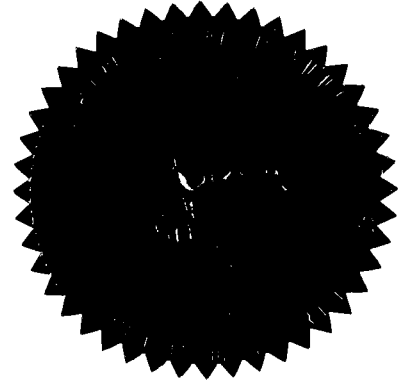


BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 020507-TL

In the Matter of

COMPLAINT OF FLORIDA COMPETITIVE  
CARRIERS ASSOCIATION AGAINST  
BELLSOUTH TELECOMMUNICATIONS, INC.  
REGARDING BELLSOUTH'S PRACTICE OF  
REFUSING TO PROVIDE FASTACCESS  
INTERNET SERVICE TO CUSTOMERS WHO  
RECEIVE VOICE SERVICE FROM A  
COMPETITIVE VOICE PROVIDER, AND  
REQUEST FOR EXPEDITED RELIEF.



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THE .PDF VERSION INCLUDES PREFILED TESTIMONY.

VOLUME 2

Pages 159 through 375

PROCEEDINGS: HEARING

BEFORE: CHAIRMAN LILA A. JABER  
COMMISSIONER J. TERRY DEASON  
COMMISSIONER BRAULIO L. BAEZ  
COMMISSIONER RUDOLPH "RUDY" BRADLEY

DATE: Monday, July 21, 2003

DOCUMENT NUMBER-DATE

FLORIDA PUBLIC SERVICE COMMISSION 07041 AUG-4 8

CLERK

1 TIME: Commenced at 9:30 a.m.  
2 Concluded at 5:07 p.m.

3 PLACE: Betty Easley Conference Center  
4 Room 148  
5 4075 Esplanade Way  
Tallahassee, Florida

6 REPORTED BY: JANE FAUROT, RPR, Chief  
7 LINDA BOLES, RPR  
8 TRICIA DeMARTE, RPR  
9 Office of Hearing Reporter Services  
FPSC Division of Commission Clerk and  
Administrative Services  
(850) 413-6732

10

11 APPEARANCES: (As heretofore noted.)

12

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1 (Transcript continues in sequence from Volume 1.)

2 - - - - -

3 CHAIRMAN JABER: Is Ms. Lichtenberg our next witness?

4 MS. McNULTY: That is correct, Chairman.

5 CHAIRMAN JABER: And she is rebuttal only?

6 MS. McNULTY: Yes.

7 Thereupon,

8 SHERRY LICHTENBERG

9 was called as a witness on behalf of MCI and, having been duly  
10 sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MS. McNULTY:

13 Q Good afternoon, Commissioners. I'm Donna McNulty  
14 with MCI.

15 Please state your name and business address.

16 A Sherry Lichtenberg, MCI, 1133 19th Street Northwest,  
17 Washington, D.C. 20036.

18 Q By whom are you employed, and in what capacity?

19 A I am employed by MCI as a senior manager for  
20 operational systems interfaces and facilities development.

21 Q Have you prefiled rebuttal testimony in this docket  
22 consisting of nine pages?

23 A Yes, I did.

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

1           A     Yes, I have a few small changes. On Page 1, Line 21,  
2 please replace Florida Competitive Carrier Association with  
3 MCI. On Page 3, Line 18, replace the date December 13 with  
4 December 12. On Line 19, replace the number 5,233 with 5,938.  
5 And on Page 4, Line 2, replace 5,233 with 5,938. And, finally,  
6 on Page 9, at Line 14, please change FCCA to MCI.

7           Q     Ms. Lichtenberg, with those corrections, if I were to  
8 ask you the same questions today, would your answers be the  
9 same?

10          A     Yes, they would be.

11                 MS. McNULTY: Chairman Jaber, I would ask at this  
12 time that the rebuttal testimony be inserted into the record as  
13 though read.

14                 CHAIRMAN JABER: The prefiled rebuttal testimony of  
15 Sherry Lichtenberg shall be inserted into the record as though  
16 read.

17

18

19

20

21

22

23

24

25

1                   **REBUTTAL TESTIMONY OF SHERRY LICHTENBERG**  
2  
3                   **ON BEHALF OF**  
4                   **FLORIDA COMPETITIVE CARRIERS ASSOCIATION**  
5                   **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**  
6                   **DOCKET NO. 020507-TL**

7  
8                   **December 23, 2002**  
9

10  
11  
12  
13   **Q.     PLEASE STATE YOUR NAME, BUSINESS ADDRESS AND POSITION.**

14   A.     My name is Sherry Lichtenberg. My business address is 1133 19<sup>th</sup> St., N.W.,  
15           Washington, DC 20036. I am employed by WorldCom, Inc. in the Mass Markets  
16           local services team as Senior Manager, Operational Support Systems and  
17           Facilities Development. I will refer to the division of the company that provides  
18           local service as "MCI."

19  
20   **Q.     ON WHOSE BEHALF ARE YOU TESTIFYING?**

21   A.     I am testifying on behalf of ~~the Florida Competitive Carriers Association~~  
            **MCI**

22  
23   **Q.     PLEASE DESCRIBE YOUR EMPLOYMENT BACKGROUND.**

24   A.     My job involves getting MCI into the local residential and small business markets  
25           across the United States. My duties include designing, managing, and  
26           implementing MCI's local telecommunications services to residential customers  
27           on a mass-market basis nationwide, including Operations Support Systems  
28           ("OSS") testing in BellSouth's region and elsewhere. I have been involved in  
29           OSS proceedings and testified as an expert witness throughout the country.

1 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

2 A. The purpose of my testimony is to describe the anticompetitive impact of  
3 BellSouth's policy of refusing to permit its DSL customers to obtain UNE-P voice  
4 service over the same line as their DSL service and to address certain operational  
5 issues raised in BellSouth's testimony as they relate to Issues 2, 4, 5 and 6 in this  
6 docket. Because my experience has involved MCI's UNE-P voice service, my  
7 testimony will focus on these issues as they relate to UNE-P.

8

9 **Q. WHAT IS THE COMPETITIVE IMPACT OF BELLSOUTH'S DSL**  
10 **POLICY?**

11 A. Speaking from MCI's perspective, as MCI's residential service launch in Florida  
12 has progressed, it has encountered a large number of BellSouth customers who  
13 receive voice and FastAccess service over the same line. While many of these  
14 customers want to migrate to MCI in order to take advantage of The  
15 Neighborhood "all distance" voice package, BellSouth's policy of forcing  
16 customers to stay with BellSouth for voice service in order to keep their DSL  
17 service effectively precludes these consumers from selecting alternative local  
18 voice providers. When customers have the option of migrating to a competitive  
19 provider for voice service and losing FastAccess, or staying with BellSouth for  
20 voice service and keeping their DSL service, customers decide to retain  
21 FastAccess.

22

1 **Q. WHAT INCENTIVES DO FASTACCESS CUSTOMERS HAVE TO KEEP**  
 2 **THEIR FASTACCESS SERVICE?**

3 A. Obviously, FastAccess customers signed up for service because they wanted a  
 4 high speed data service, and presumably those customers wish to continue  
 5 receiving this service even when they decide that they want to switch their voice  
 6 traffic to a competitive provider. Even if these customers had another broadband  
 7 provider to choose from, changing broadband providers would involve  
 8 disconnecting the FastAccess service, obtaining a different DSL modem, and  
 9 possibly having to pay early termination fees to BellSouth. The customer also  
 10 would have to arrange to hook up the new broadband service and pay any  
 11 connection fees the new provider requires. In addition, the customer would need  
 12 to change his or her e-mail address and notify his or her contacts of that change.  
 13 Given these hurdles, it is hardly surprising that FastAccess customers stay with  
 14 BellSouth for voice service rather than migrating their voice service to an ALEC.

15  
 16 **Q. CAN YOU QUANTIFY THE COMPETITIVE IMPACT OF**  
 17 **BELLSOUTH'S DSL POLICY?**

18 A. I can to some extent. From the beginning of this year to December <sup>12</sup>~~13~~, 2002, in  
 19 Florida, MCI alone received <sup>5,938</sup>~~5,233~~ rejects because the customer had FastAccess  
 20 service. This figure understates the actual number of customers who were not  
 21 able to (or chose not to) migrate to MCI as a result of BellSouth's DSL policy.  
 22 MCI customer representatives are trained to ask prospective customers whether  
 23 they have FastAccess service, and, when customers respond that they have

1 FastAccess service, to inform the customers that they must disconnect their  
2 FastAccess service if they wish to sign up for the Neighborhood. The ~~5,233~~<sup>5,938</sup>  
3 rejects MCI has received for customers that had FastAccess service, and that  
4 BellSouth therefore refused to provision, only reflects those instances in which  
5 the MCI representative presumably was not informed by the customer that the  
6 customer had FastAccess, not the instances in which the MCI representative did  
7 not submit a local service request at all because the customer decided not to  
8 migrate because he or she had FastAccess.

9

10 **Q. BELLSOUTH WITNESS RUSCILLI STATES THAT BELLSOUTH IS**  
11 **WILLING TO PERMIT ALECS TO PROVIDE VOICE SERVICE TO**  
12 **FASTACCESS CUSTOMERS VIA RESALE. IS THIS AN ACCEPTABLE**  
13 **ALTERNATIVE?**

14 A. No. BellSouth should not be allowed to dictate ALECs' business plans by  
15 preventing them from using the UNE-P service delivery method (or the delivery  
16 method of their choice) authorized by this Commission for a given segment of  
17 BellSouth's retail customer base. Moreover, resale undermines UNE-P providers'  
18 ability to design and price their own packages of services because ALECs are  
19 limited by whatever retail packages and prices BellSouth chooses to offer.  
20 Additionally, as Mr. Gillan explains in his testimony, resale is not an  
21 economically viable strategy for selling voice service to consumers on a mass-  
22 market basis.

1 **Q. BELLSOUTH WITNESSES RAISE A NUMBER OF “OPERATIONAL”**  
2 **ISSUES THAT THEY SAY ARE BARRIERS TO THE RELIEF THE**  
3 **FCCA SEEKS. HOW DO YOU RESPOND?**

4 **A.** I will specifically address some of the BellSouth “operational” issues below, and  
5 they are also discussed in Mr. Bradbury’s testimony. However, in general, these  
6 “barriers” are nothing more than excuses BellSouth uses to continue its  
7 anticompetitive behavior.

8  
9 **Q. AT PAGES 5 AND 6 OF HIS DIRECT TESTIMONY, MR. FOGLE**  
10 **STATES THAT IF BELLSOUTH WERE REQUIRED TO PROVIDE**  
11 **FASTACCESS OVER AN ALEC LINE, IT WOULD HAVE TO DEVELOP**  
12 **AN ALTERNATIVE METHOD OF BILLING. IS THIS A VALID**  
13 **CONCERN?**

14 **A.** No. BellSouth states that it will provide FastAccess over a resold line, which  
15 involves *precisely* the same billing issue. In the situation where the ALEC  
16 provides resale service, BellSouth either must arrange to bill the customer directly  
17 for FastAccess (such as by credit card) or make arrangements for the ALEC to bill  
18 the customer on behalf of BellSouth. BellSouth can make the same arrangements  
19 when FastAccess is carried over a UNE-P line.

20  
21 **Q. MR. MILNER STATES AT PAGE 6 OF HIS DIRECT TESTIMONY THAT**  
22 **BELLSOUTH HAS NO AUTHORITY TO USE THE HIGH FREQUENCY**  
23 **PORTION OF A UNE-P LOOP. MR. RUSCILLI MAKES A SIMILAR**

1           **STATEMENT AT PAGE 12 OF HIS DIRECT TESTIMONY. IS THIS A**  
2           **VALID CONCERN?**

3    A.    No. ALECs are willing grant BellSouth authority to use the High Frequency  
4           Portion of the loops for the purpose of providing DSL service to their voice  
5           customers, so lack of authority is no excuse for refusing to provide service the  
6           FastAccess service.

7  
8    **Q.    AT PAGE 7 OF HIS DIRECT TESTIMONY, MR. MILNER ALSO RAISES**  
9           **CONCERNS ABOUT NEGOTIATING PRICING FOR PROVIDING**  
10          **BELLSOUTH'S DSL SERVICE OVER A UNE-P LINE. IS THIS**  
11          **CONCERN JUSTIFIED?**

12   A.    No. ALECs are willing to permit BellSouth to provide its DSL service over UNE  
13          loops at no cost to BellSouth.

14  
15   **Q.    HOW DO YOU RESPOND TO MR. MILNER'S STATEMENT AT PAGE 7**  
16          **OF HIS DIRECT TESTIMONY THAT BELLSOUTH HAS NO WAY TO**  
17          **DETERMINE IF A PARTICULAR ALEC HAS AUTHORIZED**  
18          **BELLSOUTH TO USE THE HIGH FREQUENCY PORTION OF THE**  
19          **ALEC'S LOOP?**

20   A.    Mr. Milner attempts to make this issue much bigger than it really is. I already  
21          have stated that ALEC voice providers will authorize BellSouth to provide DSL  
22          service over their UNE loops. In most cases, they will be placing an order to  
23          migrate a BellSouth voice customer who also has DSL service. To handle these



1 migrations, BellSouth simply can add an edit to its tables to check the status of the  
2 ALEC's agreement based on the OCN submitted on the order. BellSouth already  
3 does this when it announces new UNE-P products or services, such as the change  
4 in calling areas in Florida implemented in BellSouth OSS release 10.5. Even with  
5 respect to the much smaller number of cases in which BellSouth adds its DSL  
6 service to an ALEC voice customer's UNE-P loop, it is difficult to see why  
7 performing a check (presumably by looking at the customer's service record in  
8 BellSouth's CSR data base) to determine the ALEC involved would require the  
9 "massive undertaking" that Mr. Milner suggests.

10

11 **Q. AT PAGES 7 AND 8 OF HIS DIRECT TESTIMONY, MR. MILNER**  
12 **TESTIFIES THAT BECAUSE BELLSOUTH HAS CHOSEN TO USE THE**  
13 **CUSTOMER'S TELEPHONE NUMBER TO DRIVE ITS DSL**  
14 **PROVISIONING, MAINTENANCE, BILLING AND RECORD-KEEPING,**  
15 **OPERATIONAL PROBLEMS WILL ARISE IF DSL SERVICE IS**  
16 **PROVIDED TO ALEC END-USER CUSTOMERS. MR. FOGLE OFFERS**  
17 **SIMILAR TESTIMONY AT PAGES 2-5 OF HIS DIRECT TESTIMONY.**  
18 **DO YOU AGREE?**

19 **A.** No. If the customer already has BellSouth's DSL service, and is being migrated  
20 to a UNE-P voice provider, the splitter already is in place, and there is no need for  
21 BellSouth to disconnect or change anything for the DSL service to continue  
22 working. Because BellSouth has implemented the single C order process for  
23 UNE-P migrations (and because BellSouth is doing nothing to change the

1 physical configuration of the circuit), there is no D order generated, no loop to be  
2 disconnected at the frame, and only translations required to change features, long  
3 distance carriers and possibly blocking options, as with any other UNE-P order.  
4 Indeed, BellSouth has acknowledged that in early 2001 it provisioned DSL  
5 service to 718 UNE-P customers – presumably in most cases involving a DSL  
6 customer being migrated to an ALEC’s voice service. This experience  
7 demonstrates that DSL customers may be migrated to an ALEC UNE-P voice  
8 service with no difficulty.

9 Although Mr. Milner states that when an ALEC acquires a customer it  
10 serves via UNE-P, “there no longer is a working BellSouth telephone number in  
11 some of BellSouth’s systems,” he does not specify what systems those would be  
12 for a UNE-P customer. This statement is quite surprising, since, for example,  
13 ALECs order UNE-P by name, house number and telephone number. While  
14 telephone number is often used as an identifier (and is present in all BellSouth  
15 systems for UNE-P users), service address and the circuit identification number  
16 can also be used as identifiers.

17 In the case where a competitive provider’s voice customer is requesting to  
18 add BellSouth DSL service, there is no reason for BellSouth to treat the customer  
19 any differently than if he or she were a BellSouth voice customer when the DSL  
20 service is being provisioned. After DSL provisioning is complete, the customer is  
21 in the same position with respect to maintenance, billing and record keeping as  
22 the customer who has DSL service first and then migrates his or her voice service  
23 to a competitive provider.

1 Q. MR. MILNER RAISES CONCERNS ABOUT LOOP QUALIFICATION  
2 AT PAGES 8 AND 9 OF HIS DIRECT TESTIMONY. DO THOSE  
3 CONCERNS APPLY TO AN ALEC PROVIDING SERVICE VIA UNE-P?

4 A. No. If the customer already has DSL service, and is being migrated to an ALEC  
5 for voice service, the loop already has been qualified for DSL. In cases where an  
6 ALEC UNE-P voice customer is ordering BellSouth DSL, BellSouth's loop  
7 qualification process should be no different than if the loop qualification were  
8 being done for a BellSouth voice customer.

9

10 Q. DO YOU HAVE ANY CONCLUDING REMARKS REGARDING  
11 BELL SOUTH'S OPERATIONAL CONCERNS?

12 A. Yes. It appears that BellSouth has created "operational" issues where none exist  
13 so as to enable it to continue to hold voice customers who want BellSouth DSL  
14 service hostage. BellSouth's claims that granting the relief <sup>mci</sup> ~~the FCCA~~ seeks is  
15 not "feasible" does not bear up under scrutiny.

16

17 Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?

18 A. Yes, it does.

1 BY MS. McNULTY:

2 Q And, Ms. Lichtenberg, you had no exhibits with that  
3 rebuttal testimony, is that correct?

4 A No, I have no exhibits.

5 Q Could you please provide a brief summary of your  
6 testimony at this time?

7 A Yes.

8 Good afternoon, Commissioners. As you know, my name  
9 is Sherry Lichtenberg, and I am testifying on behalf of MCI. I  
10 want to address two areas. First, the impact to Florida  
11 consumers of BellSouth's practice of refusing to allow them  
12 either to keep FastAccess or to add FastAccess service to their  
13 lines if they seek to have a competitive carrier offer their  
14 voice service using UNE-P. And I also want to speak briefly  
15 about the rationale that BellSouth has stated for maintaining  
16 what to me is a very anticompetitive customer practice.

17 As you know, MCI provides primarily residential  
18 service in Florida with more than 90,000 customers. Since we  
19 came into the market in 2001, we have encountered many  
20 customers who have BellSouth voice service and FastAccess on  
21 the same line and wanted to migrate to us, but they can't do  
22 it. A customer who wants to go to a UNE-P CLEC must have --  
23 must make the decision to drop his FastAccess service.

