

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of

PETITION FOR EXPEDITED REVIEW
AND CANCELLATION OF BELLSOUTH
TELECOMMUNICATIONS, INC.'S
KEY CUSTOMER PROMOTIONAL
TARIFFS AND FOR INVESTIGATION
OF BELLSOUTH'S PROMOTIONAL
PRICING AND MARKETING PRACTICES,
BY FLORIDA DIGITAL NETWORK, INC.

DOCKET NO. 020119-TP

PETITION FOR EXPEDITED REVIEW AND
CANCELLATION OF BELLSOUTH
TELECOMMUNICATIONS, INC.'S KEY
CUSTOMER PROMOTIONAL TARIFFS BY
FLORIDA COMPETITIVE CARRIERS
ASSOCIATION

DOCKET NO. 020578-TP

PETITION FOR EXPEDITED REVIEW AND
CANCELLATION OR SUSPENSION OF
BELLSOUTH TELECOMMUNICATIONS,
INC.'S KEY CUSTOMER TARIFF FILED
12/16/02 BY FLORIDA DIGITAL
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VOLUME 3
PAGES 229 THROUGH 310



1 PROCEEDINGS: HEARING
2
3 BEFORE: CHAIRMAN LILA A. JABER
4 COMMISSIONER J. TERRY DEASON
5 COMMISSIONER BRAULIO L. BAEZ
6 COMMISSIONER CHARLES M. DAVIDSON
7 COMMISSIONER RUDOLPH "RUDY" BRADLEY
8
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16 Tallahassee, Florida
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P R O C E E D I N G S

(Transcript follows in sequence from Volume 2.)

CHAIRMAN JABER: Okay. Let's go ahead and get back on the record. And, Mr. Feil, you were going to cross-examine Mr. Ruscilli.

MS. WHITE: Madam Chairman, before we get started, we had confirmed over the lunch hour that we would look at the final competition report and compare it to the draft to see whether there were any changes to Mr. Ruscilli's testimony. And he's found one minor change, but that's it, if you'd like him to go ahead and give that now.

CHAIRMAN JABER: Sure.

THE WITNESS: There's no material change, but on my direct testimony on Page 32, Line 8, I give a cite at "Page 22," and it should be "Page 23." That's all.

CHAIRMAN JABER: Okay. We'll show that the prefiled direct testimony was inserted into the record with that correction.

MS. WHITE: Thank you.

CHAIRMAN JABER: Mr. Feil, cross-examination.

MR. FEIL: Yes, ma'am. Thank you.

JOHN RUSCILLI

continues his testimony under oath from Volume 1:

CROSS EXAMINATION

BY MR. FEIL:

1 Q Mr. Ruscilli, in your testimony -- excuse me, in your
2 summary, specifically, you talked about Section 364.051(5) and
3 you read a portion of it. There was one last sentence in the
4 section that you read that you left out, and that sentence
5 says, "However, the local exchange telecommunications company
6 shall not engage in any anticompetitive act or practice nor
7 unreasonably discriminate among similarly situated customers."
8 And that's at the end of .051(5)(a). Would you agree with
9 that?

10 A Yes.

11 Q And would you agree that the issue here -- or let me
12 rephrase that.

13 You acknowledge that BellSouth is discriminating
14 among customers by offering Key Customer discounts to some
15 business customers but not to others, but you would
16 characterize the issue as more of one of whether or not the
17 discrimination is permissible; is that correct?

18 A Well, the statute defines it as unreasonable
19 discrimination, but the point here is with Key Customer. It's
20 available to any new or existing customer that's in the wire
21 centers that are designated. So there's --

22 Q I don't know that you've answered my question.

23 A I'm sorry.

24 Q The question is: You agree that it is discriminatory
25 to offer Key Customer to some customers but not to others; is

1 that correct?

2 A Yes. There are some customers in some wire centers
3 that are not eligible for Key.

4 Q Okay. And you would characterize the real issue as
5 being whether or not the discrimination is permissible or not
6 permissible as a legal matter; correct?

7 A Certainly.

8 Q Okay. Would you agree with me that the customers
9 being discriminated against were benefiting -- would be
10 benefiting from the discrimination if their rates would be
11 going down too?

12 A Yes, they could.

13 Q Would you agree with me that the customers
14 discriminated against, for them not to be harmed, their rates
15 would at least have to stay the same?

16 A Well, not necessarily. I mean, the Key Customer
17 doesn't raise anybody's rates.

18 Q I'm talking about the customers who are discriminated
19 against, those that do not get the Key Customer rates. Would
20 you agree that those customers, for them not to be harmed,
21 their rates would at least have to stay the same?

22 A Can you ask it a different way? I'm just not sure if
23 I'm following what you're saying.

24 CHAIRMAN JABER: Ask it a different way.

25 MR. FEIL: I don't know if I can ask it a different

1 way. It seemed to me a relatively simple question.

2 CHAIRMAN JABER: Ask it again.

3 MR. FEIL: Okay.

4 BY MR. FEIL:

5 Q Would you agree with me that, for the customers
6 discriminated against to not be harmed by the discrimination,
7 their rates would at least have to stay the same?

8 A No, not really. And if I can explain why. Again,
9 the Key Customer is a discount program. It is not a discount
10 program and a rate increase for other customers. So rate
11 increases can or cannot occur independent of Key Customer. I
12 guess maybe where I'm confused, Mr. Feil, is, are you trying to
13 tie those two together or are they separate?

14 Q That's exactly what I'm doing, is tying the two
15 together. Is it not correct that BellSouth has offered
16 discounts to customers, i.e., the Key Customer, while
17 increasing rates to other customers?

18 A It is true that BellSouth has had Key Customer
19 programs for the last several years. It is also true that
20 BellSouth has held rates constant for five years since the
21 beginning of its price regulation plan, and then initiated rate
22 increases for single line and multiline business customers
23 commensurate with the requirements of the statutes.

24 Q So the rate decreases for the customers who get Key
25 Customer, and the rate increases for those customers that do

1 not have coincided in time; correct?

2 A Well, the Key Customer has been going on for several
3 years, and the rate increases have been going on for the last
4 24 to 36 months, that's true.

5 Q I wanted to hand you an exhibit.

6 CHAIRMAN JABER: Mr. Feil, this is a confidential
7 exhibit, so we don't want the witness to release, what, the
8 numbers?

9 MR. FEIL: I am not going to ask a specific question
10 about the numbers. Actually, the page -- the first page
11 contained in the envelope stamped "Proprietary" is
12 confidential. The second I am told is not, but I included it
13 in there just in case BellSouth perceived it as confidential.

14 CHAIRMAN JABER: Thank you, Mr. Feil. Go ahead.

15 BY MR. FEIL:

16 Q Looking at these two discovery responses,
17 Mr. Surilli (phonetic), Mr. Ruscilli -- let me take a drink of
18 water. Hold on.

19 MS. WHITE: (Inaudible.)

20 Q Did I say Surilli or Silly? I'm sorry. Referring to
21 the response to FDN Interrogatory Number 23, and that number
22 reflects -- or the number stated there is through
23 September 2002. Through the end of 2002, is it fair to surmise
24 that that number has increased somewhat?

25 A It may have.

1 Q Do you know whether or not that the number stated
2 there, or the combined number for both programs, has reached
3 the dollar amount listed in the response to Item Number 34?

4 A No. I didn't prepare these, so I don't know if they
5 did or didn't.

6 Q I wanted to change subjects somewhat here and refer
7 you to Exhibit --

8 A Do you want me to hand this back to you?

9 MR. FEIL: Actually, I was going to ask that it be
10 identified, if I may, Madam Chair.

11 CHAIRMAN JABER: Short title.

12 MR. FEIL: That's a tricky one with confidential
13 information.

14 CHAIRMAN JABER: Yeah. Do you want them identified
15 separately?

16 MR. FEIL: I think they can be a composite. Let's --
17 if I may refer to them as --

18 CHAIRMAN JABER: Hang on a second. Ms. White, the
19 second page -- FDN's -- it looks like actually it's BellSouth's
20 response to FDN's second set of interrogatories, Number 34.

21 MS. WHITE: Yes, ma'am.

22 CHAIRMAN JABER: Is that confidential?

23 MS. WHITE: That particular page is not confidential.
24 It's only the answer to Number 23 that is confidential.

25 MR. FEIL: Well, if it's not inconvenient, Madam

1 Chair, we can refer to -- have them identified separately;
2 refer to Interrogatory Number 23 as Exhibit 14.

3 CHAIRMAN JABER: The response to Interrogatory
4 Number 23 is confidential, and that will be identified as
5 Exhibit 14.

6 (Exhibit 14 marked for identification.)

7 MR. FEIL: And I would ask that Item -- or the
8 response to FDN's Interrogatory Number 34 be 15, please.

9 CHAIRMAN JABER: Response to Item Number 34 is
10 identified as hearing Exhibit 15.

11 MR. FEIL: Thank you.

12 (Exhibit 15 marked for identification.)

13 COMMISSIONER DEASON: Can we take Number 34 out of
14 the red folder and keep it then?

15 CHAIRMAN JABER: Absolutely, Commissioner.

16 MR. FEIL: Actually, Madam Chair, if I may approach
17 the witness. I wanted to use a mobile mike for my next line of
18 questioning.

19 CHAIRMAN JABER: Go ahead.

20 MR. FEIL: Thank you.

21 BY MR. FEIL:

22 Q Mr. Ruscilli, I wanted to walk through some numbers
23 from your testimony with you. Specifically, I wanted to refer
24 you first to your Exhibit JAR-1. You have some pages in there
25 identified as part of Ms. Stockdale's affidavit. It begins

1 with ES-6. Those are the pages in which I have an interest.
2 What I want to do here basically, Mr. Ruscilli, is write down
3 some numbers from that data up on the board. And for
4 Ms. Stockdale's affidavit here from ES-6, these are the numbers
5 from July 2002; is that correct?

6 A Yes, it is. Are you on the third page of ES-6 or the
7 first?

8 Q Actually, I'm going to be on Pages 1 through 3, so --

9 A Okay. Thank you.

10 Q Okay. Let's look through some of these numbers. For
11 July 2002 the total number of 911 listings, and that includes
12 UNE loop and true -- I guess what I'll call true
13 facilities-based competitors; is that correct?

14 A 911 listings are those that you guys provide on UNE
15 loops, as an example, because you have your own switch. On
16 UNE-P, BellSouth provides those.

17 Q Okay. So will you assume with me for the sake of
18 argument that the data is for the end of July? It doesn't
19 necessarily indicate, but for the sake of argument say that
20 it's the end of July?

21 A Yes, sir.

22 Q Okay. And these are Method Two numbers. And Method
23 Two is the method that the FCC has basically relied on when
24 looking at market share data; is that correct?

25 A With respect to BellSouth's applications, yes.

1 Q Okay. So let's put some of these numbers up here on
2 the board. For July 2002, the UNE loop facilities-based 911 is
3 586,781.

