months even occasionally because
7 there is no facilities available in the Pensacola area to
8 install our customers, which cost us a considerable amount of
9 money. There has been two separate occasions where we have had
10 customers that have expressed to us that a BellSouth technician
11 has actually gone into the facility, he was actually working
12 the install, he looked at the install information that he had,
13 and he said, "You are a KMC customer, aren't you? Uh-oh, I
14 don't have facilities." And he turned around and left. And we
15 had to reorder the install again through BellSouth which took
16 another several weeks, which cost KMC money. So that was the
17 second thing.

18 And then I think the last thing that I have had a
19 problem with is the lack of notification of installed data of
20 getting correct FOCs. We have had quite a few times when we
21 have actually had installs done before an FOC date came about,
22 the day before, or two days before. Occasionally we get them
23 where they are several days afterwards. We lose credibility in
24 the eyes of the customer because we have discussed the time
25 that we are going to do an install, yet we can't do the install

1 on the date that we receive the FOC from BellSouth. So I think
2 that that has lost quite a bit of credibility. KMC has put a
3 big investment in a very small community.

4 We only go to Tier 3 cities with our business plan
5 for the company, and that says 100,000 to 700,000 populations.
6 As a result of this, we have to make sure that we make sure
7 that we maximize our efforts into a profitable way because we
8 are investing a big amount into this small community. So there
9 is a lot less -- a lot less potential profit for us in these
10 cities.

11 What I'm trying to say is that I don't feel that
12 BellSouth puts enough effort in their improvements in Tier 3
13 cities that KMC goes to. We think that there needs to be
14 better control. And I understand the previous discussions that
15 they have a lot of processes, and I understand that they do,
16 but one of the problems that I have maybe is the processes that
17 are in place lack control over the people that are in the local
18 communities, where at the ivory tower level everybody may see
19 the things, they know what is supposed to be done, but what is
20 actually happening in the field and the cities.

21 In the larger cities like Atlanta and Birmingham, or
22 Miami or so on, they may not experience the same problems that
23 we do in the smaller cities, and I just think that there is a
24 large lack of control in the Tier 3 markets that KMC are in
25 right now. We have put a big investment in the community. We

1 would like our product to be available to everybody in that
2 community, and we think that we would like BellSouth just to
3 play on a fair and level field with us in the Tier 3 markets.
4 And that's all.

5 MR. KLEIN: Mr. Sfakianos is available for
6 cross-examination.

7 CHAIRMAN JACOBS: Very well. Mr. Edenfield.

8 MR. EDENFIELD: Finally. I have been silent all day.
9 Oh, Chairman Jacobs, so we don't run into the same issue we
10 have run into before, is the practice to make sure no one else
11 has questions from the ALEC side or --

12 CHAIRMAN JACOBS: Thank you for reminding me. Is
13 there any questions from the ALECs? Very well. You may
14 proceed. Mr. Klein.

15 MR. KLEIN: Chairman Jacobs, it appears that the
16 witness has not been sworn, he was not here at the beginning of
17 the hearings. I'm sure he is going to tell the truth, but that
18 is something that we did overlook.

19 MR. EDENFIELD: Does that mean we need to redo the
20 summary? I'm just kidding.

21 CHAIRMAN JACOBS: Would you stand and raise your
22 right hand, Mr. Sfakianos.

23 (Witness sworn.)

24 CROSS EXAMINATION

25 BY MR. EDENFIELD:

1 Q Good afternoon, Mr. Sfakianos. If I butcher your
2 name, I am terribly sorry. We have been pronouncing it
3 Sfakianos around my office for so long, but it is Sfakianos?

4 A Sfakianos.

5 Q If I butcher it, I am apologizing in advance.

6 A That is quite all right.

7 Q In your testimony you have raised a number of
8 performance issues that surround -- I'm just going to kind of
9 sum these up, tell me if I miss one here. It looks like missed
10 installation appointments is an issue you have?

11 A Yes, sir.

12 Q Percent provisioning troubles within 30 days is an
13 issue you have?

14 A Yes, sir.

15 Q Percent repeat troubles within 30 days is an issue
16 that you have?

17 A Yes, sir.

18 Q And percent jeopardy notices or at least percent
19 jeopardies is an issue that you have?

20 A Yes, sir, that's true.

21 Q Does that generally capture, I guess kind of at a
22 30,000-foot level, the problems that you have set forth in your
23 testimony?

24 A Yes, it does.

25 Q Okay. Will you agree with me that although this is

1 in the Track B portion of this proceeding, that each of those
2 topics which I just discussed, there is a performance
3 measurement on which the Commission will look and decide
4 whether BellSouth is providing performance at parity?

5 A I understand, and I believe that is true.

6 Q Are you asking the Commission to take the data that
7 you have put forth in this proceeding in lieu of the Track B
8 performance data that is being produced?

9 A I would like them to consider the data that I have
10 put through there.

11 Q Do you plan on filing comments to that effect in the
12 Track B portion of this proceeding, of exactly what data you
13 are asking them to look at?

14 A I guess I'm not going to provide comments in that.

15 Q Okay. The analysis that you have used to reach some
16 of the conclusions that are in your testimony concerning
17 percent missed appointments, can you tell me whether your
18 analysis is done consistent with the way the analysis will be
19 done in the Track B portion of this proceeding?

20 A No, sir, I can't tell you if it has.

21 Q Can you describe the methodology used to come up with
22 the missed percentage appointments that I see in your
23 testimony?

24 A Yes. I actually look at all of the installs that we
25 have over a period of a month, I look at it as a week -- excuse

1 me, as a month, as a quarter, as a year. And this that I have
2 taken over is over the past year.

3 Q Does your analysis take into account the markets
4 other than Pensacola where KMC does business, such as Melbourne
5 and Daytona Beach?

6 A This takes into consideration only Pensacola, but it
7 states that there are similar problems or is equal problems in
8 those other cities. I can only speak for Pensacola right now.

9 Q Does this include, does your analysis include any
10 area outside of BellSouth's service territory, such as the
11 other cities in which you do business in Florida?

12 A No.

13 Q When you do your calculation of missed appointments,
14 do you take into account misses that are caused by the end
15 user? In other words, BellSouth may show up at the end user's
16 house, but the end user may just be gone?

17 A Yes, sir, I do take that in, because that will not be
18 counted as a BellSouth or a KMC missed.

19 Q Do you get a chance to look at some of Mr. Varner's
20 testimony in this proceeding?

21 A No, sir.

22 Q Were you aware that under BellSouth's calculation of
23 installation appointments that were missed from January through
24 June, which I believe is the time frame that you had set forth
25 in your testimony, that BellSouth's data was showing on average

1 it was only 6.48 percent missed installation appointments?

2 A I have seen your --

3 MR. KLEIN: Before the witness answers, I think this
4 is beyond the scope of both Mr. Sfakianos' testimony as well as
5 the scope of this hearing. This is performance data which was
6 withdrawn and Mr. Varner's testimony itself was stricken from
7 this record.

8 MR. EDENFIELD: This line of questioning is in direct
9 response to Mr. Sfakianos' testimony where he says from January
10 to June of this year he put a percentage that he has calculated
11 for missed installation appointments. All I'm asking him is is
12 he aware that BellSouth has a different number for that same
13 time period than he calculated in direct rebuttal to what he is
14 saying. That's all I'm asking. It is definitely in his
15 testimony.

16 MR. KLEIN: Where is BellSouth reading from, where in
17 the testimony?

18 MR. EDENFIELD: I'm sorry, I don't address questions
19 from counsel.

20 CHAIRMAN JACOBS: Why don't we do this, why don't you
21 address him to his testimony on that and then you can impeach
22 him based on that.

23 MR. EDENFIELD: Sure.

24 BY MR. EDENFIELD:

25 Q Take a look on Page 5, Line 5. Actually, I guess it

1 starts up on Line 3, at least on the copy I have, Mr.
2 Sfakianos. It says based on conversations with Art Webb, City
3 Director for Brevard. Do you see where I'm talking about?

4 A Yes, sir.

5 Q What is the date -- let me do it this way, then,
6 Chairman Jacobs. Just let me ask a foundation question, and I
7 will make sure we are on the same page.

8 A I can answer your question.

9 Q What was the answer to the question?

10 A Your question is, well, I just recently stated that I
11 am giving you information from Pensacola. And I'm stating in
12 here about Art Webb from Brevard. And as I earlier stated, I'm
13 stating you statistics that I gathered from Pensacola only, but
14 I'm also stating statements from other cities. The statistics
15 that we gathered and anything that I put in here are strictly
16 from my City of Pensacola.

17 Q Okay.

18 A Now I am stating, also -- I have stated here
19 information that I was given from other cities, but no
20 statistics from those cities.

21 Q Okay. I just wanted to make sure I understand this,
22 which it's not that difficult to confuse me. On Page 5, the
23 paragraphs -- I'm sorry, the Lines 3 through 6, you state a
24 number of 25 to 35 percent. What is that, what number are you
25 suggesting that that is representing?

1 A Missed appointments.

2 Q For the Cities of Melbourne and Daytona Beach?

3 A For the City of Pensacola only.

4 Q So the 25 to 35 percent is not Brevard County,
5 Mr. Webb, this is your county in Pensacola that you are
6 saying --

7 A Yes, sir, and I understand it looks like it is
8 started as Art Webb said that. It is basically Art Webb said
9 he had the same problems that I did.

10 Q Okay. You are not putting forth -- okay, I think I'm
11 starting to see the light here. You are not putting forth a
12 percentage that you are saying for missed appointments for
13 Brevard County?

14 A I can only speak for the city that I control, so I
15 say Pensacola. And anything here in the future of our
16 conversations, I'm speaking of Pensacola.

17 Q Okay. Thank you for that clarification. Now, the 25
18 to 35 percent that you are showing here is based on a
19 calculation of looking at what months?

20 A That is actually looking for this year, from the
21 first part of this year.

22 Q So that would be from January of this year through, I
23 guess your testimony was filed in July, so would that be
24 through June data?

25 A Yes, sir, right around that -- at the time I

1 accumulated the information, when I talked to Mr. Klein, and I
2 went back and gathered that information and provided that to
3 him.

4 Q Okay.

5 A So I guess that was right around June.

6 Q Okay. So you gathered this for your attorney, then,
7 I guess is what you are saying?

8 A Well, it is something that I keep, but I provided him
9 with that information.

10 Q Okay. I'm sorry, I'm getting off track here.

11 A That's all right.

12 Q The only point I'm really trying to get to here is
13 you have calculated what you believe to be the percent missed
14 installation appointments for June 2001 back to January 2001?

15 A Yes, sir.

16 Q And the question I had for you was are you aware that
17 for that same time period that BellSouth has calculated under
18 its performance data for KMC a missed installation appointment
19 of 6.48 percent?

20 A And I have some differences of opinion with that
21 information.

22 Q I'm not asking you to agree to it, I'm just asking
23 you are you aware that that is BellSouth's calculation?

24 A I have seen some data to that effect, yes, sir.

25 Q Okay. The same thing for the percentage provisioning

1 troubles within 30 days. Are you aware that in April that
2 according to BellSouth's data at least, that it has met 9 of
3 the 13 -- met parity in 9 of the 13 product groups, that that
4 is BellSouth's position?

5 A I'm not aware of that.

6 Q How about for May, are you aware that BellSouth
7 claims that it has met the parity in 10 of 13 product groups
8 for that same measure?

9 A I am aware that there is some information, but I'm
10 not aware of what the information is.

11 Q And I would ask you the same question for percent
12 repeat troubles within 30 days, that for April and May that
13 BellSouth's data, at least our contention is that we are in
14 parity?

15 A Yes, sir, I understand that there is some
16 information, and I'm not aware of what it is.

17 Q Okay. These troubles you talk about, specifically
18 I'm looking on Page 4 of your testimony -- I'm sorry, it has
19 been a long day already. On Page 3 of your testimony, starting
20 on Line 8 through 17, you discuss a number of customers --

21 A Yes, sir.

22 Q -- that were having some -- it looks like some outage
23 problems in late June and early July 2001. Can you be more
24 specific as to the time period we are talking about?

25 A We had -- yes. It was specifically in the months --

1 I can tell you that because of the length of the outages, it
2 was over a period of from I will say from May the 1st until
3 approximately the first week in June. We had excessive rain in
4 Pensacola, and as a result the outages were very high.

5 Q Okay. And that was the next question. It seems like
6 I was here in Tallahassee about that time. Wasn't there a
7 tropical storm or something that came through?

8 A It wasn't more than just a regular rainstorm that we
9 experienced, you know, seasonally. It wasn't really heavy wind
10 or anything like that, it was just basically wet ground.

11 Q These customers that you reference in your testimony,
12 are they being served via KMC facilities only or some
13 combination of KMC facilities and UNEs or resale?

14 A They are T-1 UNEs all.

15 Q Did you have a chance to discuss these issues with
16 BellSouth, someone in BellSouth's CWINS center?

17 A The problems that I experienced with them?

18 Q Sure.

19 A I discussed them with their chronic problem, yes, I
20 did, numerous times. They did look into them, but no
21 resolution was ever made.

22 Q Are these customers still continuing to have outages
23 such as you have laid out here in your testimony?

24 A One of the -- well, let me say two of the customers
25 had -- have had additional outages when it has rained. Three

1 of the other customers, I have reprovisioned them a different
2 way giving them DS-0 UNEs and T-1 UNEs. That way if the T-1
3 went out, they would still have some service with the DS-0, and
4 they were satisfied with that. We still do have some T-1
5 outages. The unfortunate thing of that, it costs me a
6 tremendous amount of more money to do it that way. But because
7 of the uncertainty of the T-1 UNEs staying up, then I felt that
8 there was a necessity to go ahead and provision these two
9 separate ways. And it has made a difference with the customer
10 because at least he has had several lines available when he has
11 had an outage rather than everything going out at once.

12 Q Do you participate in the weekly meetings between KMC
13 and BellSouth?

14 A No, sir.

15 Q Are you aware of those meetings?

16 A I am aware of those meetings.

17 Q What is your --

18 COMMISSIONER JABER: Excuse me.

19 MR. EDENFIELD: I'm sorry.

20 COMMISSIONER JABER: You have weekly meetings with
21 BellSouth?

22 THE WITNESS: KMC has weekly meetings with BellSouth.
23 That is done at our corporate level with our people in your
24 network center and BellSouth in Atlanta.

25 COMMISSIONER JABER: This is in addition to your OSS

1 conference calls, this is a separate one-on-one meeting that
2 KMC executives have with BellSouth executives?

3 THE WITNESS: No, I can't address that to be honest.
4 I know that there are meetings between our carrier management
5 group and BellSouth, but I can't really discuss that because I
6 don't know everything that goes on in those meetings, who
7 attends those meetings. I know we do have quarterly meetings
8 that I am invited to for the carrier management and BellSouth.
9 But the weekly meetings, I'm not privilege to everything that
10 goes on there.

11 COMMISSIONER JABER: Do you know the purpose of those
12 weekly meetings?

13 THE WITNESS: I think it is to discuss problems
14 within the organizations, how they are supposedly going to
15 improve different things between the organizations.

16 COMMISSIONER JABER: So would you say you have a good
17 working relationship with BellSouth then, and BellSouth has a
18 good working relationship in terms of being able to communicate
19 those problems?

20 THE WITNESS: I think that everybody definitely is
21 working to get better communications between KMC and BellSouth,
22 and I don't have a problem with that. My problem is
23 specifically with the amount of money that BellSouth -- maybe
24 not money, but the method that BellSouth uses when they do
25 repairs and where they spend their money. It seems to me -- my

1 personal view is that Pensacola and the Tier 3 cities are not
2 included when enhancements in networks are made within
3 BellSouth. And so that is what my contention is here, is that
4 I would like not to have a problem when it rains in a certain
5 area of the city, and I have reported that to BellSouth. And,
6 yet, when it still rains I still have those problems.

7 COMMISSIONER JABER: But do you feel overall that
8 those weekly meetings have helped you eliminate some of the
9 issues and the problems you have had with BellSouth?

10 THE WITNESS: No, ma'am. They haven't helped me with
11 those issues at all.

12 COMMISSIONER BAEZ: But other issues?

13 THE WITNESS: I think it has helped open up dialogue
14 within the companies to find out what the issues are. To
15 correct the issues, I don't think they have corrected the
16 issues.

17 COMMISSIONER JABER: Who initiated those meetings?

18 THE WITNESS: I can't tell you. It's somebody at the
19 corporate level.

20 BY MR. EDENFIELD:

21 Q I don't want to try to give you more knowledge than
22 you already have, but can you tell me whether you have an
23 understanding about these weekly meetings that they are to
24 discuss provisioning issues and problems that come up?

25 A As I have heard, I believe that there is a

1 possibility that in -- and I'm not privilege to all of the
2 information, but I understand that there may be something with
3 the LCSC and the SBC, which is our provisioning group and the
4 BellSouth provisioning group. I understand that they may have
5 meetings. But once again, I'm not privilege to those. And I
6 am very acceptable to new information if you want to provide
7 that to me.

8 Q I will get somebody who knows something about it, and
9 I'm sure we can add it to the meetings. Do you know whether
10 any other businesses or residential customers in the Pensacola
11 area suffer outages when there are rainstorms?

12 A Yes, sir. I think that there are also BellSouth
13 customers that suffer outages with rainstorms, too. The
14 problem that I have with that is it seems to me from my
15 information that I have that the BellSouth customers come up
16 much faster than the KMC customers come up.

17 Q Well, tell me what information you have to suggest
18 that BellSouth is taking care of its own customers faster than
19 KMC customers?

20 A Well, one specific one is a stripmall that there is.
21 I have two customers, there is five total businesses in there.
22 All five businesses were out. The other three came up, my two
23 customers did not.

24 Q Do you know when a trouble report was put in for your
25 customers as proposed to the other two customers?

1 A The moment that they called me, we were called -- we
2 made sure that we put it into our trouble management system.
3 And I think that they told me that since it is a business, a
4 majority of their business is dependent on their telephones, so
5 they have informed me that the minute that they found out about
6 it, which was as soon as it happened, and then we turned in the
7 trouble to our trouble management system immediately. That's
8 one thing that I have a very firm grasp on. Whenever we have a
9 problem, anybody in my organization that gets the call for a
10 trouble reports that trouble immediately, because our most
11 important thing is having customers come back up.

12 Q I'm sorry, somewhere in the context of this you said
13 that you have some kind of trouble management system?

14 A KMC corporate has a trouble management center. If
15 the customer doesn't call the trouble management center, they
16 call my office directly. I am of the opinion that customer
17 service is the most important thing that we can give. I even
18 give my cell phone numbers to all of my customers that I know.
19 And you will see that on my business card. So they are able to
20 get in touch with us the minute that there is an outage. The
21 minute there is an outage, if they call my office directly
22 without calling the trouble management system center, then I
23 have a form that I fill out with all the pertinent information,
24 which takes approximately three minutes. We immediately call
25 the KMC trouble management center.

1 The trouble management center then calls our central
2 office, does a test, and then if it is nothing that we can
3 control, we turn around and call BellSouth immediately. And I
4 will give BellSouth some latitude, they are saying that since
5 your BellSouth customers call, then you test your lines maybe
6 30 minutes faster than we may test our lines. But there is a
7 30-minute leeway there, and I'm stating that these customers
8 came up approximately three to four hours later rather than 30
9 minutes later.

10 Q Do you know whether the two customers in the
11 stripmall that were -- I guess you are contending they were
12 BellSouth customers, do you know that for a fact?

13 A Yes. I know they weren't my customers and we have
14 called on them. And I know that we got bills from them and
15 they were BellSouth bills, so we could look at them to bring
16 them to our service, or their customer service records when we
17 talked to them. They never did change to us.

18 Q I'm sorry, I didn't mean to talk over you. Do you
19 know whether the two customers that were the BellSouth
20 customers ostensibly were having the same problem, the same
21 kind of -- on the same kind of facilities that the KMC
22 customers had?

23 A Well, I would assume, and I could possibly be wrong,
24 but if all five customers go out at the same time and they are
25 all in the same strip shopping, that it had to be cable pairs

1 along the way. Because it wasn't any equipment, and these were
2 DS-0s at the time, so there was no equipment that we actually
3 provided them. There were no NIUs, network interface units,
4 that could have gone wrong in there for a T-1. So basically
5 the only problem that it could have been is something in our
6 central office or cable pairs along the way or something in the
7 BellSouth central office. And since they all went out at the
8 same time, I would assume, and I think justifiably, that it
9 probably were all the same problems.

10 Q Would you agree with me that T-1 circuits are more
11 complex than voice grade circuits?

12 A Yes, sir, I do.

13 Q And it's kind of like anything that has more moving
14 parts, so to speak, that the more sophisticated the equipment
15 the more that can go wrong?

16 A Well, I agree with that. But if I might add to that,
17 I worked in Atlanta for ten years with T-1 circuits, I worked
18 in Birmingham with T-1 circuits for about five years, I worked
19 in San Francisco and Silicon Valley with T-1 circuits, and in
20 those three cities, the facilities were what I consider to be
21 far superior to what we receive in Pensacola. And I would have
22 T-1 circuits that I would turn up, and they would never go
23 down. I mean, they would go years without experiencing a
24 single problem. Yet in Pensacola, I turn up a T-1, and I have
25 multiple problems or frequent problems with them.

1 Q Would you agree with me that Birmingham, Atlanta, and
2 San Francisco do not have the same kind of weather as the coast
3 of Florida?

4 A Well, I agree somewhat, yes, sir, that's true. But I
5 don't know if the weather should jeopardize the telephone
6 service that we experience in any city in the whole United
7 States that we are at. We want to give 100 percent up time to
8 our customers, I would think.

9 Q When you did your calculation of missed installation
10 appointments, what was your universe of appointments?

11 A Would you explain universe, what your meaning of
12 universe of appointment is?

13 Q Yes. What were the total number of appointments that
14 you put into your calculation?

15 A I can get that information for you. I can't tell you
16 right now. I would say I can give you an average or a
17 guesstimate.

18 Q That would be fine, and I will take that.

19 A We have approximately 40 --

20 MR. KLEIN: I will object, that the answer may call
21 for proprietary information. If counsel for BellSouth is
22 asking for number of appointments requested that may indicate
23 the number of customers. And if there is a request for data,
24 KMC would be happy to entertain the request, unless I misheard
25 what counsel was requesting.

1 MR. EDENFIELD: No, frankly I think you heard counsel
2 fine. What I'm getting at here is you can't use this as a
3 sword and a shield. He has put an estimate of the number of
4 missed installation appointments for the first six months of
5 this year into the record. And I think if it was proprietary
6 certainly it has been waived, because I am entitled to know how
7 he calculated his percentage if he is going to put it into the
8 record. It is patently unfair for him to be able to say, you
9 know, I calculate a number to be 25 to 30 percent and when I
10 asked him, you know, how he got there, what are the numbers he
11 used to reach this calculation for him to say, oh, that is
12 proprietary and I can't give you that.

13 THE WITNESS: I can tell you how I calculated it.

14 CHAIRMAN JACOBS: Excuse me.

15 MR. EDENFIELD: Mr. Sfakianos has indicated he can
16 give me a rough estimate of that. That's all I'm asking, and I
17 will take it as a rough estimate.

18 CHAIRMAN JACOBS: Mr. Klein.

19 MR. KLEIN: KMC would consider the number of
20 customers it has and the number of orders it submitted over a
21 particular time period to be confidential data. KMC is not
22 opposed to providing the data to BellSouth on a proprietary
23 basis, and that is what I already offered. KMC has not
24 received any discovery requests relating to this testimony
25 which was filed back in July. So if BellSouth is interested in

1 getting the background data, KMC will be happy to provide it,
2 but not on a public record.

3 CHAIRMAN JACOBS: Let's take the quickest, easiest
4 route. Would you be willing to accept a late-filed
5 confidential examination with this information?

6 MR. EDENFIELD: Sure.

7 CHAIRMAN JACOBS: Is that acceptable?

8 MR. EDENFIELD: Will the late-filed be more than a
9 rough estimate, then? Can I get the actual number used at that
10 point if it is going to be a late-filed as opposed to just a
11 rough guess that I was going to get today?

12 CHAIRMAN JACOBS: I think he would probably prefer --
13 well, I will leave that for you all to discuss. We will just
14 mark a late-filed exhibit, and hopefully there is no fight
15 about what it entails. But I think it should be based on the
16 question that you asked, honestly. Okay. We'll mark that as
17 Exhibit 42, and we will title it confidential.

18 MR. EDENFIELD: And with that I actually have no more
19 questions.

20 CHAIRMAN JACOBS: Let me get the title of this again.

21 MR. EDENFIELD: I'm sorry. What I'm looking for is
22 the universe of appointments used to calculate the missed
23 appointment percentage.

24 CHAIRMAN JACOBS: Okay. Very well.

25 (Late-filed Exhibit 42 marked for identification.)

1 CHAIRMAN JACOBS: And, staff.

2 MS. HELTON: Staff has no questions.

3 CHAIRMAN JACOBS: Commissioners. Redirect.

4 REDIRECT EXAMINATION

5 BY MR. KLEIN:

6 Q Mr. Sfakianos, do you report problems that you
7 experience with BellSouth to either your regional managers or
8 to your carrier relations people?

9 A Yes, sir.

10 Q Okay. And is it your understanding that those people
11 then relay those concerns or problems to the BellSouth
12 representatives?

13 A Yes, sir.

14 Q Do you know whether the meetings that take place
15 between BellSouth and KMC Telecom are weekly, monthly,
16 quarterly, or some other frequency?

17 A I can't tell you the specific meetings of the
18 frequency, of which meeting is which frequency because I think
19 there are several different meetings is my understanding. I
20 know that they do have a carrier management working with
21 another group in BellSouth, and then they have the LCSC also
22 having with the SBC, which is the two install groups. I can't
23 tell you the frequency of those meetings.

24 MR. KLEIN: Okay. Thank you. I have no further
25 questions.

1 CHAIRMAN JACOBS: Very well. And all we have is the
2 late-filed exhibit. Thank you, Ms. Sfakianos, you are excused.

3 And Mr. Hvisdas is next?

4 MR. CAMPEN: Yes, Chairman Jacobs. US LEC would call
5 Jim Hvisdas to the stand and ask that he be sworn. He was not
6 here when the other witnesses were sworn.

7 CHAIRMAN JACOBS: Very well.

8 (Witness sworn.)

9 CHAIRMAN JACOBS: Thank you. You may be seated.

10 JIM HVISDAS

11 was called as a witness on behalf of US LEC and, having been
12 duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MR. CAMPEN:

15 Q Mr. Hvisdas, for the benefit of all who might have
16 questions for you, the correct pronunciation of your name is
17 Hvisdas, the H is silent, is that correct?

18 A That is correct.

19 Q Thank you. Would you state your name and business
20 address for the record?

21 A James Hvisdas, it's 258 Southhall Lane, Suite 330,
22 Maitland, Florida, 32751.

23 Q And by whom are you employed?

24 A US LEC.

25 Q And what is your position with US LEC?

1 A I am the Senior Vice-president of Operations.

2 Q Did you cause to be prepared and filed three pages of
3 testimony and one exhibit in this proceeding?

4 A Yes.

5 Q Do you have any additions or clarifications to your
6 testimony?

7 A Yes, I do. On Page 1, at Line 22, it states in here,
8 these circuits combine an unbundled local loop and transport,
9 and also referred to as the enhanced extended links, EELs.
10 That should just read these circuits combine as unbundled local
11 loops. We purchase DS-1s under special access from BellSouth.

12 Q With that clarification, if I were to ask you this
13 afternoon the same questions that appear in your prefiled
14 testimony, would your answers be the same?

15 A Yes, they would.

16 MR. CAMPEN: Mr. Chairman, we would ask that Mr.
17 Hsvisdas' testimony be read into the record.

18 CHAIRMAN JACOBS: Without objection, show that Mr.
19 Hsvisdas' testimony is entered into the record as though read.

20 MR. CAMPEN: Thank you.

21

22

23

24

25

1 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2 A. My name is James M. Hvisdas. My business address is 258 Southhall Lane,
3 Suite 330, Maitland, Florida 32751.

4 **Q. PLEASE STATE YOUR OCCUPATION, BACKGROUND AND WORK**
5 **EXPERIENCE.**

6 A. I am Senior Vice President, Operations for US LEC of Florida, Inc. ("US
7 LEC"). My relevant education and telecommunications work experience are
8 as follows: I received my Bachelors degree in Electrical Engineering from the
9 University of Central Florida. I have been employed by companies including
10 Frontier Corporation, Contel, American Satellite Corporation and ETS before
11 joining US LEC in January 1997. As senior vice president of operations, I
12 oversee the installation of US LEC's switches throughout its footprint and
13 manage the daily operations of the US LEC network.

14 **Q: WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

15 A: The purpose of my testimony is to rebut the testimony of BellSouth witnesses
16 Cox and Milner regarding access to local loops (checklist item 4). My
17 testimony explains how constant failures of BellSouth loop facilities adversely
18 affect US LEC's ability to compete in Florida.

19 **Q: WHAT FACILITIES DOES US LEC PURCHASE FROM**
20 **BELLSOUTH?**

21 A: US LEC purchases special access circuits from BellSouth. These circuits
22 combine an unbundled local loop and transport and are also referred to as the
23 enhanced extended link ("EEL").

1 **Q: HAS US LEC HAD PROBLEMS WITH THESE FACILITIES?**

2 A: Since September 2000, US LEC has experienced 136 outages on these
3 facilities in Florida which were determined to be problems with BellSouth's
4 circuit. A spreadsheet generated from US LEC's electronic operations
5 support systems is attached as **Exhibit _____ (JH-1)**.

