

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 990649A-TP

In the Matter of
INVESTIGATION INTO PRICING
OF UNBUNDLED NETWORK
ELEMENTS (BELLSOUTH TRACK).

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VOLUME 5

Pages 607 through 747

PROCEEDINGS:

HEARING

BEFORE:

CHAIRMAN LILA A. JABER
COMMISSIONER J. TERRY DEASON
COMMISSIONER MICHAEL A. PALECKI

DATE:

Tuesday, March 12, 2002

TIME:

Commenced at 9:00 a.m.

PLACE:

Betty Easley Conference Center
Room 148
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Tallahassee, Florida

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(As heretofore noted.)

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I N D E X

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(Transcript continues in sequence from Volume 4.)

CHAIRMAN JABER: You want to call up John Donovan?

MR. MEZA: Chairman Jaber, can I just make one request, please. During the break a couple of BellSouth's witnesses had to leave for travel arrangements, and I just wanted to make sure that they were excused. That was Witness Milner, Caldwell, Stegeman, and Williams.

CHAIRMAN JABER: Yes.

MR. MEZA: Thank you.

CHAIRMAN JABER: Thank you.

MR. FEIL: Madam Chairman, Matt Feil with Florida Digital. We have discussed with the other parties and with staff the prospect of taking Mr. Gallagher next. With your permission, we would like to call Mr. Gallagher to the stand and then proceed with the regular order of witnesses.

CHAIRMAN JABER: And there is no objection to that?

MR. FEIL: No objection, I believe.

CHAIRMAN JABER: Okay. Commissioners, you don't mind, do you? Okay, we'll do it.

MR. FEIL: Thank you. Florida Digital calls Michael Gallagher to the stand.

CHAIRMAN JABER: Mr. Gallagher, you weren't here yesterday when the witnesses were sworn, right?

THE WITNESS: No.

1 CHAIRMAN JABER: Will you please raise your right
2 hand.

3 (Witness sworn.)

4 - - - - -

5 MICHAEL GALLAGHER

6 was called as a witness on behalf of Florida Digital Network,
7 and, having been duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MR. FEIL:

10 Q Could you state your name and business address for
11 the record, please?

12 A Mike Gallagher, Florida Digital Network, 390 North
13 Orange Avenue, Orlando, Florida.

14 Q Are you the same Michael Gallagher for whom prefiled
15 rebuttal testimony was filed in this docket on December 14th
16 consisting of 31 pages?

17 A Yes, I am.

18 Q Did you have one exhibit attached to your testimony
19 marked MPG-1 consisting of 44 pages?

20 A Yes, that is correct.

21 Q If I asked you the same questions in your prefiled
22 rebuttal testimony today, would your answers to those questions
23 be the same?

24 A Yes.

25 Q Do you have any corrections or changes to your

1 testimony?

2 A Yes. I believe that the rates that we referred to
3 for the BellSouth proposed pricing for its DSLAM set up have
4 changed slightly, but not materially just in step a few pennies
5 on the S-1 transport side, so I just wanted to make note of
6 that. Also I would like to withdraw my testimony on Page 28
7 from Lines 6 through Page 30, Line 10.

8 Q The numbers you are referring to in your testimony,
9 those are the numbers, or the DSLAM costs that have changed,
10 are those the numbers on Pages 17 and 18?

11 A Yes.

12 Q Other than those corrections and changes you have
13 referenced, do you have any other corrections or changes?

14 A No, I do not.

15 CHAIRMAN JABER: Mr. Feil, the changes to Page 17 and
16 18, I'm not real clear on what those changes are.

17 BY MR. FEIL:

18 Q Mr. Gallagher, could you explain to the Chairman and
19 to the Commission the changes that you are referring to?

20 A I believe the price for the DS-1 transport part of
21 the DSL, you know, UNE setup have gone up slightly from 149.48
22 to 150.-something, 150.08. And the Zone 3 went from 419.71 for
23 the DS-1 monthly charges to 420.75. It is not an increase in
24 material, just --

25 MR. FEIL: With that, I ask that Mr. Gallagher's

1 prefilled rebuttal be inserted into the record as though read.

2 CHAIRMAN JABER: The prefilled rebuttal testimony of
3 Michael Gallagher is inserted into the record as though read.

4 MR. FEIL: May I ask, Madam Chair, if his prefilled
5 exhibit, Exhibit MPG-1 be given the next exhibit number.

6 CHAIRMAN JABER: MPG-1 will be identified as Exhibit
7 60.

8 (Exhibit 60 marked for identification.)

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1 **Q. Please state your name and business address for the record.**

2 A. My name is Michael Gallagher. My current business address is 390 N.
3 Orange Avenue, Suite 2000, Orlando, Florida 32801.

4 **Q. By whom are you employed and what is your position?**

5 A. I am employed by Florida Digital Network, Inc. ("FDN"). I am FDN's
6 founder and serve as the company's President and Chief Executive Officer.

7 **Q. What are your responsibilities as CEO of FDN?**

8 A. As CEO of FDN, I am ultimately responsible to the shareholders for all
9 aspects of FDN's operations and performance. I am involved in the day-to-
10 day business dealings of the company and the decision-making on everything
11 from marketing and sales strategies, product development, network
12 architecture and deployment, financing, human resources, customer care,
13 regulatory changes, etc.

14 **Q. Please describe your education and your work experience in the
15 telecommunications sector.**

16 A. I received a B.S. Degree in Mathematics with a minor in Physics from
17 Rollins College. Prior to co-founding FDN in 1998, I served as Regional
18 Vice President for Brooks Fiber Communications where I had overall
19 responsibility for operations, engineering, finance and sales in the State of
20 Texas. Brooks Fiber Communications merged into WorldCom on January
21 31, 1998. Prior to holding the VP position at Brooks, I was President of
22 Metro Access Networks (MAN), a second-generation Texas CLEC founded
23 in 1993. At MAN, I developed all business strategies, designed network

1 architecture, secured contracts with the company's original customer base,
2 and had overall responsibility for operations and performance. MAN merged
3 into Brooks Fiber in March 1997. Prior to MAN, I worked for Intermedia
4 Communications and Williams Telecommunications Group (WilTel) as sales
5 representative, securing contracts with large commercial customers.

6 **Q. Have you previously testified before this Commission?**

7 A. Yes, I have testified in Docket No. 010098-TP (FDN's arbitration of an
8 interconnection agreement with BellSouth) and in Docket No. 960786-TL
9 (BellSouth's § 271 case).

10 **Q. Please describe Florida Digital Network.**

11 A. FDN is a Florida-focused, full-service, facilities-based provider of local,
12 interexchange, and advanced telecommunications services. FDN offers voice
13 services, dial-up and dedicated data services, and, through an affiliate,
14 Internet and other enhanced services. FDN was founded in 1998 with the
15 mission of offering bundled service packages (local, long distance and
16 Internet) to small- and medium-sized businesses. FDN launched operations
17 in Orlando, Fort Lauderdale and Jacksonville in 1999, and in West Palm
18 Beach, Miami and the Tampa Bay area in the first quarter of 2000. FDN
19 provides service to these markets with its own Class 5 Nortel DMS-500
20 central office switches, which it connects to end-users through collocated
21 facilities at more than 100 BellSouth wire centers, and through the purchase
22 of unbundled network elements (UNEs) from ILECs such as BellSouth.
23 Based upon information provided by BellSouth, FDN is the largest procurer

1 of UNE voice-grade loops from BellSouth in Florida. FDN does not at this
2 time provide service using the UNE platform or resold services.

3 **Q. What is the purpose of your rebuttal testimony in this proceeding?**

4 A. As to Issue No. 1, my rebuttal testimony first addresses FDN's concerns with
5 BellSouth's UNE rates and rate structure. FDN believes that the
6 Commission must set lower UNE rates and must structure those rates such
7 that competition can progress in more than just limited geographic areas.

8 As to Issue No. 5, I will demonstrate that BellSouth, through its cost
9 study filed September 24, 2001 (and revised on October 8, 2001), and
10 through its direct testimony filed on November 8, 2001, fails to offer a
11 reasonable, workable solution to address the present inability of competitive
12 carriers to offer xDSL services where BellSouth has deployed Digital Loop
13 Carriers ("DLCs"). Many of the bases for my rebuttal testimony in this area
14 are closely related to, and are addressed more extensively in, the direct
15 testimony I submitted to the Commission in Docket No. 010098-TP, in which
16 FDN is seeking an arbitration award that would require BellSouth to offer
17 xDSL loops with unbundled packet switching. Rather than repeating all of
18 those arguments here, I have attached a copy of pertinent excerpts of my
19 direct testimony from the arbitration as Exhibit ____ (MPG-1), and I will refer
20 to that exhibit in this testimony as my "Arbitration Testimony."

21 The Commission must carefully consider the technical and pricing
22 matters at issue in this docket if it is to require BellSouth to offer new UNEs
23 that would enable competitive carriers to provide xDSL services where

1 BellSouth has deployed Digital Loop Carriers (DLCs). As set forth in my
2 Arbitration Testimony, BellSouth's DLC-dominated network architecture in
3 Florida deprives ALECs of the opportunity to provide xDSL-based services
4 to end-users and, therefore, the Commission should establish an end-to-end
5 xDSL UNE loop, including digital subscriber line access multiplexer
6 (DSLAM) functionality and transport, that would permit FDN to provide
7 xDSL-based services.

8 If the Commission grants FDN's request in Docket No. 010098 or if
9 the Commission approves a new UNE or UNEs of a similar nature in any
10 other proceeding, reasonable TELRIC-based prices for such new UNE or
11 UNEs will need to be established in this docket.

12 **Q. Do you believe the Commission should modify BellSouth's loop rates**
13 **and rate structure?**

14 A. Yes. BellSouth's UNE rates in Florida are simply too high to foster
15 competition, and in this regard, I wanted to call the Commission's attention
16 to rate levels in relation to rate zones.

17 One can look at the price of a two-wire UNE loop in Zone 1 under
18 interim stipulated rates and under final reconsideration rates and observe that,
19 on the surface, the rate decreased from \$13.75 to \$12.79. However, the fact
20 of the matter is there was no net UNE cost decrease to ALECs like FDN.

21 Forty BellSouth wire centers, many in densely populated areas, were
22 shifted from a Zone 1 to a Zone 2 classification as part of the Commission's
23 decisions in this case. Whereas 71% of FDN's loops would be in Zone 1

1 under the interim stipulation, only 37% of its loops are in Zone 1 under the
2 final and reconsideration orders. The number of Zone 1 wire centers
3 decreased so dramatically that FDN's preexisting 59 Zone 1 central office
4 collocations became 33 Zone 1 central office collocations. without FDN
5 having made any facilities changes. In the Orlando area, for example, 58%
6 of FDN's Orlando area loops were Zone 1 under the interim regime; but now
7 only 24% are. The Magnolia and Pine Hills wire centers in Orlando were in
8 Zone 1 under the interim stipulation; but now Pine Hills is in Zone 2 even
9 though it neighbors and abuts Magnolia (still in Zone 1) and has a similar
10 total line count.

11 With the Commission's final and reconsideration decisions, rates for
12 all loops in the 40 former Zone 1 (now Zone 2) wire centers went from
13 \$13.75 to \$17.27, an increase of \$3.52 per loop. Hence, on an overall basis,
14 from interim rates to final reconsideration rates, FDN's total UNE costs will
15 increase, not decrease. I expect that the same will likely be true for other
16 ALECs in Florida.

17 The approved costs will drive the rate levels. In the rate design
18 process, the manner and the degree of shifting costs for recovery through one
19 component rate rather than another (such as from recurring to nonrecurring)
20 or through one rate grouping rather than another (among rate bands or rate
21 zones) have ramifications that must be considered just as the rate levels
22 themselves must be considered -- they all impact whether the end result is

1 fair, just and reasonable and they all impact the users' ability to acquire the
2 service.

3 FDN believes that the Commission may not have adequately
4 considered all of the impacts resulting from the dramatic rate structure
5 change that occurred when designating so many interim Zone 1 wire centers
6 as Zone 2 wire centers. One of the Commission's rate setting goals in this
7 and other UNE pricing proceedings should be to facilitate competition.

8 While the UNE rates in Zone 1 may be lower than before, the number of
9 Zone 1 wire centers is so extremely limited that the Commission may
10 promote competition only in a few, small geographic pockets. Moreover, the
11 Zone 2 rates are at a level such that it is extremely difficult for CLECs to
12 compete in Zone 2. FDN's own plans to expand into new Zone 2 markets are
13 on hold as a result.

14 The Commission must lower all UNE rates and must structure rates in
15 pricing zones such that competition is not limited to a minute portion of the
16 state.

17 **Q. Moving next to Issue No. 5, why do you maintain that BellSouth's DLCs**
18 **preclude ALECs from offering DSL service?**

19 **A.** DSL transmissions must be multiplexed into packetized data bits before the
20 data streams can be aggregated on high-volume transmission facilities bound
21 for the Internet. In the classic DSL model, this multiplexing is done by a
22 DSLAM located in the central office. However, where DLCs are deployed as
23 a break in the transmission path, this DSLAM function must be performed at

1 the remote terminal. Therefore, the carrier must locate at the remote terminal
2 a DSLAM or, in the case of Next Generation Digital Loop Carriers
3 (“NGDLCs”), DSL-capable line cards that perform DSLAM functionality. In
4 my Arbitration Testimony, I explained why ALECs, unlike BellSouth, cannot
5 viably collocate DSLAMs or line cards at remote terminals. Therefore,
6 BellSouth today is the only carrier in Florida able to offer DSL service where
7 its DLCs are deployed.

8 **Q. Why is it important for the Commission to ensure that ALECs are able**
9 **to provide xDSL service where BellSouth has deployed DLCs?**

10 A. DSL is the only widely available technology that enables a consumer to
11 achieve high-speed data service over their existing copper telephone lines.
12 However, the development of competitive DSL services in BellSouth’s
13 region in Florida is thwarted by the fact that approximately 90% of
14 BellSouth’s Florida access lines now pass through DLCs. Therefore, the
15 BellSouth region in Florida is effectively closed to DSL competition. As I
16 explained in my Arbitration Testimony, FDN’s inability to offer DSL
17 services also undermines its viability in the voice services market, as
18 customers increasingly are demanding bundled service offerings. The
19 competitive disadvantages already suffered by ALECs will be magnified
20 significantly if BellSouth obtains interLATA authority in Florida and thereby
21 becomes the only carrier that can offer one-stop shopping of local,
22 interexchange and DSL services on a ubiquitous basis.

1 **Q. What are the components of a “hybrid copper/fiber xDSL-capable**
2 **loop?”**

3 A. There are three components in any hybrid copper/fiber loop. The first two
4 components are subloops: (1) the copper subloop between a remote terminal
5 and a customer (“distribution”), and (2) the fiber subloop between a remote
6 terminal and a central office (“feeder”). The third component is the DLC that
7 connects the two subloops, together with any supporting equipment necessary
8 to perform whatever switching functions may be required based upon the
9 nature of the transmission. For circuit-switched voice traffic, this third
10 component includes voice-grade DLC line cards that are used to pass the
11 transmission from the distribution to the feeder. To be “xDSL-capable,”
12 however, the DLC component must either include DSL-capable line cards or,
13 if such cards are not supported by the DLC system, a DSLAM. The DSL line
14 card or DSLAM performs packet switching functionality at the remote
15 terminal so that it is possible to transmit the DSL-based services between the
16 distribution pairs and the feeders.

17 **Q. Does the term “hybrid copper/fiber x-DSL capable loop” appropriately**
18 **capture the definition of the new UNE that is needed to enable ALECs to**
19 **offer xDSL services in BellSouth’s Florida territory?**

20 A. No. The “hybrid copper/fiber” terminology would not completely serve the
21 Commission’s purpose. In addition to BellSouth’s millions of fiber-fed DLC
22 loops, approximately 1.2 million of BellSouth’s access lines in Florida pass
23 through DLCs that use copper feeders, and could be described as “hybrid

1 copper/copper” loops. For purposes of DSL services, these aggregated
2 copper feeders are no different from fiber feeders; the DSL traffic still must
3 be multiplexed at the remote terminal. The Commission should, therefore,
4 use a terminology that includes unbundled packet switching and that is not
5 dependent upon a particular type of infrastructure.

6 **Q. Why is unbundled packet switching a necessary component of an xDSL-
7 capable DLC loop?**

8 A. DSL transmissions must be converted into packetized data bits at the DLC.
9 Therefore, for a DLC loop to be xDSL-capable, packet switching must be
10 performed by a DSL line card or DSLAM at the remote terminal. To provide
11 xDSL service, ALECs must be able to purchase this functionality on an
12 unbundled basis as part of any loop that passes through a DLC.

13 **Q. Would any purpose be served by the creation of a new hybrid UNE loop
14 that did not include unbundled packet switching?**

15 A. No. Consideration of a “new” hybrid UNE loop without unbundled packet
16 switching would serve no purpose, since BellSouth is already required by
17 federal rules to provide unbundled access to feeder and distribution subloops,
18 and the Commission is already establishing rates and terms for these subloop
19 elements in this docket.

20 **Q. How has BellSouth defined “hybrid copper/fiber xDSL-capable loop” in
21 its testimony and its cost study?**

22 A. BellSouth’s proposal unbundles only one of the three necessary components
23 of a hybrid copper/fiber xDSL-capable loops. Its proposal includes the

1 distribution subloop in the manner that I have described in my testimony
2 above. However, BellSouth would require ALECs to purchase their own
3 dedicated network feeder and packet switching facilities, rather than offering
4 unbundled packet switching and feeder transport as part of a single wholesale
5 “loop.” Because BellSouth would require ALECs to purchase an entire 16-
6 port DSLAM, rather than a port on a common DSLAM, the ALEC is forced
7 to purchase capacity sufficient for 16 customers, rather than one at a time.

8 Similarly, BellSouth would require an ALEC to purchase the full capacity of
9 a DS1 feeder, which can also support approximately 16 customers.

10 BellSouth’s offer is the opposite of unbundling, as it would force ALECs to
11 purchase capacity for approximately 16 customers at a time, even if an ALEC
12 wants to serve only a single customer in a given remote terminal serving area.

13 **Q. Can BellSouth’s proposed offering be properly described as a “loop?”**

14 **A.** No. A loop is a transmission path between the central office and the loop
15 demarcation point at the customer premises, and includes all features,
16 functions, and capabilities of the transmission facilities. BellSouth’s
17 proposal, by contrast, would require an ALEC to purchase entire network
18 facilities that are designed to serve numerous end-users, rather than the
19 option of purchasing a single line. When FDN purchases voice grade UNE
20 loops, it buys only the transmission path between its customer and the central
21 office, at a rate based upon the long-run incremental cost to BellSouth of
22 providing the single line. Similarly, to provide DSL services to individual

1 customers, FDN seeks to purchase xDSL-capable loops; BellSouth would,
2 instead, make it purchase a network.

3 **Q. Can BellSouth's proposed offering be properly described as offering**
4 **unbundled packet switching?**

5 A. No. Unbundled packet switching should mean that an ALEC could purchase
6 the switching that it needs, not that the ILEC would offer to sell the ALEC its
7 own switch. For example, when BellSouth provides unbundled switching for
8 voice services, either as a stand-alone UNE or as part of the UNE Platform, it
9 cannot simply offer to sell to each ALEC its own dedicated Class 5 switch;
10 instead, the switching is sold based on incremental usage of BellSouth's
11 switching facilities.

12 **Q. Would it be consistent with TELRIC for BellSouth to require ALECs to**
13 **purchase DSLAM and fiber infrastructure in bulk, rather than on a line-**
14 **at-a-time basis?**

15 A. No. As I understand it, TELRIC is based upon the incremental cost of
16 providing the additional service. BellSouth's proposal would exceed
17 TELRIC standards by forcing ALECs to purchase greater capacity than is
18 needed to provision service to its customers, thereby precluding ALECs of
19 the benefit of the economies of scale of the BellSouth network. Through its
20 unnecessary requirement that ALECs purchase their own DSLAMs and DS1
21 feeders even to serve a single customer, BellSouth's proposal would deny
22 ALECs the ability to share in BellSouth's economies of scale and would
23 thereby ensure that ALECs would have a significantly higher average unit

1 cost for a particular facility than would BellSouth, which has a significantly
2 larger output and customer base over which to spread its fixed cost.
3 Economies of scale lower the incumbent's per-customer costs of providing
4 service. ALECs must have access to the same technologies and economies of
5 scale and scope that are available to ILECs. To compete effectively with the
6 ILEC for the same customers, ALECs must be able to attain similar
7 economies of scale. By denying ALECs the benefits of economies of scale
8 and forcing them to purchase excess capacity, BellSouth's proposal
9 controverts basic TELRIC principles.