4 A And that number is specific to business.

5 Q Right, I'm sorry. Let's put that up here,
6 "Business." Okay. And UNE-P numbers are 132,498.

7 A Yes.

8 Q And the resale number there is 6,593; right?

9 A Yes, sir.

10 Q Okay. My writing seems to taper off.

11 A It looks level to me.

12 Q Let me ask you a few questions about the UNE-P number
13 first. Isn't it correct that the way the Key Customer program
14 works with hot wire centers, it doesn't make any distinction
15 between UNE loop, UNE-P, or resale providers; is that correct?

16 A Well, Key Customer is for BellSouth --

17 Q Right. I understand that, but it doesn't make any
18 distinction between types of providers.

19 A That's correct. It's for our customers.

20 Q And do you recall the -- I think it was from 1998,
21 there was a promotion called the Three Free promotion, and that
22 promotion was specific to just resale customers?

23 A I don't recall.

24 Q You don't recall that. Okay.

25 It's correct though that BellSouth has argued that

1 UNE-P should be eliminated; right?

2 A It's BellSouth's position that especially the port or
3 the switching should be eliminated because carriers such as FDN
4 and multiple carriers throughout Florida and the rest of our
5 region have got switches in our metropolitan areas.

6 Q And isn't it correct that you've said that UNE-P
7 isn't really facilities-based competition? That's BellSouth's
8 position.

9 A Yes, with respect to owning your own switch. It's
10 not the same.

11 Q Okay. Isn't it BellSouth's position or haven't they
12 argued before that UNE-P is basically no better than resale
13 except it's cheaper?

14 A Extraordinarily cheaper, yes.

15 Q And you -- at least BellSouth's position is that
16 UNE-P has been priced below cost; correct?

17 A Yes. UNE-P has been priced at TELRIC, and TELRIC is
18 subject of debate, not in this proceeding.

19 Q All right. Let's move on to your rebuttal
20 Exhibit JAR-4 where you have some September numbers, and
21 specifically, I believe it starts on Ms. Stockdale -- or ES-2.

22 A Give me just a moment. I'm there. Go ahead.

23 Q Okay. So let's put these numbers up on the board.
24 Let me do this. Maybe we can truncate this. I'll write them
25 down; you can stop me if I'm doing something wrong.

1 911 is 594,163. UNE-P is 143,144. And resale is
2 6,593 -- oh, wait a minute, I got that wrong -- 6,215; is that
3 correct, total resale?

4 A 6,215.

5 Q 6,215?

6 A Yes.

7 Q Okay. What I'd like to do next, Mr. Ruscilli, is
8 BellSouth provided some earlier data points in the context of
9 271 proceeding for this type of information. And I didn't want
10 to clutter the record with all of the source data. What I'd
11 like to do is hand some of it to you and have you tell me what
12 the numbers are. So let me try that.

13 MR. FEIL: Commissioner, for the record, what I'm
14 handing, Mr. Ruscilli, is a June 17th, 2002 filing from
15 BellSouth's 271 case. And the other thing I am handing him is
16 an affidavit of Victor Wakeling (phonetic) from the 271 case.

17 CHAIRMAN JABER: Ms. White, do you need to see that?

18 MS. WHITE: Yes. I'd like to approach the witness
19 and just look at that.

20 MR. FEIL: Sure. I'm sorry.

21 BY MR. FEIL:

22 Q Let's go back in time, Mr. Ruscilli. Let's look
23 first to the June filing that you have there in front of you
24 from -- signed by Ms. Foshee. If you could flip through the
25 pages toward the end, it has the Method Two numbers that I'm

1 looking for. Have you been able to find them?

2 A I think I have.

3 Q Okay.

4 A I can't see an exhibit number at the top here to tell
5 you -- it looks like it's on ES-4.

6 Q ES-4, correct. So let's walk through those numbers.
7 For this particular affidavit from Ms. Stockdale, it refers to
8 April 2002; is that right?

9 A Yes, April 2002.

10 Q Okay. What number do we have for the 911 listings
11 there? Is it 584,779?

12 A Yes, sir.

13 Q And for UNE-P, is it 107,975?

14 A Yes.

15 Q And for resale, is the number 7,696?

16 A Yes, it is.

17 Q Okay. Let's turn now to Mr. Wakeling's information.
18 I'm not sure if you will be able to find that information there
19 as readily, but if you look on page -- for starters, on
20 Page 11 of Mr. Wakeling's information, there's a chart there
21 that shows Method Two for Florida. Do you see that?

22 A Yes.

23 Q Okay. Now, the facility-based number there includes
24 911 plus UNE-P. Could you flip through the other information
25 that you have and differentiate the 911 from the UNE-P?

1 A I was looking at -- I'm sorry, repeat that again.

2 Q Okay. I'm sorry.

3 A Go ahead.

4 Q The number there on that Page 11 doesn't distinguish
5 between UNE-P and facilities-based. So would you mind flipping
6 through there and find me the correct number for both
7 facility-based and UNE-P?

8 A It's in VW-6.

9 Q Okay. Let me read to you a number, and you can tell
10 me whether or not it's correct. The number that I have for
11 facilities-based is 354,491 -- for 911 listings, excuse me.

12 A Mr. Feil, I'm not finding that number. Could you
13 help me out here and tell me where you're seeing this from?
14 Because I was on a Method Two up here.

15 Okay. Yes, this is as of February 2001.

16 CHAIRMAN JABER: Mr. Feil?

17 MR. FEIL: Yes, ma'am.

18 CHAIRMAN JABER: Do you have all the numbers?

19 MR. FEIL: Yes, this is it.

20 CHAIRMAN JABER: That's okay. I should have asked a
21 long time ago.

22 BY MR. FEIL:

23 Q So it's 354,491.

24 A Yes.

25 Q And the correct UNE-P number -- or the UNE-P number I

1 have is 43,098.

2 A Yes.

3 Q And the resale number I have is 99,907. And
4 actually, that's on one of the earlier pages in the affidavit.

5 A Yes.

6 Q Okay. So if we do a little math here,
7 Mr. Ruscilli -- and I'm assuming that basically these are all
8 month end numbers.

9 A We made that assumption.

10 Q We made that assumption --

11 A Yes.

12 Q -- that those are all month end numbers.

13 So if we look at the numbers from, say, February 2001
14 through April 2002, okay, the net additions as I calculate
15 them -- so I'm sure you can trust the number -- is for
16 facilities-based, 230,288.

17 A Yes.

18 Q For UNE-P, 64,877.

19 A Yes.

20 Q And for resale we have a negative number, -92,211.

21 Do you agree with my math?

22 A Yes, I'll accept your math.

23 Q Okay. Let's do an average here. For the 14 months
24 through this period, a 14-month average I get is 16,449.

25 A So you're saying the average gain per month, is that

1 what you're computing?

2 Q Yes, sir.

3 A Okay.

4 Q You can check my math with a calculator you have
5 there.

6 A Mr. Gallagher took it back to compute an exhibit.

7 Q For UNE-P, the number I have for a 14-month average
8 is 4,634. And for resale, I have a negative number of -6,587.
9 Is my math okay?

10 A It's good enough for what we're doing.

11 Q Okay. It's rounding. All right. The next total I'd
12 like to do is basically from -- well, end of April, so it would
13 be May through September 2002. So let's look at those totals.

14 By my math the total for 911 is 9,384. For UNE-P, I
15 have 35,169. For resale, I have -1,481.

16 A So you're skipping July in this analysis.

17 Q Well, I'm looking from end of April to September.

18 A Right. You're skipping your July row.

19 Q Correct.

20 A Okay. Thank you.

21 Q So if I take a 5-month -- actually, this is a
22 14-month average. Let's write that in. So if I take a 5-month
23 average here, by my count I got 1,877. For UNE-P -- and by the
24 way, stop me if you think my math is wrong. For UNE-P, I have
25 7,034. And for resale, I have -1,481 -- or wait a second, I

1 pulled the wrong number. Yeah, I did do the wrong number.

2 A Yes, you did.

3 Q Sorry. I had temporary dyslexia there for the total
4 here. It should be -- no, wait, I did it right. I'm sorry.

5 A It's 1,481 divided by 5.

6 Q I'm sorry. I was right the first time. So this
7 should be -296. Okay. So I've done these averages. I've done
8 the totals. And I wanted to ask you, Mr. Ruscilli, are you
9 familiar with Mr. Massey's testimony?

10 A Yes. I mean, just generally. It's been a while
11 since I've looked at it.

12 Q Okay. Now, in Mr. Massey's testimony he says that
13 BellSouth signed under the Key Customer program from the span
14 of January 2002 through September 13th, 2002, 112,300 lines; is
15 that correct?

16 A I don't recall the number, but we can take that
17 subject to check.

18 Q So do you know what that averages out for the, say,
19 nine months, lines per month? 12,478.

20 A Yeah, something like that, 10 or 11,000. But -- are
21 you finished?

22 Q Yes, sir.

23 A But this chart is really looking at a very isolated
24 set of customers. These are the UNE customers that are
25 facility-based which represents Mr. Gallagher's position. In

1 general, you're seeing something that really shouldn't surprise
2 anybody. Resale in the business market did go away because
3 UNE-P -- people started converting to UNE-P. So you would
4 expect a negative decline there.

5 If you look at the information that BellSouth has
6 provided to this Commission and provided a week ago to the
7 staff on the growth in the business market associated with all
8 business customers, we went from 659,000 customers that were
9 competing with us all the way up to 785, and that was a period
10 of January of this year to December of the end of this year.
11 We're participating in the competitive forum. So that's a
12 25 percent growth in business customers.

13 The fact that resale may be going down, UNE-P may be
14 changing, and UNE loop is changing, that's just the dynamics of
15 the market. It's specific to FDN, but it's not specific to the
16 market in general.

17 Q Doing the math here, if I take all of the -- if I
18 take the average for all of the ALECs for the five-month
19 period, May through September 2002, isn't it correct that that
20 doesn't add up to the 12,478 average that BellSouth has signed
21 under Key Customer?

22 A All of the ALECs from --

23 Q Right. For the average -- for the period May through
24 September, if I take all the -- add up all those numbers --

25 A I've got to find that on your chart. I'm sorry.

1 Q Where it says "five-month average."

2 A On May 2002 to September?

3 Q Actually, it's on the piece of paper you have in
4 front of you.

5 A Okay. Where are you at?

6 Q Five-month average. It says "April" there; it should
7 say "May." May 2002 through September 2002. If I take the
8 average for all the ALECs, isn't it correct that that doesn't
9 even amount to the nine-month average that BellSouth had signed
10 under Key Customer?

11 A Are you talking about the 14-month average and the
12 5-month average and the 9-month? I'm trying to find which --

13 Q I'm talking about --

14 A So I can answer correctly. I'm not sure which number
15 you're pointing to on this big chart.

16 CHAIRMAN JABER: Mr. Feil.

17 MR. FEIL: Yes, ma'am.

18 CHAIRMAN JABER: You lost me with that question too.
19 So let's use the piece of paper the witness has in front of him
20 because now we're looking at that too. And if you would reword
21 your question pointing to exactly what you want him to be
22 looking at.

23 MR. FEIL: Okay.

24 BY MR. FEIL:

25 Q If you look at the heading that says -- a little more

1 than halfway down, it says "April 2002;" it should say "May."
2 Net additions, 5-month average. If you take the average, add
3 up the average per month for all three ALEC types, isn't it
4 correct that that number doesn't equal the 9-month average at
5 the bottom of 12,478 per month?