6 **Q: WHAT HAPPENS WHEN AN OUTAGE OCCURS?**

7 A: When an outage occurs on one of these circuits, the customer contacts US
8 LEC to report a problem. US LEC opens an internal trouble ticket and
9 investigates the problem. When the trouble is isolated to BellSouth's
10 network, US LEC opens a trouble ticket with BellSouth.

11 **Q: WHAT DOES YOUR EXHIBIT SHOW?**

12 A: This exhibit includes the US LEC internal trouble ticket number in the second
13 column and the date the ticket was opened by US LEC.

- 14 • The column marked "Close Code for Ticket" indicates the reason the
15 US LEC trouble ticket was closed. All of the outages on this exhibit
16 were closed because the problem was determined to be on BellSouth's
17 network. There is no dispute about the cause of the problem on these
18 items.
- 19 • The "Referred Ticket #" column includes the number of the BellSouth
20 trouble ticket submitted by US LEC.
- 21 • The "BellSouth Resolution Time" contains the elapsed time for
22 BellSouth to resolve the trouble on its facility. The "US LEC

1 Resolution Time” includes the total time for US LEC to restore service
2 once we receive the circuit back from BellSouth.

3 • The “Total Time Open in Hrs.” column gives the total elapsed time
4 from the time the internal US LEC trouble ticket was opened through
5 the BellSouth trouble ticket resolution time and the monitoring time
6 after the ticket was closed to verify with the customer that the problem
7 was corrected. This total elapsed time gives a complete picture of the
8 customer’s down time.

9 **Q: WHAT IS THE AVERAGE DURATION OF THESE BELLSOUTH**
10 **OUTAGES?**

11 A: As shown on Exhibit _____(JH-1), the average length of time required by
12 BellSouth to resolve these troubles was 44 hours over this period. The
13 average Total Time Open for these 136 outages was 58 hours.

14 **Q: WHAT DOES YOUR EXHIBIT DEMONSTRATE REGARDING**
15 **BELLSOUTH’S COMPLIANCE WITH THE COMPETITIVE**
16 **CHECKLIST?**

17 A: As these numbers vividly demonstrate, BellSouth is not providing reliable
18 facilities to ALECs and is not maintaining these facilities in a
19 nondiscriminatory manner. Outages of this frequency which last this long are
20 a substantial obstacle to the development of competition in the State of
21 Florida.

22 **Q: DOES THIS CONCLUDE YOUR TESTIMONY?**

23 A: Yes.

1 BY MR. CAMPEN:

2 Q Mr. Hvisdas, did you prepare a short summary of your
3 testimony?

4 A Yes, sir.

5 Q Would you --

6 CHAIRMAN JACOBS: Did we mark his exhibits?

7 MR. CAMPEN: Yes. Thank you, sir, we did not.

8 CHAIRMAN JACOBS: Show that marked as Exhibit 43.

9 MR. CAMPEN: 43, thank you.

10 (Exhibit 43 marked for identification.)

11 BY MR. CAMPEN:

12 Q Now, with the Chairman's permission, Mr. Hvisdas,
13 would you read your summary?

14 A Yes, sir. My testimony explains how constant
15 failures of BellSouth's local facilities adversely effect
16 US LEC's ability to compete in Florida. Outages of the
17 frequency and duration discussed in my testimony are
18 substantial obstacles to the full development of competition in
19 Florida.

20 From September 2000 through May 2001, US LEC has
21 experienced 136 outages on these facilities in Florida. All
22 these outages were determined to be problems with BellSouth's
23 circuits. The average length of time required by BellSouth to
24 resolve these troubles was nearly two full days. A spreadsheet
25 generated from US LEC's electronic operation support system and

1 attached to my testimony provides detailed data on these
2 outages. All of the outages on this exhibit were closed
3 because the problem was determined to be on BellSouth's
4 network.

5 There is no dispute about the cause of the problem on
6 these items. The spreadsheet shows the elapsed time for
7 BellSouth to resolve the trouble on its facilities. As the
8 numbers vividly demonstrate, BellSouth is not providing
9 reliable facilities to the ALECs and is not maintaining these
10 facilities in a nondiscriminatory manner.

11 MR. CAMPEN: Chairman Jacobs, Mr. Hvidas is
12 available for cross-examination.

13 CHAIRMAN JACOBS: Mr. Edenfield.

14 MR. EDENFIELD: Thank you. I will try to do better
15 with your name, Mr. Hvidas, than I did with Mr. Sfakianos.
16 Actually, I don't have a whole lot for you.

17 CROSS EXAMINATION

18 BY MR. EDENFIELD:

19 Q As I understand it, the products or circuits that you
20 are purchasing from BellSouth are special access circuits, is
21 that the correct understanding?

22 A Yes, sir, that part is correct. The issue is,
23 though, that from the end office to the customer those are
24 local loops and regardless of what tariff that we are ordering
25 under, it is the exact same facility.

1 Q Well, that was kind of my next question. You
2 purchase these special access circuits through the special
3 access services tariff, correct?

4 A Yes, sir, we do.

5 Q And these are -- this is either an intrastate or an
6 interstate tariff?

7 A That is correct.

8 Q It is not a local tariff?

9 A Yes, sir, I believe that is correct.

10 Q And you would agree with me, I assume, that you could
11 not submit orders for special access circuits over the OSS
12 interfaces that are the subject of this proceeding, such as
13 TAG, ROBO-TAG, EDI, and LENS?

14 A That is correct. But regardless of that, the
15 facility is still the same facility. It is still the copper
16 pair, the repair functions of BellSouth and how it is handled
17 within internally BellSouth is handed exactly the same,
18 regardless of how it is ordered.

19 Q Will you agree with me that the special access tariff
20 sets forth different methods and procedures on how to handle
21 orders on details about the services and the circuits that are
22 different from the local tariffs?

23 A Not as it pertains to the delivery of the DS-1 from
24 an end office to the customer, no, sir, I would not.

25 Q Will you agree with me that access service requests

1 which would be an as ASR as opposed to an LSR that is for local
2 service, are sent directly to the ICSC as opposed to the LCSC?

3 A Yes, sir, that is correct, they are.

4 Q And the attachment that you have to your testimony,
5 the circuits and the services you have referenced in that
6 attachment are all these special access circuits, correct?

7 A Yes, sir, these are -- again, yes, they are special
8 access circuits.

9 Q Are you aware that there are no SQMs in Track B of
10 this proceeding dealing with special access circuits?

11 A No, sir, I was not.

12 Q Would you accept subject to check that there are no
13 SQMs in this proceeding or performance measurements in this
14 proceeding that deal with special access circuits?

15 A Yes, sir.

16 Q Do you have any knowledge about the FCC undertaking
17 to set up its own set of performance measurements and SQMs for
18 special access circuits?

19 A Yes, sir.

20 Q Is your knowledge that they are thinking about doing
21 that?

22 A I believe they are, yes.

23 Q And that proceeding is outside of the context of a
24 271 proceeding?

25 A Yes, sir.

1 Q I have just a couple of really quick questions about
2 your exhibit. And if it isn't patently obvious by now, I am
3 not an engineer, so you may have to take me through a couple of
4 these little things we have here.

5 If you don't mind, just take a second and turn to
6 your exhibit. As I understand it, this exhibit purports to
7 measure or purports to record facility failures on BellSouth's
8 network from it looks like beginning September 6th, 2000
9 through May 31st, 2001?

10 A That is correct.

11 Q Can you tell me -- and before you answer this give
12 some thought as to whether it is proprietary. I don't think
13 that it is, but if I could impose upon Mr. Campen to listen to
14 this -- how many special access circuits do you have in Florida
15 as of May 31st, 2001?

16 MR. CAMPEN: I think that may indeed be proprietary.
17 I hadn't thought about that before, and upon reflection may
18 have a different conclusion, but it seems to me that it might
19 indeed be regarded by the company as proprietary.

20 MR. EDENFIELD: If US LEC is going to take the
21 position that it is proprietary, and I don't know what they
22 consider to be proprietary, I would suggest that this is not
23 proprietary information. But if Mr. Campen has that concern,
24 could I ask that that information be provided to me as a -- or
25 be provided in this docket as a late-filed exhibit. And I

1 guess specifically what I'm asking for are the number of access
2 circuits upon which this trouble history is based.

3 CHAIRMAN JACOBS: Is that something that you can
4 produce?

5 MR. CAMPEN: Yes, Mr. Chairman.

6 CHAIRMAN JACOBS: That will be marked as Exhibit 44,
7 late-filed.

8 (Late-filed Exhibit 44 marked for identification.)

9 BY MR. EDENFIELD:

10 Q And, Mr. Hvisdas, if you could take a look at your
11 exhibit, and I'm on the first page, Page 1 of 8, and I'm
12 looking under what is called the closed code label. Could you
13 tell me what that is?

14 A Yes, sir. That column represents -- within our
15 trouble ticket system there is actual close codes, and it's a
16 letter and a number. And that correlates to the root cause
17 analysis of what the failure was.

18 Q All right. Is this a report that is compiled or spit
19 out, everhow you want to call it, by US LEC's OSS systems?

20 A Yes, it is. But all of these troubles on here,
21 originally we met quarterly with BellSouth, which myself and my
22 regional management all the way down to the management level of
23 each office, one of the issues was to determine to make sure
24 this information was accurate. We found that to meet quarterly
25 wasn't doing the trick. We moved from quarterly to monthly,

1 from monthly we now meet weekly. And root cause analysis, time
2 of outage, and what is discussed and agreed upon on those
3 weekly meetings.

4 Q All right. That may have been more detail than I was
5 actually looking for, but I will get back to that in a second.
6 I guess what I'm getting at is this document is not compiled by
7 you going into BellSouth's P-map system or the data warehouse
8 of BellSouth, this is something that is compiled looking at
9 your own -- whatever your own internal operating systems are?

10 A That is correct. These tickets are generated -- this
11 report is generated by running a query on our data from the
12 trouble ticket system.

13 Q Okay. And, again, the close code label is what,
14 again?

15 A Is the root cause analysis of what caused the outage
16 for these particular circuits.

17 Q And it is your contention that this document that
18 every single outage reflected on here is a BellSouth caused
19 problem?

20 A Yes, sir, to the fact that it is either the facility
21 had failed or there was issues with the LIST center or routing
22 issues within BellSouth's network, yes, sir.

23 Q Okay. I guess what I'm getting at, maybe it's just
24 obvious from my lack of understanding here. If you look down
25 on the second entry, see where it says switch site

1 Jacksonville?

2 A Yes, sir.

3 Q And you kind of go across to your close code label,
4 it says facility failure Intermedia. Isn't Intermedia another
5 CLEC operating in Florida?

6 A Yes, sir, but we would have to go to see if that
7 wasn't handed off from BellSouth to Intermedia.

8 Q Which would mean that ultimately it would be
9 determined to have been an Intermedia problem, possibly?

10 A Possibly, yes, sir.

11 Q And going down a couple more -- I'm not going to go
12 through all of these, I'm just trying to hit some that I had
13 questions on. If you go down two more from that you will find
14 an entry that says no trouble found?

15 A That is correct.

16 Q Does that mean that BellSouth took a look at the
17 problem that you had sent over and determined there was no
18 problem on the BellSouth facilities?

19 A That would mean -- yes, sir, after the 74 hours that
20 the circuit was restored and that the closure code was no
21 trouble found.

22 Q And if you will go down three more from that --
23 actually, go down two more from that. I had a question about
24 this, too. You have an entry that says US LEC facility, H-W
25 and I can't tell if that is an I or a slash?

1 A That is a slash; it's for hardware.

2 Q What does that mean?

3 A That closure code that was in there represents that
4 that was a hardware failure with US LEC's hardware.

5 Q So this was a -- even though it's on this list, this
6 was a US LEC problem?

7 A Yes, sir, that would be true.

8 Q All right. So then let me ask you the question I
9 asked you a minute ago. Is every entry on this list a
10 BellSouth problem?

11 A Every entry on this list represents a problem that
12 was turned to BellSouth and worked upon by them, yes, sir.
13 But, no, every one of these closure codes was BellSouth, no,
14 that wouldn't be correct.

15 Q All right. So, for instance, on this one where you
16 had a US LEC facility hardware issue, some problem came up on
17 this particular facility, you turned it over to BellSouth, I
18 assume after you did some type of extensive investigation, I
19 mean, you wouldn't just turn it over to BellSouth before you
20 did an extensive investigation, would you?

21 A No, we would not.

22 Q So you did an extensive investigation and yet it took
23 handing it off to BellSouth for BellSouth to figure out that it
24 was a US LEC hardware problem?

25 A No, sir, that is not correct. You would have to go

1 back and read the entries in the ticket. The closure code on
2 this was that it was a US LEC hardware, that might have been a
3 resulting problem of a facility, but you would have to go
4 line-by-line within the trouble ticket to determine that.

5 Q Okay. You just can't tell from this exactly whose
6 problem it was?

7 A No, sir.

8 Q All right. How about the next entry where it says
9 customer PBX problem, and the root cause of that appears to be
10 the switch. Is that the BellSouth switch or is that a US LEC
11 switch?

12 A It would be the customer's.

13 Q The customer's switch?

14 A Right. The PBX would be referencing their root cause
15 was a switch problem, not a facilities-based issue.

16 Q Okay. And this would not be a PBX. I'm not even
17 sure if BellSouth can sell PBXs, but this would not be a
18 BellSouth customer premise equipment PBX, would it?

19 A It could be. I wouldn't know without going through
20 the ticket.

21 Q But we don't know that from this?

22 A No, sir, you don't.

23 MR. EDENFIELD: I've got no further questions. Thank
24 you.

25 CHAIRMAN JACOBS: Very well. Staff.

1 MS. KEATING: Staff has no questions.

2 CHAIRMAN JACOBS: Commissioners. Redirect.

3 MR. CAMPEN: I have just a couple of questions.

4 REDIRECT EXAMINATION

5 BY MR. CAMPEN:

6 Q Mr. Hvisdas, you recall your answering a question
7 from Mr. Edenfield by stating that the facility -- that US LEC
8 purchases the DS-1 facility is the same as an unbundled DS-1
9 loop, or words to that effect, do you recall testifying to
10 that?

11 A Yes, sir.

12 Q And do you recall Mr. Edenfield's question to you
13 about whether or not an access service request goes to --

14 CHAIRMAN JACOBS: Mr. Campen.

15 COMMISSIONER JABER: I think either your microphone
16 is off or -- we have been through this routine, haven't we?

17 MR. CAMPEN: It's on. Is that better?

18 COMMISSIONER JABER: There you go.

19 BY MR. CAMPEN:

20 Q Do you recall Mr. Edenfield's question to you about
21 whether or not an ASR, access service request, goes to the ICSC
22 or to the LCSC?

23 A Yes, I do.

24 Q Does it make any difference to a US LEC customer who
25 is suffering an outage whether or not the ASR goes to the ICSC

1 or the LCSC?

2 A No, sir. And that's the point that I find a little
3 bit disturbing. The fact that the issue is US LEC customers
4 are out of service for extended periods of time, and the
5 argument here is regarding which tariff or how we ordered it.
6 The issue here is that these facilities are down, the response
7 times do not follow any standard of any other -- the rest of
8 the interconnections I do with other companies are nowhere near
9 these extended outages that we are experiencing here with
10 BellSouth.

11 And it has nothing to do with how it was ordered or
12 what you want to call it, it has to do from the end office to
13 the customer and a facility failing that we are purchasing from
14 BellSouth. And those facilities and the amount of time and
15 effort that we put in chasing them, me personally having to
16 take it to a vice-president level on multiple issues on
17 multiple outages makes no sense to me.

18 MR. CAMPEN: Thank you. I have nothing further.

19 CHAIRMAN JACOBS: Exhibits. You have exhibits?

20 MR. CAMPEN: Yes, just one exhibit, 43, Mr. Chairman.

21 CHAIRMAN JACOBS: And the others were late-filed,
22 correct? Very well. Without objection, show Exhibit 43 is
23 admitted. Thank you, Mr. Hvidas, you are excused.

24 (Exhibit 43 admitted into the record.)

25 CHAIRMAN JACOBS: Why don't we go ahead and -- is

1 there much cross for Ms. Norris?

2 MR. EDENFIELD: I don't know, but Mr. Lamoureux had
3 approached me at the break asking -- I thought that Mr. Turner
4 had --

5 CHAIRMAN JACOBS: Do you want to do Mr. Turner?

6 MR. EDENFIELD: That Mr. Turner had some kind of a --
7 I don't want to speak for you. He had indicated that there may
8 be some kind of an issue.

9 CHAIRMAN JACOBS: I have Ms. Norris and Ms. Wheeler.

10 MR. LAMOUREUX: (Inaudible. Microphone not on.)

11 CHAIRMAN JACOBS: I should have looked at the key
12 before I -- so it is Mr. Turner who is next.

13 MR. LAMOUREUX: And before we do Mr. Turner,
14 actually, Mr. Guepe's testimony had been agreed to be put in
15 the record without cross examination, so just for housekeeping
16 purposes, I guess, I would like to designate his testimony as
17 the next exhibit and move it into the record.

18 CHAIRMAN JACOBS: Very well. Without objection, we
19 will move Mr. Guepe's testimony into the record as though read.
20 And I believe he had an exhibit, is that correct?

21 MR. LAMOUREUX: No exhibits, that's right.

22 CHAIRMAN JACOBS: He did not have any exhibits?

23 MR. LAMOUREUX: No exhibits.

24 CHAIRMAN JACOBS: Very well.

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
REBUTTAL TESTIMONY OF RICHARD T. GUEPE
ON BEHALF OF
AT&T COMMUNICATIONS OF THE SOUTHERN STATES, INC.,
AT&T BROADBAND PHONE OF FLORIDA, LLC,
AND TCG SOUTH FLORIDA, INC.

DOCKET NO. 960786-TL
JULY 20, 2001

I. INTRODUCTION AND QUALIFICATIONS

Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS, AND POSITION WITH AT&T COMMUNICATIONS OF THE SOUTH CENTRAL STATES, INC., AT&T BROADBAND PHONE OF FLORIDA, LLC, AND TCG MIDSOUTH, INC. ("AT&T").

A. My name is Richard T. Guepe and my business address is 1200 Peachtree Street, N.E., Atlanta, Georgia 30309. I am employed by AT&T as a District Manager in the Law & Government Affairs organization.

Q. PLEASE SUMMARIZE YOUR BACKGROUND AND PROFESSIONAL EXPERIENCE IN THE TELECOMMUNICATIONS INDUSTRY.

1 A. I received a Bachelor of Science Degree in Metallurgical Engineering in 1968
2 from the University of Notre Dame in South Bend, Indiana. I received a
3 Masters of Business Administration Degree in 1973 from the University of
4 Tennessee in Knoxville, Tennessee. My telecommunications career began in
5 1973 with South Central Bell Telephone Company in Maryville, Tennessee,
6 as an outside plant engineer. During my tenure with South Central Bell, I
7 held various assignments in outside plant engineering, buildings and real
8 estate, investment separations and division of revenues. At divestiture
9 (January 1, 1984), I transferred to AT&T where I have held numerous
10 management positions in Atlanta, Georgia, and Basking Ridge, New Jersey,
11 with responsibilities for investment separations, analysis of access charges
12 and tariffs, training development, financial analysis and budgeting, strategic
13 planning, regulatory issues management, product implementation, strategic
14 pricing, and docket management.

15 **Q. HAVE YOU TESTIFIED IN OTHER REGULATORY PROCEEDINGS**
16 **IN THE PAST?**

17 A. Yes. I have testified on behalf of AT&T in Florida, Alabama, Georgia,
18 Mississippi, North Carolina, South Carolina, and Tennessee on product
19 implementation issues, pricing issues and policy issues.

1 **II. PURPOSE AND SUMMARY OF TESTIMONY**

2 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS**
3 **PROCEEDING?**

4 A. I am submitting this testimony on behalf of AT&T to address Issue No. 3 -
5 does BellSouth currently provide non-discriminatory access to all required
6 network elements in accordance with Sections 251(c)(3) and 252(d)(1) of the
7 Telecommunications Act of 1996 (the "Act") pursuant to Checklist Item No.
8 2, Section 271(c)(2)(B)(ii). My testimony addresses portions of the
9 testimony submitted on behalf of BellSouth Telecommunications, Inc.
10 ("BellSouth") by Ms. Cynthia K. Cox ("Cox Direct Testimony) and
11 Mr. W. Keith Milner ("Milner Direct Testimony") concerning BellSouth's
12 provision of access and interconnection as required by the Act. Briefly,
13 BellSouth is noncompliant with Checklist Item No. 2,
14 Section 271(c)(2)(B)(ii), because it: (1) fails to provide combinations of
15 unbundled network elements ("UNEs") at cost-based TELRIC rates in a
16 nondiscriminatory manner; and (2) fails to provide appropriate access to
17 UNEs for customers located in the Miami, Orlando and Ft. Lauderdale
18 metropolitan statistical areas ("MSAs"). Accordingly, the Commission
19 should not approve BellSouth's application to provide interLATA services
20 under Section 271 of the Act.

1 **Q. HAS THE FLORIDA PUBLIC SERVICE COMMISSION (THE**
2 **“COMMISSION”) PREVIOUSLY ADDRESSED THE ISSUES**
3 **RAISED IN YOUR TESTIMONY?**

4 **A.** Yes. The Commission issued its Final Order on Arbitration, Order
5 No. PSC-01-1402-FOF-TP on June 28, 2001 that partially addressed the
6 issues discussed in my testimony below. The Commission, however,
7 addressed these issues in the context of an arbitration proceeding that did not
8 focus on BellSouth’s compliance with the nondiscriminatory access
9 requirements of Checklist Item No. 2 of the Act. BellSouth’s compliance
10 with Section 271, however, is paramount to it receiving approval from the
11 Federal Communications Commission (“FCC”) for its application to provide
12 interLATA service. My testimony, therefore, provides information from
13 which the Commission and the FCC may review BellSouth’s application
14 under Section 271 of the Act.

15 **III. BELLSOUTH FAILS TO PROVIDE UNE COMBINATIONS AT**
16 **COST-BASED RATES IN A NONDISCRIMINATORY MANNER**

17 **A. Description of the “UNE Combinations” Issue**

18 **Q. PLEASE DESCRIBE THE ISSUE CONCERNING BELLSOUTH’S**
19 **PROVISIONING OF UNE COMBINATIONS.**

20 **A.** On January 25, 1999, the U.S. Supreme Court, in *AT&T Corp. v. Iowa*
21 *Utilities Board, et al.*, 525 U.S. 366 (1999), upheld FCC Rule 315(b) (47

1 C.F.R. § 51.315(b)), which states: “[e]xcept upon request, an ILEC shall not
2 separate requested network elements that the ILEC currently combines” and
3 found that ILECs must provide such combinations of UNEs at cost-based
4 total element long run incremental cost (“TELRIC”) rates in accordance with
5 requirements of the Act and FCC rules.

6 BellSouth routinely combines network elements for itself and has configured
7 its network and central offices to efficiently cross-connect facilities into
8 standard arrangements. While BellSouth now agrees that it must provide
9 combinations of network elements in certain circumstances, it denies the
10 obligation in other circumstances. Moreover, where it denies the obligation
11 to provide combinations under the Act and FCC rules, it says it may charge
12 alternative local exchange carriers (“ALECs”) non-cost-based rates for access
13 to such combinations in cases where it decides to allow ALECs access at all.
14 In doing so, BellSouth improperly takes the narrowest view possible of its
15 obligations to provide UNEs in combined form to allow ALECs to serve
16 customers and, therefore, fails to comply with its obligations under the Act
17 and FCC Rule 315(b) (47 C.F.R. § 51.315(b)).

18 **Q. WHY IS THIS ISSUE IMPORTANT TO DETERMINING**
19 **BELLSOUTH’S COMPLIANCE WITH SECTION 271?**

20 A. BellSouth is stifling the development of competition by failing to provide
21 nondiscriminatory access to UNE combinations, an important requirement of
22 Section 271. BellSouth must provide new entrants with access to network

1 elements at any technically feasible point in BellSouth's network in a manner
2 that is "at least equal-in-quality to that which the [ILEC] provides to itself"
3 and that allows such new entrants the ability to provide a "finished
4 telecommunications service." Second Louisiana Order¹ ¶ 162. It does not.
5 Moreover, in its Second Louisiana Order, the FCC agreed with a Department
6 of Justice observation that the provision of nondiscriminatory access to UNE
7 combinations by BellSouth under Section 271 is "critical" to competitive
8 entry into the local exchange market. Second Louisiana Order ¶ 141.
9 BellSouth, therefore, cannot comply with Section 271 until it refrains from
10 impeding competition through prohibiting appropriate access to UNE
11 combinations.

12 **Q. PLEASE DESCRIBE BELLSOUTH'S POSITION REGARDING THE**
13 **PROVISION OF ACCESS TO UNE COMBINATIONS.**

14 A. From BellSouth's submissions to the Commission, it may not be obvious
15 what limitations it places on the use of UNE combinations. For example,
16 BellSouth claims in testimony provided by its witness, Ms. Cox, that
17 "BellSouth provides ALECs, at cost based rates, network elements that are,
18 in fact, combined in BellSouth's network to the particular location the ALEC
19 wishes to serve." Cox Testimony p. 42.

¹ Memorandum Opinion and Order, In the Matter of Application of BellSouth Corp., et al., for Provision of In-Region, Inter-LATA Services in Louisiana, CC Docket No. 98-121 (rel. Oct. 13, 1998) ("Second Louisiana Order").

1 In plain English, what I understand this to mean is that BellSouth will not
2 provide to an ALEC a particular UNE combination for a specific customer at
3 UNE cost-based TELRIC prices, unless the specific elements that comprise
4 that combination for that customer: (1) are physically combined at the time
5 requested by the ALEC (whether or not those elements have ever been
6 combined anywhere in BellSouth's network, including for that customer);
7 *and* (2) are being used by BellSouth to provide service to that specific
8 customer.

9 BellSouth, therefore, improperly limits ALECs from using UNEs in
10 combined form to serve any customer other than one who is currently
11 receiving service by means of the combined elements in BellSouth's network.
12 Thus, for example, BellSouth will not provide cost-based access to
13 combinations that allow ALECs to serve new customers² or to provide
14 additional lines for existing customers. When a combination is not available
15 under the limited circumstances just described, BellSouth, if it so chooses,
16 will provide a combination but not at cost-based rates. Instead, BellSouth
17 will assess a non-cost based "glue charge."

18 **Q. WHAT IS A "GLUE CHARGE"?**

² Under the specific circumstance where service to a location has been disconnected, but the facilities remain connected, BellSouth will allow UNE-P to be purchased at cost-based rates to serve a new customer at that location.

1 A. “Glue charges” are additional non-TELRIC, non-cost-based charges
2 BellSouth adds to the Commission-approved network element rates for
3 loop/switch port and loop/transport combinations that, essentially, result in
4 BellSouth charging whatever it wants for these UNE combinations.

5 **Q. HOW DOES BELLSOUTH JUSTIFY ITS IMPOSITION OF A “GLUE**
6 **CHARGE”?**

7 A. BellSouth justifies these additional “glue charges” based on its assertion that
8 it is not required to provide UNE combinations, such as loop/switch port or
9 loop/transport combinations, in all situations. The real issue, for purposes of
10 Section 271, however, is whether BellSouth is complying with its obligations
11 under the Act to provide access to network elements in a nondiscriminatory
12 manner, under terms, conditions and prices that will promote local
13 competition.

14 **B. BellSouth Is Noncompliant With the Act**

15 **Q. DOES BELLSOUTH SATISFY ITS OBLIGATIONS UNDER THE**
16 **ACT WITH REGARDS TO UNE COMBINATIONS?**

17 A. No. BellSouth’s UNE combination offering does not satisfy its obligations
18 under the Act. BellSouth has narrowly and erroneously interpreted the Act
19 and the phrase “currently combines” in the FCC Rule 315(b) (47 C.F.R.
20 § 51.315(b)) in a manner that severely limits the number of customers that an
21 ALEC can serve using UNEs in combined form at cost-based rates.

1 **Q. HOW HAS THE FCC IMPLEMENTED THE ACT'S**
2 **REQUIREMENTS WITH REGARD TO AN ILEC'S OBLIGATION**
3 **TO PROVIDE COST-BASED ACCESS TO UNE COMBINATIONS?**

4 A. The FCC in its *Third Local Competition Order*³ reaffirmed the legal
5 obligation for BellSouth to provide UNEs in combined form at cost-based
6 TELRIC prices. In the *Third Local Competition Order*, the FCC rejected the
7 theory underlying BellSouth's business practices; *i.e.*, UNEs should be priced
8 higher than TELRIC cost-based rates when provided in combination. In fact,
9 the FCC repeatedly refers to cost-based TELRIC pricing for all UNEs and
10 specifically refers to TELRIC pricing for UNEs in combined form. The FCC
11 places no restrictions on ALECs' ability to purchase UNEs individually or in
12 combination, undermining BellSouth's attempt to impose the anti-competitive
13 “glue charge” condition on the purchase of UNEs in combined form in many
14 circumstances. Finally, the FCC did not disturb its established position that
15 an ILEC, such as BellSouth, must provide combinations of elements if it
16 currently combines those elements anywhere in its network at cost. *Third*
17 *Local Competition Order* ¶ 479; *see First Local Competition Order*⁴ ¶ 296.

³ Third Report and Order, *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98 (rel. Nov. 5, 1999) (“Third Local Competition Order”).

⁴ First Report and Order, *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98 (rel. Aug. 1, 1996) (“First Local Competition Order”).