10 **Q. Where it has deployed DLCs, does BellSouth require ALECs purchasing**
11 **voice-grade loops to purchase their own dedicated DLC line cards and**
12 **DS1 feeders?**

13 A. No. Regardless of whether BellSouth's voice grade loops pass through DLCs
14 or not, it sells an end-to-end loop at the single standard UNE loop rate
15 calculated by the Commission. These rates represent the average long-run
16 incremental cost of providing individual voice-grade loops.

17 **Q. Is BellSouth's proposed rate structure for hybrid loops fair, just and**
18 **reasonable?**

19 A. No. If the Commission required BellSouth to offer "hybrid copper-fiber
20 xDSL-capable loops," but only in the manner and at the rates proposed by
21 BellSouth, FDN would remain completely unable to offer xDSL service
22 where BellSouth has deployed DLCs. First, the rates proposed by BellSouth
23 are clearly and completely non-viable. Second, even if the rates were

1 reduced dramatically, FDN would remain impaired because BellSouth's
2 proposed hybrid service would, at best, be available only after substantial
3 delays and/or special construction charges or, at worst, not at all.

4 In my Arbitration Testimony, I demonstrated that it is impossible for
5 FDN to incur the costs of placing its own *dedicated* DSLAMs and DS1
6 feeders in every one of BellSouth's 12,000 RT serving areas where it hopes
7 to provide service. Further, as FDN proved in the arbitration (through late-
8 filed exhibit 13), even if FDN collocated an 8-port DSLAM, the cash flow on
9 such a project would be negative before depreciation and return on
10 investment. This is why FDN has advocated unbundled access to
11 BellSouth's facilities. BellSouth has proposed adoption of the very cost
12 structure that I demonstrated could not be viable, in which every ALEC
13 would be required to place redundant dedicated facilities at every
14 neighborhood remote terminal. The rates proposed by BellSouth in this
15 proceeding are so clearly and completely non-viable for competitors that they
16 illustrate why BellSouth's proposal is economically unrealistic, and that
17 ALECs will remain impaired unless they are able to obtain unbundled access
18 to a UNE platform that includes packet switching and the feeder and
19 distribution subloops.

20 **Q. Please explain your assessment that BellSouth's proposed rates are**
21 **"clearly and completely non-viable."**

22 **A.** BellSouth's proposed rates are far too high to enable FDN to use the hybrid
23 loop offering to profitably provide xDSL service to Florida consumers.

1 BellSouth's proposed rates are even significantly higher per customer than
2 BellSouth's *retail* rate for DSL-based high-speed Internet services -- in some
3 cases, by hundreds of dollars per month per customer. FDN would obviously
4 be unable to offer xDSL services if it had to pay BellSouth more for just one
5 of the many underlying components of this service than the total amount it
6 could charge for its own retail service in the competitive market. In many
7 cases, FDN would be paying to BellSouth an average of \$100-300 per line or
8 more and, in some cases, even in excess of \$1240 for a line, while BellSouth
9 is offering its own retail service for less than \$50.

10 **Q. Please describe BellSouth's retail charges for its xDSL-based services.**

11 A. Through its ISP, BellSouth sells its DSL-based FastAccess Internet Service to
12 residential customers for \$49.95, or for \$45 if purchased bundled with certain
13 other BellSouth services. These prices include Internet access and content
14 service, email accounts, 10MB for personalized web pages, a newsgroup
15 account and other typical features offered by ISPs. In addition, BellSouth's
16 rates should reasonably be expected to include its recovery of the costs of
17 providing retail service, such as advertising, customer service, and billing.

18 **Q. What portion of BellSouth's \$45-50 retail charge for DSL-based services**
19 **is attributable to its wholesale costs of providing DSL transport and**
20 **packet switching through DLC loops?**

21 A. Of the \$45-50 retail charge, approximately \$21 could be attributed to Internet
22 and enhanced services, as BellSouth sells these separately for \$20.95 per
23 month. Another couple of dollars per month are attributable to the costs of

1 providing transport from the central office to an Internet connection point.
2 Using the Commission's resale discount rates as a proxy, approximately 16-
3 22% of the remaining costs are attributable to retail costs such as advertising,
4 customer service and billing. Therefore, the portion of its \$45-50 retail charge
5 attributable to the DLC loop and DSLAM packet switching should be in the
6 approximate range of \$16-22. Further, BellSouth's rates for the DLC loop
7 with packet switching should be measurably less than \$33 per month, which
8 is the rate in BellSouth's FCC tariff for DSL transport sold to ISPs to provide
9 service to BellSouth's voice customers ("wholesale ISP rate"). This
10 wholesale ISP service is more expensive to provide than DLC loops alone
11 because it includes connectivity from the central office to a single connection
12 point in each LATA. Therefore, the Commission should view with great
13 skepticism any BellSouth rate for DLC loops that exceeds \$25.

14 **Q. How did you determine that the rates offered in BellSouth's proposed**
15 **cost study exceed BellSouth's retail and wholesale ISP rates for xDSL**
16 **loops?**

17 A. Using the rates proposed by BellSouth, I calculated the monthly recurring
18 charges that would be assessed to FDN in Zones 1 and 3 at each remote
19 terminal at which it ordered hybrid loops. The BellSouth proposal includes
20 three groups of charges. The first assesses monthly recurring charges for a
21 16-port DSLAM, which FDN would incur upon initiating service to its first
22 customer in each RT serving area and again every 16 customers thereafter.
23 The second charge is for each dedicated DS1 provided to FDN, which I have

1 estimated to be sufficient for up to 16 DSL lines. The third type of charge,
2 the per line activation recurring charge, appears to represent the charge for
3 the distribution subloop, and is applied based upon the number of active
4 customers turned up by FDN. To calculate the real world meaning of these
5 proposed charges to FDN, I added together the total charges that would apply
6 based upon a range of possible customer combinations, and then determined
7 the average charge per customer that would apply.

8 **Q. What did you determine from your calculations?**

9 A. In short, providing viable service using BellSouth's proposed rates is
10 economically impossible, even before considering FDN's own costs of ISP
11 services and retail support. My calculations demonstrate that BellSouth's
12 proposed charges would, in every circumstance, exceed not only BellSouth's
13 wholesale ISP rate, but also its residential retail rate for xDSL-based services.
14 Even in Zone 1, the least expensive zone, BellSouth's charges for the
15 provision of service to a single customer would be almost \$700 per month.
16 On top of this \$700 charge, FDN would incur the costs of providing Internet
17 services, transport from the central office to the Internet, and the costs of
18 providing retail service. While the cost per customer would decrease
19 somewhat as FDN obtained more customers to fill up the 16 ports on the
20 DSLAM that BellSouth had dedicated to FDN, even if an ALEC happened to
21 need exactly 16 lines in every remote-terminal serving area where it had
22 customers wishing to purchase DSL, BellSouth's per customer charges would
23 still be \$52.68 in Zone 1 up to \$109.44 in Zone 3. Moreover, if the ALEC

1 obtained a 17th customer, its per customer costs would increase dramatically
 2 again because it would need to purchase an additional DSLAM and DS1
 3 feeder. Therefore, no matter what number of customers FDN had, and no
 4 matter how efficiently FDN could provide service, it would lose money under
 5 BellSouth's proposed rates.

6 **Q. Please state the remainder of your calculations.**

7 A. I calculated the following average charges per customer using BellSouth's
 8 proposed rates:

9
 10

11 **Figure 1: Zone 1 Average Monthly Recurring Charges Per**
 12 **Subscriber Under BellSouth's Proposal**

13

Number of Customers in ZONE 1 RT Serving Area	DSLAM Monthly Charges	DS1 Monthly Charges	Distribution Subloop Monthly Charges	Total Monthly Recurring Charges	Average Monthly Cost Per Subscriber
1	\$ 524.37	\$ 149.48	\$ 10.56	\$ 684.41	\$ 684.41
2	\$ 524.37	\$ 149.48	\$ 21.12	\$ 694.97	\$ 347.49
4	\$ 524.37	\$ 149.48	\$ 42.24	\$ 716.09	\$ 179.02
8	\$ 524.37	\$ 149.48	\$ 84.48	\$ 758.33	\$ 94.79
12	\$ 524.37	\$ 149.48	\$ 127.72	\$ 800.57	\$ 66.71
16	\$ 524.37	\$ 149.48	\$ 168.96	\$ 842.81	\$ 52.68
17	\$ 1048.74	\$ 298.96	\$ 179.52	\$ 1527.22	\$ 89.84
32	\$ 1048.74	\$ 298.96	\$ 337.92	\$ 1685.62	\$ 52.68

14

15

16

17

Figure 2: Zone 3 Average Monthly Recurring Charges Per Subscriber Under BellSouth's Proposal

Number of Customers in ZONE 3 RT Serving Area	DSLAM Monthly Charges	DSI Monthly Charges	Distribution Subloop Monthly Charges	Total Monthly Recurring Charges	Average Monthly Cost Per Subscriber
1	\$ 794.60	\$ 419.71	\$ 33.55	\$ 1247.86	\$ 1247.86
2	\$ 794.60	\$ 419.71	\$ 67.10	\$ 1281.41	\$ 640.71
4	\$ 794.60	\$ 419.71	\$ 134.20	\$ 1348.51	\$ 337.13
8	\$ 794.60	\$ 419.71	\$ 268.40	\$ 1482.71	\$ 185.34
12	\$ 794.60	\$ 419.71	\$ 402.60	\$ 1616.91	\$ 134.74
16	\$ 794.60	\$ 419.71	\$ 536.80	\$ 1751.11	\$ 109.44
17	\$ 1589.20	\$ 839.42	\$ 570.35	\$ 2998.97	\$ 176.41
32	\$ 1589.20	\$ 839.42	\$ 1073.60	\$ 3502.22	\$ 109.44

Q. If the rates for UNEs are based upon TELRIC, why are you comparing BellSouth's proposed rates with its retail rates?

A. My comparison between BellSouth's retail rates and its proposed hybrid loop/network rates demonstrates several key points. First, it illustrates clearly that BellSouth's proposed scheme of separate DSLAMs and feeders for each ALEC at each of BellSouth's 12,000 remote terminals would not be a cost effective or viable means of ensuring competition for xDSL services. Second, it demonstrates that CLECs would remain impaired if BellSouth's proposed rate structure were adopted. Therefore, a detailed TELRIC analysis of BellSouth's current hybrid loop study would not appear to be warranted; instead, the Commission should reject the study and require BellSouth to file a new cost study that offers xDSL loops, including unbundled packet

1 switching and transport between the customer and the central office, on a per
2 loop basis.

3 **Q. If, hypothetically, ALECs collocated their own DSLAMs at BellSouth's**
4 **remote terminals and secured their own dedicated transport to the**
5 **central office, either through BellSouth's hybrid loop offering or on their**
6 **own, how many xDSL customers could they realistically hope to**
7 **subscribe?**

8 A. While the results would vary by ALEC and market, an ALEC could not
9 reasonably expect (in its early years of operations) to obtain a "take rate" of
10 more than a small, single-digit percentage of the total possible market for
11 DSL service. Most of BellSouth's 12,000 remote terminals serve a small
12 number of customers, some as few as a hundred lines. Therefore, as
13 demonstrated in my calculations above, the rates proposed by BellSouth
14 would be so prohibitively expensive as to never make economic sense given
15 the few customers that any given ALEC might serve from an individual
16 remote location.

17 **Q. Would the use of shared DSL facilities by each carrier be more efficient**
18 **than the use of separate, dedicated facilities?**

19 A. Yes. The aggregation of all ILEC and ALEC traffic through shared
20 DSLAMs would be the best way to ensure efficiency not only for ALECs,
21 but also for BellSouth. If each carrier used its own facilities, there would be
22 a much less efficient allocation of DSL ports. For example, if BellSouth had
23 seven DSL customers at an RT, and three ALECs had four, two, and two

1 customers, respectively, it would be much more efficient for the four carriers
2 together to use 15 ports on one 16-port DSLAM than to use less than 25% of
3 the total capacity of four separate DSLAMs. The higher utilization rate
4 resulting from shared use will enable all carriers to reduce their per customer
5 costs and thereby lower their retail prices. Even more significantly, pooling
6 the DSL needs of all carriers could generate sufficient demand to enable the
7 use of higher-capacity facilities, such as 96-port DSLAMs or DS3 feeders,
8 which are more efficient and cost-effective if utilized sufficiently. These
9 higher-capacity facilities are more efficient and would yield lower per
10 subscriber costs. Shared facilities would reduce costs for both ALECs and
11 BellSouth, and would increase the deployment of broadband to Florida
12 consumers and businesses.

13 **Q. Could the establishment of an unbundled xDSL loop in the manner that**
14 **you have proposed inhibit BellSouth's ability to offer broadband services**
15 **in Florida?**

16 **A.** No. While diversity of facilities in some cases promotes innovation and
17 diverse service offerings, the space and infrastructure resources at most
18 remote terminals is insufficient to support it. Aggregation of ALEC and
19 BellSouth traffic onto the same DSLAMs and feeders will lead to the most
20 efficient use of these limited resources, thereby reducing costs to consumers
21 and making it more likely that carriers will be able to justify having DSL
22 capability in a greater number of areas. In addition, the development of
23 competitive service offerings will lead to lower prices and a higher overall

1 penetration rate for DSL subscription. Falling costs and prices should lead to
2 an increase in subscribership that would in some remote terminal areas justify
3 the installation of higher capacity facilities, such as 96-port DSLAMs and
4 DS3 feeders, the benefits of which I have discussed above. Therefore, the
5 availability of unbundled xDSL loops with packet switching will encourage,
6 not stifle, broadband deployment in Florida.

7 **Q. Are there any other reasons that the use of shared DSL facilities at**
8 **remote terminals would promote DSL competition?**

9 A. Yes. If each carrier has separate DSL facilities at the remote terminal,
10 consumers would not be able to enjoy the benefits of line sharing (voice and
11 ADSL services from separate carriers on the same line) unless all voice and
12 data CLECs placed facilities at the remote terminal and established cross-
13 connections to BellSouth and with each other. The installation of cross-
14 connection facilities will be difficult in the inaccessible and cramped
15 conditions of most remote terminals, and will further drain limited remote
16 terminal space and resources. The rates and terms for the provisioning of
17 these cross-connect facilities could be expensive and cumbersome. In a
18 separate facilities architecture, the distribution pair from the customer
19 carrying both voice and data traffic would terminate at the data carrier's
20 DSLAM, which would only be connected to that carrier's dedicated feeder
21 facilities. Cross-connects would, therefore, need to be established to transmit
22 the voice traffic to the voice carrier's facilities. However, carriers not
23 offering DSL would likely not have facilities collocated at the remote

1 terminal to receive voice traffic in this manner. Their additional demand for
2 remote terminal space and infrastructure will only further exacerbate the
3 resource scarcity I have described and, in many cases, it will not be possible
4 to accommodate. Therefore, Florida consumers could often be denied the
5 ability to select different carriers to provide voice and data services on the
6 same telephone line.

7 **Q. Would a shared facilities model make it easier for a customer to select**
8 **different carriers to provide voice and data services on the same**
9 **telephone line?**

10 A. Yes. Under a shared facilities model, the common remote terminal DSLAM
11 would be connected to the common feeder facilities bound for the central
12 office. Therefore, the voice traffic could be routed over this common feeder
13 and then transmitted to the central office, where it could be received by the
14 voice carrier in the same manner that it receives traffic from other BellSouth
15 UNE loops. Carriers providing only voice services would not be required to
16 locate facilities at the remote terminal, and additional cross-connect facilities
17 at the remote terminal would not be needed.

18 **Q. Would a shared facilities model promote competition in other ways?**

19 A. Yes. As another example, in a shared facilities architecture, it would be
20 much easier to permit customers to switch DSL providers with minimal
21 disruption and cost. First, if all carriers were using the same DSLAM, it
22 would be far less likely that the customer would be required to make
23 significant changes to its modems and software. Second, the technical work

1 to complete a carrier change request could be completed by a simple
2 conversion at the central office. By contrast, under BellSouth's proposed
3 plan, the customer's distribution pair would be wired to a particular carrier's
4 facilities at the remote terminal, and the conversion would need to be
5 performed there. Cutovers performed at one of BellSouth's approximately
6 200 central offices would require only a few minutes of work. However, if
7 cutovers must be performed at BellSouth's remote terminals, it is more likely
8 that the conversion could be delayed due to the difficulty in traveling to and
9 obtaining access to the correct facility. It is not even clear that BellSouth
10 would be willing to perform such cutovers, or whether it would simply
11 require the customer to cancel their existing service and then order a new
12 connection. The more difficult it is for consumers to take advantage of
13 competitive choices, the less likely it is that the benefits of competition will
14 develop.

15 **Q. Mr. Kephart of BellSouth testifies that the DSLAM portion of the DLC**
16 **loop offering is exempt from unbundling requirements under the four-**
17 **part test established in the UNE Remand Order. Do you agree?**

18 **A.** No. As I demonstrated in my Arbitration Testimony, the Florida
19 Commission can and should order BellSouth to offer unbundled xDSL loops
20 with unbundled packet switching because, without such relief, ALECs'
21 ability to offer xDSL services in Florida would be impaired. A CLEC is
22 impaired, among other reasons, when no alternative exists that would offer a
23 *realistic* opportunity to provide a competitive service. In my Arbitration

1 Testimony, I demonstrated that ubiquitous collocation of DSLAMs at remote
2 terminals is technically and economically infeasible for FDN, and that no
3 viable alternatives from BellSouth, self-provisioning or third parties are
4 available that would enable FDN to offer xDSL services where BellSouth has
5 deployed DLCs. As evidence of this reality, no ALEC had collocated, or
6 even requested to collocate, at a BellSouth remote terminal in the entire State
7 of Florida. My Arbitration Testimony further illustrates that FDN's inability
8 to offer xDSL services also impairs its ability to offer voice
9 telecommunications services, as consumers increasingly are demanding
10 bundled telecommunications services that meet all of their service
11 requirements.

12 **Q. In your Arbitration Testimony, you asserted that ubiquitous ALEC**
13 **collocation of DSLAMs at remote terminal would be technically and**
14 **economically infeasible. BellSouth's proposal in this docket, if adopted,**
15 **would offer CLECs the opportunity to purchase the use of a collocated**
16 **DSLAM at its remote terminals. Does BellSouth's hybrid loop proposal**
17 **change your conclusion in your Arbitration Testimony that ALECs**
18 **would be impaired without access to unbundled xDSL loops with packet**
19 **switching?**

20 **A. No. First, as I demonstrated above, the unreasonably high rates proposed by**
21 **BellSouth would completely preclude their use by a competitor. Second,**
22 **even if the Commission lowered the rates, in many or even most cases,**
23 **BellSouth's proposed service would often be available, if at all, only with**

1 substantial complications and/or delays that an ALEC could not afford to
2 incur. If BellSouth rejected an order for the proposed hybrid loop service on
3 the basis that facilities were unavailable, the ALEC would remain impaired in
4 its ability to offer xDSL services for the reasons set forth in my Arbitration
5 Testimony. Therefore, BellSouth's proposal is an illusion that would do
6 nothing to relieve the impairment faced by ALECs in the Florida DSL
7 market.

8 **Q. Why do you believe that the hybrid loop proposed by BellSouth would**
9 **often be unavailable?**

10 A. The vast majority of BellSouth's 12,000 remote terminals are likely too small
11 and lack sufficient power resources and connectivity to support additional
12 DSL facilities for each and every ALEC wishing to provide xDSL services.
13 Additional DSLAMs could require expansions of remote terminal space
14 capacity, power generation, and climate control facilities, that may be
15 impossible or prohibitively expensive. In addition, BellSouth's proposal
16 would require each ALEC to obtain a separate, dedicated transport facility
17 back to the central office, which could prematurely exhaust the limited
18 supply of feeder facilities that are available to ALECs. My Arbitration
19 Testimony explains that dark fiber will often not be available to ALECs at
20 remote terminals, and that it is not economically feasible for an ALEC to
21 obtain rights-of-way and construct new fiber facilities between BellSouth's
22 remote terminals and central offices. Furthermore, many of BellSouth's
23 12,000 remote terminals are unobtrusive cabinet boxes that are located,

1 among other locations, in residential neighborhoods. The public interest
2 would not be served by unnecessary and inefficient expansions of these
3 facilities.