6 A Okay. I followed you now. Thank you, sir. Yes,
7 sir, it's somewhat lower.

8 Q You refer in your testimony to some pre-2002 discount
9 programs that BellSouth had in effect. Isn't it correct that
10 at some point in time during 2001 BellSouth suspended those
11 programs?

12 A Some programs were suspended, yes.

13 Q Okay. Did BellSouth file with the Commission
14 notification of when the suspension began and when it was
15 lifted?

16 A I don't recall specifically.

17 Q You refer in your direct testimony to a calculation
18 of a full buyout under ALEC termination liability.

19 A Yes.

20 Q And the figures that you have there in your
21 testimony, isn't it correct that you made no reduction for
22 avoided costs that are contained in those ALEC full buyout
23 tariffs?

24 A No, I didn't. I just took the terms and conditions
25 just as they were listed in the tariff.

1 Q And the terms and conditions include a subtracted
2 amount for avoided costs; correct?

3 A It may have, but I did not include it.

4 Q Okay. Do you have any idea what that number would
5 be?

6 A No.

7 Q Do you know what -- or could you speculate on the
8 reputation of a -- reputation of an ALEC provider would be in
9 the business market if it attempted to charge a \$90,000
10 termination liability to a customer?

11 A I wouldn't dare speculate, but termination charges
12 are common and full buyouts are common and buyouts with
13 discounts are common in the industry, and not just the
14 telecommunications industry but all industries.

15 Q To the tune of \$90,000?

16 A It depends on the size of the contract.

17 Q I'm going to pick a hot wire center from your
18 testimony, and what I would like for you to do -- actually, let
19 me find the hot wire center. Actually, I can refer to
20 Mr. Garcia's testimony, if nothing else. He has the tariff
21 attached. But what I'd like for you to do is, I pick out a hot
22 wire center. Let's say I pick out Brooksville. Can you --

23 A First, where are you at in my testimony, so I can be
24 on the same page as you?

25 Q Actually, I don't know that it relates to a

1 particular page of your testimony.

2 A Then I'm not sure I'm able to answer your question.

3 Q Okay. Well, let me do this. Let me get you a
4 reference. You say in your testimony, do you not, that
5 BellSouth is meeting the offerings of ALECs in the hot wire
6 centers; correct?

7 A Yes. I mean, BellSouth's Key Customer program that
8 we had, both of them this year and once prior, we've looked at
9 what our customers are being offered. We're looking what our
10 customers are asking us about, and we're coming up with
11 promotions trying to meet customer expectations.

12 Q Okay. Well, let me pick out a hot wire center, and a
13 hot wire center that I took out is Brooksville. And can you
14 show me attached to your testimony what competitor offering in
15 Brooksville BellSouth is meeting? I'm looking at your exhibits
16 here attached to your direct testimony.

17 A Which exhibits?

18 Q The competitive offerings that you have.

19 A All right. Give me a section. Are you talking that
20 it's associated with what is in Elizabeth Stockdale's
21 affidavit, or are you talking about what's in JAR-3 which is
22 not telecom, or are you talking about that's in JAR-2?

23 CHAIRMAN JABER: Mr. Ruscilli?

24 THE WITNESS: Yes, ma'am.

25 CHAIRMAN JABER: Which exhibit would allow you to

1 answer the question related to competitive offerings that are
2 provided to consumers?

3 THE WITNESS: I'm sorry, yes, Madam Chair.

4 JAR-2 lists promotional offerings that are being tariffed and
5 offered by a variety of players: Business Telecom, MCI,
6 Choctaw Communications, NOS, NuVox, and Xspedius.

7 BY MR. FEIL:

8 Q I'm sorry. I had a little difficulty finding the
9 reference because there's not a cover page or a stamp on the
10 exhibit.

11 A I'm sorry. I'll wait.

12 Q The question I'd like for you to answer: If I pick
13 out a hot wire center like Brooksville, I'd like you to tell me
14 what in JAR-2, what competitive offerings in Brooksville are
15 you meeting.

16 A I don't know by specific wire center. I didn't do
17 that research.

18 Q Okay. So if I picked out another hot wire center
19 like Lake City or De Land, you wouldn't know? You wouldn't be
20 able to match up the competitor offering to the hot wire
21 center?

22 A I'm not the one that looked at those particular wire
23 centers and made that kind of decision on what kind of
24 competitive offering we would do.

25 Q Isn't it correct that under the Key Customer offer

1 that if there is a CLUB or SLA arrangement, all customer
2 locations can qualify for the Key Customer discount even though
3 there is no competitive offering from an ALEC covering every
4 location under the CLUB or SLA arrangement?

5 A Yes, that's true, with good reason.

6 Q So isn't it correct that some of the locations, more
7 than one or as many as the customer would like, could be
8 locations in non-hot wire centers; that's correct?

9 A Some of the locations could be locations that are in
10 not hot wire centers, but the Key Customer program, if I
11 remember correctly, contains the majority of the wire centers,
12 at least a large proportion of them in the state of Florida
13 inside our footprint. So it's unlikely that there will be many
14 locations that are not in key wire centers.

15 Q Okay. I want to change subjects a little bit here.
16 What discounts does BellSouth offer that a customer can tack on
17 to a Key Customer discount?

18 A I want to make sure I understand your question. The
19 Key Customer discounts -- or I don't understand what you mean.

20 Q In other words, can a customer get -- one customer
21 get the Key Customer discount plus additional discounts?

22 A If they can, it would only be subject to the
23 restrictions that are in the Key Customer tariff. And I think
24 in that Key Customer tariff it said that if you're eligible
25 under this program, you're not eligible under Key Customer,

1 et cetera, but I don't know the specifics of that.

2 Q But would you agree with me that there are other
3 programs that a customer can have a promotional price that a
4 customer can have in addition to Key Customer?

5 A I don't know that there is or there isn't, sir.

6 Q What about Select Points? Is that something that a
7 customer -- a program the customer can enroll in in addition to
8 Key Customer?

9 A I don't know specifically if the two are compatible
10 or not.

11 Q Do you know what an option payment plan agreement is?

12 A With respect to BellSouth?

13 Q Yes.

14 A It's where -- if I remember correctly, and I'm just
15 guessing here, that's where if you have nonrecurring charges,
16 we'll spread those out over a period of time, but I might be
17 misspeaking here.

18 Q Let me show you a --

19 A We have variable term payment plans which, you know,
20 give you a discount over a period of time.

21 MR. FEIL: Commissioners, I'm passing out an exhibit
22 which can be entitled, "Optional Payment Plan Agreement."

23 CHAIRMAN JABER: Optional Payment Plan Agreement is
24 identified as hearing Exhibit 16.

25 (Exhibit 16 marked for identification.)

1 THE WITNESS: I was incorrect. I was thinking of a
2 plan we offer where we waive nonrecurring charges.

3 BY MR. FEIL:

4 Q Okay. As you read this optional payment plan
5 agreement, is it your understanding that it's addressing only
6 connection charges or it addresses more than just that?

7 A Give me a moment, please. It just says for the
8 rates, so it could be the recurring rates.

9 Q Okay. Do you know whether or not this has been
10 offered in conjunction with the Key Customer discount?

11 A I have no knowledge.

12 Q If somebody offered this in conjunction with the Key
13 Customer discount, would it be improper?

14 A Well, the Key Customer discount has got limitations
15 and restrictions associated with it. And unless it -- you
16 know, if it conflicted with those, then it would be improper,
17 yes.

18 Q Do you know whether or not it does conflict?

19 A No, I don't.

20 Q Can you say whether or not there have been any
21 instances where this optional payment plan was offered in
22 conjunction with Key Customer?

23 A No, I don't have that kind of knowledge.

24 Q Okay. I wanted to read to you a response from
25 BellSouth to an FDN interrogatory, and it's Interrogatory

1 Number 22. It's short so I'll just read it.

2 The question is: Is it correct that BellSouth wins
3 back two out of every three customers that it loses to
4 competitors?

5 And the response is: Please see BellSouth's response
6 of Florida Digital Network's first set of interrogatories,
7 Items Number 20 and 21. Throughout BellSouth's nine-state
8 region during the first part of 2002, BellSouth has gained two
9 small business lines from competitors for every three small
10 business lines that it has lost to competitors.

11 Let me hand this to you. Maybe it will make it a
12 little easier.

13 A Yes, sir.

14 Q Can you agree with me then in the first half of
15 2002 in Florida BellSouth did better than winning back two out
16 of three?

17 A I don't know what the win-back statistics are for the
18 state of Florida, but two out three still says we're losing a
19 third of the customers.

20 Q But you don't know whether or not that has happened
21 in Florida or whether or not in Florida it's been a break-even
22 proposition?

23 A This data request is speaking to the BellSouth
24 region. I don't know what the Florida data numbers are.

25 Q Okay. You force me to pull out a confidential

1 exhibit.

2 A I'm sorry. But, you know, my point is still the
3 same. If we're winning back two out of three, that means we're
4 losing 33 percent of the customers that are out there, so, I
5 mean, that's commensurate with the competition report that
6 staff has prepared and commensurate with what we have filed in
7 our 271. Basically about a third of the business customers are
8 leaving us.

9 MR. FEIL: For the record, what I'm going to be
10 handing Mr. Ruscilli is BellSouth's answer to FDN Interrogatory
11 19 and FDN Interrogatory 20 which are confidential, and I'm
12 trying to keep them out of the record, so --

13 CHAIRMAN JABER: Thank you.

14 BY MR. FEIL:

15 Q Referring to Confidential Number 19. Mr. Ruscilli,
16 if you look at the last page --

17 A One moment. I want to make sure I've got the right
18 one.

19 Q Okay. Number 19?

20 A Okay. I'm sorry. I had the wrong one. And which
21 page? I'm sorry.

22 Q The very last page.

23 A Okay.

24 Q Now, this exhibit purports to show competitive
25 disconnects; correct?

1 A That's what it's so labeled, yes.

2 Q Okay. And the comparison I wanted you to make is
3 between the number for July 2002 -- or excuse me, year to date
4 through July 2002, the very bottom right-hand number, and
5 compare that to the number in response to Interrogatory Number
6 20. Okay. Look at Interrogatory Number 20.

7 A I have it in front of me. I don't know what page you
8 want me to go to.

9 Q There's only one page -- or let's call it the last
10 page. Oh, I'm sorry. Those are copies.

11 A Okay.

12 Q Pull one out. I wasn't trying to trick you,
13 Mr. Ruscilli. I'm sorry.

14 A I would have never suspected that, Mr. Feil.

15 Q So you take the total 2002 and back up -- back out
16 August 2002, you'd be comparing apples to apples to the number
17 on Interrogatory Number 19; correct?

18 A Well, I didn't do either of these, so I can't say
19 this is apples to apples, but you do have two numbers that are
20 very close to each other, but I don't know if it's an
21 apples-to-apples comparison.

22 Q Well, the response to Interrogatory Number 20 shows
23 lines that BellSouth gained from competitors; correct?

24 A Subject to the disclaimer at the top of the page,
25 yes.

1 Q Okay. In order to make a comparison of January
2 through July of 2002, I would have to back out from
3 Interrogatory Number 20 the August number; correct?