1 **Q. HAS THE FCC ISSUED ANY RULES IMPLEMENTING THE ACT**
2 **WHICH ADDRESS BELL SOUTH'S SPECIFIC OBLIGATION TO**
3 **PROVIDE COST-BASED ACCESS TO UNE COMBINATIONS?**

4 A. Yes. In fact, the FCC's rules expressly and specifically address the extent of
5 an ILEC's obligations to provide access to combinations of UNEs, dispelling
6 any uncertainty regarding the noncompliant nature of BellSouth's practices.
7 FCC Rule 315(b) (47 C.F.R. § 51.315(b)) was part of a "suite" of UNE
8 combination rules (FCC Rules 315 (a) through (f) (47 C.F.R. § 51.315(a)-
9 (f))) that the FCC had initially adopted to implement the Act. Two of these
10 rules, subparts (b) and (c), are important here because collectively they define
11 the ILECs complete obligation relating to network element combinations.

12 FCC Rule 315(b) - (c) (47 C.F.R. § 51.315(b) - (c)) states:

13 (b) Except upon request, an incumbent LEC shall not
14 separate requested network elements that the
15 incumbent LEC currently combines.

16 (c) Upon request, an incumbent LEC shall perform the
17 functions necessary to combine unbundled network
18 elements in any manner, even if those elements are not
19 ordinarily combined in the incumbent LEC's network,
20 provided such combination is:

21 (1) technically feasible; and

22 (2) would not impair the ability of other carriers to
23 obtain access to unbundled network elements or to
24 interconnect with the incumbent LEC's network.

25 **Q. WHAT IS THE CURRENT STATUS OF FCC RULES 315(b) – (c) AS**
26 **IT PERTAINS TO BELL SOUTH'S OBLIGATIONS?**

1 A. The first rule FCC Rule 315(b) (47 C.F.R. § 51.315(b)) has been reinstated
2 by the Supreme Court, while the later FCC Rule 315(c) (47 C.F.R. §
3 51.315(c)) remains vacated by the Eighth Circuit.

4 BellSouth's obligations under the Act, therefore, remain clear with respect to
5 network elements that it "currently combines" in its network, but which may
6 not yet be physically connected for a specific customer location: *i.e.*,
7 BellSouth must combine elements for entrants that it "currently" or ordinarily
8 combines for itself at cost-based TELRIC rates under Sections 251(c)(3) and
9 252(d)(1). BellSouth's obligations under the Act and noncompliance with
10 such obligations are clear for the two reasons: (1) FCC Rule 315(b) requires
11 BellSouth to offer network elements that it currently combines, and
12 (2) BellSouth must provide nondiscriminatory access to network elements in
13 accordance with the requirements of Sections 251(c)(3) and 252(d)(1).

14 **Q. PLEASE EXPLAIN THE FIRST REASON BELLSOUTH'S**
15 **OBLIGATIONS UNDER THE ACT AND NONCOMPLIANCE WITH**
16 **SUCH OBLIGATIONS ARE CLEAR?**

17 A. FCC Rule 315(b) (47 C.F.R. § 51.315(b)) requires that BellSouth offer
18 network elements that it *currently combines*, including combining elements
19 that it ordinarily combines, even if the particular elements have not yet been
20 connected for a specific customer. This is the path chosen by the Georgia
21 Public Service Commission which ruled:

1 [T]hat 'currently combines' means ordinarily
2 combined within the BellSouth network, in the manner
3 in which they are typically combined. Thus, CLECs
4 can order combinations of typically combined
5 elements, even if the particular elements being ordered
6 are not actually physically connected at the time the
7 order is placed.⁵

8 It also is the path chosen by the Tennessee Regulatory Authority, which held:

9 Consistent with the Supreme Court's reinstatement of
10 FCC Rule 351(b) and the standing definition of
11 "currently combines" in the FCC's first report and
12 order, I move to define the term "currently combines"
13 to include any and all combinations that BellSouth
14 currently provides to itself anywhere in its network
15 thereby rejecting BellSouth's position that the term
16 means already combined for a particular customer at a
17 particular location. This definition is consistent with
18 our decisions on EELs, enhanced extended links, in
19 Docket No. 99-00377, which was the BellSouth/ICG
20 Arbitration. (Intermedia/BellSouth Arbitration
21 Hearing Transcript at 7-8)

22 The Tennessee Regulatory Authority recently reaffirmed its position on
23 May 25, 2001, stating:

24 During the proceedings in this docket, the Authority
25 addressed an issue regarding the application of FCC
26 Rule 51.315(b), which prevents [BellSouth] from
27 separating elements it "currently combines." As to that
28 issue, the Authority determined that BellSouth must
29 provide combinations to [ALECs] as long as BellSouth
30 provides the combinations to itself anywhere in its
31 network.

32 The purpose of this Notice is to notify CLECs that
33 BellSouth has a duty to comply with FCC Rule

⁵ Order, Georgia Public Service Commission, Docket No. 10692-U, February 1, 2000, at 11.

1 51.315(b) as construed by this agency. (Notice of
2 Available Terms and Conditions, Docket No. 97-
3 01262)

4 The Kentucky Public Service Commission also has determined that
5 BellSouth must offer network elements that it *currently combines* – including
6 combining elements that it ordinarily combines anywhere in its network, even
7 if the particular elements have not yet been connected for a specific customer.

8 BellSouth next asserts that it will combine UNEs only
9 when the requested network elements (i.e. the loop and
10 the port) have been previously combined in its own
11 network. AT&T argues that BellSouth should combine
12 network elements for AT&T if BellSouth ordinarily, or
13 typically, combines such elements for itself. The
14 Commission agrees.⁶

15

16 In response to a motion for reconsideration by BellSouth of its decision, the
17 Kentucky Commission affirmed its decision stating⁷:

18 BellSouth claims that it cannot lawfully be required to combine
19 elements for a specific customer, if those elements are not already
20 combined, and reminds this Commission that the Eighth Circuit Court
21 of Appeals, on remand from the United States Supreme Court in *Iowa*
22 *Utilities Board v. Federal Communications Commission*, 525 U.S.
23 366 (1999), determined that the incumbent carrier is not, pursuant to a
24 literal reading of the Telecommunications Act of 1996 (the “Act”),
25 required to combine network elements “in any manner” requested
26 by another carrier. We see no conflict between our Order and the
27 Eighth Circuit’s opinion; we have not required BellSouth to combine
28 elements in “any manner.” We have required only the combining of
29 elements when such combinations *currently exist in BellSouth’s*
30 *network. (footnote omitted)*
31

⁶ Order, KY PSC Case No. 2000-465, May 16, 2001.

1 BellSouth's obligation under the Act to provide ALECs access to UNE
2 combinations that it currently combines as required by FCC Rule 315(b) (47
3 C.F.R. § 51.315(b)), therefore, is well established. Moreover, because
4 BellSouth is obligated to combine UNEs, it must provide access to such
5 combinations at cost-based TELRIC rates pursuant to Section 252(d)(1) of
6 the Act and the FCC rules. BellSouth, therefore, fails to comply with the Act
7 as implemented in FCC Rule 315(b) (47 C.F.R. § 51.315(b)).

8 **Q. BELLSOUTH ASSERTS THAT CERTAIN ISOLATED FCC**
9 **STATEMENTS IN THE FCC'S THIRD LOCAL COMPETITION**
10 **ORDER DEFINITELY REDEFINE THE MEANING OF THE**
11 **TERM "CURRENTLY COMBINES." COX DIRECT TESTIMONY,**
12 **PP. 42-43. DO YOU AGREE?**

13 **A.** No. An examination of the Third Local Competition Order shows that the
14 FCC did nothing to disturb the standing definition of the term "currently
15 combines" as meaning ordinarily combines anywhere in BellSouth's
16 network. Third Local Competitive Order ¶ 479; First Local Competitive
17 Order ¶ 296. The plain fact is that the FCC has never retracted the position
18 set forth in its *First Local Competition* Order that "currently combines"
19 means ordinarily combined in BellSouth's network. Moreover, as discussed
20 above, BellSouth cannot reconcile its position with FCC rules that prohibit

⁷ Order, KY PSC Case No. 2000-465, June 22, 2001

1 restricting access to ALECs of network elements. For instance, FCC Rule
2 309(a) (47 C.F.R. § 51.309(a)) specifically provides:

3 An incumbent LEC shall not impose limitations,
4 restrictions or requirements on requests for, or the use
5 of unbundled network elements that would impair the
6 ability of a requesting telecommunications carrier to
7 offer a telecommunications service in the manner the
8 requesting telecommunication carrier intends.

9 There can be little doubt that the imposition of a “glue charge” by BellSouth
10 for access to UNE combinations violates the intent of FCC Rule 309(a) by
11 “impairing” the abilities of an ALEC to offer services in the manner that the
12 ALEC may intend by making the use of UNE combinations cost prohibitive.

13 **Q. PLEASE EXPLAIN THE SECOND REASON THAT BELLSOUTH’S**
14 **OBLIGATIONS UNDER THE ACT AND ITS NONCOMPLIANCE**
15 **WITH SUCH OBLIGATIONS ARE CLEAR?**

16 A. Even if FCC Rule 315(b) (47 C.F.R. § 315(b)) could be construed more
17 narrowly than how the Georgia and Kentucky Commissions and the TRA
18 have interpreted the rule, it is undisputed that BellSouth is obligated pursuant
19 to Section 271(c)(2)(B)(ii) of the Act to provide “nondiscriminatory access to
20 network elements in accordance with the requirements of [S]ections
21 251(c)(3) and 252(d)(1).”

22 In its Third Local Competition Order, the FCC observed that the
23 “nondiscriminatory access” requirement of Section 251(c)(3) “means that
24 access provided by the [ILEC] must be at least equal in quality to that which
25 the [ILEC] provides to itself.” Third Local Competitive Order ¶ 481; *see*

1 also First Local Competitive Order ¶ 312; FCC Rule 311(b) (47 C.F.R.
2 § 51.311(b)). The imposition of a “glue charge” in addition to the cost-based
3 TELRIC rate as a condition for combining network elements denies ALECs
4 such “equal” access. Concerning the issue of “glue charges”, the FCC stated
5 in its New York 271 Order⁸: “As a general rule, we are skeptical of glue
6 charges, and note with approval that these glue charges were removed from
7 Bell Atlantic’s tariff before Bell Atlantic filed its section 271 application.”

8
9 “Glue charges,” in fact, are discriminatory by their very nature because such
10 charges simply serve to hinder an ALEC’s ability to enter into competition
11 with the ILEC (and other ALECs) and unnecessarily inflate the retail prices
12 paid by consumers. For example, BellSouth’s “glue charges” inflate its
13 charges for combining elements and distort competition because it is less
14 costly for a second ALEC to serve the customer than the ALEC that won the
15 customer’s business in the first instance. Oddly, if BellSouth first wins the
16 customer, once elements are combined, even BellSouth agrees that under the
17 Act’s requirements, it is unlawful to separate the elements and such elements
18 would have to be made available at cost to other competitors without
19 disruption.

⁸ Memorandum Opinion and Order, *In the Matter of Application By Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, Inter-LATA Service in the State of New York*, CC Docket No. 99-295 (rel. December 22, 1999) ¶ 262.

1 Most importantly, the greatest discriminatory distortion created by
2 BellSouth's imposition of a "glue charge" under its current business practices
3 – and the likely motivation behind such practices – is that it will *always* be
4 less costly for the customer to use BellSouth than a competitive entrant.

5 **Q. IS THERE ANY REASON TO TREAT SOME UNE COMBINATIONS**
6 **UNDER THE ACT AND OTHERS AS OUTSIDE OF THE ACT?**

7 A. No, not at all. Notably, a combination of UNEs is not some separate
8 construct outside the Act, with its own characteristics and rules and
9 regulations. Rather, a combination of UNEs is just that: a combination of
10 two or more UNEs. None of the FCC's rules and regulations concerning
11 loops, switching, or transport permit ILECs to not provision those UNEs to
12 ALECs except when the ILEC is already providing service to customers
13 currently receiving retail service by means of those UNEs. Indeed, FCC
14 rules specifically prevent ILECs from imposing restrictions on the manner in
15 which ALECs may use UNEs to provide service. *See, e.g.*, FCC Rules 307
16 and 309 (47 C.F.R. §§ 51.307, 51.309).

17 In particular, there is no requirement that a customer be receiving retail
18 service from the ILEC before an ALEC may purchase the loop to that
19 customer's premise. The FCC's definition of "loop" does not require that a
20 customer must be receiving retail services by means of a loop before an
21 ALEC may purchase it to serve the customer. Third Local Competition
22 Order ¶ 167.

1 Similarly, there is no requirement that a customer be receiving retail service
2 from the ILEC before an ALEC may purchase switching to serve that
3 customer. The FCC's definition of switching, as with its definition of loops,
4 dispels any such suggestion. *Id.* ¶ 244. A loop/switching combination is no
5 more than a loop and switching, and if BellSouth may not require customers
6 to be receiving service before an ALEC purchases loops or switches, then it
7 also may not require customers to be receiving service before an ALEC
8 purchases loops and switches in combination.

9 **Q. HOW DOES BELLSOUTH'S NONCOMPLIANCE WITH THE ACT'S**
10 **OBLIGATION TO PROVIDE COST-BASED ACCESS TO UNE**
11 **COMBINATIONS AFFECT BELLSOUTH'S SECTION 271**
12 **APPLICATION?**

13 A. BellSouth fails to provide access to UNEs in combined form that BellSouth
14 routinely combines for itself at cost-based TELRIC rates pursuant to the
15 nondiscriminatory access requirements of Sections 251(c)(3) and 252(d)(1)
16 of the Act and FCC Rule 315(b) (47 C.F.R. § 51.315(b)). Thus, BellSouth is
17 noncompliant with Section 271(c)(2)(B)(ii).

18 **C. Public Policy Concerns**

19 **Q. IF THE COMMISSION WERE TO FIND BELLSOUTH IN**
20 **NONCOMPLIANCE WITH THE ACT, WOULD THE**

1 **COMMISSION’S FINDING BE CONSISTENT WITH SOUND**
2 **PUBLIC POLICY?**

3 A. Yes. A finding by the Commission of noncompliance is consistent with
4 sound public policy. In contrast, there is no rational public policy
5 justification to support BellSouth’s position because such practices merely
6 make local competition harder and more costly, than it already is.
7 BellSouth’s position, therefore, should be rejected.

8 **Q. WHAT IS THE PUBLIC POLICY ISSUE AT STAKE?**

9 A. The public policy issue here is simple. Should BellSouth provision network
10 element combinations in the most efficient manner (*i.e.*, combining those
11 elements for entrants that it routinely combines today) at cost-based TELRIC
12 prices, or should it be allowed to require additional and unnecessary work at
13 a higher price (for both itself, the entrant and consumers) to get to the same
14 result? There is one appropriate outcome (*i.e.*, that elements be combined in
15 the most efficient manner at cost-based TELRIC prices to allow for robust
16 and widespread local competition). That outcome can be achieved only if the
17 Commission rejects BellSouth’s position as noncompliant under the Act.

18 This core “UNE combinations” public policy issue is far-reaching. Indeed,
19 mass-market competition depends upon *efficient* provisioning systems
20 structured to minimize cost and accommodate volume. This same basic
21 conclusion applies with equal force to *new* combinations as it does to *existing*
22 arrangements. Accordingly, consumers are unlikely to accept entrants that

1 can serve an existing line, but cannot provision additional lines or serve the
2 customer at a new location.

3 **Q. HOW DOES THE FCC VIEW THIS PUBLIC POLICY ISSUE WITH**
4 **REGARDS TO THE IMPORTANCE OF UNE COMBINATIONS TO**
5 **WIDESPREAD COMPETITION?**

6 A. The FCC acknowledges that efficient provisioning of UNE combinations is
7 vital to ensuring widespread local competition. In the Third Local
8 Competition Order, the FCC reiterated that the purpose of Section 251 of the
9 Act is “to reduce the inherent economic and operational advantages
10 possessed by local exchange carriers.” Third Local Competition Order ¶ 3.
11 Further, based in part on its observation of rapid growth of competition in
12 markets where the loop/switching combinations, or “UNE platform”
13 (“UNE-P”), were made available to ALECs (*see, e.g., id.* ¶ 12), the FCC
14 continues to affirm the principles of cost-based TELRIC pricing and
15 unrestricted access to UNEs individually and in combined form to promote
16 robust competition in the local marketplace. The FCC, therefore, stresses the
17 critical importance of the availability of combinations of UNEs to the
18 development of local competition:

19 We continue to believe that the ability of requesting
20 carriers to use unbundled network elements, including
21 various combinations of unbundled network elements
22 is integral to achieving Congress’ objective of
23 promoting rapid competition to all consumers in the
24 local telecommunications market. Moreover, in some
25 areas, we believe that the greatest benefits may be

1 achieved through facilities-based competition, and that
2 the ability of requesting carriers to use unbundled
3 network elements, including various combinations of
4 unbundled network elements, is a necessary
5 precondition to the subsequent deployment of
6 self-provisioned network facilities.

7 *Id.* ¶ 5.

8 **Q. HOW DOES THE ILEC INDUSTRY VIEW THE IMPORTANCE OF**
9 **UNE COMBINATIONS TO WIDESPREAD COMPETITION?**

10 A. In accordance with the FCC observations, widespread competition for
11 average consumers requires that competitors be able to access and use
12 network elements in a simple and cost-effective manner. This means, as a
13 practical matter, that entrants must have access to logical combinations of
14 network elements to provide service at cost-based TELRIC prices.

15 Although it is possible to “piece together” serving arrangements using
16 individual UNEs, the past five years of experience demonstrates that these
17 “hand crafted” arrangements are primarily useful only to serve larger
18 business customers desiring more specialized services. Even the ILEC
19 industry, therefore, recognizes the importance of network element
20 combinations to local competition. An ILEC-oriented publication, the United
21 States Telephone Association’s magazine, observed that individual network
22 elements are difficult to use at volume:

23 Because of their fragmentary nature, UNEs will be
24 operationally difficult to order and to provision on both
25 sides. Product packages that comprise appropriate and

1 pre-set UNE combinations could reduce some of the
2 difficulties.⁹

3 Furthermore, whenever an ILEC confronts the same economic problem as an
4 ALEC (*i.e.*, how to offer *competitive* local exchange service on a broad scale)
5 the ILEC's answer is inevitably the same: use of UNE-P (most commonly,
6 the loop-switching combination). For instance, SBC revealed during the
7 review of its merger with Ameritech that its out-of-region entry strategy was
8 premised on the use of network element combinations to serve the residential
9 and small business market. (*See* Deposition and Testimony of James Kahan
10 on behalf of SBC, Public Utilities Commission of Ohio, Case No. 98-1082-
11 TP-AMT).

12 **Q. DO YOU AGREE WITH MR. MILNER'S POSITION (MILNER**
13 **DIRECT TESTIMONY, P. 47-48) THAT COMBINING UNES IN**
14 **COLLOCATION IS THE SAME THING BELLSOUTH DOES WHEN**
15 **IT SERVES A NEW CUSTOMER?**

16 **A.** No, I do not. BellSouth's position merely results in *more* work and *increased*
17 costs for *both* itself and new entrants. Rather than simply combine elements
18 for entrants at those points in the network (such as existing cross-connect
19 frames) that BellSouth has established for precisely this purpose, BellSouth
20 requires the creation of *new* environments where entrants do the same work.

⁹ *Wholesale Marketing Strategy*, Salvador Arias, *Teletimes*, United States Telephone Association, Volume 12, No. 3, 1998.

1 BellSouth requires that ALECs combine elements in collocation space, or use
2 assembly “rooms” or “points” specially constructed for this purpose. These
3 additional steps (creating the assembly room/point, and then extending
4 requested elements via new facilities and additional cross-connections) do
5 nothing but create increased cost and points of potential failure.

6 With respect to UNE-P, the inconsistency of BellSouth’s position with the
7 public policy concerns represented in the intent of the Act is highlighted by
8 its admission of its obligation to provide loops to ALECs at cost-based
9 TELRIC prices to serve customers where no loops are currently provisioned.
10 BellSouth has admitted that for such customers in its serving area (*e.g.*,
11 customers in new subdivisions), BellSouth must sell ALECs a loop at cost-
12 based TELRIC prices even though no such loop is in place today (and thus no
13 BellSouth service). Yet, even though BellSouth will sell ALECs that loop at
14 cost-based TELRIC prices, BellSouth will not sell ALECs that very same
15 loop connected to the BellSouth switch as a loop-switching UNE
16 combination (UNE-P).

17 Instead, BellSouth requires “more combining” by cross-connecting the
18 requested elements to the facilities necessary to extend the elements to the
19 ALEC, not to mention the cost (in time, money and space) to create the
20 associated “assembly areas.” Expending resources for the sole purpose of
21 achieving a less reliable and more costly environment is a wasteful exercise
22 that can find no support in the intent of the Act, economics, common sense or
23 sound public policy.

1 **Q. IN LIGHT OF THE PUBLIC POLICY CONCERNS, WHY WOULD**
2 **BELLSOUTH ADOPT SUCH AN ANTI-COMPETITIVE AND**
3 **EXPENSIVE BUSINESS PRACTICE?**

4 A. The only discernable “benefit” produced by BellSouth’s business practices is
5 that the survival of BellSouth’s monopoly is assured through the imposition
6 of an onerous “glue charge,” restricting an entrant’s ability to realistically and
7 economically compete for local business. Such a result, however, is wholly
8 inconsistent with sound public policy and the intent of the Act and should be
9 rejected.

10 **IV. BELLSOUTH FAILS TO PROVIDE APPROPRIATE ACCESS TO**
11 **UNEs FOR CUSTOMERS LOCATED WITHIN DENSITY ZONE 1 IN**
12 **THE TOP 50 MSAS**

13 **Q. PLEASE DESCRIBE THE ISSUE REGARDING BELLSOUTH’S**
14 **PROVISIONING OF UNEs FOR CUSTOMERS IN THE MIAMI,**
15 **ORLANDO AND FT. LAUDERDALE MSAs.**

16 A. As a result of the Supreme Court’s decision in *AT&T Corp. v. Iowa Board of*
17 *Utilities*, 525 U.S. 366 (1999), the issue of network elements was remanded
18 to the FCC with instructions to review its decision on what network elements
19 must be provided by ILECs. As part of this remand, the FCC issued FCC
20 Rule 319(c) (47 C.F.R. § 51.319(c)) in its Third Local Competition Order
21 stating that ILECs need not provide ALECs with local circuit switching
22 capability where the ALEC intends to serve customers who have four or

1 more voice grade (DS0) equivalents or lines and, (1) the affected local circuit
2 switches are located in one of the top 50 MSAs in density zone 1, and (2) the
3 ILEC provides nondiscriminatory, cost -based access to combinations of
4 unbundled loops and transport throughout density zone 1, as defined as of
5 January 1, 1999. A local circuit switch is the type of switch deployed by
6 telecommunications carriers to provide dial tone to a customer so the
7 customer can receive local service. A MSA is a geographic area within a
8 state as defined by the United States Government Office of Management and
9 Budget.¹⁰ Presently, there are 258 MSAs in the United States. In Florida, the
10 only MSAs affected by FCC Rule 319(c) (47 C.F.R. § 51.319(c)) are the
11 Miami, Orlando and Ft. Lauderdale MSAs. Unfortunately, BellSouth
12 interprets Rule 319(c) in a manner that does not provide appropriate access to
13 UNEs in these Florida MSAs.

14 **Q. HOW DOES BELLSOUTH INTERPRET RULE 319(c)?**

15 A. BellSouth broadly interprets the limited exception to an ILECs' obligation to
16 provide for ALECs' use of loop/switch combinations in applicable density
17 zone 1 MSAs found in FCC Rule 319(c) (47 C.F.R. § 51.319(c)).
18 Specifically, if a customer has multiple locations throughout the MSA,
19 receives one bill from BellSouth for all lines, and the total of these lines is
20 more than three, then BellSouth asserts that none of the lines at any location
21 may be served by a ALEC using the loop/switch combination.

¹⁰ MSAs are often used to administer federal programs.

1 **Q. DOES BELLSOUTH'S INTERPRETATION OF RULE 319(c)**
2 **ALLOWING AGGREGATION OF LINES ACROSS DISPARATE**
3 **CUSTOMER LOCATIONS PROMOTE COMPETITION AS**
4 **ENVISIONED BY THE ACT?**

5 A. No. Rather than being compatible with the purposes of the Act, BellSouth's
6 interpretation of FCC Rule 319(c) creates an obstacle to competition. FCC
7 Rule 319(c) (47 C.F.R. § 51.319(c)) does not authorize BellSouth to
8 aggregate lines across disparate customer locations and it cannot be
9 reasonably interpreted to allow for such "aggregation." It just makes no
10 sense.

11 **Q. CAN YOU PROVIDE AN EXAMPLE OF WHY BELLSOUTH'S**
12 **INTERPRETATION OF RULE 319(c) MAKES NO SENSE?**

13 A. Yes. Suppose that a customer that has a chain of stores in Miami and only
14 has two lines at each store. Further, suppose there are 20 such stores and no
15 two stores are served from the same BellSouth local switch. For purposes of
16 managing his or her telecommunications bill, however, the customer
17 currently has billing for all 20 stores going to one location where his or her
18 main business office is located. BellSouth's position is that since the total
19 number of lines is more than 3 (actually in this case it would be 40), then
20 AT&T would have to provide service to each of the 20 locations using
21 something other than UNE-P.

1 **Q. IS BELLSOUTH’S POSITION CONSISTENT WITH THE FCC’S**
2 **INTENT IN ISSUING RULE 319(c)?**

3 A. No. Clearly, the above example demonstrates that BellSouth’s position is not
4 what the FCC had in mind when it reached its decision, in its Third Local
5 Competition Order, to issue FCC Rule 319(c) (47 C.F.R. § 51.319(c)). In
6 fact, at the time of issuance of FCC Rule 319(c) (47 C.F.R. § 51.319(c)), the
7 rationale employed by the FCC, for the rule’s “four or more lines” exception
8 to an ILEC’s obligation to provide unbundled local switching, was that a
9 ALEC could economically serve end users with four or more lines using its
10 own switch and either stand-alone loops or a loop/transport combination.
11 Third Local Competition Order, ¶¶ 258-298. FCC Rule 319(c) (47 C.F.R.
12 § 51.319(c)), therefore, was intended to apply only when more than three
13 lines were being served from the same local switch, not when disparate
14 locations of a customer happen to have four or more lines included on a
15 billing statement. *Id.* Yet BellSouth will not provide UNE-P - a loop/switch
16 port combination - to serve any customer as long as the total number of lines
17 the customer is purchasing from BellSouth exceeds three, no matter where
18 any of those lines are actually located. BellSouth’s interpretation of FCC
19 Rule 319(c) (47 C.F.R. § 51.319(c)), therefore, is unreasonable and
20 completely undermines the FCC’s intent in issuing the rule in the first place.

21 **Q. IS BELLSOUTH’S POSITION CONSISTENT WITH THE BEST**
22 **INTERESTS OF FLORIDA CUSTOMERS?**

1 A. No. BellSouth’s interpretation of FCC Rule 319(c) (47 C.F.R. § 51.319(c))
 2 impedes competition and is not in the best interests of customers. Indeed,
 3 BellSouth prevents customers from changing carriers simply because they
 4 have lines at multiple locations and want only one bill for all lines.
 5 Furthermore, some customers may actually want to have some lines served
 6 by one carrier and some lines served by another. This option of choice of
 7 carriers, effectively denied by BellSouth, allows the customer to take
 8 advantage of service offerings from various companies at each of the
 9 customer’s different locations

10 **V. SUMMARY OF TESTIMONY AND RECOMMENDATION**

11 **Q. PLEASE SUMMARIZE YOUR TESTIMONY AND PROVIDE A**
 12 **RECOMMENDATION TO THE COMMISSION REGARDING**
 13 **BELLSOUTH’S PROVISION OF NONDISCRIMINATORY ACCESS**
 14 **TO NETWORK ELEMENTS.**

15 A. BellSouth denies access to UNE combinations at cost-based TELRIC prices
 16 in contravention of FCC Rule 315(b) (47 C.F.R. §51.315(b)), the Act’s
 17 nondiscriminatory access requirements and sound public policy. Thus,
 18 BellSouth fails to comply with Section 271(c)(2)(B)(ii) of the Act.

19 BellSouth’s interpretation of FCC Rule 319(c) (47 C.F.R. § 51.319(c)) serves
 20 only to limit competition. The only reasonable interpretation of the “4 or
 21 more lines” exception of FCC Rule 319(c) (47 C.F.R. § 51.319(c)) is that it

1 only applies to each separate customer location, and not when a customer
2 receives aggregate billing on his or her multiple locations. Thus, BellSouth is
3 noncompliant with Section 271(c)(2)(B)(ii) of the Act because its practices in
4 this area are anti-competitive, adverse to important customer interests and
5 deny ALECs appropriate access to network combinations in contravention of
6 the Act as implemented by FCC Rule 319(c) (47 C.F.R. § 51.319(c)).

7 Unless and until BellSouth provides nondiscriminatory access to UNE
8 combinations in accordance with applicable law and regulation, this
9 Commission cannot find that BellSouth meets the requirements of Checklist
10 Item No. 2 of Section 271. Thus, I recommend that the Commission deny
11 BellSouth's application to provide interLATA services under Section 271 of
12 the Act.

13 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

14 **A. Yes, it does.**

1 MR. LAMOUREUX: And with that, and with the witnesses
2 that have been stricken, Mr. Turner would be our next witness.
3 And I would call Steven E. Turner to the stand. And I do not
4 believe that Mr. Turner was here when the witnesses were sworn.
5 Is that correct, Mr. Turner?