24 I can't tell you the exact number of customers that  
25 we have lost or that have chosen not to come to us because of

1 this practice of BellSouth. I would like to think that our  
2 first goal is, as the doctors say, first do no harm. So if a  
3 customer has FastAccess service, we presume that he must want  
4 high-speed data access. So we don't try to convince him that  
5 he should get rid of it so that he can go back to dial-up. But  
6 we do get some indication of the problem when we look at the  
7 number of rejections that we receive from BellSouth on our  
8 orders because the customer had DSL service.

9           As some quick background, during 2002 BellSouth would  
10 routinely issue what we call a fatal clarification, a reject,  
11 for customers who had FastAccess on their line. That would  
12 mean that the order could not be provisioned. From January  
13 1st, 2002 through December 12, 2002 we received over 5,000  
14 rejects for those customers. And, again, as I said, that does  
15 not include customers who decided that they couldn't come to us  
16 because they didn't want to lose FastAccess, or customers that  
17 we told should not come to us because they would lose their  
18 FastAccess.

19           The reason this process in BellSouth is so effective  
20 is that it is not that easy to change your FastAccess to  
21 another DSL provider. And BellSouth gives the consumer a  
22 strong incentive not to. First of all, if you would like to  
23 come to me for voice service, you must disconnect FastAccess.  
24 You must, perhaps, pay a termination liability, you need to  
25 return your equipment. And then you have to start the whole

1 process over again. And what that means is connection,  
2 equipment installation, maybe upgrading your computer, redoing  
3 your e-mail address, and then telling your bank, your credit  
4 card company, anyplace you have ever done business that you do  
5 over the Internet, and all of your friends of what your new  
6 e-mail address is.

7           BellSouth's hurdle means that these customers would  
8 rather, for the most part, keep FastAccess and forgo  
9 competitive voice services. Now BellSouth is going to tell us,  
10 I'm sure, that technically this is very, very difficult. But  
11 that's just a smokescreen. It isn't difficult. It is being  
12 done. Customers can keep FastAccess, they can add FastAccess  
13 with their UNE-P line. BellSouth has agreed to do it in  
14 Louisiana, I think they can do it here.

15           That concludes my summary.

16           MS. McNULTY: Thank you, Ms. Lichtenberg.

17           MCI tenders the witness for cross.

18           CHAIRMAN JABER: Ms. Mays.

19           MS. MAYS: Thank you.

20                                   CROSS EXAMINATION

21 BY MS. MAYS:

22           Q     Good afternoon, Ms. Lichtenberg. I want to talk a  
23 little bit about the testimony that you have filed. And as I  
24 understand your testimony, it is your position that our  
25 FastAccess policy effectively precludes consumers from

1 selecting an alternative local voice provider, is that right?

2 A Yes, if that customer wishes to keep FastAccess.

3 Q And you have talked in your summary about when MCI  
4 began providing residential service, and that was in 2001. And  
5 if we wanted to be exact, it was November 16th, 2001, is that  
6 correct?

7 A Yes.

8 Q And The Neighborhood product which we have heard some  
9 about was launched in April 2002, is that correct?

10 A That sounds correct.

11 Q And Neighborhood, of course, is largely -- is  
12 provided over UNE-P lines, is that right?

13 A That is correct.

14 Q Now, are you familiar with the confidential discovery  
15 request that MCI has filed in this case?

16 A I believe I have seen them. I'm not sure familiar is  
17 the right word at this moment.

18 MS. MAYS: If I could just have handed out at one  
19 time, Madam Chair, we are going to use several confidential  
20 documents. We will pass those out briefly.

21 BY MS. MAYS:

22 Q What I'm going to refer to, Ms. Lichtenberg, is a  
23 chart that MCI provided in discovery that actually gives a  
24 historical number of lines. And for the ease of the record, we  
25 are passing out a folder, and one red folder has several

1 confidential documents that we will collect back up. These  
2 have already been admitted.

3 CHAIRMAN JABER: Thank you.

4 BY MS. MAYS:

5 Q I think if we have given you the folder right side  
6 up, you will see the first document is this confidential chart  
7 that MCI has produced. Are you familiar with that?

8 A Yes, I am.

9 Q And if you look at the bottom of the chart in the  
10 UNE-P column there is an actual total number which I won't  
11 disclose that represents MCI's UNE-P customers, do you see  
12 that?

13 A Yes, that is correct.

14 Q If you compare on this chart from June 2002 to June  
15 2003, the number has increased significantly, has it not?

16 A Yes, it has.

17 Q And if you back it up even further from June 2001 to  
18 June 2003, and, of course, now we have to look at total  
19 numbers, the number has continued over time to increase  
20 significantly, is that right?

21 A Yes, that is correct.

22 Q Now, as I understand your testimony, you have tried  
23 to quantify how the rejects fit into this picture, is that  
24 fair?

25 A Yes, that is correct.



1 Q And your corrected testimony is that in 2002 what MCI  
2 experienced was 5,938 rejects, right?

3 A That is correct.

4 Q Those rejects related to a smaller number of actual  
5 numbers, is that right?

6 A Pardon me, I'm sorry, I didn't hear you.

7 Q In terms of the actual telephone numbers, some of  
8 those rejects were actually second attempts. So that if we  
9 look at telephone numbers, the number of telephone numbers  
10 involved was lower than the reject numbers, right?

11 A Yes. I believe when we looked at -- when we took out  
12 the number of orders that were rejected multiple times that the  
13 number was slightly smaller.

14 Q And isn't it true that in discovery we said of those  
15 rejects, please tell us how many became MCI customers. Do you  
16 recall that?

17 A Yes, we do.

18 Q And MCI provided a number of 260, is that right?

19 A I believe it was 250, but you could be correct.

20 Q Okay. Well, if you look at the second confidential  
21 document, MCI actually produced a list of the rejects. And I  
22 am not going to make you look at each page of it, but if you  
23 will accept, subject to check, you produced this list for us  
24 and said in discovery that it was 260?

25 A Yes, I will accept that.

1 Q Okay. If you thumb through that document with the  
2 list of rejects, you have certain columns. And unless your  
3 counsel tells me, I don't think the column labels are  
4 confidential, are they?

5 MS. McNULTY: No, they are not. Wait, I take that  
6 back. No, they are not.

7 MS. MAYS: I'm not going to refer to any telephone  
8 numbers.

9 BY MS. MAYS:

10 Q If I look at the columns, there is an active column  
11 and a deactive column, is that right?

12 A Yes, that is correct.

13 Q And if you took all of the PONs and added them up,  
14 you would come up with the number, wouldn't you?

15 A Yes, you would.

16 Q And when we went through the list MCI gave us and we  
17 looked through everything, we actually got a number that was  
18 higher than 260. We got a number of 317. Does that sound  
19 accurate to you?

20 A I haven't seen that number, but I will accept it.

21 Q And what it looked like to us was that MCI took a  
22 total number, and then looked at active numbers, and subtracted  
23 the deactive from the active to come up with 260. Does that  
24 sound possibly what MCI could have done?

25 A Well, actually, I would assume, and I did not do this

1 research myself, I had it done for me, that we would have  
2 counted up the number of active and told you what that number  
3 was. But we might count differently.

4 Q If you look in your folder, if you flip to the next  
5 confidential document it is just one page from the multi-page  
6 document, and on that page is an account, and there are some  
7 dates between the active date and the deactive date. Do you  
8 see that?

9 A Yes, I do.

10 Q And if you looked at the dates, it looks to me, if my  
11 recollection is correct, that there is a gap of about six  
12 months. Does that sound right to you?

13 A Yes, that looks correct.

14 Q So, actually, if we were to include all of the  
15 customers who went to MCI for some period of time, we could  
16 have a higher number than the 260, is that right?

17 A I thought we had included any customer that did come  
18 to us. I would have to go back and look and count myself. I  
19 think the relevant point is that based on this research,  
20 whether we talk 310 or 260, slightly less than 5 percent of  
21 these customers actually came to us. And it is, of course,  
22 quite possible that some of those customers never had  
23 FastAccess. We have noted that sometimes the customer service  
24 record is inaccurate, and the customer has said, no, I never  
25 had FastAccess, I don't even know what you are talking about.

1 Q You gave me a figure there, if I heard your testimony  
2 correct, and you said slightly less than 5 percent of these  
3 customers actually came to you. Did I hear you correctly?

4 A Yes.

5 Q And, of course, when you gave us these number of  
6 rejects, you also told us how many total orders you submitted  
7 over approximately the same time period, didn't you?

8 A Yes. And we do need to be careful to talk about how  
9 we defined total orders. So just to make sure that we are  
10 speaking the same language, we issue purchase orders, local  
11 service requests to BellSouth for a customer that wishes to  
12 migrate to MCI, for a customer who unfortunately has not paid  
13 his bill and whose service we might be suspending temporarily,  
14 and to change or add service to that customer.

15 Q Well, you gave us a number. We actually asked you  
16 for all the orders you have submitted, and you carefully gave  
17 us a number that was not all the orders you submitted, it was,  
18 I think, a lower number. And I don't want to reveal the  
19 confidential nature of the number, but I believe if you look in  
20 our packet there is a response to Confidential Discovery Number  
21 59. Do you see that? It should hopefully be the next page in  
22 your packet.

23 A Actually, it would be the next after the next.

24 Q Okay. And I'm looking at your confidential response  
25 to Interrogatory 59, do you see that?

1 A Yes.

2 Q And you gave a number there that you have marked as  
3 confidential that is not, in fact, total numbers, but just  
4 presumably new orders, is that right?

5 A What we gave you was a number that would have  
6 resulted in a customer being able to migrate his service to MCI  
7 or become an MCI customer. We took that number to ensure that  
8 we were talking apples-to-apples. For instance, if we had  
9 issued an order to restore one of our customers who didn't pay  
10 us, we would not have been looking at apples-to-apples. It  
11 would not have been a migration.

12 Q And if we were to look at the confidential number and  
13 compare that to the rejected numbers, that tells us that a  
14 significant amount of numbers -- orders, excuse me, that MCI  
15 submitted went through the system without any problems, didn't  
16 they?

17 A You are way over my head with math, but it does look  
18 like a significant number of orders did go through. So it  
19 means our sales people were doing their job properly and trying  
20 to screen out the majority of people whose orders could not be  
21 filled.

22 Q And you talked about what your salespeople did a  
23 little bit in your summary. And if I understand it correctly,  
24 the instructions to your salespeople are for them to tell them  
25 to cancel the service, is that fair?

1           A     Actually, no, that is not fair. What our salespeople  
2 do is ask the customer if they have FastAccess. If the  
3 customer has FastAccess, we tell them that they cannot migrate  
4 to us. In addition, because BellSouth lifted the reject at the  
5 end of December of 2002, we added a third-party verification  
6 step to make sure that customers knew that if they migrated to  
7 us and if they had FastAccess, that they would lose that  
8 service. So we didn't want to accidentally take away anyone's  
9 DSL access.

10          Q     Now, included in the rejected LSRs or PONs that we  
11 have been talking about, there are rejected orders for  
12 Pensacola, Florida, is that right?

13          A     Yes, that is correct.

14          Q     And isn't it true at the time that these orders were  
15 being rejected that MCI provided a fixed wireless service in  
16 Pensacola, Florida, did it not?

17          A     I have the understanding that at the time these  
18 orders were rejected the WorldCom portion of MCI had some sort  
19 of fixed wireless service. I think, actually, BellSouth tried  
20 to buy that from us, but you lost at the auction.

21          Q     And the instructions given to these customer service  
22 representatives did not include for Pensacola, Florida, the  
23 directive that they try to sell WorldCom's fixed wireless  
24 service to those customers, did it?

25          A     MCI mass markets the organization that sells The

1 Neighborhood, and it sells residential service, did not sell  
2 any kind of fixed wireless service. So that was offered by a  
3 different portion of the company and not available to us.

4 Q So the answer to my question is no?

5 A That is correct.

6 Q Now, other than the reject notices that we have  
7 discussed, you have no other records, studies, or anything else  
8 to tell us how many MCI customers did not -- or potential MCI  
9 customers did not migrate service to MCI due to BellSouth's  
10 FastAccess policy, do you?

11 A No. We focus our sales efforts on selling and on  
12 trying to make customers happy with our service. We don't  
13 track the number of customers that terminate calls with us or  
14 choose not to take our service because they have FastAccess.

15 Q Are you aware that this complaint was filed on June  
16 12th, 2002, Ms. Lichtenberg?

17 A I will certainly accept that. It seems like an awful  
18 long time ago.

19 Q And, in fact, you filed rebuttal testimony on  
20 December 23rd, 2002, didn't you?

21 A Yes, that is correct.

22 Q And MCI and BellSouth have gone down this road before  
23 in Georgia, and you filed a complaint against BellSouth in  
24 Georgia in April of 2002, didn't you?

25 A That is correct.

1 Q So from April 2002 until today, there is nothing  
2 other than the reject notices that we have talked about that  
3 MCI has for this Commission to look at in terms of number of  
4 customers that did not transfer to MCI, is that right?

5 A That is correct.

6 Q We were talking earlier, Ms. Lichtenberg, about  
7 timing, and we talked about the fact that MCI started providing  
8 UNE-P service in Florida in 2001. You are aware, aren't you,  
9 that BellSouth provides FastAccess to customers who use resold  
10 voice lines, correct?

11 A I understand that is the case.

12 Q And if I were to direct your attention back to the  
13 first confidential document we talked about, which gave total  
14 customer numbers, if you look at the bottom of that document  
15 there are a certain number of customers to whom MCI provides  
16 voice service over resold lines, is that true?

17 A Yes. But let me explain, again, that these are  
18 customers, and I believe we did some research for you as the  
19 result of another interrogatory, who were served by some of our  
20 subsidiary companies. The mass markets organization, the  
21 organization for whom I work, that sells The Neighborhood that  
22 has an EDI interface to issue orders to BellSouth sells only  
23 UNE platform.

24 Q It is also true, isn't it, Ms. Lichtenberg, that some  
25 of the resold lines from some other branch of the MCI group,



1 some of those resold lines actually have FastAccess on them,  
2 don't they?

3 A We did respond, and if you give me a minute, I do  
4 want to refresh my mind by looking at that data, which I think  
5 I have here. We went to our business markets organization,  
6 that is the organization that was composed of MFS, which was a  
7 competitive access provider, and the other large business  
8 customers. And I believe that they did find some small number  
9 of lines where it appeared that BellSouth FastAccess was on  
10 those lines. I don't represent those companies. I have never  
11 worked with them, so I can't answer more than that.

12 Q Well, you didn't go to your other companies who are  
13 able to use resold BellSouth lines and suggest as an option for  
14 these rejected customers that they go to resale, did you?

15 A Actually, I wasn't aware that there were any other  
16 companies providing resale to our residential customers. I  
17 don't believe that these folks ever sold to a residential  
18 customer.

19 Q So the answer is, no, you did not?

20 A The answer is, no, MCI sells The Neighborhood UNE  
21 platform product.

22 Q In discovery, Ms. Lichtenberg, and I apologize  
23 because I don't have a copy of this one in your folder, but  
24 there was a confidential response to BellSouth's  
25 Interrogatory 9. And in it MCI basically responded to a

1 question about how MCI resells DSL service. Are you generally  
2 familiar with that?

3 A I would like to see it, please.

4 MS. MAYS: May I approach, Madam Chair?

5 CHAIRMAN JABER: I think Mr. Melson is helping you  
6 out there. That is confidential response to Interrogatory  
7 Number --

8 MS. MAYS: 9.

9 CHAIRMAN JABER: Thank you.

10 A This is a response from BellSouth to a question that  
11 we asked, correct?

12 Q No. What I'm asking you to look at is an MCI  
13 response to a BellSouth interrogatory. It is actually 9A.

14 A This is not that document, sorry.

15 MS. MAYS: We'll get there.

16 CHAIRMAN JABER: Ms. Mays, do you have it handy?

17 MS. MAYS: I'm looking for it. I have it somewhere.  
18 (Pause.)

19 A Thank you. I do recognize this.

20 Q And without revealing the confidential nature of the  
21 response, Ms. Lichtenberg, basically MCI is describing a type  
22 of arrangement that allows customers to obtain DSL service, is  
23 that fair?

24 A Yes. A type of arrangement that allows business  
25 customers to obtain DSL.

1 Q And this arrangement that is the topic of the  
2 confidential discovery response was actually available in  
3 February of 2000, is that correct?

4 A Yes. But let me make it clear, without sacrificing  
5 the confidentiality, that I think the word resells is a  
6 misnomer here. This response talks about in areas where we  
7 were not able to provide our business customers, and again I  
8 believe these were large business customers, we had  
9 arrangements with certain other carriers to use their network.  
10 So it wasn't -- we weren't reselling the way you would think of  
11 for local service. We were -- I think partnering is a better  
12 word.

13 Q And this partnering arrangement, if you will, that  
14 you made available for your business customers, you began  
15 making that available in February of 2000, which is before you  
16 began serving residential customers, is that right?

17 A Yes. It is a purely business arrangement. And as I  
18 understand it, it is a high-speed, maybe perhaps even  
19 symmetrical data arrangement as opposed to the asynchronous  
20 digital subscriber line that is provided in FastAccess.

21 Q Isn't it also true, Ms. Lichtenberg, that in  
22 September 2001, which is, again, prior to the time you began  
23 providing UNE-P service, that WorldCom announced an acquisition  
24 of certain assets from Rhythms, is that right?

25 A Yes. WorldCom did buy some of the Rhythms assets.

1 Q And one of the areas in which the press release that  
2 I have seen about that acquisition, one of the areas that these  
3 assets were was Miami, Florida, is that right?

4 A Yes, that is correct.

5 Q Now, if you were to go in your packet, Ms.  
6 Lichtenberg, there is another confidential document that was  
7 produced in connection with a Georgia case that I would like to  
8 direct your attention to, if I could.

9 A Would that be the extremely large document?

10 Q It would be, but you don't have to look at every  
11 page.

12 A Okay.

13 Q This document is actually a compilation of three  
14 documents that your attorney has directed us to in this case.  
15 And if you flip through the document, about halfway through,  
16 after you get through terms and conditions of service, you will  
17 get to a page with a date on it. And I don't want to --  
18 without revealing the exact date, I think we could agree that  
19 it is very close to the time MCI began providing UNE-P service  
20 in Florida?

21 A Assuming I am looking at the right document, yes.  
22 The date has a 4 in it?

23 Q Yes.

24 A Thank you. Just wanted to make sure we were on the  
25 right page.

1 CHAIRMAN JABER: Well, I'm glad you guys know where  
2 you are. That's what is important, I suppose.

3 BY MS. MAYS:

4 Q The document we are talking about, if you get to page  
5 numbers and you make it through the first document, the  
6 document we have discussed has some 50 pages, is that right?