4 **Q. Why would ALECs face additional delays in procuring xDSL-capable**
5 **loops if BellSouth's proposal is adopted?**

6 A. Under BellSouth's proposed requirement that each ALEC purchase its own
7 DSLAM and DS1 feeder at every remote terminal, ALECs would face delays
8 of months or longer in attempting to initiate service to its first customer in an
9 RT serving area while new DSLAM and DS1 facilities were installed and
10 connected and any infrastructure upgrades needed to support these facilities
11 were completed. By contrast, if unbundled xDSL loops were offered on a
12 line-at-a-time basis, wherever BellSouth has DSL facilities, ALECs could
13 obtain unbundled xDSL loops to provide service to a customer with the same
14 speed that BellSouth could provide service to that customer. Without the
15 ability to offer service at the same speed as BellSouth, it would be difficult
16 for ALECs to win the DSL business of customers located in RT serving areas
17 where they had not already established their own DSL facilities.

18 **Q. Should BellSouth be required to offer xDSL loops with unbundled**
19 **packet switching on a stand-alone basis and in combination with voice-**
20 **grade UNE loops?**

21 A. Yes. As I demonstrated in my Arbitration Testimony, to compete, ALECs
22 must be able to utilize the full features and capabilities of the loop, including
23 the ability to provide both circuit-switched voice service and ADSL data

1 service on the same distribution pair, just as BellSouth provides for its own
2 customers. Without this ability, ALECs will unnecessarily be forced to incur
3 greater costs in order to provide voice and data service over separate loops
4 and may, in some cases, be precluded from providing both services if an
5 additional loop is not available. This combination offering is provisioned by
6 employing line sharing on the distribution subloop, and the voice and data
7 traffic are separated by the DSLAM or DSL line card at the DLC and sent to
8 the central office on separate feeder transmissions. BellSouth provisions its
9 own service in this manner. The Commission should require BellSouth to
10 offer the same capability to Florida ALECs.

11 **Q. Based upon your testimony, how should the Commission define the new**
12 **UNE needed to enable ALECs to offer xDSL services in Florida?**

13 A. The new UNE should be defined as an xDSL loop, from the customer NID to
14 the central office, with unbundled packet switching. The Commission should
15 require BellSouth to offer unbundled packet switching as part of any loop
16 that, to be xDSL-capable, would require packet switching on the customer
17 side of the central office. The Commission should not limit its terminology
18 to hybrid copper/fiber loops, since the UNE is also needed where BellSouth
19 has deployed copper-fed DLCs.

20 **Q. Would it be technically feasible for BellSouth to offer xDSL loops with**
21 **unbundled packet switching in the manner that you have proposed?**

22 A. Yes. BellSouth already provides such loops to itself for its own use. Mr.
23 Kephart admits in his testimony that the hybrid loop offering outlined in his

1 testimony is technically feasible. The only significant difference from a
2 technical perspective between his proposal and FDN's is that, in FDN's
3 proposal, the DSL transmissions are aggregated on shared DSL multiplexing
4 facilities and feeder transport to the central office. This arrangement is also
5 technically feasible for BellSouth to provide.

6 **Q. You have testified that BellSouth's requirement that ALECs purchase**
7 **dedicated DSLAMs and DS1 feeders violates TELRIC principles and**
8 **that the Commission should reject, rather than adjust, BellSouth's cost**
9 **study. Putting that contention aside, did BellSouth calculate the**
10 **individual rate elements for hybrid loops consistent with TELRIC?**

11 **A. No. Even a preliminary review of BellSouth's hybrid copper/fiber loop cost**
12 **study demonstrates that the proposed rates are not TELRIC-compliant. For**
13 **example, the proposed rates for the DS1 component of the hybrid loop**
14 **(element A.20.1 of the cost study) is much higher than the rate that BellSouth**
15 **proposes for an equivalent DS1 stubloop for other services. The disparity**
16 **between these rates appears to be based upon BellSouth's use of different**
17 **network design models in developing its cost studies for these two elements**
18 **which, in reality, are the same. BellSouth witness Caldwell's testimony**
19 **indicates that the standard DS1 cost study evaluated all DS1 loops, while the**
20 **hybrid loop study only evaluated DS1s between remote terminals and central**
21 **offices. The resulting charges would be much higher for the Hybrid**
22 **Copper/Fiber DS1, as set forth in Figure 3 below:**

Figure 3: Comparison of Proposed DS1 Rates

A.9.2 Unbundled sub-loop DS 1 feeder A.20.1 Hybrid Copper/Fiber

DS1

Zone 1	\$46.27	\$149.48
Zone 2	\$62.45	\$173.40
Zone 3	\$120.65	\$419.71

Q. How do BellSouth's proposed DS1 rates violate TELRIC principles?

A. BellSouth's study fails to utilize a single unified network design in the determination of its unbundled DS1 sub-loop rates. FCC Rule 51.505(b)(1) requires that the total element long-run incremental cost of a UNE should be measured based upon the "lowest cost network configuration." This Commission has also recognized that a single unified network design is most appropriate. The use of different engineering assumptions violates TELRIC principles because BellSouth has not used the lowest cost network assumption across the board. Use of a single unified network assumption that takes into account demand for all types of loops, including stand-alone loops, loop/port combinations, and xDSL-capable loops, would better reflect the economies of scale and scope in the ILEC network.

Q. Are there other examples of non-TELRIC-compliant rates in BellSouth's proposal?

A. Yes. BellSouth's cost study includes a charge for an unnecessary and inefficient network design in the central office. Even though BellSouth would force each ALEC to pay the cost of its own dedicated DS1 from each

1 remote terminal, BellSouth would not permit the ALEC to terminate the DS1
2 at its own collocation cage. Instead, BellSouth proposes that each DS1
3 terminate into a DS1 hub bay, and then BellSouth would charge an additional
4 "administrative DS1" charge for transport from this bay to the ALEC cage.
5 For this short and unnecessary component, BellSouth would impose the same
6 excessive charge that it imposes for the DS1 between the remote terminal and
7 the central office. Aside from the fact that this proposed rate for a DS1 is
8 excessive, as I discussed above, this extraneous element is inefficient and
9 counterproductive and should be eliminated.

10 **Q. Based upon your testimony in this docket, what do you believe would be**
11 **the appropriate rate structure for BellSouth's provision of xDSL loops**
12 **with unbundled packet switching?**

13 **A.** The rate structure for xDSL UNE loops should include two basic product
14 types: data-only and voice-and-data. Each should be offered on a line-at-a-
15 time basis, with a single loop rate for each zone. The rates should represent
16 the sum of adding unbundled packet switching to different types of already
17 existing UNE loops. The only new calculation necessary to compose the
18 TELRIC-compliant rates for the two types of xDSL loops is a TELRIC-based
19 charge for packet switching on a per line basis. For data-only xDSL loops,
20 this surcharge would be added to the applicable rate for a line shared loop.
21 For combined voice and data xDSL loops, the packet switching surcharge
22 would be added to the applicable rate for a UNE loop.

1 **Q. How would BellSouth be compensated for shared use of DSLAM**
2 **facilities?**

3 A. BellSouth could be compensated in the same way it is currently compensated
4 for shared use of its other facilities. Costs could be developed per DSLAM
5 or line card port, and BellSouth could seek approval to recover the costs of
6 unused capacity through use of an appropriate fill factor. This pricing will
7 more accurately reflect BellSouth's incremental cost of providing the UNE to
8 ALECs.

9 **Q. What is your recommendation to the Commission?**

10 A. The Commission should reject BellSouth's hybrid loop cost study and require
11 BellSouth to file a new study that offers xDSL loops, with and without voice
12 capability, including unbundled packet switching and transport between the
13 customer and the central office, on a per loop basis.

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

15 A. Yes.

1 BY MR. FEIL:

2 Q Mr. Gallagher, do you have a summary of your
3 testimony?

4 A Yes, I do.

5 Q Would you please provide that summary?

6 A Thank you very much for giving me time to talk today.
7 I would like to summarize my testimony. There are two main
8 issues I would like to talk about today, that being the recent
9 UNE rate changes and the zone -- changes of the zones as well
10 as the pricing of the DSL UNE.

11 As the Commission is aware, several years ago when
12 Florida Digital began first turning up voice customers, we ran
13 into customers when we converted them to our voice whereby
14 their data, their DSL line would shut off with BellSouth.
15 Since that point, since that had been happening that has become
16 basically our number one regulatory issue. We believe in
17 working things out with BellSouth at the trade level, at the
18 engineering level. We find them to be a very solid operator
19 and we choose to work out our differences that way and have
20 been successful doing that.

21 However, in the case of this DSL UNE, I would just
22 like to summarize that we do appear to have an impasse.
23 Florida is different, as we have talked about. We have over
24 110 collocations where we can't get DSL capable loops from
25 those collocations to RTs to upwards of 70 percent of the

1 addressable market. The result is now that BellSouth is
2 greater than 90 percent of market share of the DSL market in
3 Florida, sort of creating another monopoly and growing. FDN is
4 impaired in that the scope and scale of collocation in those
5 now over 3,000 where BellSouth has collocated up to 10,000
6 remotes, is a huge impairment on us.

7 We can't market our voice services to a customer that
8 has BellSouth DSL. We couldn't do it using a resale even if we
9 wanted to because the investment community does not view resale
10 anymore as a viable option. Besides the fact that it is not
11 profitable in any case, we believe. I believe that BellSouth's
12 argument on investment risk is hollow and it is not in line
13 with what we have seen them achieve on their own return on
14 invested capital.

15 Further in my testimony I discuss the actual
16 mathematics of what it would cost us to provide service to the
17 first customer under this proposed pricing arrangement.
18 Basically it would cost \$684 for us to serve our first
19 customer. The market, which basically the market price as
20 defined by BellSouth of \$50, we would be therefore way over --
21 our cost is way over what the market would bear and that is
22 just the cost for transport, it doesn't even include the cost
23 for the IP, the web, the E-mail part. Even if we get up to 16
24 customers, our costs would go then to \$52 and this would be
25 surgically marketed in one specific area. And, again, that

1 would also not include the cost of IP services that we would
2 have to add on top of it. So, we believe that that is not a
3 feasible option. If the Commission were to approve pricing as
4 it is proposed, no one would buy it.

5 Further, on the UNE zone issue, FDN believes it is
6 one of the largest purchasers of UNE loops, and we have
7 analyzed the change in the new UNE costs to us, and effectively
8 because the number of Zone 1 -- prior to this ruling, the Zone
9 1 COs, FDN was in 59 Zone 1 COs. But after this we are now in
10 33 Zone 1 COs. All of those other COs moved to Zone 2. So we
11 got a price decrease in Zone 1, but because so many COs moved
12 to Zone 2, we effectively got a net price increase.

13 Further, I have a map. If I may put a map up of the
14 state, showing the Zone 1 and 2.

15 CHAIRMAN JABER: Is it already --

16 MR. FEIL: Yes, ma'am. I showed it to Mr. Knight and
17 Mr. Turner. They don't have an objection. It's just a
18 demonstrative presentation, it's not an exhibit.

19 CHAIRMAN JABER: Great. Go right ahead,
20 Mr. Gallagher.

21 A (Continuing) As you are aware, a zone refers to a
22 boundary served by a wire center. So if a CLEC were to go into
23 a particular wire center, they can serve all the customers as
24 bounded by that wire center as defined by BellSouth as the wire
25 center boundary. So, for my map I have three colors. I have a

1 gray, a gray coloring which is all the BellSouth Zone 3 central
2 offices; red coloring, which is all the BellSouth -- the new
3 proposed Zone 2 central offices; and the green, which is the
4 Zone 1 central offices. So as a visual person it's helpful for
5 me to see what we are really talking about when we move these
6 zone COs from Zone 1 to Zone 2.

7 The new Zone 2 COs cover a massive amount of
8 geography. Really, we only have meaningful competition, I
9 believe, in these urban core areas, which are Zone 1s, and what
10 is adjacent to the urban core, and suburban areas will now have
11 the higher Zone 2 rates. And that coupled with the inability
12 to provide DSL and voice together with the high Zone 2 rate, I
13 believe, will make residential competition unavailable in the
14 State of Florida.

15 This particular map shows a very large CO here. This
16 is actually the Coral Springs CO. Or, I'm sorry, the Sawgrass
17 CO, so everything out here is Everglades, but otherwise these
18 are just dense downtown zones. And I just thought that was
19 important to understand that. Thank you.

20 Q Does that conclude your summary, Mr. Gallagher?

21 A Yes, it does.

22 MR. FEIL: I tender the witness for cross.

23 CHAIRMAN JABER: ALECs, do you have any questions?

24 MS. McNULTY: I don't.

25 MR. PERRY: I have no questions.

1 CHAIRMAN JABER: BellSouth.

2 MR. TURNER: Thank you, Madam Chair.

3 CROSS EXAMINATION

4 BY MR. TURNER:

5 Q Good afternoon, Mr. Gallagher. I'm Patrick Turner.
6 I think we have met on a couple of occasions before.

7 A Good afternoon.

8 Q Mr. Gallagher, we can agree, can't we, that FDN was
9 founded in about 1998?

10 A Yes.

11 Q And its mission, according to your testimony, is
12 offering bundled service packages, including local, long
13 distance, and Internet to small and medium-sized businesses, is
14 that correct?

15 A That is correct.

16 Q How many access lines today does FDN serve in the
17 State of Florida?

18 A Approximately 70,000.

19 Q Now, let me ask you this. On January the 30th of
20 2002, didn't FDN issue a press release announcing it serves
21 more than 75,000 phone lines in Florida?

22 A We included data lines, as well. So we have 70,000
23 voice lines and 10,000 data lines. So we have 80,000 total
24 lines.

25 Q Okay. Of those 80,000 total lines, how many serve

1 business customers?

2 A All of them.

3 Q Now, in August of 2001 during the arbitration
4 hearings, you testified that FDN was serving about 60,000 lines
5 in the State of Florida, right?

6 A That is correct.

7 Q Did that 60,000 number include voice and data or
8 voice only?

9 A I believe that included data at the time, as well.

10 Q Okay. So between August of 2001 and today, FDN has
11 gained approximately 20,000 total access lines, right?

12 A That is correct.

13 Q That is an increase of more than 25 percent in that
14 six-month period, isn't it?

15 A Yes.

16 Q Now, FDN owns Class 5 Nortel DMS 500 central office
17 switches in Florida, right?

18 A Yes.

19 Q How many?

20 A Four.

21 Q And as I understand it, FDN connects these switches
22 to end users through facilities that FDN has collocated at
23 BellSouth's central offices, right?

24 A That is correct.

25 Q And if I understood your summary correctly, you are

1 collocated in about 110 BellSouth central offices in Florida
2 today?

3 A Yes, sir.

4 Q And the equipment that FDN has collocated in those
5 central offices, doesn't it have built in DSLAM functionality?

6 A Yes, it does.

7 Q Now, FDN did not even attempt to collocate in all 110
8 of those central offices in the State of Florida all at one
9 time, did it?

10 A No, we did not.

11 Q In fact, as I understand your deposition testimony,
12 you collocated in roughly 30 or so central offices in each of
13 the three or so years that you have been in business, is that
14 roughly right?

15 A Correct.

16 Q Let's talk very briefly about some of the services
17 you provide your customers in the State of Florida. You
18 obviously provide local service, right?

19 A Yes.

20 Q You provide data services?

21 A Yes.

22 Q That consists of in some parts dial-up, right?

23 A Yes.

24 Q Sometimes it consists of dedicated data services,
25 right?

1 A Correct.

2 Q You offer Internet services through an affiliate
3 called FDN.com?

4 A That is correct.

5 Q You are also an IXC, right?

6 A Yes.

7 Q I assume, therefore, that FDN offers its customers
8 interLATA toll services?

9 A Yes, we do.

10 Q Do you also offer your customers international toll
11 services?

12 A Yes, we do.

13 Q So we can agree, can't we, that you receive revenue
14 from your customers for each of those services in some mix over
15 the State of Florida?

16 A Yes, we do.

17 Q You offer DSL service to your customers?

18 A Yes, would do. We have two types of DSL; we resell
19 the BellSouth ADSL, or wholesale it as you call it, and we have
20 created a product called IDSL, which operates at 128K that we
21 use from our central office space equipment which is able to go
22 for long loop length and go through SLIC, because it is TDM
23 architecture by nature, so it works through remote terminals.

24 Q About how many lines do you provide the resold ADSL
25 service that you referred to?

1 A I think -- you know, I don't know that I have that
2 exact number, but it is below 1,000.

3 Q Over about how many lines do you offer IDSL service?

4 A I'm sorry, I have neglected to mention we also have a
5 T-1 Internet access. The T-1 and IDSL comprise the remaining
6 roughly 9,000 data lines.

7 Q So a total of 10,000 data lines, 1,000 over the
8 resold ADSL, and 1,000 over the IDSL T-1 that you described?

9 A Yes. But we count lines -- a T-1 line, a customer
10 might buy 256K bandwidth on a T-1, we count that as four times
11 64 or four DS-0s, we count that as four lines. So it is less
12 than that the number of customers.

13 Q What do you charge the 1,000 or so customers that you
14 provide a resold ADSL service to?

15 A We have several packages ranging from \$59 to roughly
16 \$99 a month, which includes a little Notopia router Ethernet
17 hub on the end.

18 Q And today it is all business customers that you are
19 providing that service to, right?

20 A Correct.

21 Q About what do you charge the 9,000 or so business
22 customers that you serve through this IDSL T-1 arrangement?

23 A That is competitive information. Do I --

24 MR. FEIL: If you think that it is confidential
25 information, then it presents a problem. But if it is

1 information that is not confidential --

2 THE WITNESS: I charge them as much as the market
3 will bear, let's put it that way.

4 BY MR. TURNER:

5 Q Do you post what you charge these folks on your
6 website?

7 A You know, I don't know what is currently on the
8 website in terms of pricing.

9 MR. TURNER: Perhaps at a break I can talk to Mr.
10 Feil and see if we can skin this cat, but I do think it is
11 relevant given some of the testimony he has presented about
12 BellSouth's retail rates.

13 CHAIRMAN JABER: Do you need just a few minutes now,
14 is that what you are asking?

15 MR. TURNER: Why don't we just go on through and
16 there may be a logical breaking point at some point and we
17 could do it then and not have to waste additional time, if that
18 is okay with you.

19 CHAIRMAN JABER: I appreciate it. Thank you.

20 BY MR. TURNER:

21 Q Mr. Gallagher, I want to ask you one thing about your
22 summary. And correct me if I'm wrong, but I thought you said
23 that you cannot -- that the investment community will not allow
24 you to resell BellSouth's services. Now, maybe I didn't
25 understand exactly what you said. So if you would, kind of

1 share for us what you meant to say?

2 A Sure. In the last year or so, the banks which, you
3 know, the credit side of your balance sheet, the lenders, the
4 nonequity lenders who want to see obviously a cash flow
5 business so they can pay back their loan, have figured out that
6 by the time you -- if you are attempting a resale business
7 plan, by the time you discount your services, there is no money
8 left in it. So they prohibit -- in my credit agreement I am
9 prohibited from counting lines towards covenants that are
10 served via resale.

11 Q And that's what I wanted to clarify. We can agree,
12 can't we, that your banks that are lending you this money do
13 not prohibit you from reselling BellSouth's service, they
14 simply say that you have to have a certain number of
15 facilities-based lines, right?

16 A Or else you can't have any more money.

17 Q But, again, it is not we will not give you any more
18 money if you provide resold services through BellSouth?

19 A Right.

20 Q It is simply you have to have a certain number of
21 facilities-based lines, right?

22 A That is correct. You can look at it that way, yes.

23 MR. TURNER: Madam Chair, what I would like to do,
24 and this will be a repeat of sorts from the FDN arbitration
25 proceeding, but I would like to pass out two exhibits that we

1 can use to walk through some of the technology involved.