6 THE WITNESS: That is correct.

7 (Witness sworn.)

8 STEVEN E. TURNER

9 was called as a witness on behalf of AT&T Communications of the
10 Southern States, Inc., and, having been duly sworn, testified
11 as follows:

12 DIRECT EXAMINATION

13 BY MR. LAMOUREUX:

14 Q Would you please state your name and business address
15 for the record, Mr. Turner?

16 A It is Steven E. Turner, and my business address is
17 2031 Goldleaf Parkway, Canton, Georgia 30114.

18 Q And did you submit revised rebuttal testimony on
19 October 3rd, 2001?

20 A Yes, I did.

21 Q Consisting of 54 pages on behalf of AT&T?

22 A Yes, I did.

23 Q Do you have any changes or corrections to make to
24 that testimony?

25 A No, I do not.

1 Q Did you also have three exhibits that were attached
2 to your testimony?

3 A Yes, I did.

4 Q Do you have any changes or corrections to make to
5 your exhibits?

6 A No, I do not.

7 Q If I were to ask you the same questions as contained
8 in your testimony, would your answers be the same?

9 A Yes, they would.

10 MR. LAMOUREUX: Mr. Chairman, I would like to
11 designate Mr. Turner's testimony as -- and I have already lost
12 track of what the next exhibit number is.

13 CHAIRMAN JACOBS: We are at 45.

14 MR. LAMOUREUX: 45. And I would like to designate
15 his exhibits as Composite Exhibit 46. And I believe that would
16 be --

17 CHAIRMAN JACOBS: No, he would be 45.

18 MR. LAMOUREUX: His testimony would be 45.

19 CHAIRMAN JACOBS: We don't need to make his testimony
20 an exhibit, we can just move it into the record.

21 MR. LAMOUREUX: I'm sorry. So his exhibits would be
22 Composite Exhibit 45, and I believe that is Exhibit SET-1
23 through SET-3, is that correct?

24 THE WITNESS: That is correct.

25 CHAIRMAN JACOBS: Very well.

(Exhibit 45 marked for identification.)

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1 **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

2 **REBUTTAL TESTIMONY OF STEVEN E. TURNER**

3 **ON BEHALF OF**
4 **AT&T COMMUNICATIONS OF THE SOUTHERN STATES INC.,**
5 **AT&T BROADBAND PHONE OF FLORIDA, LLC,**
6 **AND TCG SOUTH FLORIDA, INC.**

7 **DOCKET NO. 960786-A-TL**

8 **OCTOBER 3, 2001**

9 **I. INTRODUCTION AND QUALIFICATIONS**

10 **Q. PLEASE STATE YOUR NAME AND EMPLOYER.**

11 **A. My name is Steven E. Turner. Currently, I head my own telecommunications and**
12 **financial consulting firm, Kaleo Consulting.**

13 **Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND.**

14 **A. I hold a Bachelor of Science degree in Electrical Engineering from Auburn**
15 **University in Auburn, Alabama. I also hold a Masters of Business Administration**
16 **in Finance from Georgia State University in Atlanta, Georgia.**

17 **Q. PLEASE SUMMARIZE YOUR PROFESSIONAL EXPERIENCE.**

18 **A. From 1986 through 1987, I was employed by General Electric in their Advanced**
19 **Technologies Department as a Research Engineer developing high-speed graphics**
20 **simulators. I joined AT&T in 1987 and, during my career there, held a variety of**
21 **engineering, operations, and management positions. These positions covered the**
22 **switching, transport, and signaling disciplines within AT&T. From 1995 until**
23 **1997, I worked in the Local Infrastructure and Access Management organization**

1 within AT&T. It was during this tenure that I became familiar with the many
2 regulatory issues surrounding AT&T's local market entry, and specifically with
3 the issues regarding the unbundling of incumbent local exchange company
4 ("ILEC") networks. I formed Kaleo Consulting in January 1997. I consult
5 primarily on regulatory issues related to facilities-based entry into local exchange
6 service and, using financial models to advise companies on how and where to
7 enter telecommunications markets.

8 **Q. HAVE YOU TESTIFIED IN OTHER REGULATORY PROCEEDINGS?**

9 A. Yes. I have filed testimony or appeared before commissions in the states of
10 Alabama, Arkansas, California, Colorado, Delaware, Florida, Georgia, Hawaii,
11 Illinois, Kansas, Kentucky, Louisiana, Massachusetts, Michigan, Minnesota,
12 Mississippi, Missouri, Nebraska, Nevada, New York, Ohio, Oklahoma,
13 Pennsylvania, Texas, Washington, and Wisconsin. Additionally, I filed testimony
14 with the Federal Communications Commission ("FCC") regarding Southwestern
15 Bell Telephone Company's ("SWBT") compliance with Section 271 of the
16 Telecommunications Act of 1996 (the "Act"). A copy of my resume is attached
17 as Exhibit SET-1.

18 **II. PURPOSE AND SUMMARY OF TESTIMONY**

19 **Q. PLEASE DESCRIBE THE PURPOSE OF YOUR TESTIMONY.**

20 A. The purpose of my testimony is to highlight BellSouth's inadequate provision of
21 interconnection and access, and to address certain aspects of the direct testimony
22 of Ms. Cox, Mr. Latham, Mr. Milner, and Mr. Williams and the affidavit of Mr.
23 Gray to assist this Commission in determining whether BellSouth fully

1 implements the Competitive checklist requirements of Section 271(c)(2)(B) for
2 two specific areas: (1) digital subscriber line (“xDSL”) (Checklist Item 4)
3 (Commission Issue 5); and (2) collocation (Checklist Item 1) (Commission Issue
4 2).

5 **Q. PLEASE SUMMARIZE THE RELEVANT FACTS AND YOUR**
6 **CONCLUSIONS RELATING TO BELL SOUTH’S PROVIDING OF**
7 **INTERCONNECTION AND ACCESS TO UNEs AS THEY RELATE TO**
8 **xDSL SERVICES.**

9
10 A. The current marketplace demands that Alternative Local Exchange Carriers
11 (“ALECs”) be able to offer customers advanced services, as well as a combination
12 (bundle) of voice and advanced services. BellSouth is aggressively offering
13 customers bundled voice and advanced services, while consistently precluding
14 ALECs, such as AT&T, who use the unbundled network element platform
15 (“UNE-P”) from offering customers this same option. This has the effect of
16 chilling local competition for advanced services.¹ It appears that BellSouth
17 intends to extend that policy position to the broadband services it offers over the
18 fiber-fed, next-generation digital loop carrier (“NGDLC”) architecture.
19 BellSouth’s actions significantly hinder ALECs’ ability to compete in the markets
20 for voice, data, and bundled services.

21

¹ The FCC has recognized that UNE-P is the most effective broad-based strategy for serving most residential and small business customers. *See In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order, Fourth Further Notice of Proposed Rulemaking, CC Docket No. 96-98, FCC No. 99-238, Rel. November 5, 1999 (“UNE Remand Order”), ¶ 273 and n. 543.

1 BellSouth's refusal to allow for effective interconnection and, therefore,
2 competition regarding xDSL is occurring because BellSouth has not fully
3 unbundled the "(l)ocal loop transmission from the central office to the customer's
4 premises"² for the following reasons:

- 5 a. The FCC in its *Line Sharing Reconsideration Order*³ reconfirmed that
6 BellSouth must provide for "line splitting." Line splitting occurs when an
7 ALEC provides a customer with both voice and advanced services over a
8 single line. Despite its statements to the contrary, BellSouth refuses to
9 implement line splitting requirements in Florida except in the narrowest of
10 circumstances. As a result, AT&T and other ALECs who want to provide
11 a customer with a complete package of voice services using UNE-P and
12 advanced services cannot do so. In addition, BellSouth has failed to
13 implement electronic ordering for line splitting in accordance with FCC
14 direction, precluding AT&T from providing bundled offerings of voice
15 and advanced services to customers at commercial volumes. Bundled
16 services are important now and will be central to the competitive
17 marketplace in the foreseeable future. Thus, BellSouth's refusal to comply
18 with the FCC Orders on line splitting means BellSouth is not in

² Section 271(c)(2)(B)(iv) of the Act.

³ *In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket Nos. 98-147 and 96-98, FCC No. 01-26 (rel. Jan 19, 2001) ("*Line Sharing Reconsideration Order*").

1 compliance with the Section 271 checklist and continues to delay the
2 development of a competitive market in the state of Florida.

3 b. BellSouth, like all ILECs, is aggressively deploying NGDLC.⁴ BellSouth
4 uses this technology to provide the “local loop transmission” between the
5 customer’s premises and the central office. BellSouth, however, does not
6 provide ALECs, such as AT&T, with equivalent access to loops that use
7 NGDLC technology despite BellSouth’s statements to the contrary. As a
8 result, ALECs seeking to provide bundled voice and advanced services in
9 competition with BellSouth are faced with three choices: (1) employ
10 traditional copper loops to deliver inferior service quality assuming such
11 loops are available, (2) engage in cost prohibitive remote terminal
12 collocation in an effort to replicate the loop architecture deployed by
13 BellSouth assuming it is technically feasible, or (3) forego competition for
14 the customer served by NGDLC loop technology. Of course all three
15 choices, for all practical purposes, have the same result – BellSouth retains
16 its monopoly control of the market BellSouth’s restrictions in this area are
17 inconsistent with the requirements of FCC rules and Sections 251 and 271

⁴ NGDLC is a telecommunications component that allows carriers to use fiber from the central office out to a remote terminal. At the remote terminal, the NGDLC allows for the fiber to be connected with the copper that continues the loop out to the customer’s premises. The “next generation” aspect of NGDLC is that by simply using different plug-in cards, the telecommunications carrier is able to provide voice service only, advanced service only, or combined voice and advanced services. Prior to the deployment of NGDLC, the data service was provided by a separate device known as an xDSL access multiplexer (“DSLAM”). The DSLAM capability now has been integrated onto a card within the NGDLC, permitting easier provisioning of advanced services.

1 of the Act, and allow BellSouth to remain a monopoly provider of
2 combined voice and advanced services to Florida consumers.

3 **Q. PLEASE SUMMARIZE THE RELEVANT FACTS AND YOUR**
4 **CONCLUSIONS RELATING TO BELL SOUTH'S PROVIDING OF**
5 **ACCESS TO UNEs THROUGH COLLOCATION.**

6
7 A. For collocation, BellSouth has not demonstrated that it is in compliance with the
8 requirements of Section 271(c)(2)(B) in that the terms and conditions BellSouth
9 has implemented for collocation fail to comply with the requirements of FCC
10 guidelines and, therefore, negatively impact ALECs' ability to efficiently obtain
11 interconnection and access to unbundled elements consistent with the
12 requirements of the Act. BellSouth's testimony discusses in great volume what
13 collocation options BellSouth supposedly offers. BellSouth's testimony ignores,
14 of course, what BellSouth does not offer and why the terms, conditions and prices
15 it imposes on collocation arrangements are discriminatory. Specifically:

- 16 a. BellSouth may unilaterally modify critical terms and conditions related to
17 collocation without approval by this Commission or negotiation with
18 collocators.
- 19 b. BellSouth's recovery of "extraneous expenses" is neither consistent with
20 TELRIC cost principles nor consistent with FCC rules.
- 21 c. BellSouth fails to provide for shared collocation in a form that is
22 consistent with that required by the FCC's *Advanced Services Order*.⁵

⁵ *In The Matter Of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket, No. 98-147, *First Report and Order and Further Notice of Proposed Rulemaking*, FCC 99-48 (rel. Mar. 31, 1999) ("Advanced Services Order")

1 In summary, absent BellSouth bringing these activities into compliance with the
 2 Act and FCC guidelines, BellSouth has not met the requirements of the
 3 competitive checklist as it pertains to issues of collocation.

4 **III. xDSL**

5 **Q. WHAT ARE xDSL SERVICES AND WHY IS IT IMPORTANT TO THE**
 6 **COMMISSION'S ASSESSMENT OF BELL SOUTH'S COMPLIANCE**
 7 **WITH SECTION 271 REQUIREMENTS RELATING TO**
 8 **INTERCONNECTION?**

9
 10 A. Consumers want both voice and data services. xDSL allows a customer to receive
 11 those services and in the future will also provide for the delivery of voice and
 12 video, in addition to high-speed data. "Line Splitting" or "Line Sharing" allows
 13 the customer to receive both voice and advanced services over a single phone line
 14 – often called "bundled services." ALECs must be able to provide those services
 15 in order to compete with BellSouth.

16
 17 Because of the importance of advanced services in relation to competition, the
 18 FCC requires a Regional Bell Operating Company ("RBOC"), in connection with
 19 any Section 271 application, to demonstrate that it provides ALECs with the
 20 ability to offer bundled voice and data services using the local loop. The FCC's
 21 recent *Line Sharing Reconsideration Order*, states:

22 We find that incumbent LECs have a *current obligation* to
 23 provide competing carriers with the ability to engage in line
 24 splitting arrangements . . . *incumbent LECs must allow*
 25 *competing carriers to offer both voice and data service*
 26 *over a single unbundled loop.*⁶

⁶ *Line Sharing Reconsideration Order* at ¶ 18 (emphasis added).

1
2 Moreover, we expect Bell Operating Companies to
3 demonstrate, in the context of section 271 applications, that
4 they permit line splitting, by providing access to network
5 elements necessary for competing carriers to provide line
6 split services.⁷

7 The FCC went on to find that:

8 [T]he availability of line splitting will further speed the deployment of
9 competition in the advanced services market by making it possible for
10 competing carriers to provide voice and data offerings on the same line . . .
11 these offerings are especially attractive to residential and small business
12 customers.⁸

13
14 **Q. WHAT ARE THE RELEVANT PORTIONS OF THE ACT RELATING TO**
15 **xDSL SERVICES?**

16
17 **A.** Section 251(c)(3) of the Act requires BellSouth, in part, to: “provide, to any
18 requesting telecommunication carriers, for the provision of a telecommunications
19 service, *nondiscriminatory access* to network elements . . . on rates, terms and
20 conditions that are just, reasonable, and nondiscriminatory . . .” (emphasis added).

21 An unbundled loop, including a loop used in combination with switching that
22 provides xDSL and other advanced services, is a network element.⁹

23 Nondiscriminatory access to network elements requires that there is access to all
24 of the features, functions and capabilities that are provided by that element.¹⁰ The
25 high frequency portion of the loop (“HFPL”) for advanced services is a loop

⁷ *Id.* at fn. 36.

⁸ *Id.* at ¶ 23.

⁹ *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, First Report and Order*, CC Docket No. 96-98, FCC No. 96-325, Rel. August 8, 1996, ¶¶ 380 and 382; and UNE Remand Order at ¶¶ 166-167.

¹⁰ 47 U.S.C. § 153(29) and FCC Rules 51.307(b) and 51.5.

1 capability.¹¹ The FCC also has determined that BellSouth has an obligation to
2 provide a requesting carrier with access to all of the unbundled network element
3 “features, functions and capabilities, in a manner that allows the requesting
4 telecommunications carrier to provide *any telecommunications service that can be*
5 *offered by means of that network element.*”¹² xDSL service is one of the
6 telecommunications services that can be offered by means of the loop.¹³ Thus,
7 BellSouth is required to make available to ALECs the features, functions and
8 capabilities necessary to provide xDSL service.

9 **Q. WHAT HAS BEEN BELL SOUTH’S APPROACH TOWARDS xDSL**
10 **SERVICES?**

11
12 A. BellSouth forecloses meaningful competition through use of two strategies –
13 refusal to provide operational processes for ALECs to engage in line splitting and
14 refusal to unbundle loops based on NGDLC technology. The former policy
15 effectively prevents using central-office based technology and the latter prevents
16 the same type of competition from emerging when BellSouth uses remote
17 terminal deployed electronics. Together they represent “business as usual” for
18 BellSouth – continuation of its monopoly.

¹¹ *In the Matters of Deployment of Wireline Services Offering Advanced telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order in CC Docket No. 98-147, Fourth Report and Order in CC Docket No. 96-98 (FCC Docket No. 99-355, Rel. December 9, 1999 (“Line Sharing Order”) at ¶ 17.

¹² FCC Rule 51.307(b) (emphasis added).

¹³ Line Sharing Order at ¶¶ 13, 17, and 25.

1 A. Failure to Operationalize Line Splitting is a Clear Barrier to the
2 Development of Competition

3
4 **Q. IS BELLSOUTH REQUIRED TO PROVIDE LINE SPLITTING?**

5 A. Yes. As previously indicated, because of consumer demand for advanced services
6 and bundled voice and advanced services, the FCC requires that BellSouth permit
7 line splitting. The FCC has repeatedly made clear that ILECs must make line
8 splitting available to comply with the unbundling requirements of the Act.

9 **Q. DOES BELLSOUTH OFFER LINE SPLITTING IN FLORIDA?**

10 A. No, other than on a discriminatory basis. BellSouth will make Line Splitting
11 available for a new customer *only* if an ALEC provides its own splitter.¹⁴
12 However, this does not meet the requirements of offering line splitting on a
13 nondiscriminatory basis. BellSouth provides xDSL services to new customers
14 and allows ALECs to provide xDSL services to customers when BellSouth
15 continues to provide the voice service (“line sharing”). BellSouth’s refusal to
16 permit ALECs to provide voice and advanced services to new customers through
17 line splitting is plainly and unreasonably discriminatory. The *Line Sharing Order*
18 does not authorize this discrimination. Indeed, the FCC explicitly recognized in
19 the *Line Sharing Order* that competitive carriers are entitled to “obtain
20 combination of network elements and use those elements to provide circuit
21 switched voice service *as well as data services*.”¹⁵ Moreover, the impact of
22 BellSouth denying AT&T and other ALECs with access to line splitting via

¹⁴ Direct Testimony of Cynthia K. Cox on behalf of BellSouth Telecommunications, Inc., Docket No. 960786-TL, May 31, 2001, p. 55.

1 BellSouth splitters is that customer service and choice will be negatively
2 impacted.

3 **Q. COULD YOU EXPLAIN HOW CUSTOMER SERVICE AND CHOICE**
4 **WILL BE NEGATIVELY IMPACTED?**

5
6 A. Yes. One of the concerns consumers who choose a combination of voice and data
7 services have is whether implementing this arrangement will negatively impact
8 their voice service. Acquiring advanced data services can take some time.
9 However, consumers cannot afford to have their voice service out of service other
10 than for a brief period. In my opinion, this is precisely why BellSouth is so eager
11 to offer ALECs access to a BellSouth owned splitter for line sharing; the
12 disruption to BellSouth voice service is minimized. Similarly, if only one party is
13 involved in the provision of the voice service through line splitting, including the
14 insertion of the splitter to provide for access to the DSL services would minimize
15 any outage for voice service. I would expect that the customer's service would be
16 disrupted for no more than a couple of minutes. BellSouth is very willing to
17 provide the splitter for line sharing primarily because it is still the voice provider
18 and does not want a service outage for its voice customer as a result of a lengthy
19 cutover process.

20
21 However, if the ALEC must insert its own splitter – as BellSouth requires for new
22 customers in a line splitting arrangement – multiple jumpers or cross-connects
23 must be run to extend the unbundled loop and unbundled switch port into the

¹⁵ *Line Sharing Order* at ¶ 47 (emphasis added).

1 collocation arrangement where they would have to be cross-connected through a
2 splitter and establish a connection back to the switch again. Moreover, this cross-
3 connect work must be coordinated between two companies – BellSouth and the
4 ALEC. These additional cross-connects, additional cost, and additional delays in
5 service are what clearly indicate that BellSouth is discriminating against ALECs
6 that want to provide voice *and* data service (line splitting) as opposed to ALECs
7 that are willing to only provide data service and allow BellSouth to retain the
8 voice service monopoly (line sharing). This type of discrimination is precisely
9 what the federal Act forecloses prior to Section 271 relief for the incumbent.

10 **1. BellSouth Has Not And Will Not Provide Line Splitters**

11 **Q. WHAT IS THE FIRST REASON WHY YOU BELIEVE BELLSOUTH**
12 **HAS FAILED TO MEET ITS OBLIGATIONS REGARDING LINE**
13 **SPLITTING?**

14
15 A. As briefly illustrated above, BellSouth refuses to provide line splitters in most
16 circumstances, precluding line splitting on a nondiscriminatory basis.¹⁶

17 **Q. WHAT IS A LINE SPLITTER?**

18 A. Line splitting requires the use of a splitter. A splitter is a passive electronic filter
19 that is attached to the loop that is used to split or separate signals on the basis of
20 their transmission frequencies. The splitter enables the low-frequency voice
21 signals on the loop to be directed to a voice circuit switch and the high-frequency
22 data signals on that loop to be delivered to a packet switching network. There is
23 no technical reason why BellSouth cannot add a splitter to a UNE-P loop that the

¹⁶ Cox Direct at 55 and Williams Direct at 18-20.

1 ALEC is already using to provide a Florida consumer bundled voice and advanced
2 services.

3 **Q WHY DO YOU CONCLUDE THAT BELLSOUTH HAS NO TECHNICAL**
4 **REASON NOT TO PROVIDE ALECS USING UNE-P WITH A**
5 **SPLITTER?**

6
7 A. BellSouth's technical capability to provide line splitters for ALEC use in the
8 UNE-P environment is shown by the fact that although BellSouth claims it does
9 not have a legal obligation to provide a line splitter when it engages in line
10 sharing with another ALEC, it is willing to do so and, in fact, has done so. But
11 when an ALEC wants to provide line splitting with UNE-P so that a customer
12 could obtain voice and advanced services over the same line, BellSouth uses its
13 "lack of legal obligation" to refuse to provide ALECs with the splitter to serve
14 new customers. Thus, BellSouth is willing to provide the splitter to ALECs when
15 BellSouth continues to provide the customer with voice service. However, for a
16 new customer, if BellSouth is not providing the voice service, then BellSouth
17 refuses to provide the splitter and requires the ALEC to provide one. This is,
18 obviously, not an issue of technical capability. Rather it is blatant discrimination
19 in direct violation of Section 251(c)(3) of the Act.

20 **Q. WHAT IS THE IMPACT OF BELLSOUTH'S REFUSAL TO PROVIDE**
21 **THE LINE SPLITTER TO ALECS?**

22
23 A. Without BellSouth's insertion of the splitter, the ALEC is effectively precluded
24 from competing for BellSouth customers who wish to obtain voice and advanced
25 services over a single local loop. The FCC has found that the costs of collocation
26 and the prospects of hot cuts, which would be necessary for the ALEC to provide

1 the splitter, represent a clear impairment to voice service competition because of
2 the need to disrupt the customer's service. The FCC also found in the *Line*
3 *Sharing Order* that competing via a second line stifles competition for advanced
4 services. Most consumers want one phone line for voice and advanced services.
5 The bottom line is that BellSouth's policy of refusing to provide the splitter,
6 except in a few instances, results in the customer's service being disrupted for no
7 justifiable reason other than to thwart the ability of an ALEC using UNE-P to
8 compete in the advanced services market.

9 **Q. WHAT RATIONALE DOES BELL SOUTH PROVIDE FOR NOT**
10 **PROVIDING THE SPLITTER FUNCTIONALITY TO UNE-P ALECS?**

11
12 **A.** As I stated earlier, BellSouth asserts that it has no legal obligation to provide the
13 splitter for line splitting. BellSouth bases this position on its interpretation of
14 paragraphs 325 and 327 of the FCC's Texas 271 Order dated June 30, 2000. This
15 rationale is flawed. The FCC in evaluating SBC's application for 271 relief only
16 evaluated whether or not SBC had a *current* obligation to provide the splitter for
17 line sharing and line splitting. However, the FCC also noted that this issue had
18 yet to be fully evaluated by the FCC and that it should be in short order (*see*
19 paragraph 328 of the Texas 271 Order). Thus, no prohibition exists against ILECs
20 providing splitters, and the issue in Florida remains one of discrimination.

21
22 Indeed, the Texas Public Utility Commission considered whether SBC should
23 provide access to incumbent owned line splitters after SBC had already received
24 its Section 271 authority to provide long distance in Texas. In this review, the

1 Texas Public Utility Commission concluded that SBC *did* have a responsibility to
2 provide access to its splitters for both line sharing as well as line splitting.¹⁷ The
3 arbitrators in this proceeding specifically noted in their ruling:

4 The Arbitrators find that based upon the evidence in this
5 record there is no technical distinction between line sharing
6 and line splitting, as the splitter provides access to the same
7 functionality of the loop in both contexts. **The Arbitrators**
8 **agree with AT&T that it is discriminatory for SWBT to**
9 **provide the splitter in a line sharing context while not**
10 **providing the splitter in a line splitting context.** The
11 Arbitrators believe that SWBT's policy will have the effect
12 of severely limiting the number of data CLECs with which
13 a UNE-P provider can partner in order to offer advanced
14 services. (Emphasis Added)¹⁸

15 BellSouth continues the same type of discrimination that the Texas Public
16 Utilities Commission corrected in Texas – the very state that BellSouth points to
17 for its support that providing the splitter for line splitting is not required. Again,
18 BellSouth provides access to the splitter when BellSouth is the voice provider.
19 But, BellSouth, in its continued effort to undermine the utility of the UNE-P, has
20 determined that it will not provide the splitter when an ALEC wants to serve a
21 new customer. It is in this regard that the Florida Public Service Commission
22 should determine that BellSouth is not in compliance with the Act's requirement
23 to provide nondiscriminatory access to unbundled loops, just as the Texas Public

¹⁷ *Petition of Southwestern Bell Telephone Company for Arbitration with AT&T Communications of Texas, L.P., TCG Dallas, and Teleport Communications, Inc. Pursuant to Section 252(B)(1) of the Federal Communications Act of 1996*, Docket No. 22315, Texas Public Utilities Commission Order, March 14, 2001.

¹⁸ *Petition of Southwestern Bell Telephone Company for Arbitration with AT&T Communications of Texas, L.P., TCG Dallas, and Teleport Communications, Inc. Pursuant to Section 252(B)(1) of the Federal Communications Act of 1996*, Docket No. 22315, Texas Public Utilities Commission Arbitration Award, September 13, 2000.

1 Utilities Commission did, because it will not provide access to line splitters for
2 new customers.

3 **Q. IS IT TRUE THAT IN EACH OF THE STATES WHERE A REGIONAL**
4 **BELL OPERATING COMPANY (RBOC) HAS BEEN GRANTED**
5 **SECTION 271 RELIEF AN INCUMBENT HAS NOT BEEN REQUIRED**
6 **TO PROVIDE A SPLITTER FOR LINE SPLITTING?**

7
8 A. Yes, this is true. However, it is important to understand the circumstances
9 surrounding each state. *First*, the Texas Section 271 Order was issued while the
10 FCC requirements for line splitting were being developed. The FCC made clear
11 that SBC had an obligation to provide line splitting, but many of the operational
12 issues surrounding line splitting, such as splitter ownership, were simply too
13 undeveloped for the FCC to rule against SBC's entry into long distance in Texas.
14 However, as I pointed out earlier, shortly thereafter, the Texas Public Utilities
15 Commission did, in fact, rule that SBC had to make SWBT-owned splitters
16 available to ALECs engages in line splitting.

17 *Second*, the Kansas-Oklahoma Section 271 Order was issued on January 19, 2001
18 – precisely the same day that the *Line Sharing Reconsideration Order* was issued
19 by the FCC. As such, the clear requirements for an ILEC to provide line splitting
20 over UNE-P and whether SBC was providing discriminatory treatment to ALECs
21 in Kansas and Oklahoma were not fully evaluated at the time the Kansas-
22 Oklahoma Section 271 Order was issued. Moreover, the requirements of the *Line*
23 *Sharing Reconsideration Order* were not in effect at the time of evaluation of the
24 Kansas-Oklahoma application for Section 271 relief.

25 *Third*, the only remaining states that BellSouth can point to are Verizon states:
26 New York (December 21, 1999) and Massachusetts (April. 16, 2001).

1 Importantly, Verizon did not provide access to splitters for line sharing. Thus,
2 there was no issue of discrimination by Verizon only providing the splitter for line
3 sharing and not for line splitting. In addition, there is a critical distinction
4 between the standard that Verizon was evaluated against and the standard that
5 BellSouth should be evaluated against: *discrimination*. In Massachusetts and
6 New York, Verizon does not provide access to Verizon owned splitters for line
7 sharing or line splitting. In other words, Verizon took the position early on that if
8 ALECs wanted access to splitters, they would have to provide them on their own.
9 Therefore, BellSouth, unlike Verizon, is discriminating against one group of
10 ALECs (those that want to use line splitting) in favor of another group of ALECs
11 (those that want to use line sharing). Such discrimination is contrary to Section
12 271. As such, any reliance on the Massachusetts and New York Section 271
13 Orders to support the position that BellSouth does not have to provide splitters for
14 line splitting is misplaced. BellSouth is clearly providing discriminatory access to
15 unbundled loops for different classes of ALECs based upon whether BellSouth
16 continues to provide voice service or not.

17 **Q. WHY SHOULD BELLSOUTH BE REQUIRED TO PROVIDE THE**
18 **SPLITTER?**

19
20 A. As the FCC's UNE Remand Order determined, "attached electronics", with the
21 exception of DSLAMs are regarded as a part of the loop.¹⁹ As indicated
22 previously, a splitter is a passive electronic filter that is attached to the loop in
23 order to split or separate the signals on the basis of their transmission frequencies.
24 Thus, splitters are a part of the local loop, and ILECs are required to unbundle the
25 local loop.

¹⁹ UNE Remand Order at ¶175.