7 A Yes. I see the page numbers.

8 Q And you are going to get to a second document then  
9 with another date that precedes the date that MCI began  
10 providing UNE-P service in Florida, is that right?

11 A Yes, I do see that.

12 Q And if you go to the second page of that document,  
13 that one being the one with the date preceding the UNE-P date,  
14 you have at least some --

15 CHAIRMAN JABER: Ms. McNulty, could you give me a  
16 little bit --

17 MS. McNULTY: Yes. I pushed the button because I am  
18 having trouble following counsel at this point.

19 THE WITNESS: The title of that would be, and I guess  
20 it is our confidential document, I hope, is DSL what is  
21 deployed today, is that correct? Is that the page you want us  
22 to look at?

23 MS. McNULTY: Ms. Mays, I found the page with the 4  
24 in it. I don't know if the Commissioners have found that.  
25 After that I am having trouble locating where you are.

1 MS. MAYS: Sure. Madam Chair, may I show you where  
2 we are?

3 CHAIRMAN JABER: Absolutely. Thank you.

4 THE WITNESS: Could somebody help me make sure I have  
5 the right page?

6 MS. McNULTY: If it is helpful, why don't you go  
7 ahead and disclose the date. These appear to be a PowerPoint  
8 presentation.

9 (Simultaneous conversation.)

10 CHAIRMAN JABER: Excuse me. I need you to be by a  
11 microphone to speak. And here is what I want to do, we are  
12 just going to take two or three minutes. Let's make sure  
13 everyone is literally on the same page, and then we will  
14 continue with our cross-examination.

15 Ms. Mays, when you are done with Staff, come show us.

16 (Off the record briefly.)

17 CHAIRMAN JABER: Thank you, Ms. Mays. And the  
18 witness, you all showed the witness?

19 THE WITNESS: Yes, I think I know where we are.

20 Thank you.

21 CHAIRMAN JABER: Thank you.

22 BY MS. MAYS:

23 Q Okay. Now that we all know where we are. What we  
24 were discussing, Ms. Lichtenberg, were dates associated with  
25 two subdocuments within this packet. And I think we have

1 agreed that one date preceded the date MCI began offering UNE-P  
2 service in Florida, and one date is slightly after MCI began  
3 providing UNE-P service in Florida, is that right?

4 A Yes, I believe we agreed to that.

5 Q And, of course, what these documents are referring to  
6 is a DSL product that WorldCom does make available to its  
7 customers, is that right?

8 A Actually, I can't answer that question. I am not  
9 familiar with the WorldCom business class products. My  
10 testimony addresses FastAccess and BellSouth's refusal to allow  
11 customers who have FastAccess at home or in very small  
12 businesses to continue to have that product when they move to a  
13 UNE-P carrier. So I'm not familiar with this document.

14 Q If you were looking at the document that is in the  
15 middle of it, we have tried to tab the page, it is the one with  
16 the four date in it. There are page numbers. If you will flip  
17 to Page 42 of that document, and let me know when you are  
18 there.

19 A I'm working on it.

20 Q Okay.

21 A Yes, I am here.

22 Q It refers, again, to a part of Florida, does it not?

23 A Yes, I do see a Florida city.

24 Q And you see also a number of potential, I guess,  
25 customers associated with that city, do you not?

1 A I see a number that refers to business.

2 Q And when MCI was getting the reject notices that we  
3 have talked about, MCI did not contact the part of the MCI  
4 company that sells business DSL and say can we work with you  
5 and provide this service to UNE-P customers, did it?

6 A No, because these were customers who we assumed  
7 wanted to keep their FastAccess service and were not business  
8 customers. We were not selling a business class service, we  
9 were selling UNE-P plain old telephone service.

10 Q Just a clarification, Ms. Lichtenberg. You have  
11 referred several times to plain old telephone service. Does  
12 MCI only sell The Neighborhood to residential customers, that  
13 is a bundled service offering?

14 A No, MCI also sells a stand-alone local product to  
15 residential and -- I can't answer for small business, I have  
16 gone blank all of a sudden. If you think of The Neighborhood  
17 as a neighborhood, it would have ramblers in it, and some very  
18 small flats, and some bigger houses. So it is a set of  
19 multiple kinds of products. There is one that is stand-alone  
20 local.

21 CHAIRMAN JABER: The Neighborhood is only local and  
22 long distance service?

23 THE WITNESS: The Neighborhood today includes a DSL  
24 product. I am happy to say that we have 39 customers since May  
25 19th when we announced it here in Florida. But, yes, it is



1 primarily a voice product, local and long distance or  
2 stand-alone local.

3 CHAIRMAN JABER: So for everyone on The Neighborhood  
4 since May, DSL service is available?

5 THE WITNESS: No, not exactly. As this document that  
6 we are looking at on Page 42 states, we are able to sell our  
7 own Neighborhood high-speed product to those customers who have  
8 UNE-P, whose lines are qualified, and are in 18 central offices  
9 that are in Miami, Fort Lauderdale. It is a very small  
10 footprint, and there are 39 customers.

11 Q Do you have any idea how many customers are eligible  
12 in Miami and Fort Lauderdale?

13 A No, I don't.

14 Q Do you have any idea of how many eligible customers  
15 that would represent out of the total number of customers in  
16 Florida?

17 A No, I don't.

18 CHAIRMAN JABER: Could you qualify it? Could you say  
19 that it is readily available to your customers in Miami?

20 THE WITNESS: The way that a DSL product works, you  
21 have to be on an all-copper loop less than 18,000 feet, without  
22 repeaters, and you have to go through a qualification step. I  
23 don't believe that we have looked at all of our customers in  
24 that area to see if they would be qualified. You generally do  
25 that by query into the preorder operational support systems

1 interface one at a time when they come to you. So I have no  
2 frame of reference.

3 CHAIRMAN JABER: Again, it goes back to the question  
4 I asked Mr. Gillan, as well. When one of your local customers,  
5 migrating local customers, you can tell that they are on  
6 FastAccess or perhaps the order comes back and let's you know  
7 that they are on FastAccess service, do you offer them since  
8 May your high-speed Internet service?

9 THE WITNESS: No. First of all, yes, we can tell if  
10 a customer has FastAccess. We look at the customer's service  
11 record. We have such a very small footprint, and because  
12 BellSouth requires these orders to be completely manual, I have  
13 to write them down and send them by fax, we are moving very,  
14 very slowly because it takes some time, probably almost an hour  
15 to get a good order written.

16 So if a customer contacts us and asks for  
17 Neighborhood high-speed and they have UNE-P, we try to qualify  
18 them at that time. It is not part of the out-bound  
19 telemarketing process right now.

20 CHAIRMAN JABER: Would you agree for those customers  
21 that qualify because they are UNE-P customers, and perhaps they  
22 are in your Miami area where it might be readily available,  
23 that BellSouth should not have to provide FastAccess service?  
24 And I'm talking about new customers. They are new to WorldCom,  
25 interested in high-speed Internet access, they contact you,

1 they contact BellSouth.

2 THE WITNESS: I believe the customer should be  
3 allowed to choose the best package and the best product. So if  
4 that customer wants to go with BellSouth, and since I am  
5 offering BellSouth the use of that UNE-P line at no charge, I  
6 think we should let the customer make the decision rather than  
7 foreclosing it.

8 BY MS. MAYS:

9 Q Just to follow up on that, Ms. Lichtenberg. You were  
10 here for Mr. Gillan's testimony, weren't you?

11 A Yes, I was.

12 Q And one of the things he and Mr. Lackey talked about  
13 was a carrier that does offer some type of DSL service which we  
14 have discussed MCI does. Do you recall that line of  
15 questioning?

16 A Yes, I do.

17 Q And Mr. Gillan talked about the relief in this case.  
18 And as I understood his testimony, what he was saying the CLECs  
19 in this case were willing to do is that any customer who asks  
20 for FastAccess could get it. So it was either an all or  
21 nothing. Is that how you understood his testimony?

22 A Yes.

23 Q So what MCI is saying is even though they offered DSL  
24 service, it does not want BellSouth to keep track of if it  
25 offers DSL in Miami versus whether it doesn't offer DSL

1 somewhere else. If the customer comes, we can take it  
2 regardless of whether you are able to serve that customer in  
3 that area?

4 A Yes. We want the customer to be able to choose  
5 whether they want Neighborhood high-speed or whether they want  
6 FastAccess.

7 Q But if the customer wants FastAccess, but doesn't --  
8 I'm sorry -- wants MCI's DSL product and is not on MCI's UNE-P  
9 service, it can't keep MCI's UNE-P service, can it?

10 A As Mr. Gillan so ably explained, at this moment  
11 because of the network issue, you have to be able to have a  
12 network to offer this, we don't make that offer. However, we  
13 look forward to talking with BellSouth to make sure that any of  
14 those 39 customers who would like to change their local service  
15 to BellSouth while keeping MCI's DSL product are given the  
16 opportunity to do that. And we will be happy to discuss that  
17 with you today and certainly with any other CLEC. We believe  
18 choice is very, very important and particularly for those 39  
19 customers.

20 Q Well, choice is so important that MCI hasn't changed  
21 the rates, terms, and conditions on its web page that say you  
22 have to have your local provider with MCI, is that fair?

23 A That is correct. At this time no one has come to us  
24 to ask if that potential is available. And I am glad that you  
25 are apparently offering that to us, so perhaps we can sit down

1 after this session and we could work that out.

2 Q But your stand-alone DSL service you have discussed  
3 you currently offer it to everyone other than UNE-P customers,  
4 correct?

5 A I'm sorry, I don't understand your question.

6 Q We have talked about MCI's discovery requests, and I  
7 think actually Mr. Gillan was looking at them where it  
8 described its stand-alone DSL offerings, and those stand-alone  
9 DSL offerings are currently only available to nonUNE-P  
10 customers, correct?

11 A They are available to large business customers who  
12 want high-speed generally symmetrical or various other kinds of  
13 business class DSL. They are not a product that is targeted to  
14 or available to residential customers. Just like, I suppose,  
15 as a residential customer I probably can't buy Centrex service  
16 without changing my class of service to business.

17 Q Are you aware, Ms. Lichtenberg, of what MCI's goal is  
18 for the year in terms of Neighborhood customers?

19 A No.

20 Q Does it refresh your memory that your goal is to  
21 obtain over 3 million residential customers by the end of 2003?

22 A No.

23 Q If I were to hand you a page of the Georgia  
24 transcript that said that MCI's goal was to obtain 3 million  
25 residential Neighborhood customers, would that refresh your

1 memory?

2 A I don't remember saying it myself, but if I did, I  
3 certainly would be refreshed.

4 MS. MAYS: If I could, Madam Chair, I'm going to have  
5 passed out two documents that we would like to have marked. We  
6 can have them as a composite, if that is all right.

7 CHAIRMAN JABER: Okay.

8 MS. McNULTY: And, Ms. Mays, before you begin your  
9 questioning, I would just like to be able to see the documents.

10 CHAIRMAN JABER: Ms. Mays, do you want to give me a  
11 short title for these, please.

12 MS. MAYS: If we can just refer to these as  
13 Neighborhood websites.

14 CHAIRMAN JABER: Hearing Exhibit 14 is identified for  
15 Neighborhood websites.

16 MS. McNULTY: Ms. Mays, before you begin your  
17 questioning, is there just one two-page document?

18 MS. MAYS: Actually there are two two-page documents.  
19 Did I just hand out one document? We will hand out another  
20 one, and we are going to look at them together.

21 CHAIRMAN JABER: We have two.

22 (Exhibit 14 marked for identification.)

23 BY MS. MAYS:

24 Q What I am handing you, just for counsel and the  
25 witness, is a document, and if you will look in the lower

1 right-hand corner, it is a two-page document, and one date is  
2 4/17/03, and then there is a date of 7/14/2003.

3 A Yes, I see those dates.

4 Q And if you were to look over in the left-hand column  
5 of the two documents, you will see that the 4/17/03 document  
6 has a picture of some pool balls, and then over one million  
7 have joined. Do you see that?

8 A Yes, I do.

9 Q And then if you go to the document, the later-dated  
10 document you will see under that same picture it has over 2  
11 million have joined, do you see that?

12 A Yes, I do.

13 Q Now, one of the things that you had talked about, Ms.  
14 Lichtenberg, if I understood your testimony, was possible  
15 hurdles to customers that want to transfer their DSL service,  
16 do you recall that?

17 A Yes.

18 Q And as I understand your testimony, you said one of  
19 those hurdles was possible termination charges, do you recall  
20 that?

21 A I'm sorry, hurdles from BellSouth?

22 Q Yes. Customer hurdles, one of which you identified  
23 as early termination fees?

24 A That is correct.

25 Q And if I could direct your attention back to the

1 large confidential document that we referred to earlier. And  
2 if you will just flip over about five pages into it, it refers  
3 to terms and conditions of a WorldCom DSL service. It is  
4 actually the sixth page from the front.

5 A Does that include the cover?

6 Q Yes. Counting the cover, it is the sixth page.

7 A Yes, I see that.

8 Q If you look down into the notes column, there is a  
9 note numbered seven, do you see that?

10 A Yes, I do.

11 Q And if I understand the terms, there is, in fact, a  
12 termination penalty associated with this WorldCom DSL service,  
13 is that correct?

14 A Yes. This is a business service offered to business  
15 customers under contractual arrangements. And generally those  
16 large business customers sign a contract with some sort of  
17 penalty.

18 Q And if you were to look at the rates and terms for  
19 the UNE-P DSL offering, isn't it correct that if the customer  
20 does not return the equipment that it gets there may be a  
21 termination fee associated with that offering, is that right?

22 A That document is not in front of me, but I have read  
23 it. If you are responding, requesting information about the  
24 MCI UNE-P high-speed offer, the one with 39 customers, yes, it  
25 does require that the equipment be returned and there is a



1 charge if you don't return the equipment.

2 Q Are you familiar with the testimony of the BellSouth  
3 witnesses in this case, Ms. Lichtenberg?

4 A I have read, read that testimony, but I must admit it  
5 was some time ago.

6 Q Are you familiar that, with Mr. Fogle's testimony in  
7 which he described some of the preliminary cost assessment that  
8 BellSouth has done looking at the relief that the CLECs want in  
9 this case?

10 A I think vaguely. I would need to see it.

11 Q Well, just -- you don't actually -- for the purposes  
12 of this question I just want to make sure you're familiar with  
13 the testimony. And my question is MCI is not offering to pay  
14 any of the costs associated with the relief it is seeking in  
15 this case, is it?

16 A No. We believe that since BellSouth has already made  
17 those changes in Louisiana so that the Louisiana order could be  
18 implemented and since BellSouth has one single OSS system that  
19 clearly there is some question about those costs.

20 Q Are you aware of whether or not the process you've  
21 talked about in Louisiana is being done manually right now?

22 A We must send a manual order to -- and that is again  
23 an order in writing. I am also aware that there is a change  
24 management request, which I believe will be completed by  
25 February of 2004 that will automate that process. Generally

1 we've agreed as CLECs that in order to make the software work  
2 properly that we will agree in change management how that gets  
3 done. So that's the date for the automation.

4 Q So right now the process is manual, yes?

5 A Yes.

6 Q Are you aware, Ms. Lichtenberg, that this Commission  
7 approved an interconnection agreement with Supra whereby  
8 current BellSouth customers who migrate to a UNE-P provider can  
9 continue to receive FastAccess service?

10 A I understand from today that there is some sort of an  
11 interconnection agreement and some disputes concerning it. I  
12 have not read that agreement and I'm not familiar with it.

13 MS. MAYS: I don't have anything else at this time.

14 CHAIRMAN JABER: Thank you, Ms. Mays. Staff?

15 MS. CHRISTENSEN: Yes.

16 CROSS EXAMINATION

17 BY MS. CHRISTENSEN:

18 Q Just a few questions, Ms. Lichtenberg, just for  
19 clarification.

20 Is FastAccess purely a residential product as far as  
21 you're aware?

22 A My understanding is that FastAccess is a, is a  
23 product that BellSouth sells to its residential customers, yes.

24 Q Okay. So we were talking about termination liability  
25 and that having to do with, I guess, certain MCI-related

1 product. Do you have a termination liability on your  
2 residential FastAccess or similar DSL service?

3 A On our high-speed product if you decide you no longer  
4 want high-speed, you must return the equipment to us or there  
5 will be a charge for the equipment. I wouldn't call it a  
6 termination penalty. It's a if you get the modems back, you  
7 can reuse them.

8 Q Okay. So there's no, there's no fee or penalty if  
9 you decide, you know, once you get it, let's say a month later  
10 you don't like the service, you want to switch to a different  
11 service, there's no penalty termination?

12 A There is no contract termination fee. There is just  
13 a charge if you don't return your hardware.

14 Q Do you know as far as the FastAccess service whether  
15 or not there is a monetary penalty associated with early  
16 termination? Is there like a year-long contract or some other  
17 obligation that you have to fill?

18 A I have not read the FastAccess documentation. I  
19 believe in some cases there might be.

20 Q Okay. And you had talked about in your testimony on  
21 Page 8, Lines 4, 5 and 6, you talk about 718 UNE-P customers  
22 that were allowed to keep their FastAccess service because they  
23 didn't -- I guess BellSouth was not aware that they had  
24 migrated to the CLEC service; is that correct?

25 A Yes.

1 Q Of those 718 customers, at some point did BellSouth  
2 come back and disconnect them from FastAccess?

3 A My understanding from documentation that was provided  
4 by BellSouth, I believe a letter from Mr. Greg Follensbee to  
5 the companies that had accidentally, I guess, gotten these  
6 customers, they were told that the customer service would be  
7 terminated because BellSouth would no longer offer that service  
8 to the customers.

9 Q And you had said somewhere in your marketing strategy  
10 that if you have people that are on your FastAccess or that if  
11 you find out the customer has FastAccess, you don't offer to  
12 provide them voice service. I want to make sure I'm clear.  
13 Are they offered the opportunity to at least obtain your voice  
14 service or is it a flat out we cannot provide you service or is  
15 it a we cannot provide you service along with your FastAccess,  
16 so if you wish to continue? I'm not quite sure exactly what it  
17 is you're telling the customers.

18 A If we know from looking at the customer's service  
19 record, that is the CSR, that the universal service code, USOC,  
20 U-S-O-C, for FastAccess is present, we tell the customer that  
21 they cannot migrate to us unless they discontinue the  
22 FastAccess. Because if they do come to us, BellSouth will  
23 summarily stop that service. And we need to make sure that  
24 those customers don't for some reason lose their service  
25 without paying attention to the fact that they will.

1 Q Okay. And I'm not sure -- I just want to clarify.  
2 On those numbers that you were talking about earlier about the  
3 reject, rejection numbers, those only involved cases where it  
4 wasn't clear up-front that those persons had FastAccess?