2 CHAIRMAN JABER: Sure.

3 MR. TURNER: Perhaps once we get them distributed
4 maybe then we can identify them for the record, if that is
5 okay.

6 CHAIRMAN JABER: This will be a Diagram A and a
7 Diagram B in the future.

8 MR. TURNER: Yes, ma'am. The one I would like to use
9 first is the one that has the DSLAM in the CO, and it has got
10 the 10,000 feet down at the bottom. And, again, I confess I
11 have lost count of the exhibit numbers.

12 CHAIRMAN JABER: Okay. The one that has the 10,000
13 feet on the bottom will be Diagram A, and that will be Exhibit
14 61. The other exhibit that has the DSLAM inside the remote
15 terminal will be Diagram B, and that is Exhibit 62.

16 MR. TURNER: Thank you, ma'am.

17 (Exhibit 61 and 62 marked for identification.)

18 BY MR. TURNER:

19 Q Mr. Gallagher, again, this is a dangerous thing
20 because it's a lawyer trying to draw a technical diagram, so I
21 will try to be very, very general. But I want to use this just
22 generally to demonstrate how the various technologies can be
23 used to provide both voice and data over the same line to a
24 single end user. So let's start with Exhibit A if we could.
25 You see on right there is an end user location depicted by the

1 telephone, do you see that?

2 A Yes.

3 Q And then there is a copper distribution facility
4 running from the end user location to a remote terminal that is
5 depicted by the orange box in the middle of the page. Do you
6 see that?

7 A Yes.

8 Q And given the hybrid copper/fiber loop that the
9 Commission ordered us to look at, I have depicted -- I'm sorry,
10 we will get to that in a minute. What we have here is through
11 the remote terminal another copper facility running back to a
12 DSLAM in the central office. Do you see that?

13 A Yes.

14 Q And I have designated the total length of that loop
15 from the central office DSLAM to the end user premise as being
16 10,000 feet just for demonstrative purposes, okay. Now, let's
17 assume that the end user on the right side of the screen is
18 talking on the telephone at the same time that they are surfing
19 the Internet, okay?

20 A Uh-huh.

21 Q Now, as I understand it what will happen is the voice
22 signals will travel over the copper loop on the lower frequency
23 portion of the loop, right?

24 A Correct.

25 Q And in my diagram they are going to travel all the

1 way back to the DSLAM at the central office, right?

2 A Yes.

3 Q At the same time the data that is being transferred
4 back and forth between the Internet and the end user is going
5 to travel on the upper portion of that frequency, right?

6 A Right. There is a splitting function that is going
7 on that you don't show, but that is what is doing that, right.

8 Q You're right. A lot of DSLAMs have integrated
9 splitters, right?

10 A Right.

11 Q So for simplicity let's assume that my DSLAM has an
12 integrated splitter.

13 A Okay.

14 Q So what will happen is the voice will be going over
15 the low frequency portion of the loop, the data will be going
16 over the high frequency portion of the loop, and it is going to
17 hit the splitter at the DSLAM, right?

18 A Right.

19 Q The DSLAM will split the voice services and the data
20 services and send them in different directions, right?

21 A Correct.

22 Q It will send the voice to the circuit switch and it
23 will be completed just like any other voice call, right?

24 A Correct.

25 Q And it will send the data in this case to your

1 collocation space, and from there you can send it to your
2 packet switch and do with it as you do every other packet
3 technology, right?

4 A Right.

5 Q And in this type situation that we have depicted
6 here, given that we have got all copper, we can agree that
7 regardless of who the carrier is that is providing that
8 service, you are going to have a problem providing voice and
9 data over the same loop to a single end user if that loop
10 length exceeds 18,000 feet, right?

11 A Correct.

12 Q And that is simply a function of today's technology,
13 nobody has been able to figure out how to do it on more than
14 18,000 feet yet, right?

15 A Well, there is some proprietary technologies that do
16 it pass that, but --

17 Q As a general rule, the 18,000 feet limitation, though,
18 is one that affects ALECs, ILECs, and everyone else, right?

19 A Well, there is a company called Paradym (phonetic)
20 that has something called Reach (phonetic), which is a DSLAM
21 that uses proprietary signaling that goes past 18,000, but I
22 think it is generally still the other boxes don't go that far.

23 Q Okay. So with regard to BellSouth, it is going to
24 have a problem sending voice and data to a single end user over
25 an all copper loop that exceeds 18,000 feet, right?

1 A Correct.

2 Q And an ALEC would have the same problem?

3 A Right. Unless you're talking about IDSL, which we
4 use, or you use ISDN which because it is a circuit it has got
5 carrier on it and you're not talking about dry copper, it goes
6 that far.

7 Q Right. Now, let's look at the Diagram B. In Diagram
8 B we have placed the DSLAM in the remote terminal, right?

9 A Yes.

10 Q And what we have depicted is a copper distribution
11 facility running from the end user to the DSLAM and the remote
12 terminal, right?

13 A Yes.

14 Q And given the Commission's directive for us to study
15 a hybrid copper/fiber loop, we have depicted fiber going from
16 the back end of the DSLAM back to the collocation space at the
17 central office. Do you see that?

18 A Yes.

19 Q Now, again, in this case if the end user is using the
20 Internet and talking on the telephone at the same time, to
21 start with it is going to be about the same, right? The voice
22 is going to travel over that copper loop on the low frequency
23 portion until it hits the splitter at the DSLAM in the remote
24 terminal, right?

25 A Right.

1 Q The data is going to travel over the high frequency
2 portion of the loop until it hits the splitter in the DSLAM at
3 the remote terminal, right?

4 A Right.

5 Q And once that is split off, the voice is going to be
6 sent back to the central office and it is going to go through
7 the circuit switch just like any other voice transmission,
8 right?

9 A Well, the way I understand your architecture is also
10 in that remote you don't show what is called the digital loop
11 carrier that is sitting there. And what you would probably end
12 up doing is splitting the -- the splitter in the DSLAM would
13 send the low frequency over to another box that is sitting in
14 there, provide the dial tone off of that. That box over the
15 years has been connected using that fiber back to the central
16 office. So that other box, the cabinet, the DLC, the fiber,
17 that is already there. And what you guys have done is added
18 DSLAMs out to the remotes.

19 Q Okay. And once we have added the DSLAM at the
20 remote, though, the voice frequency won't split, it is sent
21 back to the circuit switch and completed just like any other
22 voice call?

23 A Right. But it is probably handed off to a piece of
24 DLC gear sitting in that remote, so it eventually gets to a
25 switch, but it gets dial tone out there to a remote.

1 Q Okay. And the data is going to go over the high
2 frequency portion, hit the splitter, be split separately, and
3 it is going to be sent back to the packet network, right?

4 A Right.

5 Q And when we have the type of the architecture that is
6 pictured here, fiber going from the central office to the
7 remote terminal and then copper going from the remote terminal
8 to the end user, whoever the carrier is that wants to use those
9 two new components to provide voice and data to the same end
10 user over the same line, whoever that carrier is they are going
11 to have to put a DSLAM in that remote terminal, right?

12 A Yes. Assuming the loop length is -- and there is no
13 other copper, yes.

14 Q Exactly. If that is all you have got to work with,
15 you're going to have to put a DSLAM in that remote terminal?

16 A Right.

17 Q Now, you will agree with me, won't you, that as
18 Florida's population has grown over the last 20 years or so
19 BellSouth has began deploying a lot of these DLC arrangements
20 at remote terminals in its voice distribution network?

21 A Yes.

22 Q And that makes the network more efficient, doesn't
23 it?

24 A Yes. For the voice, I would imagine, yes. It's
25 ironic that it makes it less efficient, though, for DSL.

1 Q But we can agree, can't we, that those DLCs were
2 being placed in large numbers long before DSL technology ever
3 hit the scene?

4 A Probably, yes. Well, DSL technology has been around
5 since the mid-'80s. In fact, T-1s ride on something called
6 HDSL. So a lot of the original DSL technology, I believe, you
7 all were using from that RT back to the CO to multiplex lots of
8 DS-0s onto a T carrier using HDSL. So I would argue that DSL
9 technology has been available to the ILEC for a long time, it
10 has just been used for the T-1 family of products.

11 Q And we have begun our efforts to use it through the
12 fiber in putting DSLAMs in the remote terminal only the last
13 couple of years, right?

14 A That's correct.

15 Q Now, what FDN is asking for in this proceeding in
16 effect is it wants to use this DSLAM that BellSouth has placed
17 in the remote terminal in Diagram B, right?

18 A Yes.

19 Q And it wants to use -- well, first of all, we can
20 agree, can't we, that this DSLAM performs packet switching
21 functionality at the remote terminal?

22 A Provides packet switching on the back side towards
23 the packet switch and provides high frequency carrier towards
24 the customer.

25 Q Okay. Now, in your testimony on Page 8, Lines 13

1 through 16, you did put it this way, didn't you, didn't you say
2 that those DSLAMs perform packet switching functionality at the
3 remote terminal?

4 A Yes.

5 Q And FDN is not suggesting that in this proceeding, it
6 is not asking the Commission to have the parties sit down and
7 negotiate market rates or commercial rates for the use of that
8 DSLAM, is it?

9 A Not in this proceeding, no.

10 Q What FDN is asking for is unbundled access to that
11 DSLAM at TELRIC rates, right?

12 A Yes, sir.

13 Q And beyond that, FDN is asking for unbundled access
14 to that DSLAM at TELRIC rates on a line-by-line basis?

15 A Yes, sir. The same way we have access to the digital
16 loop carrier that is sitting right next to it on a line-by-line
17 basis.

18 Q Now, going back to Exhibit B, which is the DSLAM in
19 the remote terminal. This Diagram B, Exhibit 62?

20 A Yes.

21 Q Now, we have agreed already that in order for any
22 carrier to use this fiber/copper mix that we have depicted
23 here, in order to provide DSL and voice over the same line, a
24 DSLAM has to be placed in that remote terminal, right?

25 A Yes.

1 Q So it's fair to say that today wherever BellSouth is
2 serving both voice and DSL service to end users in Florida out
3 of this type of arrangement, BellSouth's has had to purchase
4 and install a DSLAM in the remote terminal?

5 A Yes.

6 Q And if additional feeder facilities were needed to
7 feed into that DSLAM, we can agree that BellSouth would have
8 had to make a choice between engineering and installing those
9 facilities or not putting a DSLAM at that remote terminal,
10 right?

11 A I would imagine that you would already have the
12 transport there in the remotes to serve your digital loop
13 carrier. You would have T carrier there. Maybe a worst-case,
14 just T carrier on copper, but probably you would have a fiber
15 optic transmission piece of equipment. And if it was maxed
16 out, then, yes, would you have to augment it. But there is
17 probably, you know, the theory that there would be some
18 available capacity on that fiber.

19 Q But assuming as you put it that the capacity was
20 maxed out, then BellSouth would have to make a choice between
21 either engineering and installing additional capacity or not
22 putting a DSLAM at that location, right?

23 A That's right.

24 Q And if the choice BellSouth made was not to put a
25 DSLAM in that location at that remote terminal, then it

1 couldn't provide DSL and voice over the same line to customers
2 who were served through that remote terminal, right?

3 A Yes.

4 Q If, on the other hand, BellSouth had decided to
5 engineer and install additional capacity, it would have
6 incurred costs to do so, right?

7 A Yes.

8 Q And it would take time to do that, wouldn't it?

9 A Yes.

10 Q Now, in each of the instances where BellSouth had
11 actually placed a DSLAM in a remote terminal to provide these
12 types of services, we can agree that BellSouth had to go out in
13 the market and buy a DSLAM, right?

14 A Yes.

15 Q And obviously BellSouth incurs costs in doing that?

16 A Right.

17 Q There is probably some time element involved in doing
18 that, too, right?

19 A Yes.

20 Q And after it has purchased the DSLAM, it has had to
21 install it at the remote terminal, right?

22 A Correct.

23 Q And that involves time, right?

24 A Yes.

25 Q It involves cost, doesn't it?

1 A Yes.

2 Q And if there wasn't space at the remote terminal, but
3 BellSouth wanted to put a DSLAM there anyway, it would have had
4 to augment the space at that remote terminal in order to fit
5 the DSLAM in it, right?

6 A Yes.

7 Q And that would involve time, right?

8 A Right.

9 Q And it would involve cost, right?

10 A Yes.

11 Q If there wasn't sufficient power, the same thing,
12 BellSouth would have to incur time and cost to get the
13 necessary power facilities at that remote terminal in order to
14 put a DSLAM in, right?

15 A That's right. And you would be the only guys that
16 could provide service to those businesses, behind that DSL
17 service to those businesses because there is nobody else that
18 could touch it. So you are going to get a pretty immediate
19 return on your investment of time and money, I would imagine.

20 Q Well, what about the cable companies who are already
21 providing broad band service to those customers?

22 A They are out there for the residential user, I will
23 give you that. For the small and medium-sized business, the
24 cable plant is not an option in the customers that I address
25 every day.

1 Q So you are saying that cable companies do not provide
2 broad band service to business customers?

3 A I think they do on a limited basis. But in my
4 customer base and the businesses that I call on, I don't see
5 that.

6 Q Let's go back to my question. If there were zoning
7 issues or right-of-way issues involved in putting a DSLAM at a
8 remote terminal for BellSouth, BellSouth would have to incur
9 time and money to resolve those issues, right?

10 A Correct.

11 Q So we can agree, can't we, that if and when a
12 BellSouth product manager says I would really like to put a
13 DSLAM in this given remote terminal in order to provide DSL
14 service to customers, it is not a matter of the next week that
15 DSLAM is sitting there serving customers, is it?

16 A Probably not.

17 Q Now, we have talked about what BellSouth would have
18 to do. Let's talk a little bit about what FDN would have to
19 do. If FDN decided to collocate a DSLAM at a remote terminal,
20 a BellSouth remote terminal, FDN would first have to go out
21 into the market and buy a DSLAM, right?

22 A No, that is not the first step. The first step is
23 that we apply through your collocation process and submit an
24 application at our expense.

25 Q Okay. Sorry, I got my steps out of order. But just

1 so I don't have to flip my pages, let's take them out of order.
2 One thing that FDN would have to do is go out in the market and
3 buy a DSLAM, right?

4 A Correct.

5 Q And FDN has received quotes for stand-alone DSLAMs
6 from various providers, right?

7 A Yes, we have.

8 Q And you haven't had any problems finding providers
9 who are willing to sell you DSLAMs?

10 A No, we have not.

11 Q And without getting into the actual numbers, both FDN
12 and BellSouth submitted price quotes on an eight port DSLAM in
13 the FDN arbitration proceeding?

14 A Yes.

15 Q And the price quote that FDN submitted for an eight
16 port DSLAM was comparable to the price quote that BellSouth
17 submitted for a similar DSLAM, wasn't it?

18 A Right.

19 COMMISSIONER DEASON: Excuse me, let me interrupt.
20 Who are some of the manufacturers that you have gotten quotes
21 from?

22 THE WITNESS: Paradym, Alcatel, and I can't remember
23 the other one off the top. I know we got three quotes, but I
24 can't remember who the third one was.

25 COMMISSIONER DEASON: Are these the same folks that

1 sell to BellSouth to the best of your knowledge?

2 THE WITNESS: I'm pretty sure that BellSouth uses
3 Alcatel fairly -- on a large basis.

4 BY MR. TURNER:

5 Q Just going from memory, was Phillips another one?

6 A Yes, Phillips is actually a distributor, though, of
7 other people's stuff, so I can't remember who the box was they
8 were selling.

9 Q Another thing that FDN will have to do to collocate a
10 DSLAM at a BellSouth remote terminal is go through the
11 collocation process with BellSouth, right?

12 A That is correct.

13 Q Now, in your prefiled testimony, you say a lot of
14 things about that collocation process.

15 A Yes.

16 Q Let me ask you this, how many times has FDN submitted
17 an application to collocate a DSLAM at a BellSouth remote
18 terminal?

19 A We have had various reps from -- our rep that we deal
20 with on interconnection issues over time. And two reps ago we
21 submitted -- we asked that rep how we would go about doing
22 that. And at the time, our rep, who was then Gene Ferrero
23 (phonetic), I believe, he did not know what the internal
24 procedures were to collocate an RT. He was very helpful in
25 helping us get into the central offices at the time, then after

1 the arbitration when we found out from Mr. Williams that there
2 was sort of a, you know, a new streamlined process, we have not
3 attempted to submit any. So the answer is we have not
4 submitted any applications.

5 Q And just to get a time frame involved with two reps
6 ago, it clearly was before the FDN arbitration proceeding, is
7 that correct?

8 A Right.

9 Q And that was in August of 2001, right?

10 A Right.

11 Q About how long before that was two reps ago?

12 A Well, you know, it was -- it wasn't the guy we have
13 now, but the guy before him, Gene Ferrero, and it would have
14 been in late -- probably late 2000 that we started
15 investigating that, the issue.

16 Q But just to summarize what I just heard you say,
17 since hearing what Mr. Williams had to say about the
18 collocation process in the FDN arbitration proceedings, FDN has
19 not submitted a collocation application to collocate a DSLAM at
20 a BellSouth remote terminal?

21 A That is correct.

22 Q Now, you talked in your testimony some about
23 collocating at 12,000 remote terminals in BellSouth's
24 territory, right?

25 A Uh-huh.

1 Q Now, we have already discussed you didn't try to
2 collocate at 110 BellSouth central offices all at once, did
3 you?

4 A No, we did not. But that was limited -- that was
5 access to capital issues than it was process issues, and how
6 many human and engineering people I had that could process and
7 go through your collocation process.

8 Q And you wouldn't plan on trying to collocate DSLAMs
9 in all 12,000 BellSouth remotes in the State of Florida all at
10 once, would you?

11 A No.

12 Q Now, assume with me that FDN has gone through the
13 collocation process and bought a DSLAM and installed it in a
14 BellSouth remote terminal, okay?

15 A Uh-huh.

16 Q Now, FDN is going to have to get from the remote
17 terminal to the end user premises, right?

18 A Yes.

19 Q And BellSouth will provide a UNE subloop that will do
20 just that, won't it?

21 A Yes.

22 Q And that UNE subloop is provided at TELRIC rates
23 established by this Commission, right?

24 A Yes.

25 Q And FDN is also going to have to get from the remote

1 terminal back to the CO, right?

2 A Yes.

3 Q And BellSouth will provide TELRIC priced subloops
4 that will provide that functionality, won't it?

5 A Yes.

6 Q Now, assume with me for this group of questions that
7 there is an existing remote terminal with an existing BellSouth
8 DSLAM already in it, okay?

9 A Uh-huh.

10 Q And assume with me that the Commission were to grant
11 you the access that you are asking for, line-by-line access on
12 a TELRIC basis to that DSLAM, okay?

13 A Yes.

14 Q Now, under that scenario, if you were to go
15 line-by-line through that remote terminal, we can agree, can't
16 we, that you could not provide DSL service to customers out of
17 that remote terminal that could not already get DSL service
18 from BellSouth through that remote terminal?

19 A That's right.

20 Q Now, let's assume that the Commission said, no, we
21 are not going to grant you TELRIC-based line-by-line access to
22 the DSLAM in BellSouth's remote terminal, okay. And let's
23 assume that FDN finds a remote terminal where BellSouth has not
24 yet located a DSLAM, okay?

25 A Right.

1 Q If FDN were to collocate a DSLAM in that remote
2 terminal and start offering DSL services through that remote
3 terminal, we can agree, can't we, that customers who had not
4 prior to that time been able to get DSL out of that remote
5 terminal can now get it out of that remote terminal?

6 A Yes.

7 Q So you have expanded the number of Floridians who
8 have access to DSL services by doing that, right?

9 A Yes. But I want to make sure there is a distinction
10 in what you said earlier where we would be able to purchase
11 what we would like, which is, you know, on a one off basis
12 using your DSLAM that you already have out there. We believe
13 we would not just do a me, too. We will innovate with that.
14 And we feel like we have done that thus far.

15 An example is back when we first started wholesaling
16 your ADSL, you all only offered a DHCP option where I'm the
17 user, every time I logged on I got a new IP address. So we put
18 a router on the end of your stuff and we gave customers a
19 static IP address so that they could have their own e-mail
20 server, they could do web posting. So we believe that we have
21 shown we would innovate with that. And I think it is unfair to
22 just say that the consumer wouldn't have anything new, because
23 I think they would.