1 **Q: ARE BELLSOUTH'S ARGUMENTS AGAINST PROVIDING THE**
 2 **SPLITTER EVEN CONSISTENT WITH BASIC ENGINEERING**
 3 **PRINCIPLES?**

4
 5 A. No. BellSouth's argument that the splitter is not part of the loop is inconsistent
 6 with principles of telephone engineering. It is undisputable that bridge taps are
 7 routinely installed in the ILEC's loop plant, and the FCC has expressly recognized
 8 the right of a purchaser of a loop element to insist that bridge taps be removed,
 9 even where the ILEC does not ordinarily perform such removals for itself because
 10 it is not providing advanced services to those customers. It is likewise
 11 indisputable that load coils – which in fact are nothing but low-pass filters – may
 12 be part of the loop, and the FCC has expressly recognized the right of a purchaser
 13 of a loop element to insist that load coils be removed.²⁰ Yet BellSouth denies its
 14 obligation to provide a splitter, claiming it cannot be part of a loop, even though
 15 insertion of a splitter is effectively nothing more than a bridge tap that separates a
 16 single copper facility into two paths and provides filtering and electrical
 17 protection for the transmission on for each path.

18 **Q. SO IS IT FAIR TO SAY THAT IN YOUR OPINION THERE IS NO**
 19 **TECHNICAL REASON FOR BELLSOUTH TO REFUSE TO PROVIDE**
 20 **ALECS USING THE UNE-P WITH A SPLITTER?**
 21

22 A. That is correct. As I indicated previously, BellSouth's technical capability to
 23 provide line splitters for ALEC use in the UNE-P environment is shown by the
 24 fact that BellSouth provides a line splitter when it engages in *line sharing* with

²⁰ UNE Remand Order at ¶¶172-173.

1 another ALEC.²¹ This is, obviously, not an issue of technical capability. Rather it
2 is blatant discrimination in direct violation of Section 251(c)(3) of the Act.

3 **Q. WHAT IS THE IMPACT OF THE DISCRIMINATION YOU JUST**
4 **DESCRIBED?**

5
6 A. The obvious impacts of BellSouth's discriminatory refusal to permit line splitting
7 has been to permit BellSouth to "lock-up" the xDSL market before ALECs have a
8 chance to provide bundled services.

9 **Q. PLEASE EXPLAIN YOUR PRIOR ANSWER.**

10 A. As I noted before, a carrier's ability to provide bundled voice and advanced
11 services is becoming essential to the carrier's ability to compete. Critically, line
12 splitting is especially attractive to residential and small commercial customers.
13 But line splitting by other than BellSouth will *not* be attractive to consumers if
14 their service must be disrupted when they switch their voice service from
15 BellSouth to a UNE-P ALEC. Unless BellSouth provides the splitter, this is
16 exactly what will happen.

17 **Q. WHY WOULD SERVICE BE DISRUPTED WHEN CONSUMERS**
18 **CHANGE PROVIDERS IF BELLSOUTH REFUSES TO PROVIDE THE**
19 **SPLITTER?**

20
21 A. When a customer changes voice providers only and a splitter is present, all that is
22 required is an electronic change modification in the local switch when the splitter
23 is not removed. No rewiring is necessary, no technicians need to be dispatched to
24 the central office or the customer's premises and no disruption is required.
25 Removal of the splitter, however, "means that the loop and the port have to be

²¹ Cox Direct at 54-55.

1 disconnected from each other, and both the loop and the port then have to be run
 2 into the ALEC’s collocation space where the loop can be hooked up to the
 3 ALEC’s splitter.”²² The physical effort to disconnect the loop and port and
 4 connect the loop and port in collocation space will require significant time.
 5 During that time, the consumer will have no service. This is in contrast to a
 6 customer who will not lose service if the BellSouth splitter remains in place. That
 7 is because only electronic changes are required under this scenario. Thus,
 8 BellSouth should comply with the following FCC guidance:

9 [B]ecause no central office wiring changes are necessary in a conversion
 10 from line sharing to line splitting, *we expect incumbent LECs to work with*
 11 *competing carriers to develop streamlined ordering processes. . .that*
 12 *avoid voice and data service disruption* and make use of the existing
 13 xDSL-capable loop.²³

14 **Q. GIVEN THAT BELLSOUTH CURRENTLY PROVIDES SPLITTERS AND**
 15 **REMOVAL OF THE SPLITTER WOULD CAUSE SERVICE**
 16 **DISRUPTIONS, SHOULD BELLSOUTH BE OBLIGATED TO PROVIDE**
 17 **SPLITTERS?**

18
 19 A. Yes. The only rationale for BellSouth’s position to refuse to provide the splitter
 20 has been to reduce competition.

21 **Q. DID THE FLORIDA PUBLIC SERVICE COMMISSION (PSC) RULE IN**
 22 **AT&T’S RECENT FLORIDA ARBITRATION WITH BELLSOUTH**
 23 **THAT BELLSOUTH DID NOT HAVE TO PROVIDE SPLITTERS FOR**
 24 **LINE SPLITTING?**

25
 26 A. Yes. The Florida Public Service Commission did rule that BellSouth did not have
 27 to provide access to the splitter. However, the standard that is required for section
 28 271 relief for BellSouth was not at issue in that arbitration. Specifically, the Act,

²² Cox Direct at 55.

1 as I have indicated earlier, requires that BellSouth provide nondiscriminatory
 2 access to unbundled elements. There is no question in Florida that BellSouth is
 3 providing splitters attached to the unbundled loop for ALECs that employ “line
 4 sharing.” As such, if BellSouth refuses to provide splitters for ALECs that
 5 employ “line splitting,” this constitutes discrimination and prevents BellSouth
 6 from being permitted 271 relief in Florida.

- 7 a. BellSouth does not deploy splitters a line at a time; and
- 8 b. BellSouth has indicated that it may not provide the same level of support
 9 for UNE-P line splitting as it does for UNE-P voice services;²⁷ and
- 10 c. BellSouth discontinues providing advanced services to a customer that
 11 elects to receive its voice service from an ALEC.

12 **Q. WHY SHOULD BELLSOUTH DEPLOY SPLITTERS ON A LINE AT A**
 13 **TIME BASIS?**

- 14
- 15 A. Commissions in Illinois, Michigan, and Texas have ordered splitters to be
 16 deployed on a line at a time basis.²⁸ BellSouth currently deploys the splitter in

²³ Line Sharing Order at ¶ 22.

²⁴ *Line Sharing Reconsideration Order* at ¶ 30 (emphasis added).

²⁵ *Id.* at fn. 36 (emphasis added).

²⁶ In fact, BellSouth has issued press releases indicating that in Georgia it had already captured 215,000 customers by the end of 2000 while it anticipates reaching 600,000 customers by the end of 2001. *In re: Investigation of BellSouth Telecommunications, Inc., Provision of Unbundled Network Elements for xDSL Service Providers*, Docket No. 11900-U; Georgia Public Service Commission Hearing Transcript at 80-1.

²⁷ This position is especially meritless because the combination of elements used is precisely the same with the only possible difference being that BellSouth requires that the loop-port combination pass through the ALEC’s collocation.

²⁸ Please *see* Arbitration Order dated August 17, 2000 in ICC Docket Nos. 00-0312/0313 in the arbitration between Ameritech Illinois and Covad Communications Company and Rhythms Links,

1 increments of 8, 24 and 96 ports (lines).²⁹ Cox Direct at 54. There is no technical
 2 reason, however, why the splitter cannot be provisioned a line at a time. Such an
 3 arrangement would prevent the ALEC from having to expend resources for
 4 capabilities it may not use and would allow BellSouth to more efficiently utilize
 5 the splitters that it deploys. By providing splitters a line at a time, BellSouth could
 6 deploy the splitter as the ALEC obtains the customer rather than providing an
 7 ALEC with an entire shelf of splitters that may remain unused.

8 **Q. WHAT DO YOU MEAN THAT BELLSOUTH DOES NOT PROVIDE THE**
 9 **SAME LEVEL OF SUPPORT FOR UNE-P LINE SPLITTING AS IT DOES**
 10 **FOR UNE-P VOICE SERVICES?**

11
 12 A. BellSouth does not support UNE-P when it is part of a line splitting configuration.
 13 In its ex-parte to the FCC, BellSouth indicated: “if a splitter is on a loop or is to
 14 be attached to a loop, a loop and port will lose its status as a UNE-P.” See Exhibit
 15 SET-2 (BellSouth Ex Parte filed with the FCC August 16, 2000, in CC Docket
 16 No. 96-98). It is unclear exactly what BellSouth means by this statement. As
 17 indicated previously, however, the splitter is nothing more than a passive
 18 electronic device that is part of the loop so that UNE-P with a splitter on the loop

Inc., p. 18, for support that Ameritech must provide both line at a time and shelf at a time line splitting capability when Ameritech chooses to deploy line splitters. See also *Petition of Southwestern Bell Telephone Company for Arbitration with AT&T Communications of Texas, L.P., TCG Dallas, and Teleport Communications, Inc. Pursuant to Section 252(B)(1) of the Federal Communications Act of 1996*, Docket No. 22315, Texas Public Utilities Commission Order, March 14, 2001. See also *In the matter of the application of Ameritech Michigan for approval of cost studies and resolution of disputed issues related to certain UNE offerings*, Case No. U-12540, Michigan Public Service Commission Order, March 7, 2001.

²⁹ The problem here is that by requiring all particular splitters to be dedicated to particular carriers (whether in blocks of 8, 24 or 96), the customer is hardwired to a particular DSL provider. This means that whenever the retail customer seeks to change service providers, particularly the DSL provider, both the voice and the data service must be interrupted to permit retermination of the loop.

1 is no different than when UNE-P is used solely to provide voice service. The line
2 sharing configuration employed by BellSouth is virtually indistinguishable from
3 that employed when a UNE-P ALEC adds DSL to the loop. There is no basis,
4 therefore, to claim that UNE-P cannot be supported in the same manner as
5 traditional voice service provided by BellSouth. Indeed, if BellSouth were to
6 operate in this manner, it would constitute unreasonable discrimination foreclosed
7 by the Act and this Commission. Nevertheless, to remove all doubt, the
8 Commission should direct that BellSouth provide the same support for the voice
9 portion of a UNE-P line splitting configuration that is provided when UNE-P is
10 used only for voice services and vigorously enforce the requirement.

11 **Q. IS THERE AN ISSUE WITH THE RATES BELLSOUTH CHARGES**
12 **ALECS FOR UNE-P THAT IS USED TO PROVIDE LINE SPLITTING?**

13 A. Yes. BellSouth charges ALECs the recurring rates for an unbundled loop and
14 unbundled port and the non-recurring rate for a loop-port “switch-with-change”
15 combination for UNE-P that is part of a line splitting configuration.³⁰ However,
16 because BellSouth must provide the ALEC with the same loop that was part of the
17 existing UNE-P so that it can be used for line splitting, ALECs should only be
18 required to pay the recurring rate for a loop-port “switch as is” combination.³¹

19 **Q. WHAT DO YOU MEAN THAT BELLSOUTH SHOULD NOT BE**
20 **PERMITTED TO DISCONTINUE PROVIDING ADVANCED SERVICES**
21 **TO A CUSTOMER THAT ELECTS TO RECEIVE ITS VOICE SERVICE**
22 **FROM AN ALEC?**
23

³⁰ Williams Direct at pp. 20-21.

³¹ *Line Sharing Reconsideration Order*, ¶19

1 A. BellSouth's current practice is to discontinue data service to a customer that
2 changes voice service to an ALEC.³² A retail customer placed in this untenable
3 position would clearly decide not to change voice carriers. Otherwise, the
4 customer faces the disruption of its data service until they are able to locate a new
5 data provider. Thus, this practice is discriminatory and stifles competition.

6 **B. Failure To Facilitate Line Sharing Impedes The Development Of**
7 **Competition**

8
9 **Q. PLEASE DEFINE "LINE SHARING."**

10
11 A. Line sharing exists where BellSouth continues to provide the voice portion of the
12 service to the end user customer over the loop while the ALEC provides the data
13 portion of the service using the HFPL. Remote site line sharing is the same
14 according to the FCC except that the technology for permitting this form of line
15 sharing is implemented at the remote terminal (normally via NGDLC as described
16 in an earlier footnote) rather than at the central office.

17 **Q. IS BELLSOUTH REQUIRED TO LINE SHARE WITH ALECS?**

18 A. Yes, even when the customer is served by an NGDLC configuration. In the *Line*
19 *Sharing Reconsideration Order* the FCC clarified that fiber-fed digital loop
20 carrier ("DLC") must be unbundled for line sharing to encourage competitors to
21 provide xDSL services. The requirement to provide line sharing, as established in
22 the Line Sharing Order, "applies to the entire loop where the incumbent has
23 deployed fiber in the loop (e.g. where the loop is served by a remote terminal

³² Cox Direct at p. 55.

1 (“RT”).³³ The FCC stated that it did not intend to prevent an ILEC from
 2 providing an ALEC with access to the fiber portion of a DLC loop for line sharing
 3 purposes just because the word “copper” was used in the rule implementing the
 4 *Line Sharing Order*, Rule § 51.319(h)(1).³⁴

5 Instead, the FCC required the ILEC to unbundle “the high frequency portion of
 6 the local loop *even where the incumbent LEC’s voice customer is served by DLC*
 7 *facilities.*”³⁵ The *Line Sharing Reconsideration Order* also states that ALECs
 8 must have the option of access the high frequency portion of the loop at the
 9 remote terminal as well as at the central office.³⁶ The FCC concluded that it
 10 would be inconsistent with “the intent of the statutory goals behind sections 706
 11 and 251 of the 1996 Act to allow incumbent LECs to limit a CLECs ability to
 12 provide xDSL services due to increasing deployment of fiber-based networks.”³⁷

13 **Q. IS BELLSOUTH IN COMPLIANCE WITH YOUR UNDERSTANDING OF**
 14 **THE FCC’S *LINE SHARING RECONSIDERATION ORDER*?**

15
 16 A. No. For example, as recently as the May 3, 2001 BST-Line Splitting
 17 Collaborative Meeting, one of the critical questions that was discussed was
 18 whether BellSouth would consider permitting an ALEC to install integrated
 19 splitter/Digital Subscriber Line Access Multiplexer (“DSLAM”) cards into
 20 DSLAM capable BellSouth remote terminals to facilitate remote site line sharing.

³³ *Line Sharing Reconsideration Order* at ¶ 10.

³⁴ *Id.*

³⁵ *Id.* (emphasis added).

³⁶ *Id.* at ¶ 11.

³⁷ *Id.* at ¶ 13.

1 BellSouth's response was that it would not consider this option. Instead,
2 BellSouth would only consider permitting ALECs to install discrete splitters at a
3 remote terminal to enable ALEC line sharing from a collocation arrangement at
4 the remote terminal. In other words, BellSouth was maintaining its position that it
5 would only permit ALECs to line share over copper facilities by requiring that
6 ALECs collocate at the remote terminal site to access the copper portion of the
7 loop. BellSouth was not offering any reasonable implementation of the
8 requirements of the *Line Sharing Reconsideration Order* that incumbents offer
9 unbundled access to the high frequency portion of the loop even on loops that are
10 served via fiber-fed DLC. In short, BellSouth's position on line sharing for fiber-
11 fed DLC loops is in express violation of the FCC's requirements in the *Line*
12 *Sharing Reconsideration Order*.

13 **Q. WHY HAS BELLSOUTH REFUSED TO ALLOW ALECS TO USE**
14 **INTEGRATED SPLITTER/DSLAM CARDS AT REMOTE TERMINALS**
15 **TO PROVIDE ADVANCED SERVICES?**

16 **A.** BellSouth takes the position that the integrated splitter/ DSLAM card performs a
17 packet switching function, which pursuant to the UNE Remand Order, BellSouth
18 does not have an obligation to provide to ALECs. However, a DSLAM,
19 particularly one with an integrated splitter, is not performing a "packet switching"
20 function, but rather, is performing a transport function. The DSLAM is an
21 integral part of the unbundled loop and is essential to deliver the voice portion of
22 the loop back to the central office voice switch, and the data portion of the loop
23 back to the central office data switch which is a packet switch. The DSLAM has

1 the ability to receive a copper loop, split the low frequency voice signal from the
2 high frequency data signal, and then transmit each of these two signals to their
3 appropriate switch types: a circuit switch for the voice signal and a packet switch
4 for the data signal. NGDLC, which was defined earlier, is now being deployed by
5 BellSouth in such a manner that integrated splitter/DSLAM cards can be installed
6 into the NGDLC in such a way that voice and data service combinations can
7 easily be provisioned to end customers. Thus, contrary to BellSouth's
8 conclusions, the integrated splitter/DSLAM card is not performing a packet
9 switching function.

10 **C. Access to Fiber-Fed Remote Terminals on an Unbundled Basis**
11

12 **Q. HOW SHOULD ACCESS TO FIBER-FED DIGITAL LOOP CARRIER
13 LOOPS BE PROVIDED?**

14
15 A. The traditional loop plant is clearly changing, as BellSouth and other ILECs are
16 deploying new loop technologies that enable them to utilize more efficient loop
17 architectures. To be found in compliance with checklist items 2, 3, and 4,
18 BellSouth must provide unbundled access to its fiber-fed remote terminals, also
19 known as Next Generation Digital Loop Carrier (NGDLC) architecture.

20 **Q. PLEASE EXPLAIN WHY IT IS IMPORTANT TO PROVIDE
21 UNBUNDLED ACCESS TO NGDLC.**

22
23 A. This is a critical time in the deployment of competition for advanced services,
24 especially as ILECs begin rapidly to deploy next-generation loop technology.³⁸

³⁸ See Morgan Stanley Dean Witter Industry Overview, *Telecom-Wireline: DSL ... It's Going Well* (Nov. 7, 2000) ("*Morgan Stanley DSL Report*") ("[w]e expect Q4 [2000] to show a dramatic

1 The addition of next-generation electronics in the ILEC's loop plant enables
2 greater bandwidth to be transmitted between the customer's premises and the
3 central office, but it does *not* change the loop's basic function of supplying
4 transmission between the customer premises and the ILEC's central office. And
5 the central office remains the place where ALECs can practically and
6 economically obtain access to their customers' telecommunications transmissions
7 so that they can provide the telecommunications services of their choosing.

8 Next-generation loop electronics, such as line cards with DSLAM functionality
9 and splitters, which enable an ALEC to provide advanced services even if
10 NGDLC has been deployed in the network, are incorporated within the
11 functionality of the unbundled loop network element itself.³⁹ Thus, the
12 electronics, such as a line card with DSLAM functionality, that are used with the
13 next-generation architecture "*simply provide a transmission channel to facilitate*
14 *delivery of specific services to the end user.*"

15 BellSouth's attempts to preclude ALECs from accessing the next-generation loop
16 architecture are merely the latest step in its unceasing efforts to avoid its
17 fundamental unbundling obligations. Adopting BellSouth's position would allow
18 it and its affiliate to be the only entities able to offer advanced services in a cost-

acceleration in DSL deployment. We estimate 704,000 net adds by the big four, twice the installs of any previous quarter, and up 56% sequentially").

³⁹ See *UNE Remand Order* ¶ 175 ("[b]ecause excluding such equipment from the definition of the loop would limit the functionality of the loop, we include the attached electronics ... within the loop definition").

1 effective manner that does not compromise the quality of service the customer
2 receives.⁴⁰

3 **Q. WHAT THEN SHOULD THIS COMMISSION REQUIRE TO ENSURE**
4 **THAT BELLSOUTH IS IN COMPLIANCE WITH THE COMPETITIVE**
5 **CHECKLIST WITH REGARDS TO NGDLC?**

6
7 **A.** Prior to finding BellSouth to be in compliance with section 271, and in particular
8 checklist item 4, this Commission should require BellSouth to provide unbundled
9 access to its NGDLC assets. Without such a requirement, competition for all
10 telecommunications services will be drastically reduced because of cost and
11 service quality issues. Without access to the entire loop in a next-generation
12 network – which consists of copper distribution, the fiber feeder facilities running
13 from the remote terminal to the central office, and all associated loop electronics
14 at the remote terminal and central office – competitors will not have meaningful
15 access to the signals necessary to offer competitive services.

16 **1. The Act and the FCC’s Prior Decisions Require that BellSouth**
17 **Provide Access to the Entire Unbundled Loop, Regardless of**
18 **the Technology It Deploys.**

19 **Q. ON WHAT BASIS DO YOU BELIEVE THE ACT AND FCC MAKE IT**
20 **CLEAR THAT NGDLC SERVED LOOPS MUST BE UNBUNDLED THE**
21 **SAME AS ANY OTHER LOOP?**
22

⁴⁰ This is hardly a new strategy. The FCC, in determining that the loop is a UNE, recognized that “[b]ecause of the size of their networks, incumbent LECs enjoy advantages of scope that competitors cannot replicate.” *UNE Remand Order* ¶ 183; *see also id.* ¶ 209 (finding that “self-provisioning subloop elements, like the loop itself, would materially raise entry costs, delay broad-based entry, and limit the scope and quality of the competitive LEC’s service offerings”).

1 A. In the 1996 Act, Congress required ILECs to provide requesting carriers with
 2 nondiscriminatory access to “a facility or equipment used in the provision of a
 3 telecommunications service,” including all “features, functions, and capabilities
 4 that are provided by means of such facility or equipment.”⁴¹ Guided by the 1996
 5 Act, the FCC recognized that granting ALECs unbundled access to the local loop
 6 was paramount for the future of local competition, finding that “under any
 7 reasonable interpretation of the ‘necessary’ and ‘impair’ standards of section
 8 251(d)(2), loops would be subject to the section 251(c)(3) unbundling
 9 obligations.”⁴²

10 The FCC has repeatedly recognized that there are two essential principles that lie
 11 at the heart of the definition of the unbundled loop element:

- 12 • *First*, the essential function of the loop is to provide *transmission functionality*
 13 needed for a customer to send and receive information between his or her
 14 location and the network of the service provider.⁴³

⁴¹ 47 U.S.C. § 151(29) (defining a “network element”); 47 U.S.C. § 251(c)(3) (discussing the duty of incumbent LECs to provide unbundled access to network elements); *see also Local Competition Order* ¶ 258 (“[w]e adopt the concept of unbundled elements as physical facilities of the network, together with the features, functions, and capabilities associated with those facilities”); *UNE Remand Order* ¶ 175 (“[t]he definition of a network element is not limited to facilities, but includes features, functions, and capabilities as well”).

⁴² *UNE Remand Order* ¶ 163; *Local Competition Order* ¶¶ 377-378 (providing access to unbundled local loops to alternative LECs is “critical to encouraging market entry,” because “preventing access to unbundled loops would either discourage a potential competitor from entering the market, ... denying those consumers the benefits of competition, or cause the competitor to construct unnecessarily duplicative facilities, thereby misallocating societal resources”).

⁴³ *See* 47 C.F.R. § 51.319(a) (“[t]he local loop network element is defined as a *transmission facility* between a distribution frame (or its equivalent) in an incumbent LEC central office and an end-user customer premises”) (emphasis added); *Local Competition Order* ¶ 380 (“[t]he local loop element should be defined as a *transmission facility*”) (emphasis added); *see also Line Sharing Order* ¶ 18 (alternative carriers “may access unbundled loop functionalities, such as non-voiceband transmission frequencies”).

- 1 • *Second*, and equally important, in order to support full-fledged competition,
2 the local loop, as a transmission path, must be both service and technology
3 neutral and must “apply to *new as well as current technologies*.”⁴⁴

4 The 1996 Act, the FCC implementing rules and their governing principles on
5 access to the local loop boils down to one simple statement:

6 *CLECs are entitled to access an unbundled loop element*
7 *that consists of all features, functions, and capabilities that*
8 *provide transmission functionality between a customer’s*
9 *premises and the central office, regardless of the*
10 *technologies used to provide, or the services offered over,*
11 *such facilities.*

12 This straightforward FCC analysis clearly means that next-generation loop
13 technologies architecture does not alter an ALEC’s right (or its compelling need)
14 to access the entire loop as an unbundled element at the central office. Nothing
15 about next-generation loop architecture changes the basic characteristics or
16 functionality of the loop element. As the FCC has properly held: “[u]sing the
17 loop to get to the customer is fundamental to competition.”⁴⁵

18 **Q. DO YOU ALSO BELIEVE THAT THE ELECTRONICS ASSOCIATED**
19 **WITH THE NGDLC MUST ALSO BE UNBUNDLED?**
20

⁴⁴ See *UNE Remand Order* ¶ 167 (emphasis added); *Local Competition Order* ¶ 292 (“section 251(c)(3) requires incumbent LECs to provide requesting carriers with all of the functionalities of a particular element, so that requesting carriers can provide *any telecommunications services* that can be offered by means of the element”) (emphasis added).

⁴⁵ *Line Sharing Order* ¶ 30; see also *UNE Remand Order* ¶ 171 (defining the unbundled loop element in such a way as to “ensure that the competitor will be able to gain access to the entire loop”); *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, *Memorandum Opinion and Order, and Notice of Proposed Rulemaking*, FCC 98-188, ¶ 54 (rel. Aug. 7, 1998) (“*Advanced Services Order*”) (“[t]he incumbent LECs’ obligation to provide requesting carriers with fully functional conditioned loops extends to loops provisioned through remote concentration devices such as digital loop carriers (DLC)”).

1 A. Yes. Line cards are needed to provide customers with Plain Old Telephone
2 Services (“POTS”) and DSL service. Specifically, line cards with DSLAM
3 functionality and Optical Concentration Devices (OCDs) allow transmission of
4 communications when placed in next-generation loop architectures. The
5 electronics associated with the next-generation loop architecture, such as line
6 cards, should – indeed must – be considered part of the loop.

7 **Q. DO YOU HAVE ANY SUPPORT FOR THIS CONCLUSION?**

8
9 A. Yes. The FCC, in the recent *Line Sharing Reconsideration Order*, noted that
10 ILECs are required to unbundle the high frequency portion *of the local loop*, and
11 that the definition of the local loop as a “transmission facility between a
12 distribution frame ... and the loop demarcation point at an end user customer
13 premises,” was intended to ensure that the definition was technology neutral.⁴⁶

14 Congress had good reason to subject ILEC advanced services facilities to
15 unbundling requirements of Section 251(c). Consumers are increasingly
16 demanding voice and high-speed data services over a single line. ILECs are
17 already satisfying that demand today and have made it clear that the ability to
18 offer bundled voice and data services a significant competitive advantage. If
19 UNE-based ALECs are denied access to local loops for advanced services simply
20 because they are served by NGDLC, they would be unable to compete for
21 consumers that increasingly demand a single voice/data offering. Thus, the
22 Commission should reject BellSouth’s efforts to avoid that mandate.

⁴⁶ *Id.*

1 **2. BellSouth does not Provide Equivalent Access to Loops Served**
 2 **by NGDLC.**

3 **a. Physical Collocation Is Generally Unavailable and**
 4 **Uneconomic.**

5 **Q. IS COLLOCATION AT THE REMOTE TERMINAL AN OPTION FOR**
 6 **ACCESSING CUSTOMERS WHO ARE SERVED BY NGDLC AS**
 7 **PROPOSED BY BELLSOUTH?**

8
 9 **A.** It is true that collocation is an option for accessing serving to customers behind
 10 NGDLC, but as will be discussed below, it is a hollow offer. Even if physical,
 11 adjacent, and virtual collocation may be useful to some competitors in limited
 12 circumstances (and thus should remain a supplemental unbundling obligation that
 13 is available as an option), remote terminal collocation is *not* a practical mass-
 14 market solution and cannot provide a substitute for access to an entire loop. An
 15 ALEC wishing to serve a customer served by NGDLC at a remote terminal would
 16 have to collocate at EVERY remote terminal rather than at the central office. Yet
 17 a remote terminal may only serve several hundred customers while a central office
 18 can serve 10,000 customers. Because one central office can serve several remote
 19 terminals, the expense of collocation at each and every remote terminal to reach
 20 customers would be cost-prohibitive. The FCC itself recently recognized this fact
 21 in the *Line Sharing Reconsideration Order*, stating that as fiber deployment by
 22 ILECs is increasing, “collocation by competitive LECs at remote terminals is
 23 likely to be costly, time consuming, and often unavailable.”⁴⁷ At present,
 24 according to the May 3, 2001 BST-Line Splitting Collaborative Meeting,

⁴⁷ *Line Sharing Reconsideration Order* at ¶ 13.

1 collocation is the *only* option that BellSouth is offering to ALECs that want
2 access to unbundled loops served by fiber-fed remote terminals.

3 **Q. WHAT ABOUT ADJACENT COLLOCATION AS A SOLUTION FOR**
4 **ACCESSING THESE LOOPS?**

5
6 **A.** As I indicated above, due the costs for collocation at remote terminals, this is not
7 an option for mass-market competition. Adjacent collocation amounts to
8 essentially an overbuild of the incumbent's network. In this arrangement, the
9 ALEC would construct its own remote terminal adjacent to BellSouth's remote
10 terminal and supply cable copper sub-loops from the Bellsouth remote terminal
11 over to the ALEC remote terminal. Although this is most likely the manner in
12 which BellSouth would implement the collocation provision for access to copper
13 at the remote terminal because "internal" collocation space at remote terminals is
14 seldom available, the prospects for adjacent collocation are no better than physical
15 internal collocation at the remote terminal⁴⁸. In fact, they are worse.