5 A No. In two thousand -- up until December 29th of  
6 2002 at the request of CLECs BellSouth had an edit in their  
7 system, in their operational support system that rejected  
8 orders for any customer that had the ADSL USOC on their  
9 customer service record. On December 29th -- and so that's  
10 where those rejects came from, that's why the date stops  
11 December 12th, because on December 29th BellSouth lifted that  
12 edit. And instead if that order, if we were to place that  
13 order, the order would flow through the BellSouth systems. The  
14 customer would get voice with MCI and BellSouth would come in  
15 and terminate the FastAccess service with no warning and no  
16 notice. So we have had to make sure that customers know that  
17 if they have FastAccess and have the temerity to switch their  
18 voice to a CLEC, that that FastAccess will be taken away.

19 Q So given that information, when was it that you  
20 implemented the policy change to let customers know that they  
21 would be disconnected from FastAccess if they switched voice  
22 service?

23 A We always told customers that as part of the sales  
24 call. After the change on December 29th we included in  
25 third-party verification a discussion with the customer saying

1 if you have FastAccess, you will lose it. And when the  
2 customer heard that, they began to cancel orders obviously. We  
3 just wanted to make sure that no customer would be harmed by  
4 BellSouth's practice of punishing them for going to a  
5 competitive provider.

6 CHAIRMAN JABER: So you were telling them before  
7 BellSouth could notify them?

8 THE WITNESS: BellSouth was not notifying customers.  
9 The carrier notification for that change on December 29th  
10 stated that there would be no notification to customers, that  
11 CLECs were responsible for notifying customers and that  
12 BellSouth would simply remove the service. We, therefore,  
13 taking our responsibility of doing no harm seriously, we put  
14 something into the, the third-party verification.

15 CHAIRMAN JABER: And what do you do now post-May in  
16 Miami, for example?

17 THE WITNESS: Post-May in Miami -- and I don't, I  
18 actually don't have the script. If the customer has  
19 FastAccess, we tell them they will lose it. And it is possible  
20 that we might also say, and in Miami we might be able to offer  
21 you -- again, it's a small footprint, it's 18 central offices,  
22 but I can't tell you --

23 CHAIRMAN JABER: It's possible or is it responsible?

24 THE WITNESS: Pardon me?

25 CHAIRMAN JABER: It's possible or it's responsible?

1 Aren't you salespeople directed to let the customers know that  
2 that's a product offering that is available to them?

3 THE WITNESS: Yes. But, again, because of the  
4 requirements for FastAccess, I'm sorry, for DSL, the  
5 18,000 feet, the loop qualification and where we physically  
6 have things located, we cannot say to a customer right then and  
7 there, yes, it is available for you.

8 CHAIRMAN JABER: What do you have to do to verify  
9 that?

10 THE WITNESS: You issue a preorder query into the  
11 BellSouth systems, which looks at loop length and loop makeup.  
12 For instance, if it is, if the customer is served by fiber, we  
13 can't offer our DSL via line splitting. In addition, we deal  
14 with those orders offline to make sure that they match up to  
15 the footprint and that there is space available on the  
16 equipment in the offices.

17 CHAIRMAN JABER: Okay.

18 THE WITNESS: I can't tell you how often a customer  
19 is qualified.

20 CHAIRMAN JABER: WorldCom customer existing, never  
21 has been a BellSouth customer, Miami, post-May, that customer  
22 contacts BellSouth and they say, I want only FastAccess  
23 service. Can BellSouth on its end know whether your Internet  
24 service is available in Miami?

25 THE WITNESS: I assume that if BellSouth dialed into

1 the MCI web, and there is a kind of quickie qualification tool  
2 on the web, typed in the customer's number, BellSouth could  
3 tell the highest level this is available. In addition, I am  
4 assuming that BellSouth could do in its own preorder systems a  
5 qualification to see about loop length, et cetera, but I'm not  
6 sure.

7 CHAIRMAN JABER: Let's assume they can do that, and  
8 right or wrong BellSouth does not want to provide FastAccess  
9 service to that customer in the hypothetical I've given you. I  
10 understand what you've said about consumer choice. But  
11 business decision, economics, poor management, whatever,  
12 BellSouth has decided they don't want to provide FastAccess  
13 service to that customer. Would you agree with me they don't  
14 have to?

15 THE WITNESS: I would agree with you that they have  
16 made a decision. I think it is an anticompetitive decision.

17 CHAIRMAN JABER: Help me understand. Before you go  
18 on, how is it an anticompetitive decision? They've looked up  
19 through the query on the Internet and they realize the  
20 18,000-foot limitation is not there. You've got a central  
21 office, remote terminals, whatever, all of those things are,  
22 that are necessary for you to provide high-speed Internet  
23 access to that customer, they have verified that, they have  
24 made, right or wrong, they've made a decision not to provide  
25 FastAccess service to that customer. How is that



1 anticompetitive behavior?

2 THE WITNESS: And are you suggesting that they would  
3 say, Mr. Customer, you can't get FastAccess from me, but if you  
4 call MCI, your local provider, they could probably provide you  
5 line splitting?

6 CHAIRMAN JABER: No. I'm suggesting they say,  
7 Mr. Customer, we don't want to provide you FastAccess or we  
8 cannot, whatever. For whatever reasons they say FastAccess  
9 service is not available, how is that anticompetitive behavior  
10 under the hypothetical I just laid out for you?

11 THE WITNESS: To me it is anticompetitive because it  
12 is telling that, it's telling that customer they can't have a  
13 service they asked for. I suppose if they acted as our sales  
14 agent and said, but you can go to MCI and get this service, it  
15 would be different.

16 CHAIRMAN JABER: What's your definition of  
17 anticompetitive behavior?

18 THE WITNESS: In my world it's not allowing a  
19 consumer to get a service that the consumer wants and for which  
20 the consumer is qualified in an attempt to get that consumer's  
21 voice service back.

22 CHAIRMAN JABER: Even though there is a consumer  
23 choice?

24 THE WITNESS: I'm sorry. I don't understand. You  
25 mean because the consumer has a choice?

1 CHAIRMAN JABER: Uh-huh.

2 THE WITNESS: I think it follows with Mr. Gillan's  
3 statement that I don't understand why BellSouth would turn away  
4 a customer.

5 CHAIRMAN JABER: Well, why, why is that important to  
6 the hypothetical here? You, you established with me that they  
7 can verify, BellSouth can verify through an Internet query that  
8 you are able to provide Internet service or someone else can.  
9 My question to you is how is it anticompetitive behavior when  
10 there is another provider that can provide the service and one  
11 company just chooses not to? Let's say it's poor management.  
12 They haven't figured out that the numbers are there, they don't  
13 want to provide FastAccess to this potential customer. How is  
14 that anticompetitive behavior?

15 THE WITNESS: If the customer continues to say to  
16 BellSouth how do I get your FastAccess service and BellSouth  
17 says you can only have that service if you are my voice  
18 customer, then that is anticompetitive. If BellSouth, I  
19 suppose, just says, nope, we won't sell you FastAccess,  
20 goodbye, perhaps it's not.

21 CHAIRMAN JABER: Thank you, Ms. Lichtenberg. Staff?

22 BY MS. CHRISTENSEN:

23 Q Ms. Lichtenberg, one last question.

24 If you know -- I know you talked about the central  
25 offices in Miami. Do you know how many central offices there

1 are in the general Miami area?

2 A No, I don't.

3 MS. CHRISTENSEN: Okay. Staff has no further  
4 questions.

5 CHAIRMAN JABER: Commissioners, do you have any  
6 questions? Okay. Redirect?

7 MS. McNULTY: No redirect -- excuse me. No redirect.

8 CHAIRMAN JABER: Ms. Lichtenberg, thank you for your  
9 testimony.

10 THE WITNESS: Thank you.

11 CHAIRMAN JABER: And there were no exhibits? Oh,  
12 actually there was a BellSouth exhibit.

13 THE WITNESS: We're supposed to give back these.

14 CHAIRMAN JABER: Yes. Please collect all the  
15 confidential exhibits, Ms. Mays. Without objection, Exhibit 14  
16 is admitted into the record.

17 (Exhibit 14 admitted into the record.)

18 CHAIRMAN JABER: Mr. Bradbury is the next witness.

19 MS. KAUFMAN: Yes, Madam Chair. AT&T would call  
20 Mr. Jay Bradbury.

21 CHAIRMAN JABER: And Mr. Bradbury was sworn,  
22 Ms. Kaufman? Remind me.

23 MS. KAUFMAN: Yes, ma'am. I believe Mr. Bradbury was  
24 here at the beginning.

25 CHAIRMAN JABER: Ready?

1 JAY BRADBURY

2 was called as a witness on behalf of AT&T and, having been duly  
3 sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MS. KAUFMAN:

6 Q Would you state your name and business address for  
7 the record, please?

8 A Jay Bradbury.

9 Q And your business address?

10 A All of the sudden I can't remember my business  
11 address. 1200 Peachtree Street, Atlanta, Georgia 30309.

12 Q Thank you. Mr. Bradbury, did you cause 17 pages of  
13 rebuttal testimony to be filed in this docket?

14 A Yes, ma'am.

15 Q And do you have any changes or corrections to that  
16 testimony?

17 A I have one change. It would be on Page 4 at Line 6.  
18 And it very simply needs to read that I am providing testimony  
19 on behalf of AT&T. The remainder of the sentence, "the Florida  
20 Competitive Carriers Association," can be stricken.

21 Q With that --

22 COMMISSIONER BRADLEY: Your voice was fading. Say  
23 that again.

24 THE WITNESS: The rest of that sentence talking about  
25 the Florida Carriers -- FCCA can be stricken.

1 CHAIRMAN JABER: Mr. Bradbury, I need you to bring  
2 the microphone right up to you. There you go.

3 THE WITNESS: Okay.

4 CHAIRMAN JABER: And you were making a change on Page  
5 4, Line 6.

6 THE WITNESS: Page 4, Line 6.

7 CHAIRMAN JABER: You removed the words "Florida  
8 Competitive Carriers Association" and you inserted "AT&T."

9 THE WITNESS: I struck everything from -- what's the  
10 easiest way to say it?

11 CHAIRMAN JABER: And you deleted the rest of the  
12 sentence.

13 THE WITNESS: Right.

14 CHAIRMAN JABER: Thank you.

15 MS. KAUFMAN: The sentence would just read, "I am  
16 providing testimony on behalf of AT&T." Correct, Mr. Bradbury?

17 THE WITNESS: Correct.

18 BY MS. KAUFMAN:

19 Q With that change, Mr. Bradbury, is this testimony as  
20 you filed it true and correct to the best of your knowledge?

21 A Yes, ma'am.

22 MS. KAUFMAN: I'd ask that Mr. Bradbury's rebuttal  
23 testimony be inserted into the record as though read.

24 CHAIRMAN JABER: The prefiled rebuttal testimony of  
25 Jay Bradbury shall be inserted into the record as though read.

1                   **FLORIDA COMPETITIVE CARRIERS ASSOCIATION**

2                   **REBUTTAL TESTIMONY OF JAY BRADBURY**

3                   **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

4                   **DOCKET NO. 020507-TL**

5                   **December 23, 2002**

6  
7  
8  
9  
10   **Q.   PLEASE STATE YOUR NAME, BUSINESS ADDRESS, BY WHOM YOU**  
11   **ARE EMPLOYED, AND IN WHAT CAPACITY.**

12   A.   My name is Jay M. Bradbury. My business address is 1200 Peachtree Street, Suite  
13       8100, Atlanta, Georgia 30309. I am employed by AT&T Corp. (AT&T) as a  
14       District Manager in the Law and Government Affairs Organization.

15  
16   **Q.   PLEASE DESCRIBE YOUR EDUCATIONAL AND PROFESSIONAL**  
17   **BACKGROUND.**

18   A.   I graduated with a Bachelor of Arts degree from The Citadel in 1966. I have taken  
19       additional undergraduate and graduate courses at the University of South Carolina  
20       and North Carolina State University in Business and Economics. I earned a  
21       Masters Certificate in Project Management from the Stevens Institute of  
22       Technology in 2000.

1 I have been employed in the telecommunications industry for more than thirty-two  
2 years with AT&T, including 14 years with AT&T's then-subsubsidiary, Southern Bell.  
3 I began my AT&T career in 1970 as a Chief Operator with Southern Bell's  
4 Operator Services Department in Raleigh, North Carolina. From 1972 through  
5 1987, I held various positions within Southern Bell's (1972 - 1984) and AT&T's  
6 (1984 - 1987) Operator Services Departments, where I was responsible for the  
7 planning, engineering, implementation and administration of personnel, processes  
8 and network equipment used to provide local and toll operator services and  
9 directory assistance services in North Carolina, South Carolina, Kentucky,  
10 Tennessee and Mississippi. In 1987, I transferred to AT&T's External Affairs  
11 Department in Atlanta, Georgia, where I was responsible for managing AT&T's  
12 needs for access network interfaces with South Central Bell, including the  
13 resolution of operational performance, financial and policy issues.

14  
15 From 1989 through November 1992, I was responsible for AT&T's relationships  
16 and contract negotiations with independent telephone companies within the South  
17 Central Bell States and Florida. From November 1992 through April 1993, I was  
18 a Regulatory Affairs Manager in the Law and Government Affairs Division. In  
19 that position, I was responsible for the analysis of industry proposals before  
20 regulatory bodies in the South Central states to determine their impact on AT&T's  
21 ability to meet its customers' needs with services that are competitively priced and  
22 profitable. In April 1993, I transferred to the Access Management Organization  
23 within AT&T's Network Services Division as a Manager - Access Provisioning

1 and Maintenance, with responsibility for ongoing management of processes and  
2 structures in place with Southwestern Bell to assure that its access provisioning  
3 and maintenance performance met the needs of AT&T's strategic business units.  
4

5 In August 1995, as a Manager in the Local Infrastructure and Access Management  
6 Organization, I became responsible for negotiating and implementing operational  
7 agreements with incumbent local exchange carriers needed to support AT&T's  
8 entry into the local telecommunications market. I was transferred to the Law and  
9 Government Affairs Organization in June 1998, with the same responsibilities.

10 One of my most important objectives in these negotiations has been to ensure that  
11 BellSouth provides AT&T with efficient and nondiscriminatory access to  
12 BellSouth's Operations Support Systems (OSS) throughout BellSouth's nine-state  
13 region to support AT&T's market entry. As part of my overall responsibilities, I  
14 have personally spent hundreds of hours in direct negotiations and implementation  
15 meetings with BellSouth personnel and subject matter experts. My activities have  
16 included direct participation in OSS implementation teams, review and analysis of  
17 data from the testing and use of BellSouth's interfaces as they are implemented,  
18 and continuing consultation with AT&T decision makers concerning OSS.  
19

20 **Q. HAVE YOU EVER TESTIFIED BEFORE?**

21 A. Yes, I have testified on behalf of AT&T in a number of state public utility  
22 commission proceedings regarding OSS issues, including arbitration, performance  
23 measurement, and Section 271 proceedings in all nine states in the BellSouth



1 region. I have also testified on behalf of AT&T in proceedings before the FCC  
 2 regarding BellSouth's applications to provide in-region interLATA service.

3  
 4 **Q. ON WHOSE BEHALF ARE YOU PROVIDING THIS REBUTTAL**  
 5 **TESTIMONY?**

6 A. I am providing testimony on behalf of <sup>AT&T</sup> ~~the Florida Competitive Carriers Association~~  
 7 ~~(FCCA), an advocacy group formed to promote competition broadly throughout~~  
 8 ~~Florida.~~

9  
 10 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

11 A. The purpose of my testimony is to respond to a number of assertions associated  
 12 with Issues 2, 4, 5 and 6 contained in the testimony of BellSouth's witnesses John  
 13 A. Ruscilli, Bill Smith, W. Keith Milner, and Eric Fogle about alleged "operational  
 14 problems" associated with providing BellSouth's FastAccess® Internet access  
 15 service (FA Service) to customers who receive voice service from an Alternative  
 16 Local Exchange Carrier (ALEC). Responses to policy claims BellSouth's  
 17 witnesses present that do not have an associated "operational problem" are  
 18 discussed in the rebuttal testimony of Joseph Gillan.<sup>1</sup>

19  
 20 Collectively, BellSouth's witnesses claim that providing FA Service to *its own*  
 21 existing customers or to consumers who want to be BellSouth FA Service  
 22 customers, when they receive voice service from an ALEC, will cause harm to

---

<sup>1</sup> This includes responses to the portions of Mr. Fogle's testimony related to Issues 6a and 6b, in which he repackages operational problems as elements in an invalid argument that changes in rates, terms and conditions are justified.

1 BellSouth and the consumers of Florida because of vaguely described operational  
 2 issues, including:

- 3
- 4 • ALEC control over the entire loop (in both UNE-P and UNE-L situations)<sup>2</sup>
    - 5 ○ Permission for BellSouth to use the high frequency portion of the loop
    - 6 (HFPL)
    - 7 ○ BellSouth does not have any means to determine if any one of the
    - 8 hundreds of ALECs in the BellSouth region has granted authorization
    - 9 for BellSouth to access the HFPL for any given loop.
    - 10 ○ Negotiating rates, terms and conditions
  - 11 • Additional operational costs<sup>3</sup>
    - 12 ○ Inability to “take full advantage of its DSL investments”
    - 13 ○ Unexplained “additional costs” to continue service to its own
    - 14 customers
  - 15 • Would require that BellSouth provide<sup>4</sup>
    - 16 ○ Terminating ATM circuit
    - 17 ○ Help Desk
    - 18 ○ Installation Services
    - 19 ○ Access to the Internet
    - 20 ○ Customer Premises Equipment
  - 21 • BellSouth would have to develop an alternative method of billing<sup>5</sup>
  - 22 • The “telephone” number is the driver for provisioning, maintenance, billing and
  - 23 record-keeping.<sup>6</sup>
    - 24 ○ All systems and “hundreds” of supporting sub-systems.
    - 25 ○ UNE-P and UNE-L wipe numbers from BellSouth systems.
    - 26 ○ BellSouth’s database does not include loop information for facilities-
    - 27 based ALEC telephone numbers, and BellSouth cannot use its database
    - 28 to readily determine whether a given loop is DSL compatible.
    - 29 ○ Systems “would have to be totally revamped.”
    - 30 ■ Very large, complex, and detailed internal system change

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<sup>2</sup> Ruscilli, Direct, page 12, line 9-21; Milner, Direct, page 5, line 1 through page 6, line 3; Milner, Direct, page 6, line 17-20; Milner, Direct, page 7, lines 4-7.

<sup>3</sup> Smith, Direct, page 6, line 1 through page 7, line 12.

<sup>4</sup> Milner, Direct, page 4, lines 13-18.

<sup>5</sup> Milner, Direct, page 4, lines 18-23; Fogle, Direct, page 5, lines 9-15.