24 Q I'm sorry, my point wasn't that.

25 A Okay.

1 Q As I understand what you just said, your position is
2 that if you were granted unbundled access to a DSLAM, you could
3 modify some of the things that BellSouth might do from that
4 DSLAM and provide different types of innovations to those
5 customers, right?

6 A Yes, sir.

7 Q But the customers who could receive those DSL type
8 innovations from you are the same customers who already could
9 receive a DSL type service from BellSouth, right?

10 A That's right.

11 Q So while you may be arguably innovating service, you
12 are not expanding the footprint of Floridians who are able to
13 get DSL service, right?

14 A Right. The only way we do that is in our IDSL
15 offering, and its lower speed, but we actually can offer that
16 in areas that -- some areas where you all don't offer DSL. And
17 what we are worried about is when you finally do put a DSLAM in
18 that CO that our IDSL customers will then go away.

19 Q Now, can we agree that it is well established that
20 the early entry and early name recognition are crucial to
21 success in markets for new technologies and new services?

22 A Yes.

23 Q Now, if FDN were to find a DSLAM that did not have a
24 BST remote -- I'm sorry, let's say it right. It has been a
25 long day and I had lunch, I'm getting tired. If FDN were to

1 find a remote terminal that did not have a BST DSLAM in it and
2 FDN were to put a DSLAM in that remote terminal and begin
3 providing DSL services through it, we can agree that with
4 regard to those customers served from that remote terminal, FDN
5 has had early entry into the DSL market to those customers?

6 A That would be true.

7 Q We can also agree, can't we, that FDN would have
8 early name recognition with regard to that market served by
9 that remote terminal?

10 A That is true.

11 Q Now, let's say that you did that, you put a DSLAM in
12 that remote terminal.

13 A Right.

14 Q And let's say that Z-Tel comes and said, Mr.
15 Gallagher, we would like to share that DSLAM with you. We
16 think we can help you fill it up more quickly than you could on
17 your own and we want to be able to have access to your DSLAM.
18 Would you be willing to give it to them?

19 A Sure.

20 Q At TELRIC rates?

21 A I don't know if it would be TELRIC rates, but it
22 would be a negotiated rate.

23 Q And it would be a negotiated rate by which you would
24 compare what you could expect to earn from the retail side of
25 the house to what you could earn if you offered it at

1 wholesale, as well, and you would do some financial analysis of
2 those numbers, wouldn't you?

3 A Probably, yes.

4 Q And sitting here today, you can't tell us what the
5 market rate that you would offer to Z-Tel for that DSLAM might
6 be, right?

7 A No, I haven't even entertained that financial
8 calculation.

9 Q Well, now, that's interesting. Let me ask you this.
10 Let's assume that --

11 COMMISSIONER PALECKI: Could I interrupt for just one
12 moment?

13 MR. TURNER: Sure.

14 COMMISSIONER PALECKI: How long would it take you to
15 get us that number?

16 THE WITNESS: I have never even thought of -- I mean,
17 if we were to do something like that, we, of course, would, you
18 know, we would come up with some sort of ability to fill up our
19 capital, you know, to fill up our DSLAM.

20 COMMISSIONER PALECKI: Could you provide us with the
21 pricing point that you would be willing to offer that service
22 to other CLECs by April 1st?

23 THE WITNESS: I probably could. I could. I could
24 caution you, I have never even -- I would have to start up with
25 a new model and develop it from the ground up.

1 COMMISSIONER PALECKI: Well, I believe that we have
2 asked BellSouth for that information. So if you could provide
3 us with that information from a competitive LEC standpoint, I
4 would like to ask for that as a late-filed exhibit.

5 CHAIRMAN JABER: Actually, Commissioner Palecki, I
6 think I withdrew that request because of the clarification that
7 was provided by Mr. Williams.

8 COMMISSIONER PALECKI: Well, I would still like to
9 see the competitive providers -- what they would be willing to
10 offer it for.

11 THE WITNESS: There is a key -- right now when we
12 look at the current cost to put our DSLAM in there, this would
13 be outside of what is in this. Because what they have proposed
14 is what they would charge for their DSLAM. And in that model
15 that I did before for the arbitration, the problem there was
16 the monthly recurring rent and the powering charge. So I have
17 this big hurdle rate to get over that isn't my -- it's a cost
18 I'm getting billed from the LEC, so I would have to build that
19 sort of artificial, what I believe an artificial high number
20 into the rate I would charge Z-Tel or somebody.

21 COMMISSIONER PALECKI: Well, you can put that as a
22 footnote on your late-filed exhibit.

23 THE WITNESS: All right.

24 CHAIRMAN JABER: And, Commissioner Palecki, you are
25 thinking in their brief, right?

1 COMMISSIONER PALECKI: That would be fine.

2 CHAIRMAN JABER: April 3rd?

3 COMMISSIONER PALECKI: If you could provide that in
4 your brief. Thank you.

5 THE WITNESS: Okay.

6 COMMISSIONER DEASON: Well, let me ask you a question
7 about that. Would this something be better to file as a
8 late-filed exhibit and have the ability to have --

9 CHAIRMAN JABER: Input or comment.

10 COMMISSIONER DEASON: -- some type of reply from
11 BellSouth? I mean, I just don't -- briefs are great, but when
12 you put something in in a brief, unless you cite to the record
13 it's really not evidence. At least that's what I have been
14 told.

15 MR. HATCH: Funny how he looks this way when he says
16 that.

17 CHAIRMAN JABER: Well, I was going to say, yes, the
18 majority of the room is made up of attorneys. I guess --

19 MR. HATCH: The only thing I would add is not having
20 seen it until it gets filed in a brief with no opportunity to
21 say, yea, nay, maybe, it has got flaws, it's the best thing
22 since sliced bread, my suggestion to you would be something in
23 the nature of a late-filed exhibit. Now, how you deal with
24 that in the brief becomes very problematic because the briefs
25 are getting filed at the same time this exhibit comes in. So

1 you don't have a chance to actually object to the exhibit at
2 the same time you try to use this exhibit as part of your
3 brief. Just logistically the time frames don't work very well.
4 I mean, either you get the data a lot faster or you delay the
5 brief filing further in time to give folks a chance just to
6 look at it.

7 CHAIRMAN JABER: Mr. Gallagher, how much time do you
8 think you need to respond to Commissioner Palecki's question?

9 THE WITNESS: You know, in just thinking about it, it
10 is very complex, because I wouldn't be the underlying copper
11 carrier there, right? I just have DSLAM. I'm sort of a toll
12 bridge between the copper loop and the service back. So, I
13 won't be reaping, you know, the payment of the UNE loop going
14 out to the customer. That is just a pass-through, I guess.

15 CHAIRMAN JABER: So is there information you would
16 need from BellSouth to even develop that?

17 THE WITNESS: Yes. I mean, I just don't know that I
18 could do a good job on that in a week or two.

19 CHAIRMAN JABER: Commissioner Palecki, what is your
20 pleasure? I thought when you said April 1st you were talking
21 about the brief. But I have to agree, I think it would be more
22 effective if we could get reaction to the late-filed exhibit
23 and still stay within our time frame.

24 COMMISSIONER PALECKI: I would agree, as well, but I
25 don't see a real solution here.

1 CHAIRMAN JABER: Staff, can you give us an idea here?

2 MS. KEATING: Well, you could do like Mr. Hatch
3 suggested and extend the time period for filing briefs.

4 CHAIRMAN JABER: What does that do to your schedule?

5 MS. KEATING: It would probably necessitate extending
6 the recommendation date, I would expect, maybe an equal amount
7 of time.

8 CHAIRMAN JABER: Commissioner, if that is what you
9 desire. I really would like to keep this proceeding on
10 schedule because there is a benefit to getting these rates in
11 place.

12 COMMISSIONER DEASON: Not only that, I would point
13 out that we heard from a witness, Mr. Williams, I believe, who
14 said that BellSouth is making a business decision not to deploy
15 line cards which could be serving rural areas because they are
16 waiting for a decision from us in this docket. So that gives
17 me some concern, too, about extending the -- I mean, if it is a
18 sort extension, that's one thing. If we are talking about
19 extending this docket very long, I think that is something we
20 need to pause and give a lot of consideration to.

21 COMMISSIONER PALECKI: Chairman Jaber, I was not sure
22 about what happened earlier, we had actually removed the
23 late-filed exhibit that we had asked BellSouth to provide.

24 CHAIRMAN JABER: Yes, I never even did it in a
25 late-filed exhibit. I asked them to answer questions related

1 to sharing that Commissioner Deason and I asked. But we
2 thought that the witness was talking about sharing in the DSLAM
3 costs, and he was referring to line cards. So I withdrew the
4 request to have that covered in the brief.

5 COMMISSIONER PALECKI: Well, I guess the question I
6 was really getting to, one, is if BellSouth was providing a
7 number, I wanted to hear a number that came from the
8 competitive community, as well. But perhaps I'm not as
9 bothered by the line card issue as you are. I thought one of
10 the witnesses had testified that the line cards actually work
11 as a small DSLAM, and each one can serve two customers.

12 And my thought was that I would like to see from the
13 parties an analysis of a market-based price at which BellSouth
14 or a CLEC could profitably offer access to their DSLAMs to,
15 one, to see if this would provide a meaningful opportunity for
16 a CLEC for entry into the market. And I guess my real desire
17 was is if this would provide a meaningful entry into the
18 market, we might want to delay our decision in this docket
19 until we see that data.

20 What I'm hearing is BellSouth's witness testify that
21 they are going to make a decision on the line cards based upon
22 our decision in this docket, and I think that might be putting
23 the cart before the horse. I might want to see, you know, the
24 meaning of the line card technology and how a market-based
25 price could be developed by BellSouth for that technology.

1 And if that technology does offer the CLECs a
2 meaningful opportunity for entry into the market, then we might
3 be able to avoid this issue. But the way I see it now is there
4 is no meaningful opportunity, or at least that is one of the
5 things we are going to have to decide in this docket is if the
6 option is available to the CLECs really do provide a meaningful
7 opportunity for entry.

8 CHAIRMAN JABER: Let's put the burden where it
9 belongs. I mean, my concern with respect to not causing delay
10 in the docket is because I want the competitors to have
11 certainty. And BellSouth, too. I mean, all of the industry
12 needs certainty with respect to these pricing issues and the
13 UNE issues. So, Mr. Feil, if it is a question of getting Mr.
14 Gallagher's analysis on what he would believe the market price
15 is versus going forward with this docket, pick, take your pick.

16 MR. FEIL: This is like Sophie's choice.

17 CHAIRMAN JABER: Yes.

18 MR. FEIL: Well, actually I would have to defer to
19 Mr. Gallagher as the client. I would like the opportunity to
20 confer with him, if I could, on the question. And, basically,
21 the question is would you rather go forward with this docket in
22 the time frame presently scheduled or delay that time frame in
23 order for Mr. Gallagher to prepare a late-filed exhibit on the
24 subject of a market-based rate.

25 CHAIRMAN JABER: And, Ms. McNulty, I'm not leaving

1 the rest of the ALECs out. I will get your input. But, Mr.
2 Gallagher?

3 THE WITNESS: I will do the best job I can on it. I
4 mean, I would like to produce something that is thought out and
5 it certainly won't have any market testing on it, and it would
6 have to be heavily footnoted. But if you all will accept that
7 and that would help you all.

8 CHAIRMAN JABER: That wasn't the question.

9 MR. FEIL: May I ask one clarifying question, are we
10 also assuming as part of this choice that BellSouth is going to
11 be submitting its own version of a market-based study?

12 CHAIRMAN JABER: If I allow one, I'm going to allow
13 the other, absolutely. Now, Mr. Gallagher, the question was
14 given the choice of providing that market-based study,
15 understanding that it would be heavily footnoted and having
16 that result in a procedural delay in this docket, do you still
17 want to do that or do you want to go forward with the record
18 that we have?

19 THE WITNESS: No, because there is more to this
20 proceeding than just the DLC. I mean, I've got my zones, you
21 know, I feel like certainty on the UNE loop rates is very
22 important for us, so I don't think it is worth that from FDN's
23 perspective.

24 CHAIRMAN JABER: Ms. McNulty.

25 MS. McNULTY: We certainly appreciate FDN's concerns,

1 too. WorldCom would object to a delay in the vote in this
2 docket because there are a number of UNEs involved. And as you
3 know it is very important to WorldCom as an ALEC in Florida.

4 MR. HATCH: AT&T would echo those same sentiments.
5 There is more at stake here than just this issue, with all due
6 respect to Mr. Gallagher. Clearly that is a big issue for him.
7 It's an issue for us, but it isn't the only issue for us and
8 there are others. We think it is more important that this
9 docket move forward on schedule than hanging back for that one
10 small piece.

11 MR. PERRY: I would have to confer with my client,
12 Z-Tel, before I could make any determination one way or the
13 other.

14 MR. SHORE: Madam Chair, to the extent you are
15 soliciting the parties' concerns on this issue, I've got one
16 that is a little bit different in nature, but it seems to me
17 that it is probably the appropriate time to raise it and
18 certainly to preserve it. And that is there has been a lot of
19 talk over the last couple of days about market rates, and I've
20 got some concerns about rates that this Commission is
21 authorized to set in this proceeding and whether or not those
22 are limited to UNEs and need to be based on TELRIC to the
23 extent the Commission finds something to be an unbundled
24 network element. I just wanted to raise that issue and to
25 preserve BellSouth's right to object on that basis.

1 CHAIRMAN JABER: I understand. Commissioner Palecki,
2 I am inclined to go forward. But let's do this, let's have
3 staff think about it a little bit more, let's have you think
4 about it a little bit more. But I am inclined to go forward
5 and not ask for any additional information in the brief on that
6 issue because of the overwhelming concern to move forward and
7 have some prices in effect and bring some of these issues to
8 resolution, quick resolution. The other thing I would point
9 out is, you know, we are free to look at individual issues
10 going forward. I think this is a moving -- to some degree this
11 might be a moving target.

12 COMMISSIONER PALECKI: I certainly agree with you,
13 Madam Chairman. And also I agree with BellSouth on the issue
14 of our authority. It would not be a market-based rate if this
15 Commission ordered it. I think what this Commission, or at
16 least what had this Commissioner wanted to see was BellSouth
17 give us a number, show us what the market would bear and offer
18 it voluntarily to, you know, the CLEC community. And that's
19 what we were trying to get at. Because we have heard from
20 BellSouth on numerous occasions just in the last two days that
21 you are willing to offer the service at market-based rates. We
22 just haven't heard anything from you as to what that rate might
23 be. We don't even have a clue as to where the ballpark is, and
24 that's what I would like to see personally.

25 COMMISSIONER DEASON: Madam Chairman, while we're on

1 this, it may be a moot point, but I wanted to explore for just
2 a moment with BellSouth the nature of their concern. Is it
3 that you feel like we only have the authority to order TELRIC
4 rates and nothing else?

5 MR. SHORE: Let me preface my remarks, and I probably
6 wasn't clear a few moments ago and I apologize for that. It's
7 not an issue that I have researched and really feel comfortable
8 stating a final position on, but I've got some concerns that
9 that is, in fact, may be the case, Commissioner. That this is
10 a UNE docket and that UNEs are required to be priced at TELRIC.
11 There is fundamental question -- well, there are several, I
12 guess, initial questions. One is the question about whether
13 the DSLAM or packet switching should be unbundled in this
14 docket. That is a fundamental question about whether or not
15 that was an issue presented for resolution.

16 Assuming that it is, I think the Commission needs to
17 find that -- would need to find that that is a UNE in order to
18 institute TELRIC pricing. And obviously we have a large
19 disagreement between the sides of the room about whether or not
20 that is a UNE and whether or not the appropriate standards have
21 been met. But I think to the extent then if the Commission
22 were to determine something was an unbundled network element,
23 by definition the law would require that to be priced at
24 TELRIC.

25 COMMISSIONER DEASON: So you are saying we don't have

1 the authority to price it anything other than TELRIC.

2 MR. SHORE: That is my concern. That is my concern.
3 If you find that it is an unbundled network element. I think
4 we are sort of mixing a lot of things.

5 COMMISSIONER DEASON: You know, to some extent you
6 are arguing against your own interest.

7 MR. SHORE: Well, I recognize that. I don't think I
8 am. I'm attempting to preserve that argument. I don't think
9 that -- and it's no secret, and I don't want to testify, but I
10 don't think that the Commission ought to determine it is an
11 unbundled network element.

12 COMMISSIONER DEASON: I'm beyond that. Just for the
13 sake of argument, if this Commission determines that it should
14 be -- it is an element that should be unbundled, are we
15 restricted to pricing it at a TELRIC rate or do we have any
16 flexibility? We have got to cover costs, but do we have the
17 flexibility to price something above a pure TELRIC price?

18 MR. SHORE: Given BellSouth's position against TELRIC
19 pricing generally, you know, we haven't been terrible
20 successful with yet, but that is up for review before the
21 Supreme Court and will be decided this term, you know, I would
22 have to step back and say I don't think TELRIC pricing is
23 appropriate. But I think the Act requires UNEs to be
24 cost-based. And, again, we don't believe this is a UNE for all
25 the reasons we have talked about.

1 COMMISSIONER DEASON: Isn't it cost-based plus a
2 reasonable profit?

3 MR. SHORE: That's right.

4 COMMISSIONER DEASON: It sounds more like a market
5 rate, doesn't it?

6 MR. SHORE: I imagine that the Commission is free to
7 make that determination.

8 CHAIRMAN JABER: We are free to make it, they are
9 just preserving their right to argue with us.

10 MR. SHORE: Argue, that is --

11 CHAIRMAN JABER: Where were we? Commissioner
12 Palecki, one of you needs to remind me where we were.

13 COMMISSIONER PALECKI: You decided not to ask for the
14 late-filed exhibit.

15 CHAIRMAN JABER: All right. Who was asking
16 questions? Mr. Turner, you were asking questions.

17 MR. TURNER: Thank you.

18 BY MR. TURNER:

19 Q Mr. Gallagher, when you were responding to
20 Commissioner Palecki's initial request, you mentioned something
21 about artificially high rates. Remind me what the rates were
22 that you thought were artificially high?

23 A It would be in our late-filed exhibit regarding to
24 the power in that little business model that I did at the
25 request of the Commission for once we put our DSLAM in there,

1 you all have some fixed recurring rates you would charge us to
2 put our DSLAM in there as part of your collocation tariff or
3 whatever it is.

4 Q Let me get back on track, Mr. Gallagher. Can we
5 agree that DSL is a technology by which broad band services are
6 offered to consumers?

7 A Yes, it is.

8 Q And DSL is not the only technology by which broad
9 band services are offered to consumers, is it?

10 A No.

11 Q In fact, broad band is evolving across multiple
12 electronic platforms, isn't it?

13 A Yes.

14 Q The FCC has pointed out that those platforms include
15 wireless, right?

16 A Yes.

17 Q They include cable?

18 A Yes.

19 Q They include satellite?

20 A Yes.

21 Q And when FDN sells its DSL-based offerings today, it
22 is competing with the broad band service offered by cable
23 companies, isn't it?

24 A We really don't, Mr. Turner. I mean, in some
25 instances I have had customers says, hey, I can get Roadrunner,

1 but it is very, very few. If we were to go into residential,
2 then -- if we were going to residential I think we would see it
3 a lot more.

4 MR. TURNER: Madam Chair, may I ask that we be
5 allowed to hand a document to the witness and distribute it to
6 the parties, as well.

7 CHAIRMAN JABER: Sure.

8 MR. TURNER: Madam Chair, may we mark this for
9 identification, please. I think it is Exhibit 63.

10 CHAIRMAN JABER: And is it a page from FDN's website?

11 MR. TURNER: Yes, ma'am.

12 CHAIRMAN JABER: Exhibit 63 is an FDN website page.
13 (Exhibit 63 marked for identification.)

14 BY MR. TURNER:

15 Q Mr. Gallagher, you will agree with me, won't you,
16 that this is a page from the FDN.com website?

17 A Yes.

18 Q And at the top it says ADSL, right?

19 A Yes.

20 Q And down near the bottom it says quotes from ADSL
21 users, right?

22 A Right. Yes, I was incorrect. We do compete with
23 cable modems for our SOHO ADSL package. I was wrong. We do
24 have a certain segment we do compete with.