16 But adjacent collocation would force competitors to rebuild the incumbent LECs'
17 network to achieve ubiquity, which is prohibitively expensive and has already
18 been rejected by the FCC.⁴⁹ Adjacent collocation not only requires significant
19 expense for the more complicated collocation itself, but may (and often will) also
20 require ALECs to go through the time-consuming and costly process of obtaining
21 rights of way and permits to construct adjacent facilities. Moreover, competitors

⁴⁸ Pursuant to BellSouth's proposal, "adjacent" collocation would be the only legitimate method or access loops served by fiber-fed next-generation DLC because internal space at the remote terminal would be unavailable.

⁴⁹ *UNE Remand Order* ¶ 6.

1 must also deal with obstacles such as neighborhood aesthetics and possible zoning
 2 restrictions. And even though the costs of adjacent collocation are *greater* than
 3 the costs of physical collocation, there is no corresponding increase in the number
 4 of potential customers an ALEC can serve. Thus, adjacent collocation is not a
 5 mass-market substitute for access to an entire unbundled loop.

6 **b. Spare Copper Is Not a Substitute for an Entire Next-**
 7 **Generation DLC Loop.**

8 **Q. CAN BELLSOUTH PROVIDE THE ALECS WITH ACCESS TO SPARE**
 9 **COPPER LOOPS RUNNING IN PARALLEL WITH LOOPS SERVED BY**
 10 **THE NGDLC AS AN OPTION TO PROVIDE XDSL SERVICE?**
 11

12 **A.** No. Spare copper does not provide ALECs with a viable alternative to the entire
 13 unbundled loop. Spare copper loop capabilities do not match those offered by the
 14 fiber-fed remote terminal loops. Fiber-fed loops provide a far superior service
 15 quality for transmitting voice and data compared to copper. This is precisely one
 16 of the reasons BellSouth is replacing copper loops with fiber-fed NGDLC. Yet,
 17 BellSouth is only agreeing to let ALECs use loops that even BellSouth will not
 18 use. Furthermore, DSL technologies are distance-sensitive. That means that the
 19 DSL service quality can change based on the length of copper between the
 20 customer's modem and the DSLAM. The longer the copper segment of the loop,
 21 the slower the speeds the customer can attain with DSL. If a remote terminal
 22 with NGDLC is placed 12,000 feet from a central office serving a customer an
 23 additional 12,000 feet from the remote terminal, a parallel copper loop from the
 24 central office that is serving such a customer would need to be 24,000 feet long.
 25 A 24,000 foot copper loop is not equal in quality to the fiber-fed next-generation
 26 DSL copper sub-loop that is 12,000 feet. In fact, in this example line sharing

1 normally would not be possible on the 24,000-foot loop based on existing
2 engineering standards.

3 In sum, there are no viable alternatives to the unbundling of the entire loop. Thus,
4 this Commission cannot, consistent with the Act's pro-competition and
5 nondiscrimination requirements, allow BellSouth and its unregulated data affiliate
6 to be the only entities that can effectively use the incumbent LEC's new loop
7 architecture. Doing so would merely allow BellSouth to increase the scope of its
8 current monopoly. Clearly, the Act bars such behavior.

9 **Q. ARE THERE OTHER BENEFITS TO THE USE OF NGDLC LOOPS?**

10
11 A. Yes. The use of fiber-fed next-generation DLC eliminates the need for loop
12 qualification and loop conditioning. In contrast, the spare copper loops available
13 to competitors may contain load coils or other DSL inhibitors that would either
14 prevent DSL deployment or require conditioning for which BellSouth has sought
15 to impose large non-recurring charges. Thus, long copper loops that require
16 conditioning are not "equal in quality" to fiber-fed next-generation DLC loops
17 that do not require such conditioning.

18 **Q. PLEASE SUMMARIZE YOUR DISCUSSION REGARDING**
19 **UNBUNDLED ACCESS TO NGDLC LOOPS?**

20
21 A. It has become increasingly apparent that competitors in the local telephone
22 business must be able to offer customers both voice and data services together as a
23 package in order to be able to compete effectively with ILECs and their affiliates.
24 BellSouth, however, has consistently precluded ALECs, such as AT&T, from

1 effectively offering such a competitive package using the UNE-platform, chilling
2 local competition in the process. It appears that BellSouth intends to extend that
3 policy position to the broadband services it offers over the fiber-fed next-
4 generation DLC architecture. BellSouth's refusal to effectively provide for the
5 addition of xDSL capabilities to UNE-P voice service prevents ALECs' from
6 competing in the markets for voice services, data services, and bundles of
7 services. BellSouth is also currently resisting providing UNE Loop-Switch Port
8 combinations through loops that are served via a remote terminal configuration
9 *and* used in an integrated voice/data offering. BellSouth insists that the voice
10 portion of the loop behind the remote terminals in the combined voice/data offer
11 come to an ALEC collocation arrangement. This is simply nothing more than
12 another attempt for BellSouth to thwart UNE Loop-Switch Port combinations.

13 Clearly, such a practice essentially precludes UNE-P providers from reaching any
14 customer who obtains data services over the fiber-fed next-generation DLC
15 architecture. Absent regulatory action, the use of next-generation loop plant by
16 incumbent LECs will allow them to thwart competition for customers who want
17 voice and data services over a single loop as swiftly, seamlessly, reliably, and
18 economically as when an ILEC and its affiliate provide voice and data services.

19 **Q. PLEASE SUMMARIZE YOUR TESTIMONY ON xDSL.**

20 A. Each and every BellSouth restriction or refusal to comply with the applicable
21 FCC rulings, discussed above, serves no purpose other than to either increase
22 AT&T's costs to provide xDSL service or prevent AT&T from providing xDSL
23 service altogether. AT&T wants to reach all Florida telecommunications

1 customers, including those who want bundled services. But BellSouth has done
 2 all that it can do to prevent this from occurring. By limiting access to splitters,
 3 refusing to modify its OSS for electronic processing of line splitting orders, as
 4 well as imposing upon AT&T additional restrictions for access to xDSL
 5 customers, BellSouth has accomplished its objective: If these conditions are not
 6 changed, BellSouth is and will remain the monopoly provider of advanced
 7 services in Florida.

8 **IV. COLLOCATION**

9 **Q. PLEASE DESCRIBE BELLSOUTH'S OBLIGATIONS UNDER THE ACT**
 10 **TO PROVIDE COLLOCATION TO ALECs.**

11
 12 A. Section 271(c)(2)(B)(i) and (ii) of the Act, respectively, require ILECs to provide
 13 “[i]nterconnection in accordance with the requirements of sections 251(c)(2) and
 14 252(d)(1),” and “[n]ondiscriminatory access to network elements in accordance
 15 with the requirements of sections 251(c)(3) and 252(d)(1).”

16 Section 251(c)(2) of the Act provides that BellSouth must make available:

17 “[I]nterconnection with the local exchange carrier’s
 18 network ... at any technically feasible point within the
 19 carrier’s network; that is at least equal in quality to that
 20 provided by the local exchange carrier to itself or to any
 21 subsidiary, affiliate, or any other party to which the carrier
 22 provides interconnection; and on rates, terms and
 23 conditions that are just, reasonable, and
 24 nondiscriminatory.”

25
 26 ALECs use collocation as one of the primary methods of interconnection. Thus,
 27 Section 251(c)(2) of the Act compels BellSouth to provide for collocation (or
 28 more appropriately central office space) to achieve interconnection at any

1 technically feasible point within BellSouth's network at the same level of quality
2 that it provides central office space to itself.

3
4 47 U.S.C. § 251(c)(3) requires that BellSouth provide ALECs access to UNEs.
5 This access must be provided in a "nondiscriminatory" manner at "any technically
6 feasible point on rates, terms, and conditions that are just, reasonable, and
7 nondiscriminatory." Collocation is key for ALECs to have the ability to access
8 UNEs.

9 **Q. DOES THE FCC REGARD COLLOCATION AS A REQUIREMENT FOR**
10 **§ 271 APPROVAL?**

11
12 **A.** Yes. The FCC has recognized the importance of collocation to interconnection
13 and UNE access. The FCC stated in its Texas 271 Order,⁵⁰ "[t]he provision of
14 collocation is an essential prerequisite to demonstrating compliance with checklist
15 item (i) of the competitive checklist." The FCC stated further that to allow
16 compliance with item (i), "a BOC must have processes and procedures in place to
17 ensure that all applicable collocation arrangements are available on terms and
18 conditions that are '*just, reasonable, and nondiscriminatory*' in accordance with
19 section 251(c)(6) and our implementing rules."⁵¹

20 **Q. DO YOU AGREE WITH MR. MILNER'S ASSERTION (DIRECT, P. 26,**
21 **LINES 18-19) THAT BELLSOUTH PROVIDES COLLOCATION TO**

⁵⁰ See *Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas*, Memorandum Opinion and Order, 15 FCC Rcd 18354, ¶ 64 (Texas 271 Order).

⁵¹ Texas 271 Order at ¶ 64 (emphasis added).

1 **ALECS ON TERMS AND CONDITIONS THAT ARE JUST,**
2 **REASONABLE, AND NON-DISCRIMINATORY?**

3
4 A. No. BellSouth fails to provide for nondiscriminatory terms and conditions for
5 collocation consistent with the Act and the FCC's rules. BellSouth has failed to
6 provide the basic essentials of just, reasonable, and nondiscriminatory
7 interconnection and access to UNEs that are required by the competitive checklist
8 items listed in Section 271 of the Act for the following reasons:

9 a. BellSouth has the ability to unilaterally modify critical terms and
10 conditions related to collocation without approval by this Commission or
11 negotiation with collocators.

12 b. BellSouth's recovery of "extraneous expenses" is neither consistent with
13 TELRIC cost principles nor consistent with FCC rules.

14 c. BellSouth fails to provide for shared collocation in a form that is
15 consistent with that required by the FCC's *Advanced Services Order*.⁵²

16 d. BellSouth fails to provide for adjacent off-site collocation even though this
17 arrangement is provided by similarly situated ILECs and permitted within
18 the definition of the FCC's *Advanced Services Order*.

19 **A. Unilateral Control Of Collocation Process.**

20 **Q. MR. GRAY STATES (P. 6) THAT BELLSOUTH WILL "NOT CHANGE**
21 **ANY EXISTING COLLOCATION ARRANGEMENTS OR PROCEDURES**
22 **FOR PROCESSING REQUESTS UNDER ANY EXISTING**
23 **COLLOCATION CONTRACTS DURING THE LIFE OF SUCH**

⁵² *In The Matter Of Wireline Services Offering Advanced Telecommunications Capability, CC Docket, No. 98-147, First Report and Order and Further Notice of Proposed Rulemaking, FCC 99-48 (rel. Mar. 31, 1999) ("Advanced Services Order").*

1 **CONTRACTS UNLESS THE FCC, OR A STATE COMMISSION, ISSUES**
2 **NEW RULES REGARDING COLLOCATION.” DO YOU AGREE?**

3
4 A. No. BellSouth provides a detailed description of the rates, terms and conditions
5 for collocation in the Collocation Handbook. However, BellSouth believes that it
6 has the unilateral right to change its Collocation Handbook in any manner and at
7 any time it chooses. In addition, because the BellSouth Collocation Handbook
8 and Tariff⁵³ are more detailed than the interconnection agreements and contain the
9 generally available terms and conditions that are more up to date with the FCC
10 *Advanced Services Order* requirements various state commissions’ orders
11 regarding collocation, ALECs must often rely upon the handbook and tariff for
12 the terms and conditions that control collocation.

13 The problem, therefore, is that the BellSouth Collocation Handbook permits
14 BellSouth to determine the terms and conditions for collocation without any
15 Commission approval or ALEC input. In fact, BellSouth has and will continue to
16 use its handbook to implement its unilateral interpretation on Commission orders
17 relating to collocation. The end result is that BellSouth has and will continue to
18 use its Collocation Handbook to *unilaterally* control collocation, and, therefore,
19 interconnection and access to UNEs in Florida.

20 **Q. CAN YOU PROVIDE AN EXAMPLE OF BELLSOUTH’S UNILATERAL**
21 **CHANGES TO ITS COLLOCATION TERMS AND CONDITIONS?**
22

⁵³ See Affidavit of Wayne Gray, Exhibit AWG-1 (Florida Access Services Tariff; Effective: July 15, 1996 with subsequent amendments; hereinafter “Access Services Tariff”).

1 A. Yes. For example, BellSouth states at the beginning of Version 9.2 (the most
2 recent version at the time of this filing) of its Collocation Handbook that:

3 This handbook is updated with version 9.2 effective
4 November 1, 2000 in order to make the following changes
5 to the Central Office Physical Collocation Contract:
6 Inclusion of PSC rules from all states in order to
7 consolidate all states into one contract. Deletion of a
8 separate Florida Central Office Physical Collocation
9 Contract. This update also makes the following corrections
10 to the Remote Site Collocation Contract: Inclusion of PSC
11 rules from all states in order to consolidate all states into
12 one contract; addition of a rate element chart per state.

13 Importantly, BellSouth believes that it may change its handbook not only to
14 reflect new Commission orders, but for whatever reason BellSouth deems
15 appropriate regardless of its impact on ALECs.

16

17 **Q. DO YOU HAVE AN EXAMPLE OF BELL SOUTH'S UNILATERAL**
18 **CONTROL OF THE COLLOCATION PROCESS THAT IS SPECIFIC TO**
19 **AT&T?**

20

21 A. Yes. One of the best examples is BellSouth's insistence on where the Point of
22 Termination ("POT") frame is placed relative to the collocation cage. It is
23 AT&T's preference to place the POT frame inside its own collocation cage.
24 However, because AT&T's interconnection agreement language is silent on the
25 specifics of this situation, BellSouth places the frame outside of the cage
26 approximately 50 feet from the collocation arrangement⁴⁴. AT&T has experienced
27 situations in Florida where if AT&T does not agree with BellSouth on the
28 placement of this frame – a frame that AT&T is responsible for purchasing –
29 BellSouth will halt the collocation construction. The bottom line is that without

1 negotiation, arbitration, or Commission review, BellSouth unilaterally changes its
2 practices and imposes its own interpretation of interconnection agreement
3 language on ALECs without recourse for the ALEC. BellSouth does the same
4 thing with its unilateral interpretation of FCC rules.

5 **Q. IS THERE ANOTHER OPTION FOR ORDERING COLLOCATION IN**
6 **FLORIDA?**

7
8 A. Yes. In Florida, BellSouth offers another option for ordering collocation –
9 BellSouth's Access Services Tariff for Expanded Interconnection Service (EIS).⁵⁵
10 The Access Services Tariff provides for many of the same terms and conditions
11 for collocation that are found in BellSouth's Collocation Handbook. However,
12 BellSouth can discriminate against CLECs by forcing them to rely upon the terms
13 and conditions in the Collocation Handbook, which are different than those
14 contained in the tariff, if their interconnection agreement has not been updated to
15 reflect new Commission orders, court decisions and FCC decisions. CLECs
16 should be allowed to access all available options for collocation in a
17 nondiscriminatory manner without having to take on the risk on BellSouth
18 changing those terms and conditions at its own discretion.

19
20 **Q. HOW DOES BELL SOUTH'S UNILATERAL CONTROL OVER**
21 **COLLOCATION TERMS AND CONDITIONS RELATE TO THIS**
22 **PROCEEDING?**
23

⁵⁴ In earlier collocation arrangements, BellSouth was more than willing to allow AT&T to place the POT frame within its collocation cage.

⁵⁵ See Affidavit of Wayne Gray, Exhibit AWG-1 (Florida Access Services Tariff; Effective: July 15, 1996 with subsequent amendments; hereinafter "Access Services Tariff").

1 A. As I stated previously, collocation that permits appropriate interconnection and
2 access to UNEs on appropriate and nondiscriminatory terms and conditions is a
3 key component to Section 271 checklist compliance. Because BellSouth has
4 unilateral control over collocation terms and conditions, BellSouth cannot meet
5 the Section 271 checklist items for interconnection and access to UNEs.

6 **B. "Extraneous Expenses"**

7 **Q. IS BELL SOUTH'S RECOVERY OF "EXTRANEIOUS EXPENSES"**
8 **CONSISTENT WITH TELRIC COST PRINCIPLES AND FCC RULES?**
9

10 A. No. In Version 8 of BellSouth's Collocation Handbook, BellSouth incorporated
11 the following provision:

12 Should BellSouth discover that unexpected major
13 renovation or upgrade will be required in order to facilitate
14 physical collocation, BST will share the costs of these
15 expenses among collocators benefiting from such work
16 based on the number of square feet being requested. Major
17 renovation may include, but not be limited to, ground plane
18 addition, asbestos abatement, mechanical upgrade, major
19 HVAC upgrade, separate egress, ADA compliance.⁵⁶
20

21 It is important to note that this same exact provision is not found in the BellSouth
22 Collocation Handbook Version 9.2. Based on other provisions contained in
23 Version 9.2 of the handbook, and AT&T's actual experiences, however,
24 BellSouth is continuing to require collocators to pay for costs similar to these in
25 nature.
26

⁵⁶ BellSouth Collocation Handbook, Version 8, June 17, 1999, Effective July 17, 1999, § 3.21.

1 Payment of these types of costs is not appropriate because it is inconsistent with
2 TELRIC principles. TELRIC requires that the costs for UNEs or interconnection
3 (of which collocation is a part) be based on the long-run incremental cost based on
4 total demand. Thus, heating, ventilating and air conditioning (“HVAC”) cost, for
5 example, should be based on the cost of providing HVAC systems to the entire
6 central office and prorated to the users of the central office either on the amount of
7 space occupied or by another mechanism tied directly to the heating or air
8 conditioning required in the space. Requiring the collocator to pay for the
9 upgrade of the HVAC system simply because the collocator had the most recent
10 need for HVAC does not reflect the TELRIC approach. This charge is also
11 discriminatory towards the collocator because the collocator is not receiving the
12 same cost efficiency benefits that BellSouth is enjoying. The same could be said
13 for many of the other areas that are included in the list of items for which
14 BellSouth may charge for “extraneous expenses.”

15 **Q. WHAT IS THE MOST COMMON “EXTRANEIOUS EXPENSES” ISSUE**
16 **FACED BY ALECS?**

17
18 **A.** The most common issue that AT&T and all other ALECs are experiencing with
19 this discriminatory approach to cost recovery is with BellSouth’s DC power
20 augments and charges. BellSouth’s Collocation Handbook and BellSouth’s
21 practices require charging the collocator, on an “individual case basis,” for the

1 cost of the DC power augment when BellSouth does not have sufficient capacity
2 in its DC power plant to provide DC power to the collocation arrangement.⁵⁷

3 **Q. IS BELL SOUTH INVOKING A DOUBLE RECOVERY FOR ITS OWN**
4 **COST?**

5
6 A. Yes. Not only does BellSouth charge an ALEC on nonrecurring charge for the
7 augment to the DC power plant, but BellSouth also charges collocators generally
8 for the recurring costs to recover BellSouth's initial investment in the DC power
9 plant.⁵⁸ Double recovery (recovering the nonrecurring purchase of the augmented
10 DC power plant and recovering BellSouth's general investment in the entire DC
11 power plant through non-recurring charges) is plainly inconsistent with TELRIC
12 and is not permitted according to Section 252(d)(2) of the Act.

13 **Q. DO YOU HAVE AN EXAMPLE OF BELL SOUTH CHARGING AT&T**
14 **FOR DC POWER AUGMENTS?**

15
16 A. Yes. BellSouth routinely charges AT&T large nonrecurring charges related to
17 cabling and DC power augments *in addition* to the recurring DC Power
18 Consumption rate, which is the only charge BellSouth should be allowed to
19 charge for recovering its investment in the DC power plant. Specifically, in

⁵⁷ BellSouth Collocation Handbook, Version 9.2, Section 6.7, subsection 7.8.2 notes: "If BellSouth has not previously invested in power plant capacity for collocation at a specific site, CLEC-1 has the option to add its own dedicated power plant; provided, however, that such work shall be performed by a BellSouth Certified Supplier who shall comply with BellSouth's guidelines and specifications. Where the addition of CLEC-1's dedicated power plant results in construction of a new power plant room, upon termination of CLEC-1's right to occupy collocation space at such site, CLEC-1 shall have the right to remove its equipment from the power plant room, but shall otherwise leave the room intact." There is no place that I could locate in the Collocation Handbook that handled the flip side of this provision: when BellSouth has not previously invested in power plant capacity for collocation and the ALEC does not want to avail itself of the option of building its own power plant.

⁵⁸ BellSouth Collocation Handbook, Version 9.2, § 6.7, subsection 7.8.1.

1 Florida, BellSouth imposed an average nonrecurring charge of almost \$97,000 on
2 AT&T to extend DC power into AT&T's collocation cage. (See Exhibit SET-3
3 for a list of the central offices where AT&T has paid these nonrecurring charges.)
4 AT&T does not know, however, how much of that is for cabling versus the
5 quantity that is for upgrading the power plant. However, based on my experience
6 in these types of costs, it appears the majority of the \$97,000 is likely going
7 towards upgrading the power plant, which leads to the double-recovery discussed
8 above. In short, BellSouth's rates for DC power are inconsistent with the Act and
9 FCC guidelines as BellSouth's DC power cost recovery via individual case basis
10 augment charges are not reviewed by this Commission and are inconsistent with
11 TELRIC principles.

12 **Q. HOW HAVE OTHER COMMISSIONS DEALT WITH THE RECOVERY**
13 **OF THESE COSTS?**

14
15 A. In Texas, SWBT is not permitted to charge collocators for DC power augments in
16 any form. SWBT must recover the investment in the DC power plant on a
17 nondiscriminatory basis and recover the cost for the total demand placed on the
18 power plant (SWBT's and collocators' demand). In Texas, however, SWBT is
19 prohibited from charging for DC power augments – the only rate that SWBT can
20 and does charge is the recurring DC Power Consumption rate.

21
22 **C. Shared Collocation.**

23 **Q. DO YOU AGREE THAT BELL SOUTH PROVIDES FOR SHARED**
24 **COLLOCATION IN A FORM THAT IS CONSISTENT WITH THAT**
25 **REQUIRED BY THE FCC'S *ADVANCED SERVICES ORDER*?**

1
2 A. No. BellSouth is not providing shared collocation in a manner consistent with the
3 *Advanced Services Order*. BellSouth's witness, Mr. Gray, claims that ALECs may
4 choose shared collocation. The type of collocation Mr. Gray describes, however,
5 does not meet the requirements of the *Advanced Services Order*. Indeed, Mr.
6 Gray's affidavit and BellSouth's Collocation Handbook describe "Shared
7 (Subleased) Caged Collocation"⁵⁹ in the same way that the FCC describes it in the
8 *Advanced Services Order* as subleased collocation and not shared collocation.

9 **Q. HOW DOES THE FCC DESCRIBE SHARED COLLOCATION?**

10 A. The FCC defines "shared collocation" as:

11 [A] caged collocation space shared by two or more
12 competitive LECs pursuant to terms and conditions agreed
13 to by the competitive LECs. In making shared cage
14 arrangements available, incumbent LECs may not increase
15 the cost of site preparation or nonrecurring charges above
16 the cost for provisioning such a cage of similar dimensions
17 and material to a single collocating party. In addition, the
18 incumbent must prorate the charge for site conditioning and
19 preparation undertaken by the incumbent to construct the
20 shared collocation cage or condition the space for
21 collocation use, regardless of how many carriers actually
22 collocate in that cage, by determining the total charge for
23 site preparation and allocating that charge to a collocating
24 carrier based on the percentage of the total space utilized by
25 that carrier. In other words, a carrier should be charged
26 only for those costs directly attributable to that carrier.⁶⁰

27 The FCC briefly references "subleased" collocation and states that the incumbent
28 LEC cannot prevent a caged collocation user from allocating a portion of its cage

⁵⁹ BellSouth Collocation Handbook, Customer Guide, CG-COLH-001, Issue 9.2, November, 2000, § 6.3, subsection 3.4.

⁶⁰ FCC *Advanced Services Order* ¶ 41.

1 to another collocator. However, the emphasis of this paragraph is that incumbent
2 LECs must make shared collocation arrangements available, must construct the
3 collocation cage, and must not increase the cost of site preparation or
4 nonrecurring charges above the cost for provisioning such a cage of similar
5 dimensions and material to a single collocating party. The Shared (Subleased)
6 Caged Collocation section of BellSouth's Collocation Handbook, however, does
7 not contain provisions covering shared cage collocation.⁶¹

8
9 In addition, FCC rules also require that the ILEC prorate the charge for site
10 conditioning and preparation undertaken by the ILEC to construct the shared
11 collocation cage or condition the space for collocation use, regardless of how
12 many carriers actually collocate in that cage. This result is determined by the total
13 charge for site preparation and allocates that charge to a collocating carrier based
14 on the percentage of the total space utilized by that carrier.⁶² The FCC's purpose
15 for this requirement is to permit a collocator to occupy space within a cage that
16 had been constructed generally for multiple collocators.

17 It is important for this Commission to recognize that several ILECs already have
18 tariff language implementing the shared collocation (or common collocation as it
19 is sometimes defined) definition outlined by the FCC in the *Advanced Services*
20 *Order*. Specifically, SWBT in Texas, Missouri, Kansas, and Oklahoma provides

⁶¹ BellSouth Collocation Handbook, Customer Guide, CG-COLH-001, Issue 9.2, November, 2000, § 6.3, subsection 3.4.

⁶² FCC *Advanced Services Order* ¶ 41.

1 for shared collocation in tariffs for these states. Pacific Bell provides for shared
 2 collocation in California. Ameritech provides for shared collocation in at least
 3 Michigan. Further, Verizon provides for shared collocation (referred to as
 4 SCOPE in its tariffs) throughout its former NYNEX and Bell Atlantic territories.
 5 There is absolutely no reason for BellSouth not to make this form of collocation
 6 available in Florida as well.

7 **Q. HAS THE FLORIDA COMMISSION CONSIDERED THIS ISSUE?**

8 A. Yes. The Florida Commission ruled on this issue in Docket Nos. 981834-TP and
 9 990321-TP.

10 **Q. WHAT DID THE FLORIDA PSC DECIDE IN RELATION TO SHARED**
 11 **COLLOCATION?**

12 A. Consistent with the FCC's guidance on this same issue, the Florida PSC
 13 concluded that:

14 (W)e acknowledge that FCC Order 99-48 clearly states that
 15 the ILEC must permit each ALEC to order UNES to and
 16 provision service from the shared collocation space,
 17 regardless of who the original collocater is and state our
 18 disagreement with BellSouth witness Hendrix's assertion
 19 that the host ALEC should be the responsible party to
 20 submit applications for initial and additional equipment
 21 placements of its guests because the ILEC may not impose
 22 unnecessary requirements on how or what the ALECs
 23 might need for their own network infrastructure according
 24 to the FCC's Order.⁶³

⁶³ *In re: Petition of Competitive Carriers for Commission action to support local competition in BellSouth Telecommunications, Inc.'s service territory.* Docket No. 981834-TP; *In re: Petition of ACI Corp. d/b/a Accelerated Connections, Inc. for generic investigation to ensure that BellSouth Telecommunications, Inc., Sprint-Florida, Incorporated, and GTE Florida Incorporated comply with obligation to provide alternative local exchange carriers with flexible, timely, and cost-efficient physical collocation.* Docket No. 990321-TP, Order No. PSC-00-0941-FOF-TP (May 11, 2000) at 38-39.

1 Consistent with this acknowledgement, the Florida PSC concluded: “ALECs shall
2 not be required to designate a host ALEC and shall be able to order directly from
3 the ILEC any addition to its network.”⁶⁴

4 **Q. IS BELLSOUTH COMPLYING WITH THIS REQUIREMENT IN**
5 **FLORIDA?**

6 A. No. Section E 20.2.3(C) of the Access Services Tariff (as amended and effective
7 on November 14, 2000) makes clear that BellSouth requires that a CLEC be
8 designated as a “host” and that the “host” CLEC must notify BellSouth of any
9 “guests” that intend to occupy space within the “host” collocation arrangement.
10 In short, BellSouth is directly in conflict not only with the FCC’s requirements for
11 shared collocation, but also the requirements of the Florida PSC in regards to
12 shared collocation.

13 **D. Impact of Recent FCC Order on Collocation**

14 **Q. DOES THE RECENT FCC ORDER ON COLLOCATION RESPONDING**
15 **TO THE DC CIRCUIT COURT’S REMAND IMPACT ANY FLORIDA**
16 **DECISIONS?**

17 A. Yes. On November 17, 2000, this Commission issued a reconsideration of some
18 of its decisions relating to collocation – reconsiderations that reversed some
19 positions that were important to collocators.⁶⁵ The standard that the Commission
20 used to make these reconsiderations was “whether the motion identifies a point of
21 fact or law which was overlooked or which the Commission failed to consider in

⁶⁴ *Id.* at 39

⁶⁵ *Order Granting in Part and Denying in Part Motion for Reconsideration*, Florida Public Service Commission, Re: Docket Nos. 981834-TP, 990321-TP, Order No. PSC-00-2190-PCO-TP, Issued: November 17, 2000 (hereafter “Florida Collocation Reconsideration Order”).