<sup>6</sup> Milner, Direct, page 7, line 16 through page 8, line 15; Milner, Direct, page 9, lines 9-12; Fogle, Direct, page 2, line 22 through page 3, line 7; Fogle, Direct, page 4, lines 1-6; Fogle, Direct, page 4, lines 9-15.

- 1                   ▪ Massive amount of expensive and time consuming “re-writes”
- 2                   ▪ Very large amount of resources.
- 3           • Providing DSL signals over ALEC UNE-L loops is a “technical challenge,”
- 4                   and requires “additional equipment.”<sup>7</sup>
- 5           • Mechanized maintenance and trouble isolation systems cannot be used on
- 6                   stand-alone loops purchased by ALECs.<sup>8</sup>
- 7           • Providing service to BellSouth’s customers “is simply not feasible.”<sup>9</sup>

8           None of BellSouth’s witnesses provide any information or data to support these  
 9           vague claims. And, as I will explain below, none of these allegations impose any  
 10           significant administrative or operational burden upon BellSouth’s ability to provide  
 11           FA Service to its own existing and potential customers. BellSouth’s claims are  
 12           exaggerated, misleading, based on partial truths, and even where partially true,  
 13           have been eliminated or mitigated by existing procedures and systems presently  
 14           available to BellSouth.

15

16   **Q.    IN UNE-P AND UNE-L SITUATIONS DOES ALEC CONTROL OR**  
 17   **OWNERSHIP OF THE ENTIRE FREQUENCY SPECTRUM OF THE**  
 18   **LOOP PRESENT PROBLEMS IN THE CONTINUED PROVISIONING**  
 19   **OF FA SERVICE TO EXISTING CUSTOMERS OR POTENTIAL NEW**  
 20   **CUSTOMERS?<sup>10</sup>**

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<sup>7</sup> Fogle, Direct, page 3, lines 9-12 and page 4 lines 21-22.

<sup>8</sup> Milner, Direct, page 9, lines 14-22; Fogle, Direct, page 4, lines 6-9; Fogle, Direct, page 4, line 23 through page 5, line 4.

<sup>9</sup> Fogle, Direct page 3, lines 14-19.

<sup>10</sup> Ruscilli, Direct, page 12, line 9-21; Milner, Direct, page 5, line 1 through page 6, line 3; Milner, Direct, page 6, line 17-20; Milner, Direct, page 7, lines 4-7.

1 A. No. As should be obvious, from the fact that the FCCA has brought this issue to  
2 the Commission for resolution, ALECs have no problem providing BellSouth the  
3 permission necessary for BellSouth to serve its existing FA Service customers or  
4 future FA Service customers who are served by ALEC UNE-P or UNE-L  
5 arrangements.

6  
7 Identification of the ALEC serving a given UNE-P or UNE-L served end user is a  
8 very minor undertaking. For most UNE-P served end users, the telephone number  
9 will not have changed and, even where it has changed, the number will reside in  
10 BellSouth's switch and various provisioning, maintenance, and billing databases in  
11 exactly the same way as a BellSouth retail number or a resale number. When  
12 UNE-L is used to serve an end user, there is a higher probability that the  
13 association between loop and telephone number when the customer was  
14 BellSouth's retail end user may change – however, this is not a significant  
15 problem. The loop's circuit identification and the end users service address reside  
16 in BellSouth's databases that also contain the identification of the ALEC serving  
17 the end user. As I will discuss below, either one of these pieces of information is  
18 sufficient to make use of the BellSouth databases required to qualify, provision and  
19 maintain FA Service.<sup>11</sup>

20  
21 Further, there is an existing set of guidelines for providing other carriers with  
22 permission in the form of Letters of Authorization that the ALECs (and DLECs)  
23 and BellSouth have developed as a result of Line Sharing / Line Splitting

---

<sup>11</sup> Should BellSouth's records about the telephone number in use on any UNE-L loop become out of sync, there are many sources that can be used to restore the proper relationship. These include the DA database that ALECs can only update by placing orders with BellSouth, the 911 database, the Line Information Data Base (LIDB), the National LNP Database, and, of course, direct reconciliation with the ALEC.

1 Collaborative meetings held over the past several years.<sup>12</sup> There is also a Web  
2 accessible database associated with this process. No development is required for  
3 BellSouth to participate in this process as another DLEC.

4  
5 The FCCA does not believe that there is any justification for any changes in the  
6 rates, terms and conditions associated with FA Service to UNE-P and UNE-L  
7 serviced end users.

8  
9 **Q. ARE THERE ANY ADDITIONAL OPERATIONAL COSTS FOR**  
10 **BELLSOUTH TO CONTINUE TO PROVIDE FA SERVICE TO ITS**  
11 **EXISTING CUSTOMERS SERVED BY UNE-P OR UNE-L OR TO**  
12 **PROVIDE FA SERVICE TO NEW CUSTOMERS SERVED BY ALEC**  
13 **UNE-P OR UNE-L ARRANGEMENTS?**<sup>13</sup>

14 A. No. As to continuing FA Service to its own existing customers, every thing  
15 BellSouth needs is already in place and in service. After all, BellSouth is *currently*  
16 providing FA Service to these customers. As to new FA service customers, the  
17 request and the issue is for BellSouth to serve customers it has already planned to  
18 serve and invested to serve – once again every thing necessary to provide service is  
19 in place, it only needs to be placed in service. The FCCA is not asking BellSouth  
20 to provide FA Service to end users it would not otherwise serve.

21  

---

<sup>12</sup> Exhibit No. \_\_\_\_, JMB-1 is a copy of the current CLEC Information Package “Letter of Authorization (LOA) for Line Splitting.”

<sup>13</sup> Smith, Direct, page 6, line 1 through page 7, line 12.

1 While Mr. Gillan is the economist and has addressed the lack of any economic  
2 rationale for BellSouth's behavior (other than its desire to protect its position as  
3 the voice monopolist), I would note that BellSouth's policy is economically  
4 unsound. Willfully disconnecting revenue-paying customers from in-service  
5 investments in the first instance and refusing to place installed investments into  
6 revenue-producing service in the second is a decision that makes no sense.

7  
8 While Mr. Smith provided no indication what additional costs BellSouth would  
9 incur, Mr. Fogle claims (without any supporting evidence) that a splitter, wiring  
10 and additional manual effort would be needed.<sup>14</sup> However, as explained above,  
11 every thing necessary for BellSouth to continue to serve its existing FA Service  
12 customers is already in place and in service, and every thing necessary to serve a  
13 service address (end user) that BellSouth had planned and invested in to serve is in  
14 place needing only to be placed into service.

15  
16 **Q. IS MR. MILNER CORRECT THAT IF BELLSOUTH PROVIDES FA**  
17 **SERVICE TO ITS OWN CUSTOMERS SERVED BY ALEC UNE-P OR**  
18 **UNE-L ARRANGEMENTS, BELLSOUTH WOULD BE REQUIRED TO**  
19 **PROVIDE A NUMBER OF OTHER ELEMENTS OF THE SERVICE?**<sup>15</sup>

---

<sup>14</sup> Fogle, Direct, page 7, line 16 through page 8, line 16.

<sup>15</sup> Milner, Direct, page 4, lines 13-18.

1 A. Yes, and this is *no different* than what is required for BellSouth to provide FA  
2 Service to its retail customers or ALEC customers served by resale. To provide  
3 FA Service to *any* customer BellSouth must provide:

- 4  
5           ○ Splitters  
6           ○ Digital Subscriber Loop Access Modules (DSLAM)  
7           ○ Terminating ATM circuit  
8           ○ Help Desk  
9           ○ Installation Services  
10          ○ Access to the Internet  
11          ○ Customer Premises Equipment

12 Without these elements, there simply is no BellSouth FA Service. Mr. Milner's  
13 statement is totally unremarkable; however, it does demonstrate that providing FA  
14 Service to BellSouth's existing and potential customers places no additional  
15 administrative or operational burdens on BellSouth.

16  
17 **Q. WOULD BELL SOUTH HAVE TO DEVELOP AN ALTERNATIVE**  
18 **METHOD OF BILLING AS SUGGESTED BY MR. MILNER AND MR.**  
19 **FOGLE?<sup>16</sup>**

20 A. No. BellSouth already has in place the capability to render bills and accept  
21 payments using credit cards. This is clearly indicated in the information available  
22 on the FastAccess Internet Service Web site. (See Exhibit No. \_\_\_\_, JMB-2 at  
23 pages 17 and 18). Credit card billing is a common form of billing used by ISPs  
24 other than BellSouth and familiar to BellSouth's existing and potential customers.  
25 It is bizarre for BellSouth to argue in defense of a policy that disconnects service

---

<sup>16</sup> Milner, Direct, page 4, lines 18-23; Fogle, Direct, page 5, lines 9-15.

1 to *100 percent* of customers who make a decision to receive voice service from a  
2 new provider because *some* customers might object to a change in billing if  
3 BellSouth continued to provide the service! Additionally, it should be noted that  
4 in continuing to provide FA Service to ALEC resale customers, BellSouth faces  
5 the same alleged billing problems it describes in its testimony, but has no concerns  
6 in doing so.

7  
8 Further, BellSouth also has the capability to produce bills for customers that do  
9 not have working BellSouth telephone numbers. BellSouth provides final billing  
10 and adjustments daily to customers that no longer receive BellSouth telephone  
11 service and mails them to addresses across the country. BellSouth also bills  
12 customers who purchase services not identified by telephone numbers through the  
13 use of Miscellaneous Account Numbers (MANs).

14  
15 BellSouth's billing capabilities are well-developed and flexible. Pages 29 and 30 of  
16 Exhibit No. \_\_\_\_, JMB-2 are samples of monthly bills for FA Service that might be  
17 produced for customers who qualify for a discount (Sample Bill Profile 3) and  
18 those who do not (Sample Bill Profile 4). The discount applies if the FA Service  
19 customer also purchases one of a number of other BellSouth services. On pages 8  
20 and 9 of the same exhibit, there are a number of promotions, discounts and rebates  
21 that BellSouth FA Service billing system currently accommodates. Additionally,  
22 on page 18, the Commission can see that the billing system also has an on-line  
23 electronic capability.



1 Q. IS THE TELEPHONE NUMBER THE ONLY EFFECTIVE DRIVER OR  
2 METHOD OF ACCESS TO BELLSOUTH'S PROVISIONING,  
3 MAINTENANCE, BILLING, AND RECORD KEEPING SUCH THAT  
4 EXPENSIVE AND TIME CONSUMING "RE-WRITES" OF SYSTEMS  
5 ARE REQUIRED TO COMPLY WITH THE FCCA REQUEST?<sup>17</sup>

6 A. No. Mr. Milner and Mr. Fogle have taken a truth – that a telephone number  
7 provides an easy driver, method of access, or starting point for business  
8 transactions or database queries – and made it incorrectly appear that the absence  
9 of a telephone number is fatal to the process. It simply is not so. Virtually all  
10 BellSouth Operations Support Systems (OSS) and associated databases can be  
11 used with equal effectiveness when presented with any one of three key identifiers  
12 – the telephone number, a circuit identification number, or the service address.<sup>18</sup>  
13 In fact, in most cases, the most reliable starting point for database queries is the  
14 service address – the service address remains fixed, while telephone numbers and  
15 circuit identifications associated with the address may change at any time. This is  
16 particularly true of the databases associated with loop information.

17  
18 It is also true that BellSouth built the Loop Qualification System (LQS), used as a  
19 "database of convenience" to quickly provide an indication whether an end user

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<sup>17</sup> Milner, Direct, page 7, line 16 through page 8, line 15; Milner, Direct, page 9, lines 9-12; Fogle, Direct, page 2, line 22 through page 3, line 7; Fogle, Direct, page 4, lines 1-6; Fogle, Direct, page 4, lines 9-15.

<sup>18</sup> Exhibit No. \_\_\_\_, JMB-3 illustrates this. The exhibit shows what data fields are required (R), conditional (C), or optional (O) when sending a Loop Makeup Data Query to BellSouth to determine if a working loop can support DSL. On page 2, the table states: "Only one of circuit ID, Telephone Number, or Service Address is required." Each entry is indicated as being conditional.

1 can be provided with BellSouth's FA Service, such that it can only be accessed by  
2 telephone number. However, LQS is not the "database of record" used when an  
3 order for FA Service is actually placed.<sup>19</sup> That database is the Loop Facilities  
4 Assignment and Control System (LFACS) database. LFACS contains information  
5 on all loops in the BellSouth region, regardless of whether they are in use to  
6 support BellSouth retail, ALEC resale, ALEC UNE-P or ALEC UNE-L, or are  
7 idle. LFACS can be accessed or queried using any of the three key identifiers.

8  
9 BellSouth's FA Service personnel have a method of determining the availability of  
10 FA Service without knowledge of a telephone number. On pages 16, 19, and 25  
11 of Exhibit No. \_\_\_\_, JMB-2, there are instructions for consumers who have only  
12 address information in various situations to "contact our representative" to  
13 determine if DSL can be provided.

14  
15 On-line and mechanized access to LFACS to qualify loops for DSL using any of  
16 the three key identifiers has already been developed and has been in service for  
17 over 18 months. Exhibit No. \_\_\_\_, JMB-5 "D/CLEC Pre-Ordering and Ordering  
18 Guide For Electronic Loop Makeup (LMU)" describes the use of the Local  
19 Exchange Navigation (LENS) system to obtain information from LFACS on-line.  
20 The Telecommunications Access Gateway (TAG) interface is used for mechanized  
21 queries and responses.

22  
23 Mr. Milner's and Mr. Folge's claims that development work is required in order to  
24 qualify loops for DSL in the absence of a telephone number are inaccurate. As

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<sup>19</sup> Exhibit No. \_\_\_\_, JMB-4 "Loop Qualification System (LQS) CLEC Pre-Ordering and Ordering Guidelines", provides a description of LQS and how ALECs may utilize it.

1 discussed above, systems necessary to perform these functions already exist and  
2 are available to BellSouth. BellSouth need only train the appropriate personnel on  
3 the use of these systems that it has already developed.

4  
5 Finally, it is important to remember that it is only in the case where the ALEC is  
6 using UNE-L to serve its customer that BellSouth does not have the working  
7 telephone number in all of its systems. No changes at all (including training) are  
8 required when the ALEC customer is served using UNE-P.

9

10 **Q. IS THERE ANY “TECHNICAL CHALLENGE” OR “ADDITIONAL**  
11 **EQUIPMENT” NECESSARY TO GRANT THE RELIEF REQUESTED IN**  
12 **THE FCCA’S COMPLAINT?**<sup>20</sup>

13 A. No. As discussed above, all of the equipment necessary to grant the relief the  
14 FCCA seeks is in place and in service for existing customers and in place awaiting  
15 activation in the new customer scenario. Further, as discussed above, there has  
16 been an on-going collaborative on line sharing and line splitting among BellSouth,  
17 the ALECs and the DLECs over a number of years. The results of these  
18 collaborative efforts have been documented in a number of ways. Exhibit No. \_\_\_\_,  
19 JMB-6 “Line Splitting (Central Office Based) CLEC Information Package”, is an  
20 example of such a document. To meet the FCCA request, BellSouth simply needs  
21 to follow the procedures in this and other documents as if BellSouth’s FA Service

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<sup>20</sup> Fogle, Direct, page 3, lines 9-12 and page 4 lines 21-22.

1 were any other DLEC providing DSL to end users over ALEC UNE-P or UNE-L  
2 arrangements.

3

4 **Q. IS IT TRUE THAT MECHANIZED MAINTENANCE AND TROUBLE**  
5 **ISOLATION SYSTEMS CANNOT BE USED ON STAND-ALONE LOOPS**  
6 **PURCHASED BY ALECS?**<sup>21</sup>

7 A. No. Full capability to use such systems exists; however, it is true that who and  
8 how they can be used will change if ALEC UNE-L arrangements are used, but the  
9 capability still exists and can be used effectively. It is simply a matter of  
10 establishing agreed upon procedures between BellSouth's and the ALEC's affected  
11 work centers.

12

13 Mr. Fogle is wrong when he states that "the end user will not know who to call for  
14 customer service" – the service being provided is BellSouth's FA Service and  
15 BellSouth's customer instructions are clear. On page 26 of Exhibit No. \_\_\_\_, JMB-  
16 2, the customer is instructed - "If you still need assistance, BellSouth's Help Desk  
17 and Technical Support personnel are available 24 hours a day, seven days a week."

18

19 **Q. HOW DO YOU RESPOND TO MR. FOGLE'S CLAIM THAT**  
20 **REQUIRING BELLSOUTH TO COMPLY WITH THE FCCA'S REQUEST**  
21 **"IS SIMPLY NOT FEASIBLE"?**<sup>22</sup>

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<sup>21</sup> Milner, Direct, page 9, lines 14-22; Fogle, Direct, page 4, lines 6-9; Fogle, Direct, page 4, line 23 through page 5, line 4.

<sup>22</sup> Fogle, Direct page 3, lines 14-19.

1 A. As demonstrated above, none of the “operational problems” that serve as the  
2 supposed foundation for his observation withstand scrutiny. None of BellSouth’s  
3 witnesses provide any data or other evidence to support their claims. For every  
4 claim, there is already a solution in place that either eliminates the problem or  
5 mitigates its impact such that there is no significant administrative or operational  
6 burden upon BellSouth’s ability to provide FA Service to its own existing and  
7 potential customers. There are no significant changes required to any of  
8 BellSouth’s systems and technology. At most, there is training to be conducted  
9 and procedures to be coordinated (most of which are already documented).

10  
11 It is perplexing that in this forum BellSouth has chosen not to discuss the systems  
12 and processes it has developed to support ALEC/DLEC DSL efforts through the  
13 Line Sharing/Line Splitting Collaboratives – LENS, TAG, mechanized LMU  
14 queries, mechanized ordering, etc. At the FCC, these efforts have been highlighted  
15 in each of BellSouth’s successful 271 applications as being efficient and non-  
16 discriminatory. Exhibit No. \_\_\_, JMB-7, is an excerpt from the Affidavit of  
17 William N. Stacy filed in the Florida/Tennessee Application that discusses these  
18 matters in some detail. Yet in this docket, BellSouth’s witnesses appear to be  
19 totally unaware of these efforts. Surely BellSouth is not now taking the position  
20 that these systems and processes are inadequate for BellSouth to use to respond to  
21 the FCCA’s request.

22  
23 BellSouth’s allegations of “operational problems” do not support its policy of  
24 refusing to provide FA Service to consumers who elect to receive their voice  
25 service from an ALEC using UNE-P or UNE-L. As discussed in Mr. Gillan’s  
26 direct testimony, this Commission in its FDN Order has already found BellSouth’s  
27 “policy” deficient. Just last week, the Louisiana Commission also rejected

1 BellSouth's policy by adopting its Staff's recommendation that BellSouth be  
2 ordered to provide FA Service over loops used by ALECs.