4 A Yes.

5 Q Okay. So if you back out that August number and look
6 at 2002 lines BellSouth gained from competitors and compare
7 that to competitive disconnects through July 2002, doesn't that
8 show that BellSouth does better than two out of three in
9 Florida?

10 A Yes, if it is an apples-to-apples comparison, but I
11 don't know the assumptions that went into both of these
12 documents. So I'm really not the person -- Sam Massey did
13 this.

14 Q Isn't it correct that in the selection of hot wire
15 centers, BellSouth's competitive assessment managers provided
16 input regarding the selection?

17 A I wasn't involved with the selection of the hot wire
18 centers. Generally it was based on the number of lines we were
19 losing in wire centers and the speed with which we were losing
20 them.

21 Q And the response to -- BellSouth's response to FDN
22 Interrogatory Number 30 it says, "Competitive assessment
23 managers in each of the outbound sale centers also gave input
24 regarding selection of hot wire centers." Will you take that
25 at face value?

1 A Yes, I will.

2 Q Okay.

3 A I just was indicating I was not involved in it, so I
4 don't know which ones were doing what.

5 Q So do you know whether or not those competitive
6 assessment managers changed the criteria from January to June?

7 A No, I have no idea.

8 Q Okay. Is it correct that one of the criteria that
9 BellSouth applied in establishing hot wire centers was that no
10 UNE Zone 3 wire center would be included as a hot wire center?

11 A Actually, it seems to me I've seen some data that we
12 did have Zone 3 wire centers that were in the hot wire center.
13 Maybe I'm mistaken, but it seemed like there was a small
14 percentage, but I don't know what the criteria was. Getting to
15 your question, I don't know what that criteria was, so --

16 Q Okay. Would you agree with me that there are some
17 UNE Zone 3s as hot wire centers?

18 A Yes.

19 Q Okay. Each time -- and if you can't answer this
20 question, I'm sorry. Actually, is there somebody else
21 testifying who may be better able to talk about the hot wire
22 center criteria? Mr. Garcia perhaps?

23 A Maybe one of the other BellSouth witnesses or maybe
24 Mr. Massey, but he's stipulated so I don't know.

25 Q Okay. Each time that BellSouth renewed a Key

1 Customer program or tariff since January 2002, has BellSouth
2 looked at all the wire centers using basically the same
3 criteria?

4 A If I -- and actually, I think that was partly --
5 maybe it was Mr. Bigelow, but I just don't know who the witness
6 was. It seemed to me that the criteria had not changed
7 specifically, if I remember some conversations, but I was not
8 involved in it, so the answer is I would not know.

9 Q If UNE-P is sunset by the FCC or by state
10 commissions, does BellSouth intend to change any of the hot
11 wire center criteria?

12 A I don't know. I don't know what our plans will be.

13 MR. FEIL: I'm going to change subjects here again.
14 Madam Chair, while Mr. Gallagher is passing that out, I
15 neglected to ask for an exhibit identification number for the
16 line total sheet. If I may have an exhibit number for that.

17 CHAIRMAN JABER: Hearing Exhibit 17 will be used for
18 the chart titled, "Florida ALEC Business Access Lines,
19 BellSouth Territory."

20 (Exhibit 17 marked for identification.)

21 MR. FEIL: And if I may have the next exhibit number
22 for BellSouth's response to FDN Interrogatory Number 9.

23 CHAIRMAN JABER: Hearing Exhibit 18 will be used for
24 BellSouth's response to FDN's Interrogatory Number 9.

25 (Exhibit 18 marked for identification.)

1 BY MR. FEIL:

2 Q Is it correct, Mr. Ruscilli, that BellSouth does not
3 exercise any retention efforts from a customer that calls in
4 the BellSouth retail office to lift a local service freeze?

5 A If the customer is calling in to lift local service
6 freeze, no, we don't do any retention. If the customer asked
7 information or a customer starts initiating contact with us
8 about offers, then we will.

9 Q So I want to make sure I understand the distinction.
10 If a customer calls in to lift a local service freeze,
11 BellSouth does not initiate any retention efforts; correct?

12 A If the customer is wanting to change that, it's my
13 understanding that we do not.

14 Q Okay. But if a customer calls in for any other type
15 of activity, there's no rule or procedure that BellSouth
16 follows that bars the retail call centers from initiating a
17 retention effort; is that correct?

18 A Well, if a customer calls our retail call center, if
19 you were one of our customers and you were going to call our
20 retail call center, just when you call in, they're going to ask
21 you for approval to use your CPNI. And if you say on the
22 affirmative, that -- and they'll tell you that the purpose of
23 that is to perhaps sell you other products and services that
24 they may offer, and if there are discount programs or
25 promotions that might be advantageous to you based on the kind

1 of services you have from us, our sales rep will sell those to
2 you, yes.

3 Q So I want to make sure I understand your answer. Are
4 you saying every time a retail end user calls up BellSouth's
5 central office -- or excuse me, BellSouth's retail office that
6 that customer is asked whether or not their CPNI can be
7 accessed?

8 A They're supposed to be asked, yes. That's
9 requirements of Section 222.

10 Q So every time a customer calls in whether or not they
11 want to change voice mail or call in a repair, they're asked if
12 their CPNI can be used?

13 A Yes.

14 Q Okay.

15 A Now, I mean, you know, if it's a repair call, I don't
16 know if it's the same process or not, but on the retail side,
17 if you call into the retail office and you're one of our
18 customers, they're going to ask you about your CPNI.

19 Q And isn't it correct that when a retail customer
20 calls the BellSouth office after they're asked for the CPNI
21 information, that BellSouth does not automatically offer the
22 customer Key Customer discount if that customer is in a hot
23 wire center?

24 A I don't know. That was the subject of some things
25 that Mr. Gallagher was saying that kind of confused me because,

1 with Key Customer, that is something that we advertise and
2 something that we promote and something we call customers
3 about. Now, whether or not on each time they call in they're
4 solicited for that or not, I don't know.

5 Q Would you agree, subject to check, that not every
6 inbound call is offered a Key Customer discount?

7 A It may or may not be. Again, every inbound call may
8 not be, you know, with that purpose in mind by the customer.

9 Q Let me come back to that later. Let's look at this
10 Interrogatory Response Number 9. It's been identified as
11 Exhibit 18. In the supplemental response in the area there
12 where it says -- or begins "In order to facilitate," I want to
13 make sure I understand that paragraph there.

14 You say, "Retail sales personnel can, on an
15 account-by-account basis, access LSR." When you say "retail
16 sales personnel," could that also include outside sales agents
17 that may receive a call from a BellSouth customer?

18 A I don't know if people outside -- I don't think
19 people outside of BellSouth's company can have access to those
20 records, if that was what your question was.

21 Q That's my question. Are you saying that they can't
22 or you don't know if they can?

23 A I said I don't know if they can or can't.

24 Q Okay.

25 A I think with what we use with our -- say if we have

1 an outbound calling center from a third party that we're using,
2 we generate a customer list for them, and then they generate
3 their own front-end systems and stuff, but I don't think they
4 go in and do that, but I just don't know for sure.

5 Q You just referred to a list. Where does that list
6 come from?

7 A In other words, if we have a list of customers that
8 we want to market to.

9 Q And is that -- the list, you're referring to a list
10 of customers who have disconnected from BellSouth?

11 A No. It could be just -- I mean, it just depends on
12 the promotion that we're talking about. In other words, if we
13 want to promote a new service that we've got and customers who
14 qualify with this amount of spend and these kinds of services
15 want that add-on feature, we'll generate a list for that,
16 things like that, using our CPNI.

17 Q Referring back --

18 CHAIRMAN JABER: Excuse me, Mr. Feil.

19 MR. FEIL: Go ahead.

20 CHAIRMAN JABER: What do you do for the customers
21 that you are able to determine have left BellSouth and gone
22 to -- regardless of the carrier but you want to offer them the
23 promotional tariff?

24 THE WITNESS: Well, and I'll sort of walk through the
25 process. What we do with customers when they leave us --

1 there's a variety of reasons why they would leave: Maybe they
2 have gone out of business, maybe they have moved out of the
3 state, maybe they're just disconnecting lines because they're
4 trying to save money. Those kind of customers we know this is
5 what they did and why they did it. The ones that are remaining
6 when we have this, you know, set of disconnects, we don't
7 really know if they have gone to competitors or not, we just
8 assume. I mean, there might be some reason they left and we
9 just don't know but we assume.

10 Now, the rules associated with CPNI say that if they
11 were our customer, we could use our own CPNI information that
12 we have on the retail side of the house about that customer, in
13 other words, how much did they spend, what kind of services do
14 they subscribe to, to attempt to win back that customer. That
15 was the whole point of the win-back on the order on remand -- I
16 mean, on the reconsideration order on Section 222. So that's
17 precisely -- you know, we can do those kinds of things and we
18 do.

19 BY MR. FEIL:

20 Q Now, an example of -- that second paragraph where it
21 says "supplemental response," would an example of that sort of
22 situation where the -- let me back up.

23 Under what circumstances would a retail sales
24 representative look for LSR activity?

25 A Well, I don't think they would be looking for LSR

1 activity at all. I think what we're saying here is that on a
2 specific basis, usually like a customer request, Mr. Gallagher
3 mentioned the one associated with DSL, we would pull up and see
4 that another CLEC was involved.

5 Q And you're saying you would not use that information,
6 that LSR information, to initiate a retention effort?

7 A It's against our policy to use that information for a
8 retention effort. However, if the customer calls and says,
9 Mr. Gallagher has offered me a fine deal here on telephone
10 service at a cheap price, what do you have, BellSouth, then,
11 you know, we feel free to respond.

12 Q But isn't it correct that every ADSL order -- or LSR,
13 excuse me. Let me back up.

14 Every LSR that has ADSL on it is clarified by
15 BellSouth? You want me to rephrase the question?

16 A Yes. I was just thinking through it. Yes, it's sent
17 back to the CLEC for clarification. It kicks out.

18 Q Okay. So the LSR comes in; it's been clarified. A
19 customer calls up to have ADSL moved from line one to line
20 three. That sales representative who gets that customer call
21 knows that the LSR has been submitted and clarified; correct?

22 A I don't know. I'm really not a systems person, so I
23 don't know if that's exactly the process.

24 Q Do you know whether or not an LSR submitted to
25 BellSouth would be clarified if there was a local service

1 freeze on the line?

2 A I don't know the process.

3 Q Okay. On Page 25, Line 23 of your rebuttal --

4 A Give me one second.

5 Q -- you talk about discount charges.

6 A Yes.

7 Q I'm going to hand you the recent interconnection
8 agreement that FDN and BellSouth signed, and I want you to show
9 me where the subject of disconnection charges is addressed.

10 And the question, Mr. Ruscilli, is, where is it
11 described how, when, and wherefore disconnection charges apply?

12 A And my response, by the way, was in response to
13 Mr. Gallagher, but it was generic to ALECs, and it's whether or
14 not you have disconnect -- yeah, nonrecurring disconnect, and
15 it's on Page 139 of 509 which is the beginning of the price
16 list for unbundled network elements. And if you look at rates,
17 which is in the center of the page, and you go down, you will
18 see a series of columns that say "nonrecurring disconnect."