1 rendering its Order.”⁶⁶ Interestingly, in many instances the DC Circuit Court
2 merely remanded issues to the FCC, but nonetheless, this Commission its position
3 on these issues. Specifically, there is at least one issue that this Commission
4 made reconsideration for which the FCC has now responded to the DC Circuit
5 Court’s remand that I would like to point out: Cross-Connects between
6 Collocators.⁶⁷

7 **Q. HOW HAS THE FCC ORDER AFFECTED THIS COMMISSION’S**
8 **DECISION ON CROSS-CONNECTS BETWEEN COLLOCATORS?**

9 A. Based on the DC Circuit Order, this Commission made the following
10 reconsideration:

11 Therefore, we reconsider our decision to rely upon the
12 FCC’s rules regarding cross-connects, because the basis for
13 that decision has now been vacated. Furthermore, we
14 acknowledge the clear ruling of the DC Circuit and refrain
15 from determining that cross-connects between ALECs are
16 required. In conformance with the DC Circuit’s ruling, we
17 determine that the ILECs are not required to allow
18 collocators to cross-connect. We note, however, that there
19 is significant testimony in the record regarding the
20 efficiency of allowing cross-connects.⁶⁸

21 However, the FCC has now made it clear that incumbents must make collocator-
22 to-collocator cross-connects available to ALECs.⁶⁹ Specifically, the FCC notes:
23 “The Commission, however, finds that an incumbent carrier must provision cross-
24 connects between collocated carriers, and requires an incumbent carrier to provide

⁶⁶ *Id.* at p. 4.

⁶⁷ *Id.* at p. 13.

⁶⁸ *Id.* at p. 16.

1 such cross-connects upon reasonable request.”⁷⁰ Given that the basis for the
2 Florida Commission’s reconsideration (the DC Circuit Court Remand) has now
3 been addressed by the FCC, and that the Florida PSC already believed “that there
4 is significant testimony in the record regarding the efficiency of allowing cross-
5 connects,” it would be appropriate for the Florida Commission to revert to its
6 original position that ALECs should be permitted to utilize and that BellSouth
7 provide collocation-to-collocation cross-connects.

8
9 **V. CONCLUSION**

10 **Q. PLEASE SUMMARIZE YOUR TESTIMONY.**

11 A. My testimony establishes that BellSouth fails to comply with the Section 271
12 checklist because of its practices relating to xDSL and collocation. These issues
13 are very important to competition, and BellSouth’s failure to meet its legal
14 obligation has adversely impacted ALEC entry and ability to compete. For these
15 reasons, the Commission should find that BellSouth does not yet comply with
16 Section 271 checklist requirements (i) and (iv).

17 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

18 A. Yes.

⁶⁹ Press Release Re: *FCC Approves Rules Designed to Give New Entrants Access to Incumbent Local Phone Companies’ Networks*, July 12, 2001.

⁷⁰ *Id.* at p. 2.

1 BY MR. LAMOUREUX:

2 Q Do you have a summary of your testimony, Mr. Turner?

3 A Yes, I do.

4 Q Would you give that now, please?

5 A Yes. Good afternoon. My name is Steven Turner, and
6 I have been asked by AT&T to respond to the direct and rebuttal
7 testimony of Cox, Latham, Milner, Williams, and Gray of
8 BellSouth to assist this Commission in determining whether
9 BellSouth fully implements the competitive checklist
10 requirements of Section 271(c)(2)(B) for two specific areas,
11 one, digital subscriber line, and, two, collocation. And I
12 will make a brief opening statement regarding each of these two
13 areas.

14 With regard to DSL, the current marketplace demands
15 that alternative local exchange carriers be able to offer
16 customers advanced services as well as a combination or bundle
17 of voice and advanced services. BellSouth is aggressively
18 offering customers bundled voice and advanced services while
19 consistently precluding ALECs, such as AT&T, who use the
20 unbundled network element platform from offering customers the
21 same option. This has the effect of chilling local competition
22 for advanced services.

23 Mr. Milner today has made clear that BellSouth
24 intends to extend this policy position to the broad band
25 services it offers over the fiber-fed next generation digital

1 loop carrier architecture. BellSouth's actions significantly
2 hinder ALECs' ability to compete in the Florida market for
3 voice, data, and unbundled services.

4 BellSouth's refusal to allow for competition
5 regarding DSL is occurring because BellSouth has not fully
6 unbundled the local loop, transmission from the central office
7 to the customer premises as per the Federal Act for the
8 following reasons. One, the FCC as far back as the Texas 271
9 order in June of 2000, required BellSouth to provide line
10 splitting. Line splitting is when an ALEC offers a consumer
11 voice and data services over the same telephone line.

12 It is my understanding that just recently in
13 testimony filed by Mr. Williams in North Carolina, BellSouth
14 has altered its position regarding line splitting, is now
15 offering ALECs that line split with nondiscriminatory access to
16 BellSouth's splitters for new customers and not just for
17 migrations of existing DSL customers. This is a recent
18 development and it will be important to confirm that this
19 change of heart on BellSouth's part is more than paper deep.

20 Specifically, BellSouth has indicated that it will
21 make splitters available for new customers, but it is important
22 that this Commission confirm that BellSouth will make its
23 splitters available to UNE platform providers in all
24 circumstances, including adding DSL to an existing ALEC
25 customer.

1 While BellSouth has changed its position regarding
2 providing access to BellSouth owned splitters for line
3 splitting, BellSouth still intends to treat line splitting in
4 an inefficient manner. Now Mr. Williams has made it appear in
5 his testimony as if the introduction of a splitter into a UNE-P
6 combination is so fundamentally different that the loop and
7 port cannot possibly continue to be considered as UNE-P. It is
8 important to realize two issues with Mr. Williams' testimony in
9 this area.

10 First, the primary reason that the two diagrams --
11 and the ones I am referring to are Exhibit TGW-24 and Exhibit
12 TGW-25 in his surrebuttal testimony -- look so fundamentally
13 different is that Mr. Williams only illustrated the insertion
14 of the splitter into UNE-P through the use of collocation.

15 This interestingly is contradictory to BellSouth's
16 new position regarding access to the splitters for line
17 splitting. This is important because collocation is not
18 necessary to insert the splitter into the UNE-P combination and
19 it is discriminatory in light of BellSouth's willingness to
20 provide the splitter for line sharing.

21 Second, it is not unusual for BellSouth or other
22 incumbents to insert other items in between the loop and the
23 port to provide the full capabilities of the loop that is
24 required in the Federal Act. For example, if a service
25 requires a higher quality loop with less noise, BellSouth will

1 provide this capability by inserting a loop conditioner in
2 between the loop and the switch port in precisely the same
3 place that the splitter would be inserted. And do so without
4 asserting that it fundamentally alters the UNE-P combination.

5 The line splitter is no different. All that AT&T or
6 any other ALEC is seeking is for BellSouth to make all the
7 capabilities of the loop available to ALECs including access to
8 the high frequency and low frequency portion of the loop, just
9 as BellSouth is willing go to do for line sharing.

10 Furthermore, the Georgia Commission has acknowledged
11 that UNE-P remains UNE-P when used for line splitting when it
12 recently determined that CLECs were entitled to the UNE-P rate
13 when engaged in line splitting rather than having to pay the
14 unbundled loop and unbundled port rate.

15 Two, BellSouth, like all ILECs, is aggressively
16 deploying next generation digital loop carrier, or referred to
17 as NGDLC. NGDLC is loop electronics that allows carriers to
18 use fiber from the central office out to a remote terminal. At
19 the remote terminal the NGDLC allows for the fiber to be
20 connected with the copper that continues the loop out to the
21 customer's premises. The next generation aspect of NGDLC is
22 that by simply using different plug-in cards, BellSouth can
23 provide voice service only, advanced service only, or combined
24 voice and advanced services.

25 Prior to the deployment of NGDLC, the data services

1 was provided by a separate device known as a DSL access
2 multiplexer, or DSLAM. The DSLAM capability now has been
3 integrated into a card within the NGDLC permitting easier
4 provisioning of advanced services. BellSouth will use this
5 technology to provide the local loop transmission between the
6 customer's premises and the central office. BellSouth,
7 however, does not provide CLECs, such as AT&T, with equivalent
8 access to loops that use NGDLC technology, despite BellSouth's
9 statements to the contrary.

10 As a result, ALECs seeking to provide unbundled voice
11 and advanced services in competition with BellSouth are faced
12 with three choices. One, they can use traditional copper loops
13 that provide inferior service quality because of their
14 excessive length, assuming that such loops are even available.
15 Two, they can use cost prohibitive remote terminal collocation,
16 assuming that it is even technically feasible. Or, three, they
17 may just not be able to compete for the customers served by
18 NGDLC loop technology at all.

19 Of course, all three choices for all practical
20 purposes have the same result, BellSouth retains its monopoly
21 control of the market. BellSouth's restrictions in this area
22 are inconsistent with the requirements of FCC rules, and
23 Section 251 and 271 of the Act, and allow BellSouth to remain a
24 monopoly provider of combined voice and advanced services to
25 Florida consumers.

1 Moving to collocation. BellSouth has not
2 demonstrated that it is in compliance with the requirements of
3 Section 271(c)(2)(B) in that the terms and conditions BellSouth
4 has for collocation fail to comply with the requirements of FCC
5 guidelines and, therefore, can prevent CLECs from efficiently
6 obtaining interconnection and access to unbundled elements
7 consistent with the requirements of the Act.

8 Mr. Gray spends a great deal of time discussing the
9 collocation options BellSouth supposedly offers. What Mr. Gray
10 fails to tell you is what BellSouth does not offer and why the
11 terms, conditions, and prices it imposes on collocation
12 arrangements are discriminatory. Specifically, BellSouth can
13 and does unilaterally adopt and change many terms and
14 conditions related to collocation without approval by this
15 Commission or negotiation with ALECs. Mr. Gray prefaces almost
16 every answer to the questions in his rebuttal testimony that
17 the collocation handbook is not the document for collocation in
18 Florida, but rather that interconnection agreements and tariffs
19 are what are used.

20 However, in reality Mr. Gray's statements do not hold
21 water. One of the best examples of BellSouth unilaterally
22 changing terms and conditions for collocation is BellSouth's
23 insistence on where the point of termination frame is placed
24 relative to the collocation cage. It is AT&T's preference to
25 place the POT frame inside its own collocation cage. However,

1 because AT&T's interconnection agreement language is silent on
2 the specifics of the placement of the POT frame, BellSouth
3 asserts that it prefers to place the frame outside the cage
4 approximately 50 feet from the collocation arrangement.

5 Now, it is important to note that in earlier
6 collocation arrangements BellSouth was more than willing to
7 allow AT&T to place the POT frame within its collocation cage.
8 However, now AT&T has experienced situations in Florida where
9 if AT&T does not agree with BellSouth on the placement of this
10 frame, a frame that AT&T is responsible for purchasing,
11 BellSouth will halt the collocation construction. The bottom
12 line is that without negotiation, arbitration, or Commission
13 review, BellSouth unilaterally changes its practices and
14 imposes its own interpretation of interconnection agreement
15 language on ALECs without practical recourse for the ALEC.
16 BellSouth does the same thing with its unilateral
17 interpretation of FCC rules.

18 Another area where BellSouth's practices leave ALECs
19 in a vulnerable position is in the area of BellSouth's
20 application of extraneous charges. The most common issue that
21 AT&T and other ALECs are experiencing with this discriminatory
22 approach is cost recovery with BellSouth's DC power augments
23 and charges. BellSouth's collocation handbook and BellSouth's
24 practices require charging the collocater on an individual case
25 basis for the cost of the DC power augment when BellSouth does

1 not have sufficient capacity in its DC power plant to provide
2 DC power to the collocation arrangement.

3 Not only does BellSouth charge an ALEC nonrecurring
4 charges for the augment to the DC power plant, but BellSouth
5 also charges collocators generally for the recurring costs to
6 recover BellSouth's initial investment in the DC power plant.
7 Double recovery or the recovery of the nonrecurring purchase of
8 the augmented DC power plant and the recovery of BellSouth's
9 general investment in the DC power plant through nonrecurring
10 charges is plainly inconsistent with TELRIC and is not
11 permitted according to Section 252(d)(2) of the Act.

12 BellSouth routinely charges AT&T large nonrecurring
13 charges related to cabling and DC power augments in addition to
14 the recurring DC power consumption rate which is the only
15 charge BellSouth should be allowed to charge for recovering its
16 investment in DC power. Specifically in Florida, BellSouth
17 imposed an average nonrecurring charge of almost \$97,000 on
18 AT&T to extend DC power into AT&T's collocation cage. AT&T
19 does not know, however, how much of that is for cabling versus
20 the quantity as for upgrading the power plant. But based on my
21 experience in these types of costs, it appears the majority of
22 the 97,000 is likely going towards upgrading the power plant,
23 which leads to the double recovery discussed above.

24 In short, BellSouth's rates for DC power are
25 inconsistent with the Act and FCC guidelines as BellSouth's DC

1 power cost recovery via individual case basis augment charges
2 are not reviewed by this Commission and are not consistent with
3 TELRIC principles.

4 This concludes my opening statement.

5 MR. LAMOUREUX: Mr. Turner is available for
6 cross-examination.

7 CHAIRMAN JACOBS: Very well. Ms. Foshee.

8 CROSS EXAMINATION

9 BY MS. FOSHEE:

10 Q Good evening, Mr. Turner. Lisa Foshee on behalf of
11 BellSouth. The first 22 pages of your testimony concern AT&T's
12 position that BellSouth should own the splitter in a line
13 splitting arrangement, correct?

14 A Yes, that is correct.

15 Q Okay. BellSouth now offers an option whereby
16 BellSouth will own that splitter, correct?

17 A That is my understanding from Mr. Williams.

18 Q And that is what AT&T wanted, correct?

19 A That is correct. It's not clear to me yet what the
20 exact terms and conditions of that offer are, but it does
21 appear that it is in the direction of what AT&T was seeking.

22 Q Do you participate in the line splitting
23 collaboratives, Mr. Turner?

24 A I do not personally participate in them.

25 Q So if that matter was raised and discussed and

1 presented to the ALECs in the line splitting collaborative, you
2 would have no knowledge of that, correct?

3 A No, I would not have direct knowledge.

4 Q Okay. Now, the next issue you raise in your
5 testimony is your contention that CLECs should have access to
6 splitters one line at a time, correct?

7 A That is correct.

8 Q And, Mr. Turner, I believe we have agreed in earlier
9 proceedings that there is no 271 requirement that BellSouth
10 provide access to a splitter one port at a time, correct?

11 A There is not a specific 271 requirement. The
12 argument that I have made in earlier proceedings is that it
13 would be more efficient not only for the CLECs, but it would
14 also be more efficient for BellSouth to deploy splitters a line
15 at a time, or allow CLECs to order them a line at a time.

16 Q Let me ask my question again. Is there a 271
17 requirement that BellSouth provide access to a splitter one
18 port at a time?

19 A I don't believe there is.

20 Q And, in fact, ILECs are not obligated to provide a
21 splitter in either a line sharing or a line splitting
22 arrangement, are they?

23 A No, they are not required to do it in either, but if
24 they do it in line sharing, it would be discriminatory for them
25 to then not provide it in line splitting. And that would be

1 inconsistent with the requirements of Section 271.

2 COMMISSIONER DEASON: Let me interrupt, you may have
3 just touched upon my question. When you say it is or is not a
4 requirement of 271, a requirement of whom, FCC, or just
5 inherent within the law itself?

6 THE WITNESS: When I'm talking about requirements
7 consistent with 271, I'm talking in general about two things,
8 one is consistent with FCC rules, and the FCC with regards to
9 splitters has said that it is at the option of the incumbent
10 LEC to provide the splitter. And so some incumbents in the
11 country do not offer access to the splitter.

12 Where it becomes a 271 issue is that BellSouth
13 voluntarily offered to make splitters available to CLECs that
14 were using it for line sharing. Once they made that offer, for
15 them to then say to a CLEC that wanted to use it for line
16 splitting, we are not going to give you the splitter, that was
17 discriminatory.

18 And so that then becomes a 271 issue because the
19 Federal Act requires that BellSouth provide nondiscriminatory
20 access to its elements, not picking one class of competitor
21 that only wants to go after data service and saying we will
22 give you the splitter, but picking another class of competitor
23 that wants to offer both voice and data using BellSouth network
24 elements and saying, we are not going to give you the splitter.
25 So, it's kind of -- it becomes a 271 issue in BellSouth

1 territory because of BellSouth's position that they will offer
2 the splitter for line sharing.

3 BY MS. FOSHEE:

4 Q Following up on Commissioner Deason's question, and
5 just to be clear about your issue, however, regardless of the
6 ownership of the splitter, there is no requirement anywhere as
7 to whether BellSouth must provide access to that splitter one
8 port at a time, ten ports at a time, 100 ports at a time,
9 correct?

10 A No, there is no specific requirement to that other
11 than whether or not you want to make the provisioning process
12 more efficient. That would be a choice for this Commission to
13 make, but it is not something that the FCC has mandated.

14 Q Now, the next issue you discuss is BellSouth's
15 alleged failure to, quote, support UNE-P when it is part of a
16 line splitting configuration. What do you mean by the term
17 support?

18 A Well, the context for that was the ex parte letter
19 that I attached as Exhibit SET-2 to my testimony, and BellSouth
20 explicitly said in its ex parte that as far as they were
21 concerned in the context of line splitting that UNE-P is a
22 combination of a loop and a port. Consequently if a splitter
23 is on a loop or is to be attached to a loop, a loop and a port
24 will lose its status as UNE-P. So, the context -- that is
25 not -- it is not real clear exactly what BellSouth meant by

1 that when it told the FCC that.

2 My concern is that it might have cost implications to
3 the CLEC in terms of the prices that would be charged for the
4 unbundled element platform. It could have service
5 implications, that perhaps BellSouth will treat this as a
6 special service situation as opposed to a POTS service. It may
7 have different provisioning intervals, it may have different
8 maintenance intervals. I'm not entirely sure what all the
9 implications are from BellSouth. But clearly BellSouth, at
10 least in this ex parte, intends to treat a loop and a port with
11 a splitter inserted differently than it intends to treat a loop
12 and a port combined.

13 Q And, in fact, in the FCC's Kansas/Oklahoma 271 order,
14 the FCC explicitly recognized that, in fact, once you enter
15 into a line splitting arrangement that a UNE-P no longer
16 exists, and it is, in fact, a separate loop and a port, did
17 they not?

18 A Well, I don't recall that exact language.

19 Q Okay. Let me show you --

20 MS. FOSHEE: And, Mr. Chairman, I don't think we need
21 to mark this as an exhibit, but what we were handing out is an
22 excerpt from the FCC's 271 decision in Kansas and Oklahoma, and
23 specifically Paragraph 220.

24 CHAIRMAN JACOBS: Very well.

25 BY MS. FOSHEE:

1 Q And, Mr. Turner, you are free to read that entire
2 paragraph, but the sentence that I am going to direct you to is
3 the last sentence of the paragraph. And when you are ready, if
4 you could read that last sentence for us.

5 A The last sentence says, "A competing carrier, either
6 alone or in conjunction with another carrier, thus is able to
7 replace an existing UNE-P configuration used to provide voice
8 service with an arrangement that enables it to provide voice
9 and data service to a customer."

10 Q And, in fact, the arrangement that SBC was using when
11 it filed its Kansas/Oklahoma order was an arrangement whereby a
12 carrier using a UNE-P when they wanted to engage in line
13 splitting would then divide that loop and that port and
14 purchase the loop as an xDSL capable loop and purchase the port
15 as a separate port, correct?

16 A That is correct. But, I think it's important to note
17 the date that this order came out. It came out actually on the
18 exact same day as the line sharing reconsideration order came
19 out that made it more clear what the requirements were going to
20 be related to line splitting for incumbents. So, when you
21 evaluate a 271 application, such as they were doing here in
22 Oklahoma, you evaluate it against the rules that are in place
23 at that time. And I don't believe that going forward the type
24 of discrimination that was inherent in this order can continue
25 given that the FCC, I think, has made more clear its support

1 for line splitting for CLECs using the unbundled network
2 elements platform.

3 Q Have you read the FCC's 271 orders subsequent to
4 Kansas and Oklahoma?

5 A I have looked at some of them, but I haven't read
6 every one cover to cover.

7 Q There is no 271 order since Kansas and Oklahoma that
8 has changed the FCC's position on this issue, is there?

9 A Well, the ones that I am familiar of that would be
10 since then would be Pennsylvania, possibly. I'm just doing
11 this from memory, but Pennsylvania would, again, be a state in
12 Verizon territory where Verizon does not offer the splitter
13 either to line sharing or line splitting CLECs. And so this
14 issue of discriminatory access and whether or not you can use
15 the unbundled network elements platform with a splitter
16 inserted is not even an issue in that particular proceeding.

17 COMMISSIONER JABER: That kind of brings us back to
18 the issue that Commissioner Deason addressed. That was way
19 last week, wasn't it, when we were talking about the standards.

20 COMMISSIONER DEASON: It seems like it was longer
21 than a week ago.

22 COMMISSIONER JABER: Doesn't it? When we were
23 talking about what is it exactly that the PSC needs to consider
24 as it relates to 271 and the 14-point checklist, or do we get
25 some guidance from the applications that are approved by other

1 state commissions. And what I hear you saying is your position
2 would be to the degree something is offered in a particular
3 state and is available, then perhaps 271 kind of becomes a
4 different consideration from state-to-state.

5 THE WITNESS: I think that it does. I think there
6 has been a fair amount of development particularly in the area
7 of DSL since the early 271 applications were granted by the FCC
8 since the latter ones. And so, for instance, if you take a
9 state like Texas, when Texas had its 271 application reviewed
10 by the FCC, the whole issue of line splitting was just
11 beginning to be discussed. And so the FCC effectively said we
12 are approving this application, we recognize that this issue is
13 just in its infancy, but there was no basis for them to reject
14 Southwestern Bell's application in Texas.

15 And then they went on to point out that the State of
16 Texas was continuing to evaluate that issue. And it wasn't
17 much later after that that the State of Texas ended up
18 determining that line splitting for the unbundled network
19 elements platform was consistent with the requirements that you
20 provide nondiscriminatory access to splitters. In fact, I
21 think I have the quote from there. They specifically made that
22 decision referencing the requirement that they give
23 nondiscriminatory access to both sides. Those CLECs that are
24 doing line sharing versus those that are doing line splitting.

25 COMMISSIONER JABER: Can you read that quote. I am

1 interested in that, because I recall -- this is just from basic
2 memory. Was it New York or Texas where the FCC actually
3 rejected one of the 271 applications because they didn't feel
4 like line sharing and line splitting was adequately addressed?
5 Do you recall?

6 THE WITNESS: There was an application, but I want to
7 say that it was Massachusetts, and the reason in that case --
8 this is from my memory -- was that it was not even addressed at
9 all. And it was late enough that the FCC felt that Verizon
10 needed to at least outline a position for how it was going to
11 provide line splitting.

12 And I will read the quote, but, again, in the context
13 of that application, if you look at that order, that order is
14 not going to say that they have to provide access to the
15 splitter for line splitting because Verizon doesn't provide the
16 splitter for any line sharing or line splitting applications.
17 So where you get -- you don't have the discriminatory issue in
18 Massachusetts, the issue in Massachusetts was just one of they
19 had to at least address it in their application.

20 COMMISSIONER JABER: Is there a line in the sand
21 drawn anywhere in the Act, in any of these orders that we could
22 look to? It seems to me that we are almost behind in terms of
23 considering new technologies anyway as it relates to 271. As
24 things develop in the middle of these proceedings, it seems to
25 me you don't go back and consider that that is an option that

1 is available and, therefore, it becomes one of the UNEs that we
2 need to test and consider and look at whether there is
3 nondiscriminatory access. Do you have any sort of guidance you
4 could direct me to for drawing a line in the sand?

5 THE WITNESS: I don't think that you could look at a
6 particular 271 approval as a line in the sand, and the reason
7 is because the technology is developing. I think the line in
8 the sand, as from a Commissioner standpoint, is trying to think
9 in terms of what helps to accomplish the pro-competitive goals
10 of the Federal Act. And so to the extent that you have an
11 issue in front of you, do I let only one class of competitors
12 have splitters or not; do I only allow BellSouth to have access
13 to the splitters behind NGDLC, which I hope we get to talk
14 about some, as well, or not.

15 I think the line in the sand is am I choosing one
16 class of competitor over another, or am I giving all of them an
17 equal playing field. I think that is ultimately the principle
18 that is the line in the sand is the Commission needs to do --
19 to ensure that they are giving nondiscriminatory access to all
20 players in this market. And, secondly, it would seem to me
21 that part of your role is to ensure that you give Florida
22 consumers the best opportunity to have access to these new
23 technologies.

24 The particular quote is on Page 16 in my revised
25 testimony, and it says, "The arbitrators find that based upon

1 the evidence in this record there is no technical distinction
2 between line sharing and line splitting as the splitter
3 provides access to the same functionality of the loop in both
4 contexts. The arbitrators agrees with AT&T that it is
5 discriminatory for SWBT --" or S-W-B-T -- "to provide the
6 splitter in a line sharing context while not providing the
7 splitter in a line splitting context. The arbitrators believe
8 that SWBT's policy will have the effect of severely limiting
9 the number of data CLECs with which a UNE-P provider can
10 partner in order to offer advanced services."

11 So, I mean, ultimately their line in the sand was
12 discrimination in this case. And when you limit the number of
13 providers that you can work with in a particular context, you
14 are effectively going to limit the availability of that
15 technology to new customers.

16 BY MS. FOSHEE:

17 Q Mr. Turner, I just want to make sure we have no
18 misunderstanding here. You understand that BellSouth is going
19 to give you the splitter; we are doing what you want, right?

20 A Yes, you are.

21 Q Okay.

22 A Under great protest. But you did finally offer
23 nondiscriminatory access. But there is more in this testimony
24 that is issues of discrimination that need to be addressed.

25 Q I understand that, I just want to make sure that --

1 you know, you keep complaining about the thing that we are
2 actually going to give you that you want. So I want to make
3 sure that we are square on that.

4 A Well, I'm being asked about it.

5 Q Okay. All right. Let's turn to the issue that you
6 appeared to want to talk to about ALECs -- talk about ALECs
7 putting the integrated splitter DSLAM card into the remote
8 terminals. You testified in your prefiled testimony that
9 BellSouth's policy on this issue is "express violation of the
10 FCC's requirements in the line sharing reconsideration order."
11 Have you looked at, sir, the notice of proposed rulemaking that
12 the FCC has put out on this issue?

13 A Could you point me to where you read that express
14 violation phrase?

15 Q Sure. It's Page 27 of your testimony, Lines 11 and
16 12.

17 A And your question was have I read the notice for
18 proposed rulemaking?

19 Q Right. That the FCC has put out on this exact issue,
20 and I believe Commissioner Jaber asked some of the BellSouth
21 witnesses about.

22 A Yes, I have read it.

23 Q Okay. And, in fact, in that proposed rulemaking the
24 FCC has specifically stated that we seek comment on whether a
25 requesting carrier may physically or virtually collocate its

1 line card at the remote terminal by installing it in the
2 incumbent's DLC for purposes of line sharing, isn't that the
3 issue in that proposed rulemaking?

4 A Yes, it is. That is not the point of my sentence
5 that you have read, but that is what that NPRM says.

6 Q Okay. Well, I want to just make sure we are clear.
7 So we agree that the FCC is currently considering that exact
8 issue, right?

9 A See, that issue that they are considering is an
10 implementation of the principle that they want loops that are
11 behind NGDLC to be -- or the way they put it is fiber-fed
12 digital loop carrier -- that those need to be made available to
13 CLECs. And so what they are looking at is how can that be
14 done.

15 And I talk about in my testimony effectively three
16 ways that that can be done. One is the collocation of the line
17 card, which is what BellSouth's witnesses tend to focus in on
18 and blow out of proportion how difficult that might be.
19 Another option is to collocate. The FCC is going to look at
20 those two options. Another option is to provide unbundled
21 access to the loop that is served by the NGDLC so that you can
22 gain access to the data portion of it at the central office.

23 Q Well, I guess what confused me about your testimony,
24 Mr. Turner, is that on the one hand you say that BellSouth is
25 in express violation of an FCC requirement by refusing to

1 provide this line card, and yet the FCC itself has opened up a
2 notice of proposed rulemaking to consider the issue. So it
3 seems unlikely that BellSouth can be in express violation of
4 something the FCC is currently considering, don't you agree?

5 A Well, you have set up something that my testimony
6 does not say. So I would not agree, because I have not said
7 you are in express violation by not providing the line card.

8 Q Okay. Now, you take the position, as well, that
9 remote terminal collocation -- I think you said in your
10 testimony is not viable, in your summary you said it was cost
11 prohibitive, correct?

12 A That is correct.

13 Q Now, will you agree with me that BellSouth had to
14 incur the expense to place equipment to provide DSL from the
15 remote terminal to its end users?

16 A Yes, you did.

17 Q And that is no different from the ALEC having to
18 incur that same cost to serve those same customers, correct?

19 A That is true, but by that logic that would say that
20 since you put copper in the ground between a customer premise
21 and the central office that the ALEC should also put copper in
22 the ground between the customer premise and the ALEC. Just
23 because BellSouth expends resources to provide a technology
24 option does not mean that it should be precluded from CLECs
25 being able to have access to that on an unbundled basis.

1 Q BellSouth is not obligated to unbundle packet
2 switching except in limited circumstances, correct?

3 A That is the FCC's present position on the issue.

4 Q And BellSouth is not required to unbundle packet
5 switching in Florida, is it?

6 A That is my understanding at this point that this
7 Commission has taken.

8 Q And your position in your testimony is that the
9 DSLAM, quote, is an integral part of the unbundled loop, and
10 that was on Page 27, Line 21?

11 A That is correct.

12 Q Okay. Is it your position that the unbundled loop
13 rate set by this Commission in their cost docket included the
14 cost of the DSLAM?

15 A The --

16 Q If you could answer yes or no, and then I will be
17 happy for you to explain.

18 A The answer to that question would probably be a no.

19 Q Okay.

20 A You said I could explain.

21 Q Absolutely, sorry.

22 A The DSLAM itself would not be in the mix of loops for
23 which the price was set. Digital loop carrier for which this
24 card is plugged into would likely have been a part of the loop
25 cost study.