3

4 The FCCA request is "reasonable", "practicable", and "realistic" and should be  
5 granted.

6

7 **Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

8 **A.** Yes, it does.

1 BY MS. KAUFMAN:

2 Q Mr. Bradbury, do you have 7 exhibits attached to your  
3 testimony?

4 A Yes, ma'am, I do.

5 Q Do you have any changes or corrections to those  
6 exhibits?

7 A No, I do not.

8 MS. KAUFMAN: Madam Chairman, I think we're up to 15.

9 CHAIRMAN JABER: 15. And is a composite exhibit all  
10 right?

11 MS. KAUFMAN: Yes, ma'am.

12 CHAIRMAN JABER: Composite Exhibit 15 is identified  
13 for JMB-1 through JMB-7.

14 (Exhibit 15 marked for identification.)

15 BY MS. KAUFMAN:

16 Q Mr. Bradbury, do you have a summary of your rebuttal  
17 testimony?

18 A Yes, I do.

19 Q Would you please give it to us now?

20 A Good afternoon, Commissioners. My name is Jay  
21 Bradbury and I am employed by AT&T. My rebuttal testimony  
22 responds to the assertions made by BellSouth's witnesses  
23 regarding alleged operational problems they claim will occur if  
24 BellSouth provides FastAccess to customers who receive local  
25 voice service from a CLEC. BellSouth has attempted to make the

1 simple complex. BellSouth's claims of operational problems are  
2 nothing more than thinly-veiled excuses by which it attempts to  
3 prop up a practice this Commission has already found to be  
4 anticompetitive relative to existing customers.

5 BellSouth's witnesses claim that provisioning of  
6 FastAccess to its own retail customers or to retail customers  
7 who want to become BellSouth FastAccess customers but happen to  
8 receive local voice service from a CLEC will result in a host  
9 of vaguely described operational problems.

10 My testimony demonstrates that none of these alleged  
11 problems impose any significant administrative or operational  
12 burden on BellSouth's ability to provide FastAccess to its own  
13 existing or potential customers. BellSouth's parade of  
14 operational horrors is exaggerated, misleading and based on  
15 partial truths.

16 For BellSouth to continue to provide FastAccess to  
17 its own customers who already receive FastAccess service,  
18 everything BellSouth needs is already in place and working.  
19 These customers are already receiving the service.

20 For BellSouth to provide FastAccess to new customers  
21 that it would otherwise serve, has planned to serve and  
22 invested to serve, everything required is physically present  
23 and needs only to be placed into service.

24 New network arrangements or provisioning are not  
25 required and should not be permitted. Any proposal that would



1 necessitate two loops instead of the full utilization of one  
2 loop is unnecessary, inefficient, wasteful of scarce resources  
3 and telephone numbers, seriously inconveniences retail  
4 customers and provides an inferior product.

5           There are no significant changes required to any of  
6 BellSouth's systems or technology to provide FastAccess  
7 customers to those who choose a CLEC. For every alleged  
8 operational problem there already is a solution in place that  
9 either eliminates the so-called problem or mitigates its impact  
10 so that there is no significant burden upon BellSouth. That  
11 this is the case is clearly demonstrated by the fact that  
12 BellSouth routinely provides FastAccess to CLEC customers  
13 served by resale. Relative to FastAccess there are simply no  
14 operational or technology differences between UNE-P and resale.

15           Further, as you've heard, BellSouth has provided  
16 FastAccess to UNE-P customers in the past and then modified its  
17 systems to prevent the process from working. Despite what we  
18 expect BellSouth to tell you, the CLEC's control over the loop  
19 in a UNE-P situation is a nonissue. AT&T will give BellSouth  
20 permission to use the high frequency portion of the loop to  
21 provide FastAccess to retail end users at no cost. In  
22 addition, BellSouth already has access to the loop to perform  
23 necessary testing and to repair and maintain the physical loop.  
24 In fact, BellSouth already performs these functions for UNE-P  
25 arrangements today under its interconnection agreements.

1 Further, maintaining and repairing FastAccess over  
2 UNE-P is no different from doing so over resale lines, nor is  
3 loop qualification, the preordering process that determines if  
4 a loop can support FastAccess an issue. BellSouth's service  
5 representatives have the ability today to determine if  
6 FastAccess can be provided using either a telephone number or a  
7 street address.

8 In the UNE-P situation the telephone number is  
9 resident in all necessary BellSouth databases. There are no  
10 gaps in the data BellSouth needs in order to place orders for  
11 FastAccess over UNE-P. The telephone number and all other  
12 information about the UNE-P customer resides in all of the  
13 databases that must be used to place such an order exactly as  
14 it does for resale or retail lines.

15 There are no additional costs to provide FastAccess  
16 over UNE-P. The network arrangement used is identical to that  
17 used for FastAccess over retail lines or resold lines, both of  
18 which BellSouth routinely does.

19 Billing customers for FastAccess over UNE-P or UNE-L  
20 is no different from doing so over resale lines. Credit card  
21 billing imposes no operational difficulties on BellSouth.  
22 BellSouth already has the capability to bill and accept credit  
23 card payments.

24 As my technology and exhibits -- excuse me. My  
25 testimony and exhibits demonstrate in more detail the

1 operational problems BellSouth has raised are simply intended  
2 to provide cover for its unacceptable behavior. BellSouth's  
3 provision of its own FastAccess service to customers who desire  
4 it is reasonable, practicable and realistic from a  
5 technological and operational perspective. Thank you.

6 CHAIRMAN JABER: Thank you, Mr. Bradbury.

7 MS. KAUFMAN: Mr. Bradbury is available for cross,  
8 Madam Chair.

9 CHAIRMAN JABER: Thank you. Mr. Lackey or Ms. White?  
10 Mr. Lackey.

11 MR. LACKEY: I'm afraid it's me.

12 CROSS EXAMINATION

13 BY MR. LACKEY:

14 Q Mr. Bradbury, could you turn to Page 9 of your  
15 rebuttal testimony? And I'm interested in the part of your  
16 testimony that begins at Line 4. Are you there?

17 A Yes, sir.

18 Q My testimony, to make sure we're together, reads --  
19 actually it's Line 3. "I would note that BellSouth's policy is  
20 economically unsound. Willfully disconnecting revenue-paying  
21 customers from in-service investments in the first instance and  
22 refusing to place installed investments into revenue-producing  
23 service in the second is a decision that makes no sense." Is  
24 that what your testimony reads?

25 A That's correct. Yes, sir.

1 Q Okay. When you wrote that, were you aware of the  
2 fact that an MCI neighborhood customer who chooses to leave  
3 MCI's local service cannot continue to get a flat rate  
4 unlimited toll service?

5 A No, sir, I've done no research into MCI's product  
6 offering.

7 Q Okay. AT&T, in fact, does offer a flat rate  
8 unlimited toll service offer to consumers, doesn't it?

9 A I'll take that subject to check.

10 Q I'm sorry. What?

11 A I'll take that subject to check. I don't, don't  
12 actually know.

13 Q Well, I want to go into it a bit, so do you have the  
14 interrogatories that were admitted earlier today there in front  
15 of you?

16 A I have some of them, but it would probably be easier  
17 to manage paper if somebody gives me new ones.

18 Q This is the one dated June 6th, 2003, and it's AT&T  
19 Communications of the Southern States and so forth, notice of  
20 supplemental responses to BellSouth Telecommunications' first  
21 set of interrogatories. I believe this is hearing Exhibit 1,  
22 Madam Chair.

23 Do you have it, Mr. Bradbury?

24 A I've got a handful here. Which one are you looking  
25 for now?

1 Q I'm looking for the one dated June 6th, 2003, signed  
2 by Mr. Hatch. Can you identify it with that or do you need  
3 more?

4 A I've got one that has those dates and Mr. Hatch's  
5 signature.

6 Q And is it the supplemental responses to, to  
7 BellSouth's first set of Interrogatories Number 1 through 3?

8 A Yes.

9 Q And if I look at Interrogatory Number 1 where we ask  
10 for each interrogatory to identify the person providing the  
11 response, it identifies Mr. Jay Bradbury, which is you; right?

12 A I see that. Yes, sir.

13 Q Okay. Go over and look at Interrogatory 3 and more  
14 appropriately look at the paragraph on Page 4 that begins,  
15 "Notwithstanding the above objections and without waiver."

16 A Yes, sir.

17 Q Now you, according to Interrogatory 1, provided this  
18 answer; correct?

19 A That's correct, yes, sir.

20 Q And this answer states that AT&T has two offerings  
21 for the consumer, AT&T Unlimited for \$19.95 and AT&T Unlimited  
22 Plus for \$24.95?

23 A Correct.

24 Q And those are represented as being unlimited long  
25 distance offerings; correct?

1 A That word is included in their title, yes, sir.

2 Q Okay. And is there any catch or anything that makes  
3 it not an unlimited toll offering?

4 A I don't know, sir.

5 Q I'm sorry?

6 A I don't know, sir.

7 Q Let me, let me, let me state the question the other  
8 way. You don't believe that AT&T would offer up a service call  
9 and represent it that it was an unlimited long distance  
10 offering if there was some catch that made it not an unlimited  
11 long distance offering, would you?

12 A I do not know the terms and conditions of these  
13 offers.

14 Q Let me just ask you one more question on it. Just  
15 based on your 30 years with AT&T or in the telephone industry,  
16 a good part of which has been with AT&T, do you believe that  
17 AT&T would offer the consuming public what they called an  
18 unlimited toll offering, if it --

19 A Sir, I don't know the terms and conditions of these  
20 offers.

21 Q I can purchase local service, toll service and voice  
22 mail service from AT&T; is that correct?

23 A Local service, toll service and the last, please?

24 Q Voice mail.

25 A Voice mail, is that what you said?

1 Q Voice mail. Yes. I'm sorry. I seem to be moving  
2 away from the microphone and I'm trying to do better. I got  
3 lectured.

4 A We have a local service product, we have long  
5 distance products, and our local service product does include a  
6 voice mail component.

7 Q And you bundle those together; correct?

8 A I don't know the terms under which they're offered,  
9 sir.

10 Q All right.

11 A My testimony here today responds to BellSouth's  
12 alleged operational problems.

13 Q Well, the reason I'm asking again is you're the one  
14 who answered these Interrogatories 1 through 3. That's what  
15 they say; right?

16 A That's correct. And what you see on those answers is  
17 what I know about those products.

18 Q All right. Well, look at Interrogatory 2. If a  
19 customer wants to leave AT&T's local service but wants to  
20 retain its voice mail service, will AT&T let the customer,  
21 consumer do that? The answer is actually on the top of Page 3,  
22 the first full paragraph. And for the record, I'm still  
23 looking at the same document.

24 A Yeah. Yeah. Subject to and without waiving this  
25 objection AT&T does not provide voice mail as a stand-alone

1 service. There are many third-party vendors that provide voice  
2 mail, but AT&T has not made the business decision to make such  
3 an offering.

4 Q Okay. So if I were one of your customers and I was  
5 buying local service and voice mail service from you and I  
6 wanted to abandon or leave your voice service but keep my voice  
7 mail, you wouldn't let me do it, would you?

8 A The voice mail product is not offered as a  
9 stand-alone product.

10 Q So the answer to my question is, that's correct, AT&T  
11 wouldn't let me do it?

12 A That's correct.

13 Q Okay. All right. Now when you were talking about  
14 willfully disconnecting revenue-paying customers from  
15 in-service investments, did you think about AT&T's policy on  
16 voice mail, for instance?

17 A No, sir. This testimony was written well in advance  
18 of these responses.

19 Q Well, this, this position of AT&T that they don't  
20 offer voice mail as a stand-alone service is not a recent  
21 development, is it?

22 A I do not know, sir.

23 Q All right. Let's talk now about your comments  
24 beginning on Page 7 of your testimony. And it begins on mine  
25 on Page 7, Line 1, begins with an answer that says, "No." Is



1 that the way your testimony reads?

2 A Yes.

3 Q Okay. Now this is the issue about whether BellSouth  
4 could have permission to use the, that part of the loop that's  
5 necessary to provide DSL service; correct?

6 A Correct.

7 Q All right. And I know that you're not representing  
8 the FCCA anymore, but is it still your position that ALECs, now  
9 I guess CLECs after July 1, have no problem providing BellSouth  
10 the permission necessary for BellSouth to serve its existing FA  
11 Service customers?

12 MS. KAUFMAN: Commissioner, I'm going to object.  
13 Mr. Bradbury is here on behalf of AT&T and that's who he's here  
14 representing. So I think this is beyond the scope of his  
15 rebuttal testimony.

16 MR. LACKEY: I'm sorry, but I don't believe he  
17 changed his statement in the testimony that ALECs have no  
18 problem. If he, if he changed that, I apologize. I didn't, I  
19 didn't hear him do that. I thought that was still a part of  
20 his testimony.

21 CHAIRMAN JABER: Mr. Lackey, what line were you  
22 looking at in forming your question?

23 MR. LACKEY: I'm looking at Line 2, and particularly  
24 the part that begins, "ALECs have no problem providing  
25 BellSouth the permission necessary." I thought that was still

1 in his testimony. I did not know he had taken it out.

2 CHAIRMAN JABER: Ms. Kaufman, it is --

3 MS. KAUFMAN: I'll withdraw my objection, Chairman.  
4 Thank you.

5 CHAIRMAN JABER: Okay. Just to finish the thought,  
6 there were no changes to that part of the testimony and,  
7 Mr. Lackey, Ms. Kaufman withdrew her objection, so go ahead.

8 MR. LACKEY: Thank you.

9 BY MR. LACKEY:

10 Q Let's go back to that again. Is it still your  
11 position that ALECs have no problem providing -- it reads on to  
12 say that you'll let us use the spectrum; right?

13 A As I sit here today, I can now only speak for AT&T.  
14 I no longer speak for any of the ALECs who were a part of FCCA.

15 Q Okay. So you can no longer represent that ALECs in  
16 the State of Florida would have no problem?

17 A No. But I can represent that the parties remaining  
18 in this complaint have this same position. They do not object  
19 to providing BellSouth access to the high frequency portion of  
20 the loop at no cost to provide the service and to maintain the  
21 service.

22 Q Okay. Now AT&T has an arrangement with Covad to  
23 provide DSL service; is that correct?

24 A I have seen the press releases on those, yes, sir.

25 Q Okay. Is AT&T providing DSL jointly with Covad in

1 Florida?

2 A I'm not aware that we have any in service at this  
3 point in time, sir.

4 Q Do you anticipate -- well, what I'm trying to do is  
5 find out what the scope of your permission here is. So let me  
6 ask you to assume -- let me ask you whether you know whether  
7 AT&T has any plans to provide DSL jointly with Covad in  
8 Florida?

9 A What I know is contained in the press releases. I  
10 don't think it was specific to Florida, but I would assume that  
11 eventually it would be a joint product here.

12 Q Okay. Well, what I'm trying to get to is let's  
13 assume for the moment that AT&T is providing DSL with Covad as  
14 outlined in the press release that you mentioned. Can we  
15 assume that just for a moment?

16 A Yes, sir.

17 Q All right. If a subscriber wants to take AT&T's  
18 local service but, and wants to take AT&T's DSL service, once  
19 you start offering it here with Covad, customers will be able  
20 to do that; correct?

21 A You're saying will customers be able to get AT&T  
22 local service and Covad's partnered DSL service?

23 Q Yes. Yes.

24 A I would assume that is a future potential here, yes.

25 Q Okay. Now will you, will some customers who want to

1 take AT&T local service perhaps not want to take the AT&T/Covad  
2 DSL service but rather will want to take BellSouth's FastAccess  
3 service, do you expect?

4 A I expect that would be a viable scenario, yes.

5 Q Okay. And if an AT&T voice customer comes to  
6 BellSouth and wants to buy FastAccess service, even where AT&T  
7 is providing its own DSL service via the Covad arrangement,  
8 does the permission that you're giving here extend to that  
9 situation as well?

10 A Yes, it does.

11 Q Okay. So basically if the Commission follows through  
12 on this, on its FDN order and extends it, even if AT&T is  
13 providing DSL service in the future, any consumer who wants to  
14 take FastAccess from BellSouth can do so and BellSouth has  
15 permission to use the loop for that purpose?

16 A That's correct.

17 Q Okay. All right. Let's go down on that same Page  
18 7 to Line 7. And you say, "Identification of the ALEC serving  
19 a given UNE-P or UNE-L served end user is a very minor  
20 undertaking." Does your statement on Line 7 assume that AT&T  
21 already has the customer that we're talking about here?

22 A Yes. The statement presumes that the customer has  
23 either UNE-P or UNE-L service from an ALEC.

24 Q Okay.

25 A It could be AT&T, it could be MCI, it could be

1 anybody else. What it's saying is that for BellSouth to  
2 determine who that ALEC is or CLEC is is a very minor  
3 undertaking. It's in their records already.

4 Q That's what I want to talk to you about. Okay. So  
5 let's just assume that Mr. Melson is an AT&T subscriber, local  
6 subscriber, and he wants to take BellSouth's FastAccess because  
7 it's a superior service. Who does he call to get that service  
8 installed?

9 A He wants -- he has today AT&T's voice product?

10 Q Yes.

11 A And he wants BellSouth's FastAccess product?

12 Q That's correct.

13 A He calls BellSouth's FastAccess group.

14 Q All right. All right. Do you know who he gets -- is  
15 there a special number he dials?

16 A There is a -- in the call guide pages in Florida  
17 there is a special number for obtaining FastAccess residence or  
18 business.

19 Q And are there retail service representatives  
20 answering that number?

21 A As -- you mean -- are you making a difference between  
22 retail and FastAccess service representatives?

23 Q No. I'm just talking about a service representative  
24 who answers the phone.

25 A Yeah. There are BellSouth service representatives

1 who would answer that call.

2 Q Okay. Do you know what operating system or what  
3 interface with the BellSouth computer systems that service  
4 representative has?

5 A I know some of them, yes. Those were -- some of them  
6 were identified in my deposition Exhibit 1. We have copies of  
7 that. I think it might be helpful. Pictures help when we're  
8 talking about these things.

9 Q Let me ask my question, I suppose, first. Do you  
10 know what RNS is?

11 A Yes, I do.

12 Q What is it?

13 A That's the Regional Negotiation System. It's a  
14 system used for ordering residential service.

15 Q Okay. Do you know what ROS is?

16 A ROS is a similar system used for ordering business  
17 service.

18 Q Okay. When the call ordering FastAccess comes into  
19 the service rep, is the service rep sitting in front of a  
20 terminal that has the RNS system on it?

21 A If you'd called a residence center, that would be  
22 the, one of the systems that they have available to them.

23 Q Okay.

24 A Having recently called a residence center to ask  
25 about whether I could order FastAccess from them, they

1 indicated that indeed I could.