25 Q Okay. So when you are selling DSL-based services,

1 you are, in fact, competing with cable companies, aren't you?

2 A Right. Of those 1,000 ADSL lines we wholesale from
3 you all, several hundred of those I would estimate are to SOHO,
4 you know, small office home office users and they would have
5 the option of the cable modem as you suggest.

6 Q Go with me, if you will, to Page 12, I believe it is
7 of your rebuttal testimony. Actually I hit the wrong button on
8 my typewriter. I believe it is Page 17. Mr. Gallagher, this
9 is your chart for Zone 1 in which you calculate, as I
10 understand it, the average monthly cost per subscriber and that
11 is the cost to FDN under BellSouth's hybrid fiber copper loop
12 proposal, right?

13 A Yes.

14 Q Now, on the far left column, number of customers in
15 Zone 1 RT serving area?

16 A Yes.

17 Q I take it that what you have done there is you
18 estimated if you serve one customer out of a remote terminal,
19 2, 4, 8, whatever, that is the number of customers that you
20 would be providing DSL service to through the remote terminal,
21 right?

22 A Correct.

23 Q And you have included the DSLAM monthly charges,
24 right?

25 A Yes.

1 Q The DS-1 monthly charges you corrected, and I believe
2 they went up by about 50 cents?

3 A Yes, sir.

4 Q Just so I don't have to do math in my head, let's use
5 your numbers in your testimony with that understanding, okay?

6 A Okay.

7 Q You have got your distribution subloop monthly
8 charges, right?

9 A Yes.

10 Q You added those figures up, those three figures and
11 you came to the total monthly recurring charge, right?

12 A Yes.

13 Q And then as I understand it with your average monthly
14 cost to subscriber, per subscriber, what you did was you
15 divided the total monthly recurring charges in that column by
16 the number of customers served through the RT depicted in the
17 same row, right?

18 A Yes. This is just for Zone 1.

19 Q Yes, sir.

20 A Which as we can see is a shrunken number of potential
21 areas, so probably a Zone 2 number would be better, but we
22 could use this.

23 MR. TURNER: Madam Chair, if I may, I would like to
24 grab the mike and go up to the easel there and possibly draw a
25 few things on the board.

1 CHAIRMAN JABER: Sure.

2 BY MR. TURNER:

3 Q Now, Mr. Gallagher, if I recall correctly, today FDN
4 is serving only business customers, right?

5 A Yes.

6 Q And can we agree that BellSouth's retail DSL service
7 is called Fast Access?

8 A Yes.

9 Q Do you happen to know what BellSouth charges its
10 business retail customers for Fast Access service?

11 A I think that depends on the number of IP addresses
12 that they buy from DHP all the way up to a certain number.

13 Q Yesterday in testimony Mr. Ruscilli testified that it
14 is around \$79.95 for one line. Will you accept that subject to
15 check?

16 A Yes. How many IP addresses does that give you? Does
17 that give you one or five or --

18 Q I don't know. I figure the more IP addresses, the
19 higher it would cost, right?

20 A Right.

21 Q We will check on that. I'm pretty sure that is
22 probably about the minimum that we could do there.

23 A Okay.

24 Q Now, if FDN served 16 end users out of a DSLAM in
25 Zone 1, under the numbers that you have there on your chart

1 that is going to come out to about -- do I have it right --
2 \$66.71 per month?

3 A Yes, 12 users would be 66.71.

4 Q Okay. Actually, let's go to 16. If it were 16 end
5 users it would be 52.68 per month, right?

6 A Yes.

7 Q Now, that would allow FDN to provide xDSL service to
8 one of its business customers, right?

9 A That is just the transport part. We still have to do
10 the upstream Internet part, also.

11 Q But as far as the transport piece that you would have
12 to buy from BellSouth, that gets you what you need that you can
13 add your Internet stuff on top of, right?

14 A That is for the 16th customer, correct.

15 Q Right. And we have assumed 16 customers in Zone 1,
16 right?

17 A Right.

18 Q Now, the 79.95 retail rate for BellSouth's DSL
19 service to business customers is about 50 percent higher than
20 that \$52.68 cost figure, isn't it?

21 A Roughly, right. But does that 79.95 include Internet
22 access, also?

23 Q It includes the whole shooting match.

24 A Okay. So I don't know that that is apples-to-apples.

25 Q Well, the UNE that you would have to buy to add your

1 Internet office on top of is \$56, right?

2 A 52.68.

3 Q 52. So that leaves you with about -- is that 25
4 bucks?

5 A Right.

6 Q And that is 50 percent above what BellSouth sells its
7 ADSL service for. We can agree to that, right?

8 A Right. But I've got pay an upstream Internet IP guy
9 for the IP bandwidth, too. So I have other costs.

10 Q Well, when BellSouth provides this it has got to
11 provision the DS-1 service and it has got to the add the ISP
12 stuff on top of it, right?

13 A Right.

14 Q Now, if you had 12 customers out of that DSLAM, that
15 is going to cost FDN \$66.71 a month, right?

16 A Right.

17 Q That is still above the \$79.95 retail rate for
18 BellSouth's Fast Access service to business customers in Zone
19 1, right?

20 A It's still below, yes.

21 Q And it is about 20 percent below, right?

22 A Right.

23 Q Now, in the 271 case you testified that in order to
24 compete FDN has to have the ability to provide voice and data,
25 right?

1 A Yes.

2 Q So I would imagine you would agree with me that if
3 you were to buy this TELRIC-based stuff from BellSouth and
4 provide DSL service to a business end user in Zone 1, you would
5 also want to provide voice service to that business end user in
6 Zone 1, right?

7 MR. FEIL: Excuse me. I have to interpose an
8 objection. That was a long question and I didn't even
9 understand it.

10 MR. TURNER: Well, there is a reason for that, it was
11 poorly worded.

12 MR. FEIL: Sorry.

13 BY MR. TURNER:

14 Q You would want to provide both voice and data service
15 to the end user, right?

16 A Well, in this scenario I would have to. Because when
17 we compete with you all in the marketplace, that 79.95 rides
18 over a BellSouth phone line, so the customer is effectively
19 getting a phone line included in that 79.95. So, you know, FDN
20 can't take that phone line right now that that thing is riding
21 on.

22 Q But if the customer is going to be getting voice
23 service from BellSouth over that phone line it is going to pay
24 something in addition to the \$79 it is paying for the ADSL,
25 right?

1 A Correct.

2 Q Okay. Now, worst-case scenario, can we agree that an
3 ALEC who were to buy the combined offering that you talked
4 about, the hybrid loop model that is in your study?

5 A Right.

6 Q If an ALEC were to buy that to provide xDSL service
7 to its end users, worst-case scenario it could buy additionally
8 a UNE-P from BellSouth and provide voice to that same customer,
9 right?

10 A UNE-P from BellSouth, yes. Or UNE copper, right, or
11 the loop.

12 Q It could buy just a piece of it, right?

13 A Right.

14 Q And that is going to cost less than the UNE-P, right?

15 A Right.

16 Q But worst-case scenario, the highest cost scenario,
17 they can buy a UNE-P to provide the voice and they can buy this
18 offering in your testimony to provide the xDSL, right?

19 A Right.

20 Q So if they buy the offering in your testimony in Zone
21 1 in Florida --

22 MR. FEIL: Can I ask for clarification? When Mr.
23 Turner is referring to the offering in Mr. Gallagher's
24 testimony, are you referring to the numbers?

25 MR. TURNER: I'm talking about the TELRIC-based

1 numbers that we submitted and that he depicts in his testimony
2 on Page 17.

3 MR. FEIL: Okay. Thank you.

4 BY MR. TURNER:

5 Q So if you are serving --

6 A There is an important thing that I want to make sure
7 I understand you are talking about. In our previous -- like
8 when I talked before about talking to Mr. Ferraro about
9 collocating at a remote, a big part of the problem -- assuming
10 we could solve the space, the power, you know, the logistical
11 issues associated with that, we could never get -- interchange
12 between the companies a map showing the serving area of that
13 remote.

14 In other words, I have the serving area of the, you
15 know, Gainesville main CO. I know what that is. But the
16 remotes that are in Gainesville, in order to send my marketing
17 force into the market, into this specific area, I would have to
18 have all the customers and their addresses served by that
19 remote. So you would have to give me access to that, and that
20 has been an area in the past where we haven't been able to
21 exchange that information.

22 COMMISSIONER PALECKI: Mr. Gallagher, I would like to
23 interrupt you here. I believe in the arbitration docket there
24 was testimony from BellSouth that they would provide that to
25 you.

1 THE WITNESS: Okay. Assuming that we would have to
2 have that to be so efficient to be able to go in and sell 16,
3 you know, fill up that DSLAM, we would have to know exactly
4 where the boundaries were.

5 COMMISSIONER PALECKI: Have you requested any data to
6 that effect from BellSouth?

7 THE WITNESS: Not since the arbitration hearing, but
8 in the -- when I mentioned before how we wanted to get this
9 started, the first thing we asked BellSouth was, okay, can you
10 break your remotes up and give us the serving footprint so we
11 can see which remotes we want to go to and where they are, and
12 we were unable to get that data.

13 COMMISSIONER PALECKI: But I do remember correctly
14 that testimony, do I not? Did you hear the same testimony at
15 the arbitration hearing that they would provide that?

16 THE WITNESS: Right, they would. That is a key
17 assumption, that information exchange.

18 MR. FEIL: And, Commissioner, for the record, that
19 was either at the arbitration or it may have been at the 271
20 hearing, but I remember consistently with what you do.

21 COMMISSIONER PALECKI: Actually, I think it was at
22 the 271 hearing.

23 BY MR. TURNER:

24 Q So for the purposes of this, Mr. Gallagher, let's
25 assume that we can resolve those issues and you can get the

1 information you need, okay?

2 A Okay.

3 Q Now, under this worst-case scenario in Zone 1, an
4 ALEC could buy and we are assuming the ALECs bought the 16-port
5 hybrid copper/fiber loop that is in your testimony here and
6 filled up a 16-port DSLAM, okay. They are going to pay, the
7 ALEC would pay 52.68 per customer under the numbers in your
8 testimony, right?

9 A For the DSL transport, yes.

10 Q And for the UNE-P, let's look over here, which is a
11 chart from one of WorldCom witnesses that has BellSouth's
12 proposed rates for UNEs. And we see in Zone 1 the total cost
13 under BellSouth's proposed rates as \$20.79, right?

14 A Correct.

15 Q Let's round it up to 21, okay?

16 A Okay.

17 Q So they could buy the UNE-P for \$21, right? They
18 could serve DSL over the hybrid offering and they could serve
19 voice over the UNE-P?

20 A Yes.

21 Q To the same customer, right?

22 A Right.

23 Q And when you total this up it is \$73.68 for the UNE
24 components that they would have to purchase from BellSouth to
25 provide those services, right?

1 A It appears so, yes.

2 Q Now, look back over here at the components of the
3 average UNE-P cost chart. Features are included, right?

4 A Right. What features are those?

5 Q Features of the switch.

6 A Like everything from hunting to voicemail to --

7 Q Everything in the switch.

8 A Okay.

9 Q Now, if BellSouth were providing ADSL service to a
10 business customer, the business customer were to pay 79.95 for
11 that service, right?

12 A Right.

13 Q That is even higher than the cost of the hybrid loop
14 plus the UNE-P, right?

15 A Right.

16 Q But, as we have already mentioned, if the customer is
17 also getting voice service from BellSouth, they are going to
18 pay additional, right?

19 A Right.

20 Q Are you familiar with BellSouth's complete choice for
21 business offering?

22 A Yes.

23 Q Is it your understanding that that offering provides
24 a line and up to 30 features of the switch to the business
25 customer?

1 A Yes.

2 Q I have the tariffs here. We need to hand them out,
3 but would you assume with me subject to check -- actually, let
4 me look it up here. Would you assume with me subject to check
5 that the least expensive rate for a one line business complete
6 choice customer in Florida is \$52?

7 A Yes.

8 Q Did I do my math right? When I add 79.95 and 52.09,
9 do I get 132.04?

10 A That is for a business complete choice.

11 Q Yes, sir.

12 A A residential is a very different bit of math there.

13 Q Well, we will get to that.

14 A Okay.

15 Q But you don't have residential customers?

16 A But I would like to be. I mean, I'm only not because
17 of this.

18 Q Well, but let's look at this. Right now this allows
19 you to provide DSL service to the business customers that you
20 have today, right?

21 A Right. It would if I sent my sales force into one
22 little area of town where they beat each other brains out to
23 get 16 -- you know, it just wouldn't be efficient. I would
24 have to buy these \$684 setups all over town and go in the hole
25 a huge amount of money until I was able to fill them up.

1 Q Well, we will come back to that in a minute. But
2 assuming you have done that, assuming you have worked, assuming
3 your market people have accomplished that goal. When you fill
4 one up at 16 ports, you can provide -- you can buy what you
5 need for the DSL service and the voice service for 73.68,
6 right?

7 A Right.

8 Q And if the same customer bought BellSouth's retail
9 ADSL service and BellSouth's complete choice with business
10 service, that customer would be paying BellSouth \$132.04,
11 right?

12 A Yes.

13 CHAIRMAN JABER: Mr. Gallagher, that is an example
14 using Zone 1?

15 THE WITNESS: That's right.

16 CHAIRMAN JABER: Where are your -- does the fit the
17 FDN situation?

18 THE WITNESS: Well, not if the zones change, because
19 we are in more -- twice as many Zone 2 COs. I mean, that is
20 our customer base. So we didn't do -- I don't know why we
21 didn't; we should have, but we didn't do a Zone 2. We did a
22 Zone 3 analysis, and on Zone 3 analysis where Mr. Turner has
23 52.68 it would be 109.44. So somewhere between 52.68 and 109
24 would be the Zone 2 number.

25 CHAIRMAN JABER: So the reality is depending on the

1 zone you are competing in, your offering may be lower or
2 higher?

3 THE WITNESS: Correct.

4 COMMISSIONER PALECKI: Are the Zone 2 numbers closer
5 to Zone 1 or to Zone 3?

6 THE WITNESS: Commissioner, I don't know. I can't
7 tell you exactly where they are. We could have that in a
8 couple of days, but I don't have that now.

9 BY MR. TURNER:

10 Q I need to make one correction. Can we assume that if
11 a business customer buys ADSL service and complete choice for
12 business service from BellSouth, they get five bucks off of the
13 ADSL rate?

14 A Yes.

15 Q So this would drop this figure down to about 127.04,
16 right?

17 A Right.

18 CHAIRMAN JABER: What was that? Mr. Turner, what is
19 it you just did?

20 MR. TURNER: Madam Chair, if a BellSouth business
21 customer buys complete choice for business and also buys the
22 ADSL service, they get about five bucks off of their ADSL. So
23 the retail figure drops from 132.07 to 127.04.

24 BY MR. TURNER:

25 Q Mr. Gallagher, in your testimony I believe you tell

1 us how much BellSouth charges for its retail ADSL service for
2 residential customers. Can you remind us of that number?

3 A I think it is 49 or \$50 approximately.

4 Q And if they get complete choice it is about five
5 bucks off?

6 A Yes.

7 Q Now, in order to purchase the UNEs in Zone 1 to
8 provide DSL service to a residential customer in Zone 1, FDN is
9 still going to pay the same 52.68, right?

10 A Right.

11 Q And to buy a UNE-P in Zone 1 to provide service to a
12 residential customer, they are still going to pay 21, right?

13 A Well, the way the new zones are, they don't touch
14 many residential customers anymore they are mostly business
15 customers, Zone 1. So you have to use Zone 2 to make any
16 comparative math here I would believe. I mean, there certainly
17 are some residential witnesses in Zone 1, but not as many as in
18 Zone 2.

19 Q So you would add \$5 to the UNE-P rate, right, for the
20 Zone 2?

21 A Right. And your 52.68 changes considerably. I think
22 it is going to be somewhere between 109 and 52. I mean, call
23 it 75 bucks.

24 Q Are you sure it falls in the middle like that?

25 A No, I'm not sure.

1 Q We can check on that. Let's go with the Zone 1.

2 CHAIRMAN JABER: Mr. Gallagher, I need you to take me
3 back to something you said so I can follow this line of
4 cross-examination. You said the way the zones are now there
5 aren't a lot of residential customers in Zone 1.

6 THE WITNESS: Right.

7 CHAIRMAN JABER: In terms of how BellSouth charges
8 you for those UNEs, what does that mean? Don't you still pay
9 Zone 1 wholesale rates?

10 THE WITNESS: No. For example, in Orlando, the --
11 let's see. Colonial central office, which is sort of
12 everything east of downtown, the rates are \$17.27 versus \$12.79
13 for Zone 1 in the PSC anticipated. So in the BellSouth
14 proposed DSLAM setup, they also gave three prices, Zone 1, Zone
15 2, and Zone 3.

16 CHAIRMAN JABER: Right. But if you were trying to
17 serve someone in Zone 1 --

18 THE WITNESS: Well, Mr. Turner is doing the Zone 1
19 example, but my argument is -- and that's a big part of why we
20 are here, there is a lot more Zone 2s than there are Zone 1s
21 now. It used to be the other way around.

22 CHAIRMAN JABER: So your point is the pricing that we
23 really should focus on in terms of concentrating on developing
24 a competitive market is the Zone 2 pricing?

25 THE WITNESS: Correct. It is the majority of the

1 central offices now.

2 CHAIRMAN JABER: All right. But to answer my
3 original question so I can move off of this, to the degree you
4 are serving anyone in Zone 1, Zone 1 pricing governs?

5 THE WITNESS: Correct. That is exactly right.

6 BY MR. TURNER:

7 Q Mr. Gallagher, we can agree, can't we, that if the
8 UNE rates increase from Zone 1 to Zone 2 to Zone 3 --

9 A Right.

10 Q -- it stands to reason that BellSouth's cost of
11 providing its own services increases from Zone 1 to Zone 2 to
12 Zone 3?

13 A That's where I seem to be missing it, because in the
14 COs that I've been in that are now Zone 2 COs, they are
15 massive. They are just massive, dense COs. And I just don't
16 understand how those can move up to \$17 a loop in there. They
17 are old COs, they are dense, they are huge. It goes against
18 intuition that these would be Zone 2. I could see something in
19 Brooksville, you know, and something in the outskirts of Vero
20 Beach or something, but right in downtown Orlando or downtown
21 Jacksonville or Lauderdale, I just don't see that.

22 Q And in saying that you are taking issue with the Zone
23 2 that the Commission itself has established, right?

24 A Yes.

25 Q Stay with me for now for the zones that the

1 Commission did, in fact, establish, okay?

2 A Okay.

3 Q Now, the greens are the Zone 1s, right?

4 A Right.

5 Q Where is that, is that Jacksonville?

6 A Yes.

7 Q Downtown?

8 A Clay, yes.

9 Q Where is that?

10 A That's Orlando Magnolia.

11 Q Downtown?

12 A Yes.

13 Q Where is this?

14 A Cocoa main.

15 Q Downtown?

16 A Yes.

17 Q Where is this?

18 A I believe that is what is called Gardens.

19 Q What is this?

20 A Which one?

21 Q This one down here.

22 A That would probably be Miami Grande and Canal and Al

23 Ambra (phonetic).

24 Q Downtown?

25 A Yes.

1 Q Are there apartment buildings downtown in those
2 areas?

3 A Yes.

4 Q Lots of residential customers living in those
5 apartment buildings?

6 A Yes.

7 Q When CLECs decide to go in the residential market
8 that is a pretty lucrative thing for them to look for, isn't
9 it?

10 A There are some res customers in Zone 1.

11 Q Let's look at Zone 1 residential rates. Zone 1,
12 again, in order to provide DSL and voice over UNE-P an ALEC
13 would pay \$72.68 to BellSouth, right?