19 Q Okay. Can you tell me where in the interconnection
20 agreement it states how, when, and where that charge applies?

21 A That I'm not familiar enough with this particular
22 agreement or agreements in general to tell you where that's at.

23 Q Would you agree, subject to check, that it doesn't
24 say?

25 A I couldn't agree one way or the other. I'll take --

1 if you're saying subject to check, we'll take that, but it does
2 say it in the price list.

3 Q Well, we can try this though. I can show you the
4 Commission's order approving those UNE rates, and I can ask you
5 if you can find in there where it states how, when, and where
6 the disconnection charge applies. Would you like to go through
7 that exercise, or would you agree subject to check?

8 A No, I just said -- I'm sorry, sir, I apologize. I
9 didn't mean to sound impolite. I said I would take it subject
10 to check.

11 MR. FEIL: Okay. If you give me a moment, Madam
12 Chair, that may be all I have. I have nothing further at this
13 time.

14 CHAIRMAN JABER: Thank you, Mr. Feil.
15 Staff.

16 CROSS EXAMINATION

17 BY MS. DODSON:

18 Q Good afternoon, Mr. Ruscilli. I'm Linda Dodson, and
19 we only have a few questions for you.

20 A Good afternoon, Ms. Dodson.

21 Q Mr. Ruscilli, your testimony covers a variety of
22 issues but mainly addresses policy considerations; is that
23 correct?

24 A That's correct.

25 Q I have a line of questions about CLUB billing and

1 another line about termination liabilities. I'm going to start
2 with the termination liabilities.

3 A Yes, ma'am.

4 Q I believe both you and BellSouth witness John Casey
5 provided testimony on termination liabilities; is that correct?

6 A Yes, we did.

7 Q I have some policy-oriented questions about it, and
8 to lay the framework -- the groundwork for the questions, I'll
9 refer to a portion of Mr. Casey's testimony and one of his
10 exhibits.

11 A I don't have those in front of me. Do I need to have
12 those?

13 Q Yes. If you could --

14 A I do not have his testimony or his exhibits in front
15 of me.

16 MS. WHITE: I've got it.

17 MS. DODSON: Thank you.

18 THE WITNESS: Yes, ma'am, I have it now. If you
19 would direct me.

20 BY MS. DODSON:

21 Q Okay. We're probably going to ask these questions of
22 Mr. Casey, but since the questions are policy-oriented, I
23 wanted to ask them to you too.

24 A Okay.

25 Q I want to ask you a specific question about some

1 language in the Key Customer enrollment contract itself.
2 Please take a look at Mr. Casey's Exhibit JPC-2 which is
3 attached to his direct testimony.

4 A I have that.

5 Q Does this exhibit represent the June filing?

6 A Yes, this is the one.

7 Q And this enrollment form is still in use for the
8 current Key Customer program; is that correct?

9 A I believe it is, but you might want to verify that
10 with Mr. Casey.

11 Q I'm going to use a hypothetical example to ask you
12 about Section 4 of this enrollment form, specifically about the
13 phrase that reads, "Subscriber will receive the reward
14 associated with the subscriber's monthly total billed charges,
15 and if such charges fall below the minimum charges per month,
16 rewards will not be applied." Do you have that section?

17 A I just found where you were reading from. I'm sorry,
18 ma'am. Okay.

19 Q Let's assume a hypothetical five-line customer signs
20 a Key Customer contract.

21 A Uh-huh.

22 Q And based on his mix of Key-eligible services, the
23 minimum revenue threshold for participation in the Key Customer
24 tariff is met with two of his five lines.

25 A Yes.

1 Q Okay so far?

2 Because this customer is exceeding the minimum
3 threshold, he's getting the reward for all his lines; is that
4 correct?

5 A Well, yes. If I understand your question correctly,
6 and please correct me if I'm wrong, if he has five lines and it
7 only took two to meet the minimum threshold, they all would
8 enjoy the discount.

9 Q What if a competitor comes along and wins four of
10 those five lines? Now the customer is below the minimum
11 revenue threshold for participation in the Key Customer tariff.

12 A Yes.

13 Q But he is still receiving services from BellSouth at
14 the tariff rate for the single line that didn't migrate to the
15 competitor; is that correct?

16 A Yes. But he would not be eligible for the discount
17 because he's below the threshold.

18 Q Will this customer get assessed a termination charge
19 because four out of five lines left prior to the end of the
20 contract period?

21 A I don't believe they will, but you will need to
22 verify that with Mr. Casey.

23 Q And why would they not?

24 A They've stayed on -- if I read the language, and
25 really, you should talk to Mr. Casey about this, they didn't

1 disconnect their service, they just failed to meet the minimum.

2 Q Okay. Is this customer then considered to have
3 broken his contract?

4 A I think -- and again, I'm certainly not a lawyer, so
5 I don't know if it's a breach of contract or not. If I'm
6 correct in what I said and Mr. Casey verifies that, I think all
7 the customer does is he loses the ability to have those
8 benefits, but I don't know if it's a breach in contract from a
9 legal perspective.

10 Q Would Mr. Casey be able to answer that question?

11 A I think so.

12 Q At failing that, is there anybody else that we should
13 ask that question?

14 A I think --

15 Q You think Mr. Casey?

16 A Yeah, I think -- this is associated with his
17 testimony, and these termination liabilities are what he's
18 responsible for, so I think he would be the expert.

19 Q Now, I'm going to switch to --

20 CHAIRMAN JABER: Staff. Ms. White, is Mr. Casey the
21 right witness?

22 MS. WHITE: Yes, ma'am, he should be.

23 CHAIRMAN JABER: Thank you.

24 MS. WHITE: Especially after being in the room and
25 listening to these questions, he better be.

1 CHAIRMAN JABER: I just wanted to make sure you
2 understood.

3 BY MS. DODSON:

4 Q Now, I'm going to switch to a series of questions on
5 CLUB billing.

6 A Yes, ma'am.

7 Q I'm going to start with something Mr. Casey said in
8 order to lay the groundwork. Again, if you can't answer, we'll
9 ask Mr. Casey these questions, but since you're the policy
10 witness, we wanted to start with you.

11 A Okay.

12 Q Mr. Casey states on Page 3, Lines 3 through 11 of his
13 direct testimony that Key Customers can add or delete
14 Key-eligible services throughout the life of a contract, and
15 that this affects the determination of the specific damage
16 BellSouth would suffer up front if a contract was terminated
17 early.

18 A Ma'am, I apologize. You said on Page 3, Lines
19 3 through 7?

20 Q Lines 3 through 11 --

21 A Okay. I'm sorry. I was looking on the wrong lines.

22 Q -- of your direct, yeah, of your direct testimony.

23 A Of Mr. Casey's direct, yes.

24 Q Mr. Casey's direct testimony. I'm sorry, I
25 apologize.

1 A Yes. Okay.

2 Q Would you like me to repeat the --

3 A Please.

4 Q He states that Key Customers can add or delete
5 Key-eligible services throughout the life of a contract, and
6 that this affects the determination of the specific damage
7 BellSouth would suffer up front if a contract was terminated
8 early; is that correct?

9 A Yes, that's what he says.

10 Q Okay. To the best of your knowledge, if Key-eligible
11 services are added or deleted midstream in a contract, is
12 BellSouth able to accurately adjust the billing for these
13 changes?

14 A Well, if customers -- and again, certainly ask
15 Mr. Casey this. If customers add or delete lines, we can bill
16 and delete those lines, and the discount occurs in the other
17 credits and charges section of the bill. So it should flow
18 through, but please verify that with Mr. Casey.

19 Q Okay. What if the changes were distributed among
20 several customer locations? Would BellSouth still be able to
21 accurately adjust the billing for these added or deleted
22 services on a location-specific basis?

23 A Well, if -- I'm sorry, did somebody talk? I thought
24 I heard a voice. I apologize.

25 If the customer is subscribing to CLUB billing, we

1 would not do that on a location basis. We do it on a total of
2 the bills. If the customer has five locations and five
3 independent bills and varies those services, then that would
4 flow through on each of those independent bills.

5 MS. DODSON: Can I have a minute, please?

6 CHAIRMAN JABER: Absolutely.

7 Clear your head, Mr. Ruscilli.

8 (Laughter.)

9 BY MS. DODSON:

10 Q I understand that CLUB billing is a single bill.

11 A Yes.

12 Q And you stated that it would flow through on separate
13 bills.

14 A Okay. I'll explain that again. If the customer had
15 multiple locations and had CLUB billing, it would all be billed
16 to one bill, and whatever changes the customer made to the
17 spend level that they had, and that would be associated with
18 adding or deleting lines, would flow through in the discount on
19 that one bill.

20 The other scenario would be where a customer did not
21 have CLUB billing but instead just had five locations and five
22 separate bills sent to five separate addresses, and then as
23 each individual location made a change, then that location
24 would go either up or down in the total amount of benefits that
25 would be received.

1 Q In your testimony about CLUB billing arrangements on
2 Page 29, Lines 1 through 15 of your direct testimony --

3 A Yes.

4 Q -- you state that under specific circumstances a
5 CLUB-billed customer that may have one or more locations
6 outside of the hot wire centers would be eligible to receive
7 the tariff discount because of the CLUB arrangement.

8 A That's correct.

9 Q Based on what you just told me about adding and
10 deleting services and keeping the billing straight on a
11 location-specific basis, please explain to me why the billing
12 for CLUB accounts cannot also be done on a location-specific
13 basis.

14 A Well, again, and I'll maybe point to Mr. Casey on
15 this, but again, when you do CLUB billing, you're grouping all
16 of the charges that the customer has into one big bill format,
17 and it's for the convenience of the customer. They just want
18 to receive one big bill for everything. It's not factored out
19 by locations. And if I misspoke, I apologize, but within that
20 big CLUB bill as locations change, the services that they have,
21 that will be reflected in their total spend that they have with
22 BellSouth which then appears in the other credits and charges
23 as a benefit.

24 Now, with the other one, we had four or five separate
25 locations, and they had four or five separate bills. So some

1 of those may be in a hot wire center and may not be.

2 Q I'm going to switch to another area here, marketing
3 practices. On Page 26, Lines 10 through 12 of your direct
4 testimony --

5 A Yes.

6 Q -- you state that when the term of the promotional
7 contract expires, the customer is free to evaluate all of the
8 competitive alternatives that are available at that time and
9 decide which one of those competitive alternatives to accept.

10 A Yes.

11 Q At what point prior to the expiration of a Key
12 Customer contract do BellSouth marketing representatives
13 contact the customer regarding a renewal of the Key Customer
14 contract?

15 A I think it would sort of depend. There are some
16 accounts where you have face-to-face representation that might,
17 you know, be associated with that, so they're talking all the
18 time. But to say that that would be exclusive would be totally
19 incorrect because all of our accounts are approached by other
20 ALECs. And they ask the customer what they're under, and it
21 doesn't matter if it's a BellSouth term or it's an ALEC term,
22 when does that expire, and they look forward to the opportunity
23 to market. And my policy there is that that's exactly what the
24 customer and the customer market needs, is people competing for
25 their business when they can.