2 Q Okay. All right. So would, would there be some  
3 other kind of system like RNS or ROS that a service rep might  
4 have on, on their screen when the call comes in especially for  
5 FastAccess?

6 A There are -- there is another system within BellSouth  
7 known as BIAS that is used in the FastAccess ordering process.  
8 There's another system known as the Service Order Entry Gateway  
9 that's used in that process. There are a number of systems.  
10 They're -- depending on how BellSouth has designed its  
11 terminals, all of these systems can come up on the same  
12 terminal. I have confirmed by calling residence centers,  
13 business centers and the FastAccess center that you can, in  
14 fact, place an order for FastAccess with any one of those three  
15 groups.

16 Q Okay. What I'm asking you is do you know what system  
17 they have, and you've given me RNS and you've given -- is BIAS,  
18 B-I-A-S, an operating system that populates the screen of a  
19 service rep? Is it like a Windows screen?

20 A Yes. They look like Windows screens.

21 Q Okay. Now when you call that service rep, does the  
22 service rep ask you for the telephone number?

23 A They do ask you the telephone number. If, however,  
24 you don't have a telephone number and you give them an address,  
25 they are able to determine by the address whether or not

1 FastAccess can be provided to that location. And, again, those  
2 are calls that I made recently to confirm that.

3 Q Well, isn't it true that when you give them the  
4 address and they type it into the system, it simply pulls up  
5 the phone number associated with the address?

6 A I don't know what they actually see. I did, however,  
7 ask for a verification at an address with a telephone number,  
8 if you verify it, will not qualify for FastAccess but the  
9 address will.

10 Q Well, my question was -- was your answer, no, you  
11 don't know whether they just put the address in and it pulls up  
12 the telephone number?

13 A From the response that I got I know it pulls up more  
14 than the telephone number because the telephone number at that  
15 address would not validate for FastAccess.

16 Q Okay. What happens when you put a telephone number  
17 into those systems that belongs to a CLEC?

18 A I'm not following your question. Try me again, sir.

19 Q Sure. When you call into a service center, you give  
20 the service rep the telephone number that you're inquiring  
21 about, and the service rep inputs the telephone number into  
22 whatever system they're using. What happens when the number  
23 belongs to a CLEC?

24 A Okay. What BellSouth has been doing for numbers that  
25 are UNE-P or UNE-L is showing those numbers as unavailable for



1 FastAccess. And I know in response to the Louisiana order, in  
2 Louisiana they have lifted that edit.

3 Q So you know that, for instance, in Florida when they  
4 put the number in it'll show up, what did you say, unavailable?

5 A I can get you the exact term, but the outcome is that  
6 the service rep will tell the consumer that FastAccess is not  
7 available to that telephone number.

8 Q Okay. When you go to qualify a line for FastAccess,  
9 do you have to access the LFACS database?

10 A If you're using a telephone number, BellSouth has  
11 created a, what I call a database of convenience known as LQS  
12 that works on telephone numbers only. There's confusing  
13 testimony about whether or not it would actually accept an  
14 address. Mr. Hastings testimony or, excuse me, affidavits  
15 filed with the FCC say that it will accept addresses.  
16 BellSouth's witnesses here say that it won't. LFACS will  
17 accept addresses.

18 Q What does LFACS stand for, by the way?

19 A That's the loop facility administration control  
20 system. I may not have that quite right. Loop and facility  
21 administration control system.

22 Q I'm sorry. I didn't mean to interrupt you.

23 A Loop and facility administration control system.

24 Q Do the service reps sitting at the RNS terminals have  
25 access to LFACS?

1           A     I don't know. I know that they have access to a  
2 validation system that now provides them validations based on  
3 both telephone numbers and addresses.

4           Q     Do the --

5           A     LQS may be able to do both. I know that LFACS does  
6 do both.

7           Q     Do the CLECs that validate these lines use LENS and  
8 TAG and EDI to access the LFACS database?

9           A     LENS, TAG and EDI all now have the ability to access  
10 LFACS database, that's correct. And I know we're speaking in  
11 Greek, Commissioners, on these letters. I'm sorry.

12          Q     Well, TAG, TAG, LENS, EDI are all interfaces that  
13 allow CLECs to get into the operational support systems of  
14 BellSouth; is that correct?

15          A     That's correct.

16          Q     And they were -- now does a service rep sitting at a,  
17 an RNS terminal have access to LENS, EDI or TAG?

18          A     They can have. It's simply something BellSouth  
19 would -- BellSouth has the ability to bring those three  
20 interfaces to any terminal in its complex.

21          Q     Okay. That's -- I'm sorry I took a long time to get  
22 there, but that's what I was after.

23                   Do you have any idea what it would cost or how long  
24 it would take to give the RNS or the representatives who have  
25 RNS terminals access to those three systems?

1           A     To LENS and to TAG, very little effort. They exist  
2 today on BellSouth's internal data network. It's simply a  
3 matter of giving permissions. EDI would be more difficult.

4           Q     If, if it's truly a little effort, would AT&T mind  
5 paying for the cost of converting those terminals so that they  
6 have TAG and LENS on them?

7           A     Well, there clearly is no reason to do that. By my  
8 own calls I've already determined that representatives in all  
9 of BellSouth's service centers have everything they need in  
10 order to validate numbers or addresses or place orders for  
11 FastAccess.

12                   Further, even if there were a need to do that, the  
13 only reason that the BellSouth people don't have the access  
14 they need, which they actually do, or would not have the access  
15 they'd need, would be decisions made by BellSouth in the past  
16 that they didn't need to make the technology available to  
17 BellSouth when they built their interfaces would have allowed  
18 them to do everything necessary. I see no need for the CLECs  
19 to even be asked about paying for modifying systems that  
20 BellSouth specifically put up to restrict their operation.

21           Q     Well, actually my question was driven by your  
22 characterization of it requiring little or no effort to do it.  
23 I just wanted to ask whether, if it was really little or no  
24 effort, would you mind paying for it?

25           A     I see no reason we should pay for BellSouth's failure

1 to properly plan their own interfaces.

2 Q Were you here when Ms. Lichtenberg was talking about  
3 Louisiana and the fact that the orders down there are now being  
4 handled manually?

5 A Yes, sir, I was.

6 Q And were you also here when she said that she  
7 understood that the process wasn't scheduled to be mechanized  
8 until next February?

9 A Yes, I was here then.

10 Q All right. And I take it -- how long, how long has  
11 the Louisiana order been out?

12 A My recollection is the last order was in January.

13 Q January?

14 A I think they gave you until June the 1st to make your  
15 changes.

16 Q Okay. And the mechanization of this isn't going to  
17 occur until February of 2004?

18 A That's what I've heard today. I haven't, I haven't  
19 validated those CRs yet myself to know.

20 Q All right. And is -- in spite -- and that's  
21 proceeding through what, the change control process?

22 A Actually since this is a regulatory mandate,  
23 preceding through the, quote, change control process is,  
24 doesn't slow BellSouth down any at all. It creates no barriers  
25 for them. Regulatory mandates take precedence over all other

1 types of changes.

2 Q So it's got a priority?

3 A It has a priority.

4 Q Okay. So even though it had a priority, it's taken  
5 from January of last year to February of next year to, to  
6 convert this to a mechanized system that can handle this  
7 ordering; right?

8 A Those are the dates that are available now. That  
9 doesn't necessarily mean that it needs to take that much time  
10 or that it should be taking that much time.

11 Q Okay. You said it was a simple process, didn't  
12 require much, you said that it was a regulatory mandate, and I  
13 think we've agreed that it's taking 13 or 14 months; right?

14 A That's BellSouth's time line. I don't know whether  
15 that is actually a required time line. I don't believe  
16 personally that it is.

17 Q Okay. So, so you just don't, you just don't believe  
18 BellSouth when they say that that's how long it takes; is that  
19 right?

20 A Given the fact that BellSouth used to do this and  
21 then turned it off, no, I don't believe it at all.

22 Q Let's look at Page 15 of your testimony, the  
23 mechanized maintenance system. This is another situation where  
24 you're -- I assume this is -- let me start that again.

25 Turn to Page 15 of your testimony.

1 A Yes, sir. I'm there.

2 Q In your summary, if I wrote it down correctly, you  
3 accused Mr. Fogle and Mr. Milner of exaggerating, misleading  
4 and making statements based on partial truths; correct?

5 A Correct.

6 Q And is this situation regarding the mechanized  
7 maintenance and trouble isolation system one of those  
8 situations you were referring to?

9 A Yes.

10 Q Okay. Now your testimony on Page 15 at Line 7 in  
11 response to a question, "Is it true that mechanized maintenance  
12 and trouble isolation systems cannot be used on stand-alone  
13 loops purchased by ALECs?" is, "No. Full capability to use  
14 such systems exist." And then you go on and explain that;  
15 correct?

16 A Correct.

17 Q All right. Is a mechanized loop testing system a  
18 switched base system?

19 A That's correct.

20 Q And normally the way it works, a loop is connected to  
21 a BellSouth switch. When BellSouth wants to test the loop, it  
22 uses its switch functionality to test the loop?

23 A That's correct. And in the case where the loop is  
24 connected to the CLEC switch, it's simply the CLEC that has the  
25 switch and the access to it. All you need is a procedure

1 coordinated between BellSouth and the CLEC to have the CLEC do  
2 the test. The full functionality of the test set is still  
3 available. It's just who does it.

4 Q Well, then the system doesn't exist today to do that,  
5 does it? The procedures and the way it's done doesn't exist  
6 today, does it?

7 A Yes, they do.

8 Q The procedures exist today --

9 A The procedures to coordinate, coordinate maintenance  
10 and repair, trouble reporting between ALECs and DLECs exists  
11 today.

12 Q I wasn't -- I was asking about BellSouth. If I  
13 wasn't clear about that, let me start again.

14 Are you saying that the procedures exist between  
15 BellSouth and AT&T today where AT&T can use the MLT to test a  
16 BellSouth UNE-L?

17 A Actually, yes, they do. And specifically toward the  
18 FastAccess again, there are procedures that BellSouth has  
19 helped established between DLECs, and in this case BellSouth  
20 becomes another DLEC, and AT&T or the CLECs. Yes, there are  
21 procedures for both the UNE-L environment without DSL and the  
22 UNE-L environment with DSL.

23 Q Does -- do the AT&T switches that exist in Florida  
24 today have the MLT program installed in them?

25 A To my knowledge they have either MLT or an equivalent

1 functionality in them, yes.

2 Q Well, but MLT is the BellSouth mechanized loop  
3 testing program; right?

4 A It's the switch vendors' program generically called  
5 MLT. You'll find an MLT in switches provided but Lucent,  
6 provided by Ericsson, provided by Nortel. MLT is a common  
7 language reference to those.

8 Q Can you tell me which AT&T switch in Florida is  
9 connected to BST's MLT test head?

10 A Again, the MLT test set would reside in the CLEC's  
11 switch.

12 Q Well, I'm talking about BST's test head.

13 A The loop in these situations terminates in the CLEC's  
14 switch.

15 Q The bottom line is it's the CLEC that has to run the  
16 mechanized loop test, isn't it?

17 A Under the existing procedure, that's correct. That's  
18 what the testimony says.

19 Q Out of their switch; correct?

20 A Correct.

21 Q It's not run out of BellSouth's switch, is it?

22 A No. When the loop terminates on the CLEC switch, the  
23 test is run from the CLEC switch.

24 Q Somebody would have to call AT&T and have AT&T have  
25 somebody run that MLT test out of AT&T's switch on that UNE-L;



1 right?

2 A Correct. Exactly what my testimony says. And the  
3 procedures to do that exist.

4 Q And your, your testimony is the procedures exist  
5 right now that somebody in BellSouth knows who to call at AT&T  
6 and how the test is to be run; right?

7 A Yes, sir.

8 Q How many UNE-Ls do you have connected to AT&T  
9 switches to provide local service in Florida today?

10 A I believe there is confidential data that indicates  
11 that, how many of those there are.

12 CHAIRMAN JABER: Mr. Lackey, how much time do you  
13 think you need?

14 MR. LACKEY: Five minutes.

15 CHAIRMAN JABER: Okay. Go ahead.

16 MR. LACKEY: That is assuming we -- let me see if I  
17 can ask some general numbers without getting in trouble.

18 BY MR. LACKEY:

19 Q I'd just like to ask order of magnitude. And if what  
20 I ask you is infringing on proprietary data, you just tell me  
21 --

22 A Okay. As an order of magnitude it's a five-digit  
23 number.

24 Q Now you went and made it tough for me. Okay.

25 A Was I right?

1 Q It was five digits. You're right.

2 A Thank you.

3 Q I was having trouble figuring out how many five  
4 digits were. That's my problem.

5 I see, I see what the problem is.

6 BellSouth has for its switches an MLT test head;  
7 correct? You know what that is?

8 A Yes.

9 Q Okay. Apparently AT&T must have some sort of MLT or  
10 equivalent test head on its switch.

11 A Correct.

12 Q The two are not connected, are they?

13 A No, they're not.

14 Q Okay. And so there's no mechanized way for BellSouth  
15 to run an MLT test from its switch on the loop that's attached  
16 to your switch, is there?

17 A That's correct. The procedures are a phone call  
18 between the carriers.

19 Q Okay. And so in your testimony on Page 15 you  
20 weren't intending to imply, as I read it, that there was some  
21 mechanical way of doing that?

22 A Not today between those parties. There's nothing  
23 that precludes that from being developed in the future. In  
24 fact, going the other way from the ALECs to, to BellSouth, we  
25 do have the ability to reach in and use their MLT test set.

1 All you've got to do is reverse the process.

2 MR. LACKEY: That's all I have, Madam Chair. Thank  
3 you.

4 CHAIRMAN JABER: We're going to take a ten-minute  
5 break, so be back here at 3:40.

6 (Recess taken.)

7 CHAIRMAN JABER: Mr. Melson, did you have an update  
8 on whether witnesses could be stipulated, or is that something  
9 we need to revisit at the end of today?

10 MR. MELSON: I think we can talk about it now. My  
11 understanding from all the parties is we're willing to  
12 stipulate Dr. Taylor without having him take the stand. I  
13 think what we'd simply do is when we -- he was going to be the  
14 last witness. When we get there, we just stipulate his  
15 testimony into the record as though read.

16 Staff has some questions for Mr. Smith, so they don't  
17 want to stipulate him. I suspect we should be able to get  
18 through, depending on the length of the answers, Mr. Ruscilli  
19 by five o'clock this evening and that would leave us Milner,  
20 Fogle, and Smith for tomorrow.

21 CHAIRMAN JABER: Sounds great, but I would like to  
22 address Taylor tonight and have that testimony inserted into  
23 the record tonight so that I can excuse him and it won't be a  
24 question tomorrow. Someone needs to remind me.

25 Ms. White.

1 MS. WHITE: Well, did you want to do that now, or did  
2 you want to just do it before the end of the day?

3 CHAIRMAN JABER: No. I thought you had your  
4 microphone on, that there was something you wanted to say.

5 MS. WHITE: No. That's what I was --

6 CHAIRMAN JABER: Tonight, before we adjourn, we'll  
7 take care of that.

8 Okay. Staff.

9 MS. CHRISTENSEN: Yes.

10 CROSS EXAMINATION

11 BY MS. CHRISTENSEN:

12 Q We have just a few questions, sir. You were talking  
13 about implementing the Louisiana order, and you had talked  
14 earlier about there being edits that were in place in the  
15 BellSouth system. Given that BellSouth will have to presumably  
16 remove some of these edits to implement the Louisiana order, is  
17 that a system-wide implementation or is that a state-by-state  
18 implementation, if you know?

19 A BellSouth's OSS systems are region-wide. They  
20 contain tables in them that are state-specific. So I'm  
21 assuming that there's a mix of a state-specific table update  
22 and a region-wide system update. So once that was done, any  
23 other state's tables could be changed very easily with no  
24 additional work on the system as a whole.

25 MS. CHRISTENSEN: Okay. That was the question that

1 staff had. Thank you.

2 CHAIRMAN JABER: Redirect.

3 MS. KAUFMAN: Thank you, Chairman. I just have one.

4 REDIRECT EXAMINATION

5 BY MS. KAUFMAN:

6 Q Mr. Bradbury, do you recall that Mr. Lackey and you  
7 had a discussion about your testimony at Page 15,  
8 Lines 7 through 17 regarding the MLT issue?

9 A Yes, ma'am, I do.

10 Q Does that have any applicability whatsoever in a  
11 UNE-P situation?

12 A No, ma'am. All of that discussion is unique to  
13 UNE-L.

14 MS. KAUFMAN: Thank you.

15 CHAIRMAN JABER: Mr. Bradbury, thank you for your  
16 testimony.

17 Commissioners, I neglected to ask if you had any  
18 questions.

19 MS. KAUFMAN: Chairman, AT&T would need to move  
20 Exhibit 15.

21 CHAIRMAN JABER: Without objection, Exhibit 15 is  
22 admitted into the record.

23 (Exhibit 15 admitted into the record.)

24 CHAIRMAN JABER: Thank you, sir.

25 THE WITNESS: Thank you.

1 (Witness excused.)

2 CHAIRMAN JABER: Mr. Ruscilli.

3 Yes, Mr. Melson.

4 MR. MELSON: Chairman Jaber, would this be an  
5 appropriate time, since BellSouth is starting its case, to put  
6 the Taylor testimony in?

7 CHAIRMAN JABER: That's fine with me.

8 Ms. White, are you ready for that?

9 MS. WHITE: Yes. Dr. Taylor filed rebuttal testimony  
10 consisting of 23 pages. He also filed one exhibit, WET-1. He  
11 informs me he has no changes to his testimony, so I'd ask that  
12 the rebuttal testimony of Dr. Taylor be inserted into the  
13 record as if read.

14 CHAIRMAN JABER: The prefiled rebuttal testimony of  
15 William E. Taylor shall be inserted into the record as though  
16 read.

17 MS. WHITE: And I would ask that his one exhibit be  
18 numbered and moved into the record.

19 CHAIRMAN JABER: WET-1 is identified as Hearing  
20 Exhibit 16, and without objection, that will be admitted into  
21 the record.

22 (Exhibit 16 marked for identification and admitted  
23 into the record.)

24 MS. WHITE: And may Dr. Taylor be excused?

25 CHAIRMAN JABER: Dr. Taylor may be excused.

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MS. WHITE: Thank you very much.

CHAIRMAN JABER: Thank you.

(Witness excused.)

**ON BEHALF OF BELLSOUTH TELECOMMUNICATIONS, INC.**

**REBUTTAL TESTIMONY OF WILLIAM E. TAYLOR, Ph.D.**

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

**DOCKET NO. 020507-TP**

**DECEMBER 23, 2002**

1 **I. INTRODUCTION AND SUMMARY**

2 **Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS, AND CURRENT**  
3 **POSITION.**

4 A. My name is William E. Taylor. I am Senior Vice President of National Economic Research  
5 Associates, Inc. ("NERA"), head of its Communications Practice, and head of its Cambridge  
6 office located at One Main Street, Cambridge, Massachusetts 02142.