1 Q But your testimony -- just to make sure I'm quoting
2 it right, I double-checked it, it is that the DSLAM is the
3 integral part of the unbundled loop, correct?

4 A Yes, but -- you're right, that's what it says. The
5 context of what I'm talking about, though, is the capability of
6 that card to be able to provide essential functions for
7 delivering a loop back to the central office.

8 Q Now, Mr. Turner, would you agree with me that even if
9 the FCC had decided that these line cards could be placed by
10 CLECs, that would only occur if it was technically feasible for
11 it to be done, correct?

12 A Yes, that is correct.

13 Q Turning now to collocation, does AT&T have a
14 collocation agreement with BellSouth in Florida?

15 A Yes, it does.

16 Q Have you reviewed that collocation agreement?

17 A Yes, I have.

18 Q Have you reviewed any of the other myriad of
19 collocation agreements BellSouth has with ALECs in Florida?

20 A Yes, I have.

21 Q Now, each of these collocation agreements evidences a
22 legally binding obligation on BellSouth to provide collocation
23 under certain terms and conditions, do they not?

24 A They should.

25 Q And with your understanding of FCC orders, BellSouth

1 can rely on those collocation agreements to support its 271
2 application, can it not?

3 A Yes, it can.

4 Q And BellSouth also has a collocation tariff in
5 Florida, does it not?

6 A Yes, it does.

7 Q Now, I don't know if you were part of this
8 proceeding, but the ALECs all begged for a collocation tariff
9 in Florida, did they not?

10 A I do not know if they begged or not. If I had been
11 testifying, I would have been begging.

12 Q Okay. That's fair. Has any ALEC that you are aware
13 of ordered out of the collocation tariff in Florida?

14 A I do not know.

15 Q And your understanding of tariffs is that BellSouth
16 cannot unilaterally change the terms of that tariff, correct?

17 A Yes. That is one of the benefits of a tariff.

18 Q Okay. Let's talk a little bit about shared
19 collocation. If BellSouth provided a shared arrangement in
20 which after the host built the cage the guests interfaced
21 directly with BellSouth, would that alleviate your concerns?

22 A No. I don't believe that the definition for shared
23 collocation in the advanced services order even contemplates
24 the idea of a host and a guest. But the problem, it really
25 goes beyond -- you have addressed one issue when you say that

1 the guest can have direct access to order things from
2 BellSouth. But the way that the tariff reads is that the host
3 is still obligated to effectively guarantee payment from all of
4 the guests that are in that cage. And there is -- that is just
5 a concept that is not even present at all in the advanced
6 services order. And so effectively what you are trying to do
7 is you want to make sure that there is one party that you can
8 make sure pays for that whole cage, and you are willing to
9 allow other collocators to come in and have direct ordering
10 capability with BellSouth. But in my opinion what that is is
11 subleasing, which the FCC also defined, but it is not shared
12 collocation.

13 Q Were you here for Mr. Gray's testimony?

14 A No, I was not.

15 Q Okay. Have you reviewed AT&T's new interconnection
16 agreement with BellSouth?

17 A I have read it in several states. I'm not sure that
18 I have seen the -- I think I have read Florida's, but I'm not
19 going to be able off the top of my head say exactly what is in
20 it. But I have read Florida's, but I have read in detail
21 Georgia's and North Carolina's.

22 Q Okay. Well, let me ask you this as a general
23 question. In their new interconnection agreement, BellSouth
24 and AT&T have gone to standard prices, have they not?

25 A Yes, they have.

1 Q And those standard prices include a standard price
2 for DC power, correct?

3 A That is what I believe is intended.

4 Q Now, I want to talk to you a little bit about the POT
5 bay issue that you brought up. As I understand it from your
6 prefiled testimony, your position is that the contract was
7 silent on the issue of where the POT bay should be, correct?

8 A Yes, the interconnection agreement under which AT&T
9 ordered these collocation arrangements, that is correct.

10 Q Okay. And POT bays, when BellSouth provisions UNEs
11 to AT&T, BellSouth terminates those UNEs at the POT bay, does
12 it not?

13 A That is correct.

14 Q And if the demarcation point between BellSouth's
15 network and AT&T's network is at the POT bay, and AT&T puts its
16 POT bay in its collocation space, there is no way for BellSouth
17 to get to that POT bay to terminate the UNEs, is there?

18 A That is not correct.

19 Q Okay. How would we do that?

20 A You would open the door with your set of keys and
21 gain access to the POT bay.

22 Q So AT&T would be willing to consent to BellSouth
23 having free access to its collocation space?

24 A I don't know if AT&T would be willing to consent or
25 not. I have just seen it happen regularly by incumbents where

1 they will go into POT bays that are inside cages and inspect
2 them, do things to them. So I know that it happens. And I
3 would think that since AT&T strongly preferred that the POT bay
4 be inside the cage and they knew that you would have to have
5 access to it, that there was an understanding that you were
6 going to be able to come inside the cage to do work on the POT
7 bay.

8 Q Okay. So we can agree that the only circumstance
9 under which that would be a feasible arrangement is if AT&T
10 gave BellSouth unfettered access to its POT bay and its
11 collocation space, correct?

12 A Yes.

13 Q Okay.

14 A And you were doing that for collocations before the
15 29 -- or, excuse me, before -- not the 29, before there were
16 several that became a conflict in the State of Florida.

17 Q I wanted to ask you next about extraneous expenses.
18 On Page 40 --

19 CHAIRMAN JACOBS: Excuse me, Mr. Foshee. I don't
20 want to cut short your cross. Are you going to be -- have a
21 good time forward -- I mean, a good time longer for cross
22 examination?

23 MS. FOSHEE: No, sir. Actually I have three more
24 questions, and then if I could confer with my client for one
25 minute about an additional question I may have, that would be

1 it.

2 CHAIRMAN JACOBS: Very well.

3 COMMISSIONER JABER: Mr. Turner, what was that last
4 remark you made, that they were doing it until there became a
5 conflict with it?

6 THE WITNESS: Yes. I'm not exactly sure of the
7 dates, but I believe in '99 BellSouth changed its position on
8 where it would allow the POT bay to be located. Prior to that
9 AT&T was locating the POT bay inside of its cage and BellSouth
10 had not had a problem with it. It then decided it did have a
11 problem with it. And as a result of that problem, which again
12 was not specified in the interconnection agreement, they
13 refused to implement AT&T's collocation arrangements unless
14 AT&T was willing to do what they wanted, which was to locate
15 the POT bay outside of the cage.

16 And then, you know, there was a fallback of making it
17 coterminous with one of the walls of the cage, but that created
18 in AT&T's opinion safety and network concerns. And so,
19 unfortunately -- my concern is when you don't have terms and
20 conditions that are clearly spelled out and BellSouth believes
21 that they can interpret the ambiguity in whatever way that they
22 want to, it causes CLECs to -- or, ALECs, excuse me, to have
23 problems. And AT&T experienced that for quite a long period in
24 Florida.

25 COMMISSIONER PALECKI: Mr. Turner, turning back to

1 something you testified on earlier, why is not remote terminal
2 collocation a practical means of providing DSL service?

3 THE WITNESS: There is several reasons. First, is
4 that frequently at remote terminals there is virtually no space
5 inside the remote terminal to be able to do physical or virtual
6 collocation options. Mr. Gray talks about how those are other
7 options besides adjacent collocation, but when you go and look
8 at a remote terminal and, you know, you open up the cabinets or
9 open up the door, if it is a hut, there is virtually no space
10 available. They try to engineer those as tightly as possible.

11 COMMISSIONER PALECKI: Well, BellSouth in this
12 hearing has guaranteed that they will make that space available
13 to any ALEC that wants to collocate a DSLAM.

14 THE WITNESS: Without question of whether there is
15 space or not? I mean --

16 COMMISSIONER PALECKI: I think that's what we have
17 heard.

18 THE WITNESS: That would really surprise me given the
19 remote terminals that I have inspected.

20 COMMISSIONER PALECKI: What are the other reasons?

21 THE WITNESS: The other reasons is adjacent
22 collocation requires that you build a pad, a concrete pad next
23 to the remote terminal that Bell has built, put in your own
24 equipment, run copper pairs over to Bell's equipment so that
25 you can gain access to the copper portion of the loop. You run

1 into zoning issues. Communities are not going to want to have
2 a whole myriad of pads all built together. Normally,
3 communities would like to keep those as small as possible. You
4 run into engineering issues, as well, that frequently the
5 copper coming from the distribution into the remote terminal
6 doesn't have a easily accessible location to pick up that
7 copper.

8 The third reason is cost. These two options, to
9 physically collocate or to adjacently collocate, are both very
10 costly for the numbers of customers that you are talking about
11 a CLEC being able to acquire. And so, availability of space,
12 the difficulties of doing adjacent, and the engineering
13 problems associated with accessing copper at a remote terminal,
14 and fourth would be just cost issues would make it
15 uneconomically viable.

16 COMMISSIONER PALECKI: Well, if you had a situation
17 where BellSouth or any other ILEC guaranteed you collocation
18 space and they told you if the space is not available, they
19 would expand the size of the cabinet or in some manner make it
20 available to you, so you would always have the collocation
21 space, you wouldn't have to worry about adjacent space, if that
22 was the circumstance, couldn't an ALEC make a pretty good
23 business plan as far as putting a lot of these DSLAMs into the
24 remote terminals and competing head-on-head with BellSouth to
25 provide DSL?

1 THE WITNESS: In my opinion they would not be able to
2 make a business plan to do that. The cost of the equipment
3 requires that you be able to have a very, very high number of
4 customers coming through that equipment at the remote terminal
5 before it makes economic sense. And because of that, it makes
6 incredible economic sense for incumbents to deploy those
7 assets. Southwestern Bell has done a project called Project
8 Pronto where it is rolling out next generation digital loop
9 carriers all throughout its 13-state region and expects huge
10 cost savings to come from that.

11 But the way that it works is because they are going
12 to have all the customers behind that remote terminal come
13 through the remote terminal. They are going to be able to
14 spread that investment out across several hundred customers.
15 Whereas, a CLEC would have to deploy very much similar
16 equipment in terms of the size and scope of it, but would
17 likely only achieve a much smaller penetration, not 100
18 percent. And I have done these types of economic studies and
19 they just simply don't -- they don't pan out given the number
20 of customers that you would have available on the remote
21 terminal.

22 COMMISSIONER PALECKI: We have also heard in this
23 hearing that BellSouth would make available to the ALECs the
24 customers' names, phone numbers, addresses of customers as they
25 are served off of each remote terminal so that an ALEC could

1 surgically market that particular neighborhood or area where
2 the remote terminal is located. I guess I'm having a difficult
3 time understanding why an ILEC, like BellSouth, can make a good
4 business plan doing this and it would not be practical for an
5 ALEC.

6 THE WITNESS: The reason in a nutshell, and I'm going
7 to answer and then give you a contrast, but the reason in a
8 nutshell is that when you put out a remote terminal and put out
9 NGDLC, your expectation as an incumbent LEC is that you are
10 going to probably have -- I'm going to give you a rough number,
11 2,000 customers go through that remote terminal. And you may
12 have several remote terminals that will ultimately feed back
13 into your central office.

14 But at that remote terminal you expect to have, say,
15 2,000 customers go through that remote terminal. And then it
16 is going to ride fiber back to your central office for the
17 voice portion. It will also ride a separate fiber route for
18 the data portion.

19 If the CLEC comes and overbills the incumbent LEC,
20 forgetting for a moment the engineering problems I talked
21 about, the economics for the CLEC, let's say that they were to
22 pick up 5 percent, and that would be extraordinary for them to
23 pick up 5 percent of the customer base, they would only be
24 picking up -- what does that work out to be, 100 customers. So
25 BellSouth has 2,000 customers to spread the cost across of that

1 remote terminal. The CLEC, if they were extraordinarily
2 successful would perhaps win 5 percent of the market. They
3 have got to spread that same cost structure across 100
4 customers. The reality is, though, it's not going to be just
5 one CLEC. Well, it may be soon. But it's not going to be just
6 one CLEC, it's going to be two, or three, or four fighting over
7 the 100 customers. And you just decimate one another's
8 business plan.

9 And the way to contrast this, we are talking about
10 collocating equipment at a remote terminal. To date, no CLEC
11 in the country has successfully deployed digital loop -- or
12 DSLAM assets in the central office where they have a much
13 larger scope of customers that they can potentially spread
14 their costs across, none of them have been able to do that
15 successfully yet. And successfully meaning measured in terms
16 of profits or measured in terms of market value. You pick just
17 about any measure of success, none can do it.

18 So to say that that is the only option that we are
19 going to make available for reaching customers at a remote
20 terminal effectively dooms that option to failure. Because no
21 CLEC, given that they can't succeed at the central office with
22 the market shares they are currently obtaining, no CLEC is
23 going to take the next step and deploy those assets at a remote
24 terminal where the addressable market is even smaller. The
25 only party that can make that investment and be able to make

1 that investment profitably -- and according to Southwestern
2 Bell and Verizon extremely profitably is going to be the
3 incumbent.

4 COMMISSIONER PALECKI: So your testimony is that in
5 the entire country no ALEC has been able to offer its own DSL?

6 THE WITNESS: Oh, they are offering it. I said offer
7 it successfully.

8 COMMISSIONER PALECKI: Successfully.

9 THE WITNESS: And what I define as success is, you
10 know, go look at pretty much the market shares of any CLEC
11 across the country and you can assume that they're, but the
12 chances are they are not. It's just that the scale economies
13 in telecommunications are enormous when you are the incumbent,
14 and they are a huge barrier to overcome when you are the new
15 entrant. And in this particular market if you want competitive
16 choice for customers that are served behind NGDLC, equivalent
17 competitive choice, it's going to end up having to come through
18 unbundling the NGDLC.

19 COMMISSIONER PALECKI: Thank you.

20 CHAIRMAN JACOBS: Ms. Foshee.

21 MS. FOSHEE: Thank you. I have a few follow-up
22 questions on the discussion you were having with the
23 Commissioners.

24 BY MS. FOSHEE:

25 Q Do you agree that BellSouth is new to the DSL market,

1 just as the ALECs are?

2 A Yes.

3 Q And let's assume that we have a new area with no DSL
4 provider thus far. Why in the world would you assume that
5 there is going to be a lower penetration for DSL for ALECs than
6 for BellSouth?

7 A I don't have to assume it, it's just reality of what
8 has happened. I mean, if you take a look in the states where
9 DSL competition has been very aggressive, such as Texas, for
10 instance, the incumbent normally has in that state about 90
11 percent of the share for DSL lines already, Southwestern Bell.

12 But the reason why they are also going to be more
13 successful is that any investment that they make, particularly
14 in the case of like NGDLC, they are actually getting to use
15 that asset multiple ways. It causes cost improvements for them
16 for their existing copper plant, it gives them efficiency of
17 provisioning, it gives them the efficiency of maintenance.
18 Southwestern Bell said that that particular asset would pay for
19 itself whether they sold one DSL line or not. So, the
20 incumbent has many reasons to deploy those assets whether it
21 sells DSL or not, and on top of it they are selling DSL quite
22 successfully.

23 Q If an ALEC is competing in the local market, the ALEC
24 is going to have the identical efficiencies to BellSouth when
25 competing for DSL, correct?

1 A Why? I don't think so.

2 Q Okay. If we go into a new area where there is no DSL
3 provided, there is no limitations on an ALEC's ability to
4 market its DSL service in competition with the ILEC, is there?

5 A There is no limitations, but there are still extreme
6 challenges that the CLEC has to overcome that the incumbent
7 does not in terms of dealing with provisioning difficulties
8 through collocation, dealing with being a new entrant in the
9 market where the competitor you are going up against has name
10 recognition that is 100 years old or more. There is extreme
11 challenges for the CLEC. And then on top of that is what I
12 keep saying, but there are tremendous scale economies for the
13 incumbent with the deployment of new technology that CLECs do
14 not have.

15 Q I wanted to ask you specifically about that, are you
16 familiar with a piece of equipment called a mini-RAM
17 (phonetic)?

18 A No, not by that name.

19 Q Okay. As I understand it, a mini-RAM is a piece of
20 equipment that an ALEC could collocate in a remote terminal
21 that would provide them DSLAM capability. Is that ringing any
22 bells to you?

23 A No, it doesn't.

24 Q If there was such a piece of equipment out there that
25 cost between seven and \$8,000, would you still consider that

1 cost prohibitive to collocate in a remote terminal?

2 A Well, that's one piece of equipment. I don't know
3 the specifications of that piece of equipment. I don't know if
4 you are going to have to then purchase fiber between that
5 remote terminal back to either your central office or to a
6 collocation location you have. I don't know what else is
7 associated with it, but I sort of doubt that that piece of
8 equipment by itself does the equivalent of what the remote
9 terminal does for BellSouth.

10 Q Well, it sounds to me like, Mr. Turner, it's probably
11 fair to say that there could be a whole litany of equipment out
12 there were which you are not familiar with when basing your
13 opinion that remote collocation at the RT is cost prohibitive,
14 correct?

15 A It's possible. But I have explicitly studied this
16 issue trying to figure out a way to make collocation of
17 equipment at a remote terminal economically feasible, and I
18 have not been able to find one. And this is something that I
19 have done in my area of expertise, I have been studying for ten
20 years these economic studies for placing equipment for
21 different applications. But this is one that I have studied in
22 great depth. And I haven't heard of that particular piece of
23 equipment, but I'm not familiar with anything that would allow
24 you to -- for \$8,000, be able to collocate at a remote terminal
25 and provide equivalent capability of bringing that service back

1 to a node, whether it's BellSouth's or your own for that small
2 of an investment.

3 Q You made a comment earlier that there was no ALEC
4 that was successfully offering DSL service. What is AT&T's
5 market penetration of cable modems?

6 A I don't know the exact number. But what we were
7 talking about was DSL, but I don't know what their penetration
8 is of cable modems.

9 Q Is it higher than DSL penetration in your opinion?

10 A You're talking about nationwide cable modem versus
11 nationwide DSL?

12 Q Yes.

13 A I think the last time that I saw it was approximately
14 even, but it was not just AT&T, it was AT&T plus Time Warner's
15 deployment.

16 Q Now, we talked earlier about the POT bay and the
17 location of the POT bay. Do you know where the demarcation
18 point is in Florida?

19 A According to what interconnection agreement?

20 Q According to an order of this Commission.

21 A I was reviewing that, and I believe that it is -- I'm
22 trying to remember exactly what it said. But it's either --
23 the way it was worded it appeared to be in the collocation
24 space.

25 Q So your testimony here today is your understanding of

1 this Commission's location of the generic -- I mean, excuse me,
2 of the demarcation point is that it is in the collocation
3 space?

4 A Well, the language that I was reading, it was in
5 Mr. Gray's testimony where he was representing what he believed
6 to be the latest order of the Commission, and it seemed to me
7 what he was representing was accurate.

8 Q Have you reviewed the order?

9 A Yes.

10 Q And your understanding of the order is that the
11 demarcation point is in the collocation space?

12 MR. LAMOUREUX: I'm going to object at this point.
13 To the extent that Ms. Foshee is talking about a specific
14 order, I think she ought to at least tell the witness what
15 order she is talking about rather than simply referring to an
16 order of the Commission that may have come out sometime in the
17 last five years.

18 MS. FOSHEE: I would be happy to. The order I'm
19 referring to is the Commission's order on reconsideration in
20 the generic collocation docket in Florida.

21 BY MS. FOSHEE:

22 Q Have you reviewed that order?

23 A Yes, I have. But I don't have it memorized.

24 Q Okay. That's fair, and if you don't know that is
25 also a fair answer. What is your understanding of what this

1 Commission ordered as to the location of the demarcation point?

2 A Well, I have told you what I remembered, but that is
3 me reading lots of orders, interconnection agreements, and the
4 way you keep asking me over and over it would seem that you
5 think that I'm wrong. So if you want to give me the order to
6 read it, I would be happy to do that. But my recollection was
7 there was some language that seemed to denote that it was in
8 the collocation space.

9 And the reason the Commission explained -- at least
10 in the order that I read for was that they felt it was
11 important that the CLEC be able to have access to that space.
12 And so if they placed it out where BellSouth was proposing,
13 they felt it was going to preclude the ability of the CLEC to
14 have access into the BellSouth area, but BellSouth could have
15 access into the collocation area. But that is my recollection
16 off the top of my head, and I would be happy to read something
17 if you want to put it in front of me.

18 Q Okay, that's fair. On Page 48, Lines 3 through 6 --
19 and these are my last three questions, sir -- you talk about
20 your experience with, quote, these types of costs, close quote.

21 A Pages 48, Lines --

22 Q Yes, sir, Lines 3 through 6.

23 A Yes.

24 Q Did you participate in the Florida generic cost
25 docket?

1 A No, I did not.

2 Q Have you ever toured a BellSouth central office?

3 A Not today. I will as of Friday.

4 Q But at the time you filed this testimony and as you
5 testify today, you have not toured a BellSouth central office?

6 A That is correct.

7 Q So when you talk about your experience with, quote,
8 these types of costs, you don't have any BellSouth specific
9 experience, do you?

10 A No, I do not.

11 MS. FOSHEE: Thank you, Mr. Chairman. I have no
12 further questions.

13 CHAIRMAN JACOBS: Staff.

14 MS. HELTON: Staff has no questions.

15 CHAIRMAN JACOBS: Commissioners. Redirect.

16 MR. LAMOUREUX: Just a few questions. We will go
17 backwards.

18 REDIRECT EXAMINATION

19 BY MR. LAMOUREUX:

20 Q What sort of experience do you have, Mr. Turner, in
21 looking at the types of collocation costs that are discussed in
22 your testimony?

23 A I have reviewed cost studies related to collocation,
24 and in particular with power for probably about 30 states
25 across the country in every incumbent territory, including

1 BellSouth territory.

2 Q Have you had any discussions with AT&T personnel that
3 have direct experience with collocation costs specifically in
4 BellSouth territory?

5 A Yes, I have.

6 Q How extensive conversations?

7 A We have had a whole series of conference calls
8 dealing with specifically the issue of BellSouth charging ICB
9 types of charges to augment their power plants, and how in
10 particular in the State of Florida that is inconsistent with
11 this Commission's orders with relation to how DC power costs
12 should be recovered here.

13 Q Along that line, does setting of standard prices for
14 DC power in the new interconnection agreements resolve the
15 issue you have raised with extraneous collocation charges?

16 A It should have resolved it, but since the setting of
17 that standard, which to my understanding occurred in April of
18 1998 by this Commission, AT&T has continued to be charged power
19 augment charges for collocation since that time. And so my
20 concern is that there seems to be an intention by this
21 Commission that cost recovery for DC power should only be
22 through the standard charges, but that does not yet seem to
23 have been implemented, at least in the relationship with AT&T.

24 My other concern is that in a deposition with
25 Mr. Gray, which admittedly was in the state of -- for the State

1 of North Carolina, but the questions were generically related
2 to the issues of the standardized power question, he explicitly
3 said that the interconnection agreement that was attached in
4 North Carolina to his testimony was supportive of a standard
5 rate. When you go and read the interconnection agreement that
6 he attached he explicitly points out that in addition to the
7 standard rate that BellSouth would be allowed to charge ICB
8 nonrecurring charges for augmenting the power plant.

9 So my concern is that Mr. Gray even is a little
10 unclear as to exactly what the standard rate covers and does
11 not cover. The language, at least in North Carolina, is
12 unclear, and the way that AT&T has continued to be treated by
13 BellSouth in this area seems to be ambiguous.

14 Q Do you happen to know what the bottom line is of AT&T
15 continuing to be charged for the power augments in Florida is?

16 A Well, in Exhibit SET-3, the augment costs for 29
17 offices was \$2.8 million. Since the production of this exhibit
18 in subsequent conversations with AT&T personnel, they believe
19 that the cost now is up to \$4.6 million that they have been
20 improperly charged by BellSouth for power costs.

21 Q Let's talk a little bit about UNE-P and the splitter,
22 the first questions that you were asked. How and when did AT&T
23 learn that BellSouth would provide the splitter for line
24 splitting?

25 A My understanding is that they found out through Mr.

1 Williams' testimony that was filed in North Carolina, at least
2 that was what was communicated to me was their first
3 understanding of it.

4 Q Have you seen anywhere where BellSouth has set forth
5 all the details, including terms and conditions and pricing as
6 to how exactly BellSouth would provide that splitter?

7 A No, I have not seen that.

8 Q Ms. Foshee asked you a question about line splitting
9 collaboratives. Have you seen BellSouth produce any notes of
10 those collaborative meetings where BellSouth has said that it
11 has explained all the details of how they would provide
12 splitters?

13 A No.

14 Q Did you see that attached to any testimony in this
15 proceeding?

16 A No. In fact, the testimony still seems to be written
17 around the position that they are not going to provide access
18 to the splitter.

19 Q Are there any technical impediments to BellSouth
20 providing splitters one line at a time?

21 A No, there are not.

22 Q Is there any reason other than the fact that
23 BellSouth does not want to do it for BellSouth not providing
24 the splitter one line at a time?

25 A No, there are no reasons why they shouldn't.

1 Q Would providing splitters one line at a time help or
2 hinder competition in your mind?

3 A It would help it.

4 Q Why?

5 A It would simplify the ordering process associated
6 with ordering a loop with a splitter, and potentially in
7 combination with the switch port. It would greatly simplify
8 that. The alternative is you have to order several splitters
9 at a time and you have to specify which one that you are going
10 to utilize, but it seems to me it would be much simpler to just
11 order one at a time.

12 Q You had some discussion with Ms. Foshee about your
13 use of the word express violation on Page 27 of your testimony.
14 What is it that you are saying in your testimony that
15 BellSouth's policy is an express violation of?

16 A It is that the line sharing reconsideration order has
17 clarified that you -- that BellSouth has to provide access to
18 loops behind the remote terminal, and the fact that there is
19 fiber in that loop should not preclude BellSouth from providing
20 access to it. So the reason I have said it is an express
21 violation is effectively what BellSouth's position is right now
22 is that they are still only giving you copper-only loops. You
23 have to go to the remote terminal to pick up that copper and
24 that is inconsistent with the line sharing reconsideration
25 order.

1 Q Does the fact that BellSouth has no specific
2 obligation to unbundle packet switching resolve the issue of
3 whether BellSouth should provide access to fiber-fed NGDLC?

4 A Could you ask the question again.

5 Q Sure. Does the fact that BellSouth has no specific
6 obligation to unbundle packet switching resolve the issue of
7 whether BellSouth should provide access to fiber-fed NGDLC?

8 A No, I don't believe it does. Effectively, the
9 element at the remote terminal, the NGDLC is not providing a
10 packet switching function at all. What it is doing is it is
11 providing a transport function. BellSouth is quite willing to
12 allow that technology to be used for voice applications in
13 combination with the switch port. Where they are resistant is
14 in allowing you to have access to the data portion of that
15 loop. But the Federal Act requires that you have access to all
16 the capabilities of the unbundled element, not just the voice
17 capabilities.

18 So I don't think the packet switching issue is
19 even -- it's almost a ruse. Because the technology is simply a
20 mechanism for delivering a transmission path back to the
21 central office. And all that AT&T is seeking and what I
22 believe the FCC should require is that it be made available to
23 CLECs for use with voice and data applications. And this
24 Commission can do that independently of the FCC.

25 Q Is there any difference in performance or

1 efficiencies for a copper loop all the way back to the CO and a
2 fiber at least portion of the loop all the way back to the CO?

3 A Yes. The deployment of the NGDLC is to effectively
4 shorten the copper portion of the loop. I mean, it would be
5 like if you had a loop that used to be 16,000 feet of copper
6 and you have deployed fiber 12,000 feet, now all you have is a
7 4,000-foot copper loop. A 4,000-foot copper loop compared to a
8 16,000-foot copper loop, which is what BellSouth wants to offer
9 CLECs, the 4,000-foot copper loop is going to have much faster
10 data speeds than the 16,000-foot copper loop. It's going to be
11 easier to provision than the 16,000-foot copper loop because
12 line conditioning is no longer going to be an issue. So there
13 is a lot of efficiency gains that you obtain when you go to an
14 NGDLC served loop.

15 MR. LAMOUREUX: That's all I have. Thank you very
16 much.

17 CHAIRMAN JACOBS: Exhibits. Exhibit 45?

18 MR. LAMOUREUX: I would move 45, which are Mr.
19 Turner's composite exhibits, and I think I actually even forgot
20 to move Mr. Turner's testimony itself.

21 CHAIRMAN JACOBS: Without objection, show Mr.
22 Turner's testimony is entered into the record as though read.
23 And just to be sure Mr. Hsvisdas' Exhibit 43 without objection
24 is entered.

25 (Exhibit 45 admitted into the record.)

1 CHAIRMAN JACOBS: Thank you. You are excused, Mr.
2 Turner. We will be in recess for the day. We will adjourn
3 (sic) tomorrow at 9:30 in the morning.

4 (Transcript continues in sequence with Volume 11.)

5 (The hearing adjourned at 6:05 p.m.)

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

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

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

10 I FURTHER CERTIFY that I am not a relative, employee,
11 attorney or counsel of any of the parties, nor am I a relative
12 or employee of any of the parties' attorney or counsel
connected with the action, nor am I financially interested in
the action.

13 DATED THIS 22ND DAY OF OCTOBER, 2001.

14 

15 _____
16 JANE FAUROT, RPR
17 Chief, Office of Hearing Reporter Services
18 FPSC Division of Commission Clerk and
19 Administrative Services
20 (850) 413-6732
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