14 A Yes.

15 Q Now, the ADSL --

16 COMMISSIONER DEASON: I thought that \$25 was Zone 2?

17 MR. TURNER: I changed it when they said Zone 2, so
18 let me do this again. Thank you, Commissioner.

19 BY MR. TURNER:

20 Q So what we have here is the Zone 1 hybrid
21 copper/fiber loop cost for a 16-port DSLAM filled up, right?

22 A Filled up 16-port DSLAM.

23 Q And that is the 52.68, right?

24 A Right.

25 Q What we have here is the rounded up \$21 per UNE in

1 Zone 1, right?

2 A Right.

3 Q And when you add them up that is \$73.68, right?

4 A Right.

5 Q And you pay that same amount for these UNEs whether
6 you are serving a business or residential customer, right?

7 A Right.

8 Q Now, BellSouth's retail rate for its ADSL service to
9 a residential customer with complete choice is about \$45,
10 right?

11 A Right.

12 Q Can we agree subject to check that BellSouth's retail
13 rate for complete choice to residential subscribers is \$30?

14 A Yes, but not everybody buys complete choice. I mean,
15 it is your most expensive offering, and I can understand why
16 you would want to illustrate it, so I will go with you.

17 Q Well, when you buy those features for \$2.26 under the
18 UNE, when an ALEC buys a UNE-P, it gets the features for 2.26,
19 right?

20 A I am unfamiliar with UNE-P, so I will take your word
21 for it.

22 Q And can you assume subject to check that an ALEC who
23 gets those features with UNE-P can provide all the features
24 that the switch allows to its customer?

25 A Yes.

1 Q And can we agree that the residential complete choice
2 rate of \$30 allows the residential customer to get some, but
3 not all of those features of the switch?

4 A Okay.

5 Q Can we agree to that?

6 A Yes.

7 Q Okay. So when you add these two numbers together you
8 are coming up with 75 bucks, right?

9 A Yes.

10 Q Compared to 73.68?

11 A Right.

12 Q The retail price down here is higher than the UNE
13 price, right?

14 A Right.

15 Q And if you are providing service to both business and
16 residential customers, you are going to be getting -- or you
17 have to work with not only the margin between the 75 and the 73
18 here in Zone 1, but the other margin we talked about earlier
19 which is much higher, right?

20 A Right.

21 MR. TURNER: Madam Chairman, I want to put this down
22 and go back and sit at my table, if I may.

23 BY MR. TURNER:

24 Q Mr. Gallagher, just to clarify, we can agree, can't
25 we, that there are ways for the ALEC in my example to provide

1 voice service to that same customer other than having to pay
2 \$21 for a separate UNE-P, right?

3 A Right. Well, in the case of the UNE you are
4 proposing or the 16-port DSLAM?

5 Q No, I'm just talking about to provide -- yes, in
6 conjunction with the DSLAM offering we have up here --

7 A Right.

8 Q -- there are ways for the ALEC to use its own
9 facilities or even purchase subloop elements and provide voice
10 service to the same customer without having to pay \$21 to get a
11 full UNE-P?

12 A Yes. You could buy the loop, right, the entire loop.

13 Q Right. Now, go with me to Page 20 of your rebuttal
14 testimony. I realize I'm picking up in mid-sentence up there
15 on Line 1, and feel free to add anything you want to to it, but
16 I want to ask you about your statement that says, "It would be
17 much more efficient for four carriers together to use 15 ports
18 on one 16-port DSLAM than to use less than 25 percent of the
19 total capacity of four separate DSLAMs." Do you see that?

20 A Yes.

21 Q Let's go back to the example that I was using before
22 we had some questions from the Commissioners. Assume with me
23 that an ALEC finds a remote terminal where there is not a
24 BellSouth DSLAM and puts his own 16-port DSLAM in that remote
25 terminal, okay?

1 A Okay.

2 Q And assume with me that three other ALECs come and
3 say, hey, let us join in on this. We would like to share and
4 get some efficiency out of that.

5 A Okay.

6 Q Nothing prevents that from happening, does it?

7 A No.

8 Q And so you could gain efficiencies, joints use
9 efficiencies if FDN, for example, put a DSLAM in a remote
10 terminal and you shared it with other ALECs?

11 A Theoretically, yes.

12 Q Go with me to Page 27 of your rebuttal testimony,
13 please.

14 MR. TURNER: Madam Chair, before I forget, just as a
15 housekeeping matter, I assume when Mr. Feil requested or when
16 Mr. Gallagher actually requested to withdraw portions of his
17 testimony as designated, that request was granted and those are
18 no longer part of the record. I just want to make sure I've
19 got my record straight.

20 CHAIRMAN JABER: Right. We inserted into the record
21 the testimony as corrected today.

22 MR. TURNER: Thank you, ma'am.

23 BY MR. TURNER:

24 Q Mr. Gallagher, I'm going to draw your attention to
25 Lines 13 through 17. There you describe the xDSL loop that you

1 want this Commission to order BellSouth to provide in this
2 proceeding, right?

3 A Yes.

4 Q Starting on Line 14, you say the Commission should
5 require BellSouth to offer unbundled packet switching as part
6 of any loop that to be xDSL capable would require packet
7 switching on the customer side of the central office. Do you
8 see that?

9 A Yes.

10 Q As I understand it, that is consistent with your
11 request in the FDN arbitration proceeding for a UNE loop that
12 ended at the main distribution frame on the central office,
13 right?

14 A Yes.

15 Q Assume with me that the Commission were to grant some
16 sort of a UNE access to the DSLAM, okay?

17 A Yes.

18 Q And assume with me that FDN and BellSouth both had
19 end users served from that DSLAM, okay?

20 A Yes.

21 Q Can we agree that the traffic going back from that
22 DSLAM at the remote terminal to the central office is going to
23 be packetized?

24 A Yes.

25 Q And it is going to include FDN's packets and

1 BellSouth's packets, right?

2 A Right.

3 Q And if BellSouth simply dropped that off at the main
4 distribution frame, without something else it ain't going to be
5 much good, is it?

6 A No. And, in fact, I think we have said that we would
7 meet you just as we meet you now when we buy your wholesale
8 ADSL. We will meet you at your packet switch at a point you
9 define and pick up packets. That's fine with us.

10 Q You will meet us at our packet switch?

11 A Yes. Right now when we buy your wholesale ADSL in a
12 particular market in, say, Fort Lauderdale, you say you all in
13 order to buy the product need to meet us at the ATM level at
14 the Hollywood CO, and so we do.

15 Q When you say you want to meet us at our packet switch
16 under this UNE-P arrangement -- I'm sorry, this UNE arrangement
17 you are asking for, do I understand you to be saying that you
18 want BellSouth to take that packetized data, run it through our
19 ATM switch and then give you your packets?

20 A Just as a simplified means to hand off, yes. That
21 would facilitate, you know, we figure that would be the easier
22 way to do it.

23 Q That is different than simply dropping it off at the
24 main distribution frame, isn't it?

25 A Right.

1 Q Can we agree that what FDN is really asking for --
2 let me ask it this way. FDN can already purchase the UNEs from
3 BellSouth's that it needs to provide voice service to FDN
4 customers, right?

5 A Yes.

6 Q What FDN is asking for in this proceeding is some
7 sort of an xDSL capable UNE loop, right?

8 A Yes.

9 Q And you want to use that UNE loop primarily to
10 provide Internet access services, right?

11 A Right.

12 Q And hasn't the FCC found that ISP-bound traffic is
13 not local traffic?

14 A Subject to check, I guess, yes.

15 Q Will you also agree that in at least two prior
16 arbitration proceedings before the FDN proceeding, this
17 Commission has ruled that the DSLAM functionality is not the
18 UNE?

19 A Uh-huh, yes.

20 Q And we can also agree that in the UNE remand order
21 the FCC itself declined to order packet switching as an
22 unbundled loop?

23 A Yes.

24 Q So in this proceeding you are asking this Commission
25 to take a loop that you want to provide ISP-bound traffic on,

1 and despite the fact that the FCC has said that traffic is
2 interstate in nature and we are not going to unbundle it, you
3 are asking this state commission to unbundle it anyway, right?

4 A Right. But I might not just be doing ISP traffic on
5 it. I might be doing other applications. I might be, you
6 know, I could put local voice on it. I could, you know, stream
7 video or things of that nature.

8 MR. TURNER: I have nothing further. Thank you,
9 Madam Chairman.

10 CHAIRMAN JABER: Thank you. Staff.

11 CROSS EXAMINATION

12 BY MS. KEATING:

13 Q Good afternoon, Mr. Gallagher.

14 A Good afternoon.

15 Q I have really just got some follow-up questions on
16 some questions that Mr. Turner asked you. And this first one
17 is something that he just touched on that I'm not sure that I
18 really understood your answer for sure. Your proposal includes
19 a DSLAM, unbundled on a port-by-port basis, correct?

20 A Yes.

21 Q As well as shared transport from the remote terminal
22 back to the central office, is that correct?

23 A Yes.

24 Q Okay. And then at the central office would you also
25 require a packet switch?

1 A Yes. That's ideally what we would -- you know, we
2 are fine either way, but we are offering that as it seems like
3 that is the way they hand off the traffic now under the
4 wholesale arrangement, so we are assuming the UNE would be
5 similar in nature to that.

6 Q Okay. And this isn't identical to what BellSouth has
7 modeled and costed for this proceeding, right?

8 A This is or is not, I'm sorry?

9 Q Is not, I'm sorry. Is not identical, is that
10 correct?

11 A No.

12 Q Now, just so I can try to understand how the packets
13 would flow, when BellSouth and FDN's commingled packets are
14 split out by the packet switch in the central office, is there
15 any additional equipment that would be necessary to route FDN's
16 packets from the packet switch to FDN's collocation presence in
17 the central office?

18 A No, that would just be transport. A dedicated -- it
19 will go across a DS-1, DS-3, or fiber. Like right now on the
20 wholesale arrangement when FDN, or AOL, or EarthLink buys the
21 wholesale ADSL from BellSouth, we meet BellSouth at either a
22 T-1, T-3, or optical level to take those packets. So it would
23 be the same thing.

24 Q Okay. Let me make sure I understand. Would you
25 agree with me that the shared transport, the packet switch in

1 the central office, and whatever additional transport may be
2 necessary to take FDN's packets from the switch to your
3 presence in the central office, those haven't been modeled and
4 costed in this proceeding, is that correct?

5 A Everything but the packet switch has.

6 Q Okay. Then looking at your proposal, what
7 information should the Commission use to establish a rate for
8 the broad band UNE that you have proposed?

9 A Well, we have basically said that, you know,
10 BellSouth -- BellSouth sells their web and IP services, you
11 know, e-mail for \$21 a month. So if their retail rate is, you
12 know, is 49, then, you know, we are saying a starting point
13 would be the difference, you know, in the two. That would be
14 theoretically what they are showing as their cost, you know.

15 Q I guess I'm just wondering, that sounds like an
16 estimate to me?

17 A Yes. I mean, I don't know what their TELRIC
18 bottom-up numbers really should be.

19 Q So is there information in the record that the
20 Commission could use to establish a TELRIC-based rate?

21 A I don't know. I don't know the answer to that.

22 Q Let's follow up on a different point. You would
23 agree with me, wouldn't you, that the FCC rules require meeting
24 an impair standard in order to unbundle a new UNE, wouldn't
25 you?

1 A Yes.

2 Q Okay. And if I understand your discussion with Mr.
3 Turner when he was drawing, going through the different zones,
4 is essentially what you are getting at is that FDN is impaired
5 financially based on what BellSouth has proposed as a hybrid
6 fiber/copper UNE?

7 A It is financially, logistically. It took us a long
8 time to collocate at 110 BellSouth COs. We think we are the
9 only ones that were in that many in Florida. And just to do,
10 you know, to keep up with BellSouth to do the 3,000 that they
11 have already done, just the materials, the collocation
12 application process, the maps and the charts that you would
13 need to map where each remote was serving, the integrated
14 marketing plan that it would take in addition to the just pure
15 financial outlay of the DSLAMs.

16 I know it's going to be harder than they are making
17 it sound having physically gone through 100 collocations with
18 them. There is not going to be space out there. Augmenting it
19 is going to be hard. There is going to be a concrete pad that
20 you are going to have to pour next to it and you are going to
21 have to get an easement from some landowner, and you're going
22 to have to pull in new power and do all sorts of stuff like
23 that.

24 MS. KEATING: Thank you, Mr. Gallagher. That's all I
25 have.

1 CHAIRMAN JABER: Commissioners.

2 COMMISSIONER PALECKI: In a perfect world the
3 solution we should be looking for and the solution we should
4 strive to attain in this docket should be one where BellSouth
5 and all of the CLECs are doing everything they can to sell DSL
6 service to the citizens of Florida in all three zones in the
7 hinterlands as well as in the cities.

8 THE WITNESS: Yes.

9 COMMISSIONER PALECKI: You should be putting the full
10 energy of your marketing departments behind that effort, and we
11 should have numerous opportunities for our citizens to get DSL
12 service.

13 THE WITNESS: I agree.

14 COMMISSIONER PALECKI: In order to accomplish that,
15 would your company be willing to purchase existing DSLAM open
16 ports rather than paying a monthly rate as we see exemplified
17 in your Figure 1 at BellSouth's cost. You get a customer for
18 DSL, they have an open port, would you be willing to purchase
19 that? Would you be willing to take that risk, one, that the
20 customer may only stay with you for a few months; two, that
21 this might be obsolete equipment at the end of six months?
22 Would you be able to assume or would you be willing to assume
23 that risk and purchase the open port at BellSouth's cost?

24 THE WITNESS: Assuming that there was oversight of
25 the cost, that they weren't able to just set it, subject to

1 some pretty serious review, and that I could be the dial tone
2 provider, you know, I could provide the voice frequency in your
3 idea, is that --

4 COMMISSIONER PALECKI: That is correct.

5 THE WITNESS: And I would have look at that. I think
6 we would absolutely look at that.

7 COMMISSIONER PALECKI: Now, under that scenario,
8 would you be willing, since BellSouth has provided the initial
9 investment, the time, the energy, and the money to install that
10 DSLAM, to pay them a reasonable return plus their cost?

11 THE WITNESS: Yes.

12 COMMISSIONER PALECKI: So, under those circumstances
13 you would be assuming much of the risk that was previously
14 assumed by BellSouth. Especially the risk, one, that you lose
15 the customer. You're still left holding the bag for that
16 investment you made. Two, if this DSLAM technology is
17 obsolete and we have something new six months from now that
18 makes all of this completely technology of the past, you are
19 still left holding the bag and you are talking that risk away
20 from BellSouth.

21 THE WITNESS: See, I don't see the risk. BellSouth's
22 return on invested capital is roughly 18 percent for the last
23 couple of years. Their EBITDA margin in their wire line
24 business is roughly 51 percent. Their risk is not as great as
25 I think they are making it out to be. They are going to get --

1 we're hearing them say they are filling up those DSLAMs.

2 COMMISSIONER PALECKI: Well, let's look at the other
3 side of the coin. Would you be willing, if you installed a
4 DSLAM in a remote terminal, to make that DSLAM available, one,
5 to BellSouth, and, two, to every other CLEC in the State of
6 Florida at your cost on a per port basis plus a reasonable
7 return?

8 THE WITNESS: Yes.

9 COMMISSIONER PALECKI: And you would be willing after
10 you have made a large up-front investment, even though you know
11 you can sell all 16 ports, someone else comes in when you still
12 have four ports open and they say we want to purchase those
13 four ports from you, you would be willing to go ahead and sell
14 those?

15 THE WITNESS: I would think so just to accelerate the
16 return on the investment. I would think I would, yes.

17 COMMISSIONER PALECKI: So if we set up as system as I
18 am envisioning where -- and one more caveat, whoever puts the
19 first DSLAM in a remote terminal would sell the ports to all
20 comers. To all CLECs, to BellSouth, to anyone who comes in
21 with a customer at that cost. Whoever gets there first sells
22 the ports until they are full, and then whoever wants to put
23 another DSLAM in could do that. Now, if we have a scenario
24 like that, do we end up with a situation where all players, the
25 CLECs as well as BellSouth are selling DSL throughout the

1 state, including in remote areas? Because the first one who
2 gets that DSLAM in sells all the ports until it is full to all
3 comers.

4 THE WITNESS: Yes. I would think theoretically that
5 that would be -- you know, I would have to think about that,
6 but it sounds reasonable. The other thing that also happens is
7 if I got a customer in your scenario, ABC Company, and I bought
8 that port, like you said, you know, on a one-time basis. I
9 paid whatever dollars for that port. And ABC Company goes out
10 of business or moves to another side of town where I haven't
11 bought a port, because these small businesses, they move a lot.
12 What do I do then? Do I own that port forever and slot five on
13 that DSLAM? You know, the next customer I get I can put them
14 on that port in that area, or can I take that port with me over
15 to the next side of town where that guy moved to?

16 COMMISSIONER PALECKI: Well, the devil is in the
17 details, but the way I look at it is you would own that
18 particular port and when somebody wants DSL service off of that
19 particular remote terminal, that whether that is BellSouth or
20 another CLEC, that your port would be put on the queue and it
21 would be open to the other customers then who wanted the DSL
22 service.

23 THE WITNESS: See, that's where I see it sort of
24 breaking down. If I was a bigger guy -- I mean, hopefully I'm
25 just a little guy and we are going to grow into a big company,

1 but when we are just a little company that really hurt us to be
2 warehousing that capacity all over and chasing our customers
3 around.

4 COMMISSIONER PALECKI: Yes, but the beauty is you are
5 only needing to purchase one port at a time as needed rather
6 than the entire DSLAM.

7 THE WITNESS: I think, you know, there is some
8 definite merit to that idea. Like you said, the devil is in
9 the details.

10 COMMISSIONER PALECKI: Thank you.

11 CHAIRMAN JABER: Mr. Gallagher, do you remember the
12 FCC's Third Report and Order that I think your counsel passed
13 out earlier to cross-examine someone else?

14 THE WITNESS: Yes.

15 CHAIRMAN JABER: In that order the FCC identified --
16 well, they made the statement that it might be appropriate to
17 unbundle packet switching in limited circumstances?

18 THE WITNESS: Yes.

19 CHAIRMAN JABER: Are you familiar with what those
20 circumstances might be?

21 THE WITNESS: I think it is the impairment situation.
22 And, you know, again, I believe that this is a local, you know,
23 state issue and Florida is unique and certainly should be
24 considered a unique scenario where there is such impairment.

25 CHAIRMAN JABER: Actually, counsel, Mr. Feil, you can

1 help me out here. It's not the Third Report and Order, it's
2 the Memorandum Opinion and Order dated November 16th, 2001. Is
3 that the right order?

4 MR. FEIL: I don't believe I passed out that one.

5 CHAIRMAN JABER: Can I borrow another copy, please.
6 It is the Third Report and Order, Mr. Gallagher, I apologize
7 for the confusion. The FCC identified limited circumstances
8 and you believe that it relates to impairment in the
9 residential market. Would you agree with me that they said
10 that there are situations and concerns that the FCC identified
11 related to market entry into the residential market?

12 THE WITNESS: Yes.

13 CHAIRMAN JABER: From your understanding of what the
14 FCC stated, tell me if you think those circumstances exist in
15 Florida today, number one. And, number two, if those
16 circumstances under this order warrant our unbundling packet
17 switching?

18 THE WITNESS: I do believe that we are in the
19 residential argument very severely impaired due to the current
20 arrangement wherein most residential users only have one phone
21 line. So, we have sort of got some ideas on marketing to them
22 where we only market to the Roadrunner, you know, the cable
23 modem users because those folks have a local phone line we
24 could, you know, sell, put on our dial tone. Right now the way
25 it is set up, as we have talked about, if we sell a local

1 residential customer who has BellSouth Fast Access either
2 through BellSouth, or through AOL, or someone buying the
3 wholesale product, we can't be the dial tone provider. We
4 can't put the bundle together to make it work.

5 CHAIRMAN JABER: Okay. Now reconcile that with your
6 testimony that you are not yet in the residential market and
7 the fact that the FCC in this order recognizes that there is
8 some level of competition in the small business market and,
9 therefore, packet switching should not be unbundled.

10 THE WITNESS: Well, I think they are saying it should
11 not be unbundled where there is not impairment. And I think
12 that this was sort of an older rulemaking in the sort of the
13 go-go times when NorthPoint and Covad and Rhythms were viable
14 entities. They were getting some original market share in some
15 of the towns in the northeast. And, you know, the first place
16 those folks went were the big cities, the older cities that had
17 copper plant that they could be successful at.