1 Q On Page 41, Lines 15 through 17 of your direct
2 testimony --

3 A Yes.

4 Q -- you state that BellSouth has established a ten-day
5 waiting period before initiating win-back activities.

6 A Yes.

7 Q Are you aware that in response to Interrogatory 5A of
8 staff's second set of interrogatories BellSouth stated that it
9 waits three to seven weeks in Florida prior to initiating
10 win-back activities?

11 A Yes. And I remember reading that.

12 Q Do you know why BellSouth reduced the number of days
13 to ten in Florida?

14 A I didn't prepare those responses. I could offer an
15 opinion of what was being responded to. The data that we have
16 on -- that I was talking about when Madam Chair asked me about
17 our marketing list, the data that we have is usually about four
18 to six weeks old before we generate that list, and we know that
19 customers have left us, and we know the ones that left us with
20 reason, and then we assume the rest are competitors. And I
21 could offer an opinion that the person responding to that
22 perhaps was thinking of that. But the net effect is that
23 region-wide when a customer has moved, said, I'm going with
24 another carrier, we wait ten days. That's by order. I think
25 the South Carolina Commission had that order. Some other

1 commissions have seven days. We just took it to ten across our
2 region for efficiency sake.

3 Q Now, I have a couple of general questions regarding
4 contract duration.

5 A Yes, ma'am.

6 Q What is the relationship between the contract term
7 and the amount of the discount?

8 A You may -- I mean, the relationship just on its
9 surface value is that the longer that the contract is in place,
10 you are received a greater discount. And it's not a policy,
11 it's really more of a pricing decision. Just like if you sign
12 up for something for a long time, you're basically entering
13 into an agreement with that provider that I'm going to stay
14 with you for a while, and that provider says, well, that's
15 worth discounting to me to know I'm going to have your business
16 for two years.

17 Q Does the recovery of any foregone revenues because of
18 the discounts take three years to recoup?

19 A I don't know.

20 Q This morning we were advised that the win-back
21 promotion actually started in 1998. When in 1998 did BellSouth
22 institute win-back tariff offerings?

23 A I don't know precisely when. We've had a variety of
24 offerings over the years.

25 Q CLUB billing arrangements extends the benefits of the

1 discount to wire centers not designated in the tariff, the hot
2 wire centers; is that correct?

3 A Yes, it can.

4 Q Is there any effort that you are taking to modify the
5 billing system to not extend the benefits to wire centers not
6 in the tariff?

7 A I'm not aware if we're taking any effort or not, but
8 it's really sort of moot. A large majority of the wire centers
9 in this particular promotion are actually hot wire centers, so
10 it's pretty rare that a customer with CLUB billing is going to
11 have a location that's not in a hot wire center.

12 Q Would you accept that that could possibly violate the
13 tariff because the benefits potentially go to customers outside
14 the wire centers named in the tariff?

15 A I don't think it -- I mean, I wouldn't accept that,
16 no. I don't think it does because it indicates in there that
17 CLUB billing arrangements and SLAs are available, so it sort of
18 gives a modifier.

19 Q So the billing arrangement could possibly be the
20 trigger for violating a tariff?

21 A Well, again, I don't think it's violating the tariff
22 because we have -- and I think they're attached to Mr. Casey's
23 testimony, we have those tariffs in there that indicate that if
24 you've got CLUB or a secondary location, that you are eligible
25 for it. So we sort of explained that that may happen, so I

1 don't think it's a violation of the tariff.

2 Q But isn't the tariff limited to specific hot wire
3 centers?

4 A Yes, the tariff is, but then that's -- I guess an
5 exception might be the word to use, I'm not sure. But it's in
6 the list of what's restricted and not restricted, that's
7 covered. So you basically have this list of wire centers, but
8 oops, there's going to be some exceptions and this is allowed.
9 So it's really not a violation of the tariff, if I remember
10 correctly.

11 MS. DODSON: We have no further questions.

12 CHAIRMAN JABER: Commissioners, do you have any
13 questions?

14 Okay. Redirect.

15 MS. WHITE: Yes, just a couple.

16 REDIRECT EXAMINATION

17 BY MS. WHITE:

18 Q Mr. Ruscilli, Mr. Feil was asking you about rate
19 increases of BellSouth's non-Key Customer customers --

20 A Yes, I remember.

21 Q -- versus the rate paid by the Key Customer
22 customers.

23 A Yes.

24 Q If there's an increase, a rate increase of a single
25 line or multiline business, would that also result in a Key

1 Customer rate increasing as well?

2 A It would. It's uniform across, you know, the rate
3 group.

4 MS. WHITE: Thank you. I have nothing further.

5 And --

6 CHAIRMAN JABER: I'm sorry. Let me follow up on
7 that.

8 MS. WHITE: Sure.

9 CHAIRMAN JABER: Once a customer is on the Key
10 Customer promotional tariff, for whatever length of the
11 contract is, they still are subject to rate increases?

12 THE WITNESS: Well, yes. Again, the tariff doesn't
13 freeze the rate. What the tariff does is offer a specific
14 discount on the amount you spend with us each month. So if
15 there is a rate increase in multiline and it goes up a dollar,
16 then you'll get -- you pay a dollar more but you'll get that
17 discounted.

18 CHAIRMAN JABER: Okay. You were done?

19 MS. WHITE: Yes, I was done. And I would ask that
20 Mr. Ruscilli be excused if there are no more questions for him.

21 CHAIRMAN JABER: Thank you, Mr. Ruscilli.

22 (Witness excused.)

23 CHAIRMAN JABER: We have Exhibits 12 and 13, Bell,
24 are yours.

25 MS. WHITE: Yes, ma'am. I would move Exhibits 12 and

1 13.

2 CHAIRMAN JABER: Without objection, Exhibits 12 and
3 13 are admitted into the record.

4 (Exhibits 12 and 13 admitted into the record.)

5 CHAIRMAN JABER: FDN, Exhibits 14 through 18 are
6 yours.

7 MR. FEIL: Yes, ma'am. I would move those into the
8 record.

9 CHAIRMAN JABER: Without objection, Exhibits 14
10 through 18 are admitted into the record.

11 (Exhibits 14, 15, 16, 17, and 18 admitted into the
12 record.)

13 CHAIRMAN JABER: And, BellSouth, call your next
14 witness.

15 MS. MAYS: Yes, Madam Chair. BellSouth's next
16 witness will be John Casey.

17 CHAIRMAN JABER: Mr. Casey, were you here when I
18 swore in witnesses?

19 MR. CASEY: Excuse me?

20 CHAIRMAN JABER: Were you sworn?

21 MR. CASEY: Yes, ma'am.

22 JOHN P. CASEY

23 was called as a witness on behalf of BellSouth
24 Telecommunications, Inc., and, having been duly sworn,
25 testified as follows:

DIRECT EXAMINATION

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BY MS. MAYS:

Q Mr. Casey, could you please provide your name and business address for the record?

A Yes. My name is John Casey, and my business address is 2180 Lake Boulevard, Atlanta, Georgia.

Q And by whom are you employed and in what capacity?

A BellSouth Telecommunications as a pricing manager.

Q Did you cause to be prefiled in this case nine pages of direct testimony?

A Yes, ma'am.

Q Do you have any changes or corrections to your direct testimony?

A Actually, I do. I have two minor corrections.

Q If you could, just go ahead and tell us what they are, please.

A Okay. On Page 3, Line 15, the word "custom" appears and that should be "customer." And then again on Page 8, Line 1, second to last word says "uner" and it should say "under," of course.

Q Thank you.

A And that's it.

Q With those changes --

CHAIRMAN JABER: I'm sorry.

MS. MAYS: I'm sorry.

1 CHAIRMAN JABER: Mr. Casey, I didn't hear the change
2 you made on Page 8.

3 THE WITNESS: Okay. Line 1, the last -- the second
4 to last word in the line is "uner" and it should say "under."

5 BY MS. MAYS:

6 Q And with those changes, Mr. Casey, if I were to ask
7 you the same questions here today, would your answers be the
8 same?

9 A Yes, they would.

10 MS. MAYS: If I could, Madam Chair, have the prefilled
11 direct entered into the record.

12 CHAIRMAN JABER: The prefilled direct testimony of
13 John P. Casey shall be inserted into the record as though read.

14 MS. MAYS: Thank you.

15 BY MS. MAYS:

16 Q Did you also prefile two exhibits, Mr. Casey?

17 A Yes, I did.

18 Q Do you have any changes to those exhibits?

19 A No, I do not.

20 MS. MAYS: If we could have the exhibits identified
21 for the record as --

22 CHAIRMAN JABER: JPC-1 and JPC-2 are identified as
23 composite Exhibit 19.

24 MS. MAYS: Thank you, Madam Chair.

25 (Exhibit 19 marked for identification.)

1 BELLSOUTH TELECOMMUNICATIONS, INC.
2 DIRECT TESTIMONY OF JOHN P. CASEY
3 BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
4 DOCKET NOS. 020119-TP and 020578-TP
5 OCTOBER 23, 2002
6
7

8 Q. PLEASE STATE YOUR NAME, YOUR POSITION WITH BELLSOUTH
9 TELECOMMUNICATIONS, INC. ("BELLSOUTH") AND YOUR BUSINESS
10 ADDRESS.
11

12 A. My name is John P. Casey. I am currently employed by BellSouth as a Pricing
13 Manager in the Strategic Pricing Organization. My business address is 2180 Lake
14 Boulevard Atlanta, Georgia 30319.
15

16 Q. PLEASE PROVIDE A BRIEF DESCRIPTION OF YOUR BACKGROUND
17 AND EXPERIENCE.
18

19 A. I graduated from the University of Georgia in 1996 with a Bachelor of Arts
20 Degree. In November of that year, I began working for BellSouth Public
21 Communications, and I joined the BellSouth Pricing Organization in 1998. In
22 August of 2001, I assumed my current position within the Strategic Pricing
23 Organization as a Product Pricing Manager with various responsibilities related to
24 the development and implementation of pricing strategies for BellSouth's
25 business voice portfolio.

1 *Issue 3A(i): Is the BellSouth Key Customer tariff filing (Tariff Number T-020035)*¹
 2 *unfair, anticompetitive, or discriminatory under the criteria, if any, established*
 3 *pursuant to this issue?*

4

5 *Issue 3A(ii): Is the BellSouth Key Customer tariff filing (Tariff Number T-020595*²
 6 *or subsequent tariff filing that extends the expiration date thereof) unfair,*
 7 *anticompetitive, or discriminatory under the criteria, if any, established pursuant to*
 8 *this issue?*

9

10

11 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

12

13 A. The purpose of my testimony is to explain how BellSouth determined the
 14 termination liability terms and conditions for the January and June Key Customer
 15 offerings.

16

17 Q. AS OF THE DATE A CUSTOMER SIGNS A JANUARY KEY CUSTOMER
 18 CONTRACT OR A JUNE KEY CUSTOMER CONTRACT, CAN
 19 BELLSOUTH READILY ASCERTAIN THE DAMAGES BELLSOUTH WILL
 20 SUFFER IF THAT CUSTOMER TERMINATES THE CONTRACT PRIOR TO
 21 ITS EXPIRATION?