18 But I think now we have evolved to, you know, Florida
19 is actually considered mostly Tier-2 cities. Even though we
20 are a big state, we don't have the top MSAs. And now that
21 competition has hit that area, I think this rulemaking is
22 somewhat dated.

23 CHAIRMAN JABER: In identifying your customers, would
24 you call them small business, medium, or large?

25 THE WITNESS: Small and medium.

1 CHAIRMAN JABER: Thank you. Redirect.

2 MR. FEIL: Thank you.

3 REDIRECT EXAMINATION

4 BY MR. FEIL:

5 Q Mr. Gallagher, I have just a few questions. Mr.
6 Turner asked you -- Mr. Turner had asked you a few questions
7 about whether or not FDN had collocated in all 110 BellSouth
8 COs all at one time. Do you recall that conversation?

9 A Yes.

10 Q Is there any fair comparison in collocating at COs
11 versus collocating in remote terminals?

12 A Theoretically, the CO collocation is easier.

13 Q What about the sequence and method in which the
14 collocation is done COs versus remote terminals?

15 A There is a, you know, a couple of years running
16 process for collocating at a CO. And there is -- theoretically
17 it is a larger building, there is space there. Access issues
18 are already figured out versus a remote it's going to be on an
19 individual case basis. Each one is going to have different
20 space, power, and size issues that you will have to deal with
21 on a case-by-case basis.

22 Q When Mr. Turner was asking you questions earlier on,
23 I don't know whether or not you will remember this, but the two
24 of you kept referring to less than 1,000 resold ADSL lines.
25 Throughout that conversation, referring to that 1,000 or less

1 than 1,000 lines, you meant wholesale, did you not?

2 A Yes.

3 Q Does the IDSL product that FDN sells meet the FCC
4 definition of broad band?

5 A I believe broad band is considered everything above
6 128 and, therefore, I don't think it does. Or 144, I think 144
7 is the cutoff.

8 Q If FDN would not in a theoretical world collocate at
9 all 12,000 BellSouth remote terminals in Florida all at one
10 time, how would it go about collocating in remote terminals,
11 putting aside the impairment type argument?

12 A How would we go to do these?

13 Q Yes.

14 A We would identify a market area and understand the
15 footprint of each of the remote terminals and put together a
16 plan to build a contiguous area of remote terminals. And then
17 I would imagine start the process which would involve the
18 collocation application process where you submit a form and
19 BellSouth has a certain amount of time to get back to you, and
20 they usually always take exactly the amount of time that they
21 have. And you sort of go back and forth through the
22 collocation process, the application process, and then you
23 actually get moving on putting your gear in.

24 Q So you would have to deploy or seek to collocate in a
25 contiguous area. And what would you consider a contiguous

1 area?

2 A You know, several remote terminals connected
3 together.

4 Q Would it be the geography of a city, say?

5 A Yes.

6 Q How many remote terminals in a given city would you
7 believe BellSouth would have?

8 A If BellSouth is saying that they have 10,000 remotes
9 and there is 200 central offices, then the ratio is
10 approximately 500-to-1. So, therefore, in a city with 20, or
11 say 10 central offices, there would be, you know, 500 times 10,
12 so it would be 5,000.

13 Q So even if FDN took that approach, would FDN be able
14 to collocate at that many remotes?

15 A I don't think so. I'm sorry, I had my math wrong.
16 It would be 500. So it would be difficult.

17 Q Do you know whether or not the collocation intervals
18 and requirements that apply to CO collocation also apply to
19 remote terminals?

20 A I have to believe there would be longer intervals
21 because of the ICB basis.

22 Q Do you know whether or not the intervals that the PSC
23 may have approved apply to COs and remotes?

24 A I don't know.

25 Q Mr. Turner asked you a few questions about early

1 market entry and market recognition -- excuse me, name
2 recognition. Is market entry and name recognition more than
3 just actual physical presence in the market providing the
4 service?

5 A Yes.

6 Q What else would it entail in your opinion?

7 A It would be, you know, your brand identity, I would
8 guess.

9 Q I wanted to ask you a few questions about some of the
10 numbers that Mr. Turner drew up on the board. Do these numbers
11 reflect the nonrecurring charges that BellSouth would have
12 included as part of its hybrid offering?

13 A No.

14 Q So in order for the BellSouth wholesale costs to be
15 correct, you would have to include those costs and then
16 presumably amortize them over some period of time?

17 A Yes.

18 Q You said, if I remember correctly, that you were not
19 familiar with UNE-P, is that correct?

20 A Yes, in that FDN does not use it as a service
21 delivery method.

22 Q Okay. So is it correct to say that you don't know
23 what features are included in that?

24 A No.

25 Q Do you think it would be safe to say that the --

1 well, basically what Mr. Turner was doing here was comparing
2 wholesale prices versus retail prices?

3 A Yes.

4 Q And he was -- basically, the wholesale price is what
5 FDN would pay to BellSouth or any ALEC would pay to BellSouth
6 under the hybrid proposal?

7 A Yes.

8 Q Do you believe that BellSouth's retail price is going
9 to include a rate of return?

10 A Yes.

11 Q Okay. And you said, I believe, earlier that
12 BellSouth's overall rate of return was 18 percent?

13 A Its return on invested capital for its wire line, its
14 singular wireless and its South American operations altogether
15 was 18 percent.

16 Q So when FDN is charging a retail rate for a broad
17 band service to end users, it would have to include the
18 nonrecurring charges that we talked about, correct?

19 A Correct.

20 Q It would have to have FDN's rate of return, correct?

21 A Correct.

22 Q Is FDN's risk greater than, say, BellSouth's and
23 therefore its expected -- its investor expected --

24 MR. TURNER: Madam Chair, I'm sorry, he has been
25 leading his witness for a long time now and I think it's time

1 to object to it.

2 MR. FEIL: That's fine. I'm sorry, I will change the
3 format of the question. I apologize.

4 CHAIRMAN JABER: Thank you, Mr. Feil.

5 BY MR. FEIL:

6 Q In any case, the retail rate that BellSouth -- excuse
7 me, that FDN would charge to end users as part of FDN's costs,
8 would that -- would its cost have to include the nonrecurring
9 charges that it would have to pay?

10 A Yes. It would have to have nonrecurring, it would
11 have to have the upstream IP costs, and it would have to have a
12 return, you know, calculation.

13 Q Would there be any other allocations that FDN would
14 have to include in order to establish its cost for such a
15 product?

16 A Well, the trick on this one would be the marketing
17 costs to -- you wouldn't be able to use billboards or radio if
18 you are just going to be in one, little, you know, tiny little
19 geographic area. So your cost of acquisition would, I think,
20 be the big problem here. If you are just sort of surgically
21 marketing, I don't know how we would effectively do that.

22 CHAIRMAN JABER: Mr. Gallagher, so on that example
23 that is right there on the board, as I recall that was the
24 residential Zone 1 example?

25 THE WITNESS: Yes.

1 CHAIRMAN JABER: 45 and 30, 75, that is the BellSouth
2 retail offering, which is the consumer choice program?

3 THE WITNESS: Correct.

4 CHAIRMAN JABER: And it includes that discount. Are
5 you saying your 73.68 -- up top, the 52.68 and \$21 -- 73.68 is
6 your wholesale price paid to BellSouth, and that doesn't
7 include all the things you say --

8 THE WITNESS: Nonrecurring costs, cost for the
9 upstream Internet bandwidth, and the cost for the, you know,
10 our cost of acquisition and our -- the cost of acquisition is
11 going to be big here. And the return, you know, our return on
12 capital or investments.

13 CHAIRMAN JABER: So is it your assertion that the
14 wholesale price at the end of the day will be more than the
15 BellSouth retail?

16 THE WITNESS: Oh, absolutely. Absolutely.

17 CHAIRMAN JABER: By how much, do you know?

18 THE WITNESS: It would depend on how we would
19 amortize the nonrecurring cost and what our actual cost of
20 acquisition would be, but it would be, you know, maybe 100
21 percent more.

22 COMMISSIONER DEASON: Since we are kind of exploring
23 this in a little bit more detail, let me ask a few questions
24 and see if I understand. The example that is up there, the
25 73.68, which would be the wholesale price you would pay to

1 BellSouth, you would also, though, your revenue stream -- first
2 of all, your revenue stream would be whatever the market could
3 bear, basically.

4 THE WITNESS: Right.

5 COMMISSIONER DEASON: And also in that revenue stream
6 you would receive a \$5 slip charge?

7 THE WITNESS: Yes, the end user common line charge,
8 yes.

9 COMMISSIONER DEASON: Okay. You would also receive
10 terminating access charges from whatever the long distance
11 business that customer generated?

12 THE WITNESS: Right. It should be exactly like
13 BellSouth on that.

14 COMMISSIONER DEASON: Okay.

15 BY MR. FEIL:

16 Q Are investors' perceived risk of FDN's business model
17 comparable to the perceived risk of BellSouth's business model?

18 A No. Our risks are much, much higher. Especially in
19 current times.

20 Q The BellSouth wholesale costs we have been talking
21 about, they are the same whether or not a customer is
22 residential or business, whether or not the end user is?

23 A Yes, I believe so.

24 Q Mr. Turner --

25 COMMISSIONER PALECKI: Excuse me one moment. Why are

1 your risks much, much higher?

2 THE WITNESS: The CLEC industry is having some big
3 time problems right now. There has been no capital, no capital
4 flowing into the industry for about a year now. There has been
5 too many CLECs started up, and the natural capitalistic die-off
6 process is going on right now, and the capital markets are shut
7 while that is going on. There is regulatory overhang right now
8 on issues such as this. For folks who are willing to put
9 capital at risk, they want to see what the actual rules of the
10 game are.

11 And, you know, from that standpoint not only is
12 capital -- it's almost impossible to get right now. So we have
13 got to create, you know, generate our own returns to pay for
14 this. Eventually as we grow, the capital markets should open
15 up again. But if BellSouth wants to raise money, they have so
16 many more options than we do. They can issue equity, they can
17 do bond offerings, their commercial -- their credit rating is
18 spectacular. They could get credit lines. None of the things
19 I can do.

20 COMMISSIONER PALECKI: If the system was put in place
21 where the CLEC community could market DSL throughout
22 BellSouth's territory without installing a DSLAM in every one
23 of the remote terminals, or without surgically needing to
24 market throughout the territory, would that be a much greater
25 risk for any CLEC above BellSouth?

1 THE WITNESS: Oh, yes.

2 COMMISSIONER PALECKI: And why? I'm not sure I
3 understand why it would be a greater risk.

4 THE WITNESS: Well, it wouldn't be a greater risk if
5 we could market ubiquitously as they do. I mean, if we are
6 able to get this UNE, we would be able to get a billboard off
7 I-95 in Jacksonville and everybody that went by it, if we could
8 get all of Jacksonville, you know, we would lower our cost of
9 acquisition.

10 COMMISSIONER PALECKI: Let me ask you this. Do you
11 think you might be more apt to install a DSLAM in a remote
12 terminal if you felt that the entire CLEC community as well as
13 BellSouth were going to market DSL that would be served out of
14 that particular DSLAM?

15 THE WITNESS: Sure.

16 COMMISSIONER PALECKI: Even in a remote location?

17 THE WITNESS: You know, I don't think BellSouth would
18 ever buy DSL services from me. I mean, I would like to think I
19 could get that big one day.

20 COMMISSIONER PALECKI: Well, if we have a system
21 where whoever has a DSLAM in place provides the DSL, would you
22 be willing to put a DSLAM in place?

23 THE WITNESS: Sure. I would have to look at that.

24 COMMISSIONER PALECKI: Thank you.

25 BY MR. FEIL:

1 Q Mr. Turner had asked you some questions regarding
2 Zone 1 residential customers. He said that there were
3 apartment buildings in Zone 1. Do you remember those
4 questions?

5 A Yes.

6 Q And he also said that there were lots of residential
7 customers in those apartment buildings. Do you recall that
8 question?

9 A Yes, I do.

10 Q How does the number of residential customers in Zone
11 1 compare to the number of residential customers in Zone 2?

12 A I would think with the recent zone shuffling its at
13 least an order of magnitude greater in Zone 2. I mean, we all
14 know there are apartment buildings downtown, but it is not near
15 as much as the density in the houses that are outside of the
16 downtown core.

17 Q Mr. Turner asked you whether or not there was
18 anything that would prevent an ALEC from sharing a DSLAM if it
19 collocated its DSLAM in a remote terminal, do you remember
20 that?

21 A Yes.

22 Q Is there anything preventing BellSouth from sharing a
23 DSLAM?

24 A No.

25 Q Does FDN have the same economies of scale that

1 BellSouth has?

2 A I wish we did. I don't think we do, no.

3 Q Mr. Turner asked you some questions regarding if you
4 would agree that the PSC in two prior proceedings didn't
5 unbundle packet switching, or words to that effect?

6 A Yes.

7 Q I'm going to show you copies of the two orders I
8 believe that he is referring to. For the record, and I'm
9 sorry, Commissioner, I only have like two copies of this
10 document. But I assume the two orders Mr. Turner is referring
11 to are the two orders Mr. Ruscilli referred to, which are the
12 ICG case and the Intermedia case. And I want to hand you both
13 of those orders, Mr. Gallagher. And I'm sorry to take you
14 through this torment.

15 Could you look at the ICG order first?

16 A Yes.

17 Q That's the shorter one. Could I ask you to page
18 through that briefly and tell me whether or not there is any
19 discussion evaluating a claim of impairment in that order?

20 A I don't see a headline related to impairment in the
21 ICG order.

22 Q Look to what I have handed you. There is a heading
23 with Roman Numeral III that says packet switching capabilities,
24 and I want to ask if you would look just through that section
25 and tell me whether or not there is any evaluation of a claim

1 for impairment.

2 A I do not see one, no.

3 Q The same question with regard to the other order, the
4 Intermedia order, actually under Roman Numeral IX.

5 A I see where the FCC talks about, you know, what would
6 have to happen for an ILEC to unbundle.

7 Q Well, this is the PSC decision. Let me do this, on
8 the page that you have, look at the bottom of Page 21.

9 A Right.

10 Q And read at the sentence beginning nevertheless.

11 MR. TURNER: Madam Chair, I'm sorry, which --

12 MR. FEIL: Doesn't it say in there, Mr. Gallagher,
13 that --

14 CHAIRMAN JABER: Mr. Turner, what --

15 MR. TURNER: I'm just trying to find out what page he
16 is on, I'm sorry, Madam Chairman.

17 THE WITNESS: Yes, I don't see 21.

18 MR. FEIL: I'm referring to a HTML downloaded version
19 of it, so it may not bear the same page numbering that yours
20 does. It is the last paragraph under that Roman Numeral. It
21 was Roman Numeral IX, Mr. Turner.

22 MR. TURNER: Thank you.

23 COMMISSIONER DEASON: Did you download that with DSL
24 service, or cable modem, or dial-up? I'm just kidding.

25 THE WITNESS: Nevertheless -- the Witness Jackson

1 one?

2 MR. FEIL: Yes.

3 BY MR. FEIL:

4 Q Doesn't that say there that there was no claim for
5 impairment made in that case?

6 A Yes, that is correct.

7 MR. FEIL: Thank you. That's all I have.

8 CHAIRMAN JABER: Thank you, Mr. Feil. Okay.

9 Exhibits. Mr. Feil, Exhibit 60.

10 MR. FEIL: FDN would move in Exhibit 60.

11 CHAIRMAN JABER: Without objection, Exhibit 60 is
12 admitted into the record.

13 BellSouth, I have Exhibits 61, 62, and 63 that were
14 yours.

15 MR. TURNER: Yes, ma'am. Madam Chairman, just one
16 last matter of housekeeping. There was the issue of that
17 potentially confidential rate. I would like an opportunity --
18 I was thinking we might take a quick break, and I was wondering
19 if I could speak to Mr. Feil and see if we can't try to find a
20 way to get that in.

21 CHAIRMAN JABER: Yes, let's admit your exhibits into
22 the record and then we will take that up. I'm glad you
23 reminded me.

24 MR. TURNER: Thank you.

25 CHAIRMAN JABER: Exhibit 61 is admitted into the

1 record without objection. Exhibit 62 and 63 admitted into the
2 record without objection.

3 (Exhibits 60 through 63 admitted into the record.)

4 CHAIRMAN JABER: That's right, we had held onto some
5 cross-examination for you because you were going to confer with
6 counsel.

7 MR. TURNER: It may be something that we can discuss,
8 stipulate, and just state into the record after a quick break.
9 I'm hoping. But I apologize for waiting until after the cross
10 was over to remember it and remind you of it.

11 CHAIRMAN JABER: Yes. But just have it noted that if
12 you do cross-examination on it, I'm going to allow redirect and
13 the whole process to start again. Let's take a ten-minute
14 break.

15 Mr. Feil, please confer with counsel.

16 MR. FEIL: Yes, ma'am.

17 (Recess.)

18 MR. TURNER: Madam Chairman, what we propose to do is
19 we have a web page from FDN.com with some ADSL rates on it. I
20 have shown it to counsel for FDN and counsel for the staff and
21 all other parties, and while everyone has reserved the right to
22 fight to the death over the relevance of the document, everyone
23 has agreed to stipulate it as the next exhibit in lieu of any
24 further evidence coming through Mr. Gallagher, himself. If
25 that pleases the Commission, we would rather do it that way.

1 MR. FEIL: As Mr. Turner said, I don't have a problem
2 stipulating the exhibit in, but I'm not stipulating anything
3 relative to whether or not the rates here that are listed
4 reflect cost, return, or anything else.

5 CHAIRMAN JABER: That will be Exhibit 64, Mr. Turner,
6 but can you distinguish it with the other FDN website page,
7 please, for purposes of the record?

8 MR. TURNER: Yes, ma'am. I think the easiest way to
9 do it is this is a chart that contains rates for the SOHO home
10 office product and the professional best value product.

11 CHAIRMAN JABER: Okay. For the sake of efficiency,
12 Exhibit 64 will be the FDN website page that is the SOHO chart.
13 And Exhibit 63 was --

14 MR. TURNER: Can we just call it quotes from ADSL
15 users? That was the heading that was the relevant portion of
16 the document.

17 CHAIRMAN JABER: Okay. The FDN website page showing
18 quotes from cable users, wasn't it?

19 MR. TURNER: ADSL.

20 CHAIRMAN JABER: Okay. ADSL users. Exhibit 64 is
21 admitted into the record without objection.

22 (Exhibit 64 marked for identification and admitted
23 into the record.)

24 MR. TURNER: And the final housekeeping matter, Madam
25 Chair. I have exactly one copy, I have showed it to everybody.

1 If I may, I will just give to the court reporter and let her go
2 from there if that is okay.

3 MR. PERRY: Madam Chairman, I don't believe that
4 Mr. Tucker (sic) showed me the document.

5 MR. TURNER: I'm sorry.

6 MR. PERRY: Turner.

7 CHAIRMAN JABER: And, Mr. Turner, I just need you
8 later on to provide copies to staff and the Commission file.

9 MS. McNULTY: As well as the other parties?

10 CHAIRMAN JABER: Yes, absolutely.

11 MR. PERRY: I would agree as well to stipulate.

12 CHAIRMAN JABER: Okay. Mr. Turner, anything else?

13 MR. TURNER: Not from me.

14 CHAIRMAN JABER: Mr. Gallagher, I do believe you can
15 go home now.

16 THE WITNESS: Thank you very much.

17 CHAIRMAN JABER: Thank you. And the next witness for
18 WorldCom is Mr. Donovan.

19 MR. HATCH: Yes, ma'am. AT&T and WorldCom call John
20 Donovan.

21 I do not believe Mr. Donovan has been sworn, Madam
22 Chairman.

23 CHAIRMAN JABER: Let's see, who do we have after
24 Donovan, Mr. Gillan?

25 MR. HATCH: Yes, ma'am.

1 CHAIRMAN JABER: That is our last witness?

2 MR. HATCH: Yes, ma'am.

3 (Transcripts continues in sequence with

4 Volume 6.)

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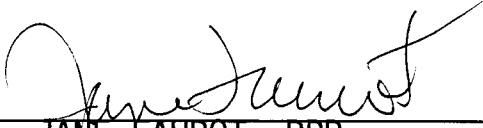
1 STATE OF FLORIDA)
2 : CERTIFICATE OF REPORTER
3 COUNTY OF LEON)

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 20th day of March, 2002.

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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