22

23 A. No.

24 ¹ Throughout my testimony, I will refer to this offering as the "January Key
 25 Customer Offering."

² Throughout my testimony, I will refer to this offering as the "June Key Customer
 Offering."

1 Q. WHY NOT?

2

3 A. Basically a customer is eligible to participate under these tariffs when the
4 customer commits to spending a minimum amount of money each month with
5 BellSouth. However, once this minimum threshold is reached, the customer
6 continues to receive additional benefits (in the form of a larger amount of credit or
7 reward) as the customer adds additional eligible services. Similarly, the customer
8 could drop services, which could result in less benefits (in the form of a smaller
9 amount of credit or reward) for the customer, but as long as the customer meets
10 the minimum revenue commitment the customer made, the customer will
11 continue to receive Key Customer benefits for the remaining services. The point
12 is that the customer determines its spending throughout the term of the Key
13 Customer plan, and BellSouth cannot, at the initiation of the contract, accurately
14 estimate the benefits the customer will receive under the contract, nor the
15 damages that BellSouth will suffer if the ^{customer}~~custom~~ terminates the contract
16 inappropriately. This difficulty in estimating damages is, of course, compounded
17 by the fact that different Key-eligible services have different prices, costs, and
18 margins. Thus, the margin BellSouth realizes from a customer that spends \$1,000
19 on one set of Key-eligible services can vary significantly from the margin that
20 BellSouth realizes from a customer that spends \$1,000 on a different set of Key-
21 eligible services. It is therefore very difficult, if not impossible, to ascertain the
22 damages BellSouth will suffer if a given customer terminates its January or June
23 Key Customer contract before that contract expires.

24

25

1 Q. WHAT ARE THE TERMINATION LIABILITY TERMS AND CONDITIONS
2 IN THE JANUARY 2002 KEY CUSTOMER OFFERING?

3

4 A. If a customer terminates its January Key Customer contract before the contract
5 expires, the contract provides that the customer must pay an amount equal to: the
6 discounts the customer has received under its January Key Customer contract up
7 to the date of termination; and a \$100 charge. This \$100 charge represents
8 incremental costs of administration and acquisition that are specific to the January
9 Key Customer offering. BellSouth's anticipated recovery of these costs are
10 spread over the term of the contract and, therefore, if the customer does not
11 complete the term of the contract it signed, these costs have been incurred by
12 BellSouth but not recovered.

13

14 Q. WERE THESE TERMINATION LIABILITY TERMS AND CONDITIONS
15 MADE CLEAR TO CUSTOMERS WHO SIGNED A CONTRACT UNDER
16 THE JANUARY KEY CUSTOMER OFFERING?

17

18 A. Yes. Exhibit JPC -1 is a copy of the contract that customers sign under the
19 January Key Customer offering. Paragraph five clearly sets forth these
20 termination liability terms and conditions.

21

22 Q. PLEASE EXPLAIN HOW BELLSOUTH DETERMINED THE
23 TERMINATION LIABILITY TERMS AND CONDITIONS FOR THE
24 JANUARY KEY CUSTOMER OFFERING.

25

1 A. By repaying the discounts received up to the date of termination, the customer
2 returns the benefits that BellSouth would not have provided to the customer had it
3 not entered into the contract that it ultimately breached. BellSouth, therefore, is
4 placed in the position it would have occupied had it charged the standard tariffed
5 rates for the services it provided to the customer under that contract.

6
7 Similarly, the \$100 charge represents administrative and acquisition costs
8 BellSouth incurs when it does things such as contacting the customer, explaining
9 the contract's terms and conditions, assisting the customer in executing the
10 contract, and processing the executed contract. The \$100 charge also includes a
11 component for sales incentives that are paid to the different sales organizations for
12 each executed contract, which BellSouth does not require the sales organizations
13 to repay in the event the customer terminates. These are costs that BellSouth
14 would not have incurred had the customer not entered into the contract that it
15 ultimately breached.

16

17 Q. DOES THE JUNE KEY CUSTOMER OFFERING CONTAIN THESE SAME
18 TERMINATION LIABILITY TERMS AND CONDITIONS?

19

20 A. No. While the June Key Customer offering contains termination liability terms
21 and conditions, they are different than the ones contained in the January Key
22 Customer offering.

23

24

25

1 Q. WHY ARE THE TERMINATION LIABILITY TERMS AND CONDITIONS IN
2 THE JUNE KEY CUSTOMER OFFERING DIFFERENT THAN THOSE IN
3 THE JANUARY KEY CUSTOMER OFFERING?

4

5 A. The termination liability terms and conditions in the January Key Customer
6 offering were designed to put BellSouth, at least to some degree, in the position it
7 would have been in had the customer never entered the contract it ultimately
8 breached. These terms and conditions, however, did not address the margin
9 BellSouth expected to realize over the remaining term of the contract, and thus
10 did not give BellSouth the benefit of the agreement it struck with the customer. In
11 the June Key Customer offering, BellSouth used termination liability terms and
12 conditions that are designed, in part, to address that margin.

13

14 Q. WHAT ARE THE TERMINATION LIABILITY TERMS AND CONDITIONS
15 IN THE JUNE 2002 KEY CUSTOMER OFFERING?

16

17 A. If a customer terminates its June Key Customer contract prior to the expiration
18 date, the contract provides that the customer must pay an amount equal to all
19 rewards it has received as a result of any line connection charges that were waived
20 pursuant to the contract. In addition, the customer pays a designated amount for
21 each month remaining on the term of the contract.

22

23 Customers billing between \$75 and \$149.99 at the time they enter into a June Key
24 Customer contract are charged \$25 for each month remaining in the term of their
25 contract if they terminate the contract early.

1 Customers billing between \$150 and \$3,000 at the time they enter into a June Key
2 Customer contract are charged \$40 for each month remaining in the term of their
3 contract if they terminate the contract early.

4

5 Q. ARE THESE TERMINATION LIABILITY TERMS AND CONDITIONS
6 MADE CLEAR TO CUSTOMERS WHO SIGN A CONTRACT UNDER THE
7 JUNE KEY CUSTOMER OFFERING?

8

9 A. Yes. Exhibit JPC-2 is a copy of the form of the contract that customers sign
10 under the June Key Customer offering. Paragraph five clearly sets forth these
11 termination liability terms and conditions.

12

13 Q. PLEASE EXPLAIN HOW BELLSOUTH DETERMINED THE
14 TERMINATION LIABILITY TERMS AND CONDITIONS FOR THE JUNE
15 KEY CUSTOMER OFFERING.

16

17 A. The \$25 and \$40 per month amounts represent a conservative estimate of the
18 margin BellSouth would have received had the customer honored the contract it
19 signed. Additionally, by paying an amount equal to the rewards it has received as
20 a result of any line connection charges that were waived pursuant to the contract,
21 the customer returns benefits that BellSouth would not have provided to the
22 customer had it not entered into the contract that it ultimately breached.

23

24 Q. ISN'T THIS CALCULATION OF A LOST "MARGIN" INCONSISTENT
25 WITH YOUR EARLIER STATEMENT THAT BELLSOUTH CANNOT

1 ESTIMATE THE DAMAGES THAT IT WOULD LOSE ^{UNDER} ~~UNDER~~ THESE
2 CONTRACTS WHEN THEY ARE BREACHED?

3
4 A. No. I will explain this in more detail below, but the margin is calculated by
5 looking at the average margins that would be associated with the minimum
6 number of Flat Rate Business Lines (“1FBs”) that the customer would have to
7 purchase in order to meet the \$75 or \$150 amounts set forth in the termination
8 liability provisions of the June Key Customer offering. BellSouth did not attempt
9 to calculate the actual margin it would have received had the customer honored
10 the contract. As I explained earlier, the customer controls what he purchases
11 under the contract, and that makes calculating in advance the actual damages
12 BellSouth will suffer as a result of a breach of the contract very difficult, if not
13 impossible.

14
15 Q. HOW DID BELLSOUTH DETERMINE THAT THE \$25 PER MONTH AND
16 THE \$40 PER MONTH AMOUNTS REPRESENT THE AVERAGE MINIMUM
17 AMOUNT OF MARGIN BELLSOUTH COULD EXPECT TO RECEIVE HAD
18 THE CUSTOMER HONORED THE CONTRACT IT SIGNED?

19
20 A. As I mentioned earlier, a customer can order any of a number of combinations of
21 Key-eligible services under the June Key Customer offering. In establishing the
22 \$25 and \$40 amounts, BellSouth looked at a common denominator, the Flat Rate
23 Business Line (“1FB”), and determined the minimum number of 1FBs a customer
24 would need to purchase in order to qualify at the lowest level of spending within
25 the two tiers - \$75 and \$150.

1 The rates for 1FBs vary by rate group in Florida, and the number of 1FBs
2 BellSouth provides in any given rate group is different than the number of 1FBs
3 BellSouth provides in any other rate group. BellSouth, therefore, used a weighted
4 average approach to determine a statewide average price for a 1FB and a
5 statewide average margin associated with that statewide average price. BellSouth
6 then calculated how many 1FBs a customer would have to purchase at the
7 statewide average price to meet the \$75 per month and \$150 per month spending
8 levels set forth in the June Key Customer offering's termination liability terms
9 and conditions. The \$25 and \$40 per month termination charges in the June Key
10 Customer offering represent the statewide average margin associated with those
11 numbers of 1FBs.

12

13 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

14

15 A. Yes.

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25

1 BY MS. MAYS:

2 Q Have you prepared a summary of your testimony,
3 Mr. Casey?

4 A Yes, I have.

5 Q Could you please give that now.

6 A Yes. Good afternoon. My testimony explains how
7 BellSouth determined the termination liability terms and
8 conditions for BellSouth's Key Customer offerings. Under the
9 January 2002 Key Customer offering, customers who terminate
10 their agreement prior to the expiration date are required to
11 repay the discounts for each month received under the agreement
12 plus a \$100 charge representing the administration and
13 acquisition costs specific to Key Customer.

14 By repaying the discounts, the customer places
15 BellSouth in the position it would have occupied had the
16 customer purchased the services at tariff rates. And by paying
17 the \$100 charge, the customer compensates BellSouth for
18 administration and acquisition costs that would have otherwise
19 been recovered over the life of the agreement.

20 Now, while the 2002 -- January 2002 structure
21 compensated BellSouth for the differences between the tariff
22 and the contract rates, it did not address the full extent of
23 the damages as a result of the breach. Therefore, BellSouth
24 changed the termination liability terms and conditions with its
25 June 2002 filing.

1 Under the June 2002 Key Customer filing, BellSouth
2 requires the customer to pay either \$25 or \$40 per month times
3 the number of months remaining on the contract. These amounts
4 represent estimated margins that BellSouth could reasonably
5 expect to realize on a monthly basis from customers billing
6 between \$75 and \$150 or \$150 to \$3,000. In addition to the \$25
7 and \$40, BellSouth also requires the customer to repay any line
8 connection charges that were waived as a result of
9 participation in the program.

10 To reach representative numbers, BellSouth used the
11 most commonly purchased business voice product, which was the
12 1FB, as the basis for its margin analysis. But by doing so,
13 BellSouth had to take into account that the 1FB carries
14 different rates and rate groups as well as different
15 penetration rates and different rate groups, so therefore,
16 BellSouth used a weighted average approach in order to
17 calculate a statewide weighted average price for the 1FB.

18 Based upon that statewide weighted average price,
19 BellSouth then determined how many lines a customer would need
20 to purchase in order to reach the \$75 and the \$150 level; then
21 multiplied those number of lines times the statewide average
22 price in order to come up with a total revenue figure; to which
23 it then applied the highest discount level to get down to --
24 let's call it a net billing or a net revenue effect or net
25 revenue amount. BellSouth then took the number of lines,

1 multiplied it times the statewide average cost per 1FB to come
2 up the total cost figure which it then subtracted from the net
3 revenue figure to produce a statewide average margin.

4 The two structures at issue here are different. One
5 is backward-looking while the other is forward-looking.
6 However, BellSouth believes that both of these are reasonable
7 because at the time the customer executes the agreement,
8 BellSouth can neither predict the benefits that the customer
9 will receive over the life of the agreement nor can BellSouth
10 predict the damages they will incur if that contract is
11 ultimately breached.

12 Thank you. That concludes my summary.

13 MS. MAYS: The witness is available for cross.

14 CHAIRMAN JABER: Mr. Feil.

15 MR. FEIL: No questions.

16 CROSS EXAMINATION

17 BY MS. BANKS:

18 Q Good afternoon, Mr. Casey.

19 A Good afternoon.

20 Q I'm Felicia Banks and I'll be asking you some
21 questions on behalf of the Commission. I guess I want to
22 verify that you have your prefiled direct testimony exhibits
23 within reach.

24 A Yes, ma'am, I do.

25 Q Okay. The questions I have to begin with deal with

1 the issue of termination liability clauses and the two Key
2 Customer tariffs of this proceeding. Consistent with how you
3 describe the tariffs in your testimony, I'll refer to the older
4 or expired tariff as the January filing --

5 A Okay.

6 Q -- and the second one as the June filing.

7 A Okay.

8 Q If you would go to your direct testimony on Page 3.

9 A Okay.

10 Q And I will be looking at Lines 3 through 23.

11 A Okay.

12 Q In this patch of your testimony, you describe how it
13 is difficult, if not impossible, to ascertain the damages
14 BellSouth will incur if given a customer terminates a contract
15 early; is that correct?

16 A Yes, ma'am.

17 Q Okay. Then am I correct to assume that the Key
18 Customers can add or delete Key-eligible services throughout
19 the life of a contract?

20 A Yes, ma'am, that's correct.

21 Q Okay. And this adding or deleting Key-eligible
22 services throughout the term of the contract affects the
23 determination of the specific damage BellSouth would suffer;
24 correct?

25 A Correct.

1 Q I guess I have a specific question regarding the
2 enrollment of the contract itself. If you would, take a look
3 at your exhibit which is marked as JPC-2.

4 A Okay. I'm sorry.

5 Q Are you there?

6 A Yeah, JPC-2?

7 Q Yes, sir.

8 A Okay.

9 Q And this enrollment form is still in use for the
10 current Key Customer program; correct?

11 A To my knowledge, yes, it is.

12 Q Okay. Hypothetically speaking -- and I'm making
13 reference to Section 4 of this particular exhibit which reads,
14 "Subscriber receives the reward associated with subscriber's
15 monthly total billed charges, and if such charges fall below
16 the minimum charges per month, rewards will not be applied."

17 Let's just assume a five-line customer signs a Key
18 Customer contract, and based on this mix of Key-eligible
19 services, the minimum revenue threshold for participation in
20 the Key Customer is met with two of the five lines. Because
21 this customer is exceeding the minimum threshold, he's getting
22 the reward for all lines; correct?

23 A Yes, ma'am, all five lines.

24 Q What if a competitor comes along and wins four of
25 those five lines? Now the customer is below the minimum

1 revenue threshold for participation in the Key Customer tariff,
2 but he is still receiving services from BellSouth at the tariff
3 rate for the single line that didn't migrate to the competitor;
4 correct?

5 A Correct.

6 Q Okay. So if this customer maintained the single line
7 through the term of the contract, will this customer get
8 assessed a termination charge?

9 A No, they will not.

10 Q Okay. If this happens, has the customer violated the
11 contract, or are there any restrictions placed?

12 A I'm not an attorney, but in my opinion, no, because
13 if you refer to the first section, Section 1, when the customer
14 signs the agreement, the customer is only guaranteeing that he
15 or she will keep its local service with BellSouth for a period
16 of 24 or 36 months as opposed to guaranteeing a revenue
17 threshold of, say, \$75. So as long as they are a BellSouth
18 customer, they have not breached the agreement.

19 Q Okay. Can you give me one moment, Mr. Casey?

20 A Yes.

21 Q Mr. Casey, I want to kind of follow up on a few of
22 the questions that were asked of Witness Ruscilli that I think
23 you may be able to answer and they regard CLUB billing.
24 Looking at your testimony on Page 3 at Lines 3 through 11 --

25 A Okay.

1 Q -- you state that Key customers can add or delete
2 Key-eligible services throughout the life of a contract, and
3 that this affects the determination of specific damage
4 BellSouth would suffer up front if a contract was terminated
5 early; is that correct?

6 A Yes. I mean, by virtue of them being able to add or
7 delete services, it does change the potential damages which at
8 the time we signed the contract were not aware of because of
9 that fact.

10 Q Okay. To the best of your knowledge, if Key-eligible
11 services are added or deleted midstream the contract, is
12 BellSouth able to accurately adjust the billing for these
13 changes?

14 A I believe we are.

15 Q Okay. And what if the changes were distributed among
16 several customer locations? Would BellSouth still be able to
17 accurately adjust the billing for these added or deleted
18 services on a location-specific basis?

19 A That I'm not sure of. I understand that Mr. Ruscilli
20 indicated that I might be able to answer that question, but as
21 it comes to CLUB billing and billing specific outside of what I
22 would consider a normal billing arrangement, that's outside of
23 my area of expertise with respect to CLUB billing.

24 Q Do you know if there's any other witness that might
25 be able to answer that question?

1 A Not to my knowledge.

2 MS. BANKS: Okay. Thank you, Mr. Casey. I have no
3 further questions.

4 CHAIRMAN JABER: Ms. White, you know what I'm going
5 to ask you.

6 MS. WHITE: Yes, ma'am, and we'll be more than happy
7 to provide that as a late-filed exhibit. I would ask staff to
8 repeat it again so I can make sure I get exactly what they're
9 looking for.

10 CHAIRMAN JABER: Why don't we do this? Before we
11 identify it now on the next break, how about you and staff get
12 together and find out what staff really needs?

13 MS. WHITE: Yes, ma'am.

14 CHAIRMAN JABER: And we'll come back and identify it
15 as a late-filed exhibit.

16 MS. WHITE: Be happy to.

17 CHAIRMAN JABER: Okay. Staff, were you done with
18 your questions?

19 MS. BANKS: Yes, Madam Chair.

20 CHAIRMAN JABER: Okay. Redirect.

21 MS. MAYS: No redirect, Madam Chair.

22 CHAIRMAN JABER: Thank you.

23 Thank you, Mr. Casey.

24 THE WITNESS: Thank you.

25 (Witness excused.)

1 CHAIRMAN JABER: Exhibit 19, BellSouth?

2 MS. MAYS: Yes, Madam Chair. If we could have that
3 admitted, please.

4 CHAIRMAN JABER: Without objection, Exhibit 19 will
5 be admitted into the record.

6 (Exhibit 19 admitted into the record.)

7 CHAIRMAN JABER: Bell, call your next witness.

8 MS. MAYS: BellSouth's next witness will be
9 Carlos Garcia. He was present for the oath.

10 CHAIRMAN JABER: What did you say?

11 MS. MAYS: He was present for the swearing in, Madam
12 Chair.

13 CHAIRMAN JABER: Thank you.

14 CARLOS GARCIA

15 was called as a witness on behalf of BellSouth
16 Telecommunications, Inc., and, having been duly sworn,
17 testified as follows:

18 DIRECT EXAMINATION

19 BY MS. MAYS:

20 Q Mr. Garcia, if you could, please provide the
21 Commissioner with your name and business address.

22 A Yes. My name is Carlos Garcia, and my business
23 address is 600 Northwest 79th Avenue, and that is in Miami.

24 Q And by whom are you employed and in what capacity?

25 A I am employed by BellSouth Telecommunications as the

1 Florida market manager for inbound.

2 Q And in this proceeding, Mr. Garcia, did you cause to
3 be prefiled 12 pages of direct testimony?

4 A Yes, I have.

5 Q Do you have any changes or corrections to your direct
6 testimony?

7 A No, I do not.

8 Q Did you also cause to be prefiled 13 pages of
9 rebuttal testimony?

10 A Yes, I did.

11 Q And as I understand it, there will be some changes to
12 your rebuttal based on the posture of this case?

13 A Correct.

14 Q Can you go through the changes to your rebuttal
15 testimony, please.

16 A Sure. First of all, I would like to withdraw Page
17 Number 4, Lines 7 through 23; Page 11, Lines 11 through 25; the
18 complete Page 12; Lines 1 through 6 on Page 13; and also
19 Exhibit CG-9.

20 Q And the withdrawal is based on the fact that that
21 testimony addressed people who are no longer testifying?

22 A Exactly. They are no longer testifying; correct.

23 Q Are there --

24 A In addition to that, I also would like to make one
25 correction and that is on Page 1 of Exhibit CG-6. I believe

1 that there was a page left off initially, and then it was later
2 on faxed to the Commission.

3 MS. MAYS: We do have extra copies of that page. I
4 don't know, Madam Chair, if there was a miscopy or if it was
5 actually omitted. So we're happy to -- we can provide the
6 page, or we can simply leave it off.

7 CHAIRMAN JABER: This is CG-6?

8 THE WITNESS: Yes.

9 MS. MAYS: Uh-huh.

10 CHAIRMAN JABER: And Page 28 of 28 was initially
11 missing?

12 MS. MAYS: Page 1 of 28, I believe, was missing on
13 staff's copy, and we provided it to them yesterday. I do not
14 know if Mr. Feil had it or not. And we're happy to withdraw
15 the page if he did not.

16 MR. FEIL: Well, I can't even tell where one exhibit
17 ends and another one begins because of the markings on here.
18 I'm having difficulty finding them, so it's hard for me to say
19 if I do or don't have it. If it's the first page, it should
20 have been marked CG-6.

21 CHAIRMAN JABER: Well, I've been looking for a place
22 to take a break. So we're going to take a ten-minute break.
23 And if you will show Mr. Feil that page and staff, we'll come
24 back in ten minutes.

25 MS. MAYS: Thank you.

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CHAIRMAN JABER: Thank you.

(Brief recess.)

(Transcript continues in sequence with Volume 4.)

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

4
5 I, TRICIA DeMARTE, RPR, Official Commission Reporter, do
6 hereby certify that the foregoing proceeding was heard at the
7 time and place herein stated.

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

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

18 DATED THIS 26th DAY OF FEBRUARY, 2003.

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TRICIA DeMARTE, RPR
FPSC Official Commission Reporter
(850) 413-6736