7 **Q. PLEASE DESCRIBE YOUR EDUCATIONAL, PROFESSIONAL, AND BUSINESS**  
8 **EXPERIENCE.**

9 A. I have been an economist for over thirty years. I earned a Bachelor of Arts degree from Harvard  
10 College in 1968, a Master of Arts degree in Statistics from the University of California at  
11 Berkeley in 1970, and a Ph.D. from Berkeley in 1974, specializing in Industrial Organization and  
12 Econometrics. For the past twenty-five years, I have taught and published research in the areas  
13 of microeconomics, theoretical and applied econometrics, and telecommunications policy at  
14 academic and research institutions. Specifically, I have taught at the Economics Departments of  
15 Cornell University, the Catholic University of Louvain in Belgium, and the Massachusetts Institute  
16 of Technology. I have also conducted research at Bell Laboratories and Bell Communications  
17 Research, Inc.

18 I have participated in telecommunications regulatory proceedings before many state public  
19 service commissions, including the Florida Public Service Commission ("Commission"). Before  
20 the Commission, I have testified in Docket Nos. 900633-TL, 920260-TL, 920385-TL,  
21 960786-TP, 980000-SP, 980696-TP, 990750-TP, 000075-TP, 000121-TP, 020119-TP and



1 020578-TP.

2 In addition, I have filed affidavits before the Federal Communications Commission (“FCC”)  
 3 and the Canadian Radio-television Telecommunications Commission on matters concerning  
 4 incentive regulation, price cap regulation, productivity, access charges, local competition,  
 5 interLATA competition, interconnection and pricing for economic efficiency. Recently, I was  
 6 chosen by the Mexican Federal Telecommunications Commission and Telefonos de Mexico  
 7 (“Telmex”) to arbitrate the renewal of the Telmex price cap plan in Mexico.

8 I have also testified on market power and antitrust issues in federal court. In recent years, I  
 9 have studied—and testified on—the competitive effects of mergers among major  
 10 telecommunications firms and of vertical integration and interconnection of telecommunications  
 11 networks.

12 My curriculum vita is attached as Exhibit WET-1.

13 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

14 A. I have been asked by BellSouth Telecommunications, Inc. (“BellSouth”)—an incumbent local  
 15 exchange carrier (“ILEC”)—to respond to the economic issues raised in the direct testimony of  
 16 Joseph Gillan filed by the Florida Competitive Carriers Association (“FCCA”).<sup>1</sup> Mr. Gillan and  
 17 the FCCA are requesting that this Commission order BellSouth to provide its enhanced retail  
 18 high-speed DSL-based Internet access service<sup>2</sup> to any requesting end user (including an end user  
 19 that is not an existing BellSouth FastAccess customer as well as a current FastAccess customer  
 20 that is changing voice providers) (Issues 4 and 5). FCCA members want the ability to serve an  
 21 end user over a UNE-P line or an unbundled loop. If in the future that end user wants  
 22 BellSouth’s FastAccess service, then FCCA members want to force BellSouth to provide its

<sup>1</sup> Although the reference here is to the customers of the 13 competitive carriers that are members of the FCCA, I use “FCCA” in this testimony as shorthand to mean one or more of those carriers. On other occasions, I refer to competitive carriers generally by the established acronym “ALECs” (alternative local exchange carriers).

<sup>2</sup> This retail service is BellSouth® FastAccess<sup>®</sup> Internet Service (“FastAccess<sup>®</sup>”), of which the regulated wholesale DSL transport service is a component. The retail FastAccess<sup>®</sup> service itself is a non-regulated enhanced service.

(continued...)

1 broadband service to their voice customer. The FCCA completely disregards the fact that a  
2 multitude of available options exist for such an end user customer to obtain broadband service.  
3 In addition, the FCCA wants the Commission to mandate the circumstances in which BellSouth  
4 (as opposed to any other broadband provider) must provide broadband service. Contrary to  
5 Mr. Gillan's contentions, from an economic perspective such relief, rather than BellSouth's  
6 practices, is anticompetitive.

7 **Q. PLEASE SUMMARIZE YOUR TESTIMONY.**

8 A. If the Commission were to order BellSouth to provide its FastAccess service to any requesting  
9 end user, then the economic impact would be:

- 10 • *Anti-consumer*: The requirement would reduce consumer choice for broadband access  
11 because ALECs could rely on mandatory BellSouth-provided services instead of  
12 supplying their own broadband service or obtaining broadband service from another DSL  
13 or cable provider. By using BellSouth to supply broadband access to its customers, the  
14 FCCA is denying its voice customers the benefits of purchasing broadband access and  
15 basic exchange service from the FCCA as a package.
- 16 • *Anti-competitive*: BellSouth would be required to invest to supply FastAccess® service  
17 in circumstances which it determined to be unprofitable. No other broadband access  
18 provider would have this responsibility, although the broadband market is served by  
19 standalone broadband providers, such as Covad, and by cable providers, such as the  
20 merged AT&T/Comcast company. Imposing this requirement would distort competitive  
21 outcomes in the broadband access market among wireline suppliers and across  
22 technologies (wireline, cable, wireless and satellite). In addition, injecting a regulated  
23 supplier-of-last-resort requirement into a well-functioning competitive (broadband access)  
24 market would expand the role of regulation, and the process of competition in the  
25 broadband access market would deteriorate inevitably.
- 26 • *Contrary to public policy*: Under the FCCA's proposal, ALECs would not have to  
27 invest in broadband access facilities because their voice customers could use FastAccess®  
28 service. In addition, BellSouth's incentives to develop such services would be reduced  
29 because whatever competitive advantage it could gain from investing in infrastructure and

(...continued)

See the Direct Testimony of John Ruscilli, on behalf of BellSouth, filed November 26, 2002, at 3.

1 developing new broadband services would be offset by the requirement to provide the  
2 service to ALEC customers.

3 Because the broadband access market is effectively competitive and functioning well in Florida,  
4 any proposal to mandate that any carrier supply service to particular customers will have bad  
5 consequences for competition and for consumers.

6 Moreover, the claim that BellSouth's FastAccess<sup>®</sup> service gives BellSouth a competitive  
7 advantage in the voice market, even if true, does not merit the relief requested. Presumably some  
8 BellSouth voice customers also like its inside wire maintenance plans, its calling card plans, or its  
9 voice mail services. For those customers, their experience with those BellSouth services arguably  
10 confers a competitive advantage on BellSouth in the basic exchange market—an arguable  
11 competitive advantage which is *earned* and which would be anticompetitive to remove. And, of  
12 course, for good economic reasons, few if any LECs (ALEC or ILEC) would consider supplying  
13 those particular services, which it supplies to its basic exchange customers, on a standalone basis  
14 to the basic exchange customers of competing LECs. For example, I am not aware of MCI  
15 offering to provide local service to customers who do not also subscribe to MCI's long distance  
16 service.

## 17 II. FCCA'S POSITION ON BELL SOUTH'S DSL POLICY

18 **Q. WHAT SPECIFIC ALLEGATIONS HAS THE FCCA MADE IN THIS PROCEEDING**  
19 **AGAINST BELL SOUTH'S DSL POLICY AND DO THESE ALLEGATIONS HAVE**  
20 **MERIT?**

- 21 A. The FCCA alleges that BellSouth's DSL policy conflicts with Florida's laws designed to promote  
22 competition. Specifically, Mr. Gillan makes the following erroneous assertions [at 3]:
- 23 1. BellSouth's policy denies consumers the opportunity to determine for themselves what  
24 combination of service providers best meets their needs.
  - 25 2. BellSouth is seeking to protect its voice monopoly by frustrating prospects for greater  
26 penetration of advanced services.
  - 27 3. BellSouth's policy discriminates among customers for data based on who provides their voice  
28 services.

1 4. BellSouth's policy represents a classic "tying arrangement" which provides BellSouth leverage  
2 in the market for voice and data services and enables it to foreclose competition.

3 5. The end result of BellSouth's policy is to raise barriers to competitive entry in the local  
4 exchange market.

5 As I explain in greater detail below, none of Mr. Gillan's assertions has any merit.

### 6 **III. RESPONSE TO FCCA'S POSITION**

#### 7 **A. FCCA Allegation 1: BellSouth's DSL Policy Denies Consumers Choice**

8 **Q. PLEASE ADDRESS MR. GILLAN'S ASSERTION THAT BELLSOUTH'S POLICY**  
9 **DENIES CONSUMERS THE OPPORTUNITY TO DETERMINE THEIR MOST**  
10 **PREFERRED COMBINATION OF SERVICE PROVIDERS.**

11 A. Mr. Gillan's testimony disregards the fact that consumers cannot mandate service provider  
12 choices. In competitive markets, the metric that matters most—and best determines which firms  
13 survive in the long run—is profit, followed closely by firms' ability to offer consumers choice and  
14 attract their interest. No firm can maximize profit and develop any competitive advantage by  
15 *denying* consumers that choice. However, by the same token, if a service provider heedlessly  
16 provides any and all services to consumers and such choices are unprofitable, then eventually that  
17 service provider will perish.

18 Moreover, in the case of broadband Internet access, BellSouth's service and the wholesale  
19 DSL transport service are far from being the "only shows in town." Consumers are free to  
20 choose any number of broadband providers. However, if BellSouth – and not other broadband  
21 provider -- is compelled to offer broadband service in circumstances that negatively impact its  
22 profit, then ultimately BellSouth will be faced with a dilemma as to whether it desires to offer such  
23 a service at all.

24 **Q. MR GILLAN STATES [AT 8, ISSUE 3] THAT "IN A COMPETITIVE MARKET,**  
25 **THE CONSUMER IS MADE SOVEREIGN BECAUSE IT IS THE CONSUMER**  
26 **(BECAUSE OF ITS ABILITY TO CHOOSE AN ALTERNATIVE) THAT PUNISHES**

1 **UNRESPONSIVE FIRM BEHAVIOR.” DOES THIS MEAN THAT BELLSOUTH**  
 2 **SHOULD BE FORCED TO PROVIDE FASTACCESS<sup>®</sup> SERVICE OVER UNE-P**  
 3 **FACILITIES OR OVER UNE LOOPS THAT ALECS USE TO PROVIDE LOCAL**  
 4 **EXCHANGE SERVICE?**

5 A. Not at all. The consumer, as Mr. Gillan puts it, has the “ability to choose an alternative.” Mr.  
 6 Gillan, however, ignores this choice. Because consumers have the ability to choose from several  
 7 alternatives, and because BellSouth has no particular corner on the market for advanced  
 8 broadband services, it is disingenuous to claim that BellSouth’s policy denies consumers, in some  
 9 material way, the freedom of choice that Chapter 364.01(3) of the Florida Statutes aspires to  
 10 provide consumers in Florida.

11 The direct testimonies of BellSouth witnesses John Ruscilli and Keith Milner demonstrate that  
 12 there are several public policy and, more importantly, technical reasons which make the provision  
 13 of FastAccess<sup>®</sup> service over ALEC-served UNE-P facilities infeasible or uneconomical for  
 14 BellSouth. In these circumstances, it is understandable for BellSouth to be unwilling to serve as a  
 15 cog in the FCCA’s scheme to compete in the markets for packages of voice and advanced  
 16 services.

17 **B. FCCA Allegation 2: BellSouth is Hindering Penetration of Advanced**  
 18 **Services in Order to Preserve its Voice Monopoly**

19 **Q. IS THERE ANY TRUTH TO MR. GILLAN’S CLAIM [AT 3] THAT BELLSOUTH’S**  
 20 **DSL POLICY IS DESIGNED TO FAVOR ITS OWN “VOICE MONOPOLY” AT THE**  
 21 **EXPENSE OF THE NATIONAL GOAL OF WIDESPREAD DIFFUSION OF**  
 22 **ADVANCED SERVICES?**

23 A. No. It is true that Section 706 of the Telecommunications Act of 1996 (“1996 Act”) and  
 24 subsequent laws and policies enacted at the state level have sought to promote the diffusion of  
 25 advanced, i.e., broadband Internet access, services. However, although I am not a lawyer, I do  
 26 not believe that these laws and policies placed a particular onus on either a particular service  
 27 provider (like BellSouth) or a particular form of advanced services (like DSL) to accomplish that

1 goal. Unlike the market for voice services, the market for advanced services was just beginning  
2 at the time these laws and policies were enacted. Therefore, the sensible course of action was to  
3 provide the necessary economic incentives to *all* service providers (not just ILECs or even just  
4 telecommunications service providers) to devote resources to the deployment of advanced  
5 services. Thus, the cable industry as well as providers of broadband Internet access through  
6 other means (such as optical fiber, satellite, or fixed wireless) have invested in providing advanced  
7 services, just as BellSouth and others have invested in providing those services over DSL  
8 facilities.

9 The important point to note is that *all* providers of advanced services started with a blank  
10 slate and that BellSouth possessed no particular corner on the market for these services. Rather,  
11 there is increasing evidence (some documented in the testimony of BellSouth witness John  
12 Ruscilli)<sup>3</sup> that the supply of broadband Internet access services by various means is growing  
13 rapidly in both Florida and the rest of the nation, and that DSL service providers (of whom  
14 BellSouth is just one) are locked in strenuous competition with providers of inter-modal  
15 alternatives like cable modem service. In these circumstances, it would make little economic  
16 sense for BellSouth to subvert its own developing broadband access business in order to favor its  
17 established voice services. It makes no economic sense to attempt to leverage a competitive  
18 service (namely, broadband access) to favor an allegedly monopoly service (namely, local  
19 exchange service).<sup>4</sup> Tying only works to favor a competitive service by leveraging a monopoly

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<sup>3</sup> Also see the FCC report, *High-Speed Services for Internet Access: Status as of June 30, 2002* (“*FCC Advanced Services Report*”), Industry Analysis and Technology Division, Wireline Competition Bureau, December 2002. Although this report distinguishes between “high-speed” Internet access service (speed above 200 kbps in one direction) and “advanced” service (speeds above 200 kbps in both directions), I treat them interchangeably for present purposes.

<sup>4</sup> Even there, I disagree completely with Mr. Gillan’s gratuitous characterization of BellSouth as having a “voice monopoly.” The term monopoly has been used loosely and inappropriately here. By definition, a firm is a monopoly when it is the *sole* supplier of a good or service. It is, by now, a well-established fact that numerous ALECs offer competing local exchange voice services in Florida, and that their collective share of the market (measured in switched access lines and as self-reported by a limited number of ALECs) was at least 9 percent as of the end of last year. See FCC, *Local Telephone Competition: Status as of June 30, 2002* (“*FCC Local Competition Report*”), Industry Analysis and Technology Division, Wireline Competition Bureau, December 2002, Table 6. This ALEC share—which was up from only 6 percent in December 1999 (see Table 7)—ranked

(continued...)

1 service, which is the other way around from what Mr. Gillan contends.

2 **Q. WHAT IS THE EMPIRICAL EVIDENCE ON BROADBAND COMPETITION IN**  
 3 **FLORIDA, AND HOW DOES THAT EVIDENCE PERTAIN TO MR. GILLAN'S**  
 4 **CONCLUSION [AT 7, ISSUE 3] THAT BELL SOUTH IS "VIRTUALLY A**  
 5 **MONOPOLY" IN THE PROVISION OF DSL SERVICE IN FLORIDA?**

6 A. The fact that BellSouth has deployed DSL-based services in Florida only proves BellSouth's  
 7 commitment to developing an important and fundamentally new segment of the market for  
 8 communications services in the state. Mr. Gillan's point, of course, is to cast BellSouth's alleged  
 9 99.3 percent share of the market for DSL-based services in Florida as conclusive proof of  
 10 BellSouth's stranglehold over consumers, which supposedly enables it to indulge in anti-consumer  
 11 and discriminatory strategies. This is counter-intuitive in itself: if BellSouth is so anti-consumer  
 12 when it comes to advanced services, then why would it commit itself to ensuring that its annual  
 13 growth rate for such services in 2001 was, in Mr. Gillan's words, the "fastest" in the country?

14 The more relevant discussion should be not about DSL-based services (or BellSouth's share  
 15 of those services), but rather about the market for advanced broadband services of which DSL  
 16 services are just one component. It is well known that cable modem, satellite, optical fiber, and  
 17 fixed wireless technologies offer substantial inter-modal alternatives to DSL technology in the  
 18 delivery of high-speed Internet access services. Therefore, the real issue is how the market has  
 19 grown for all of these services, and the position that DSL-based services have secured in this  
 20 market.

(...continued)

Florida as having the 21st highest ALEC penetration of all states in 2002. Table 8 of this report shows that, of the 1,035,417 ALEC-served lines in Florida, 29 percent were ALEC-owned and 47 percent were UNE or UNE-P based, as of June 2002.

Whatever other term he could have used instead, Mr. Gillan's unfortunate choice of the term "voice monopoly" is a loaded one, and perhaps designed to invoke negative connotations about BellSouth's actual market position for local exchange services. From an economic standpoint, there is a very big difference between a pure monopoly that is able to completely shut down competitive entry and a firm with a large market share that is, however, in no position to raise barriers to competitive entry.

1 According to the *FCC Advanced Services Report*, Table 7 (attached as exhibit JAR-2 to  
2 Mr. Ruscilli's rebuttal testimony), the number of lines capable of broadband Internet access in  
3 Florida (from all technologies) rose from 190,700 in December 1999 to 1,119,693 in June 2002  
4 (an increase of 487 percent in just two and a half years). Moreover, in June 2002, there were  
5 391,188 lines providing DSL-based service in Florida and 728,505 lines providing comparable  
6 service over inter-modal alternatives. Thus, the share of DSL-based lines was only 35 percent,  
7 while that of inter-modal alternatives was 65 percent. This clearly establishes that, Mr. Gillan's  
8 skewed presentation of market growth statistics notwithstanding, advanced service customers in  
9 Florida have significant alternatives to DSL services (or, even to BellSouth's FastAccess<sup>®</sup>  
10 service).

11 **Q. MR. GILLAN SEES BELLSOUTH'S DSL POLICY [AT 11, ISSUE 3] AS**  
12 **SOMETHING THAT "EFFECTIVELY FORECLOSES VOICE COMPETITION FOR**  
13 **THOSE CUSTOMERS DESIRING FASTACCESS SERVICE." AS A MATTER OF**  
14 **ECONOMICS, COULD THIS BE TRUE?**

15 A. No. Customers should be free to choose their most preferred combination of services and  
16 service providers *from among those being offered*, but there can never be any circumstance—  
17 and there are none in unregulated, competitive markets—in which consumers can *force* unwilling  
18 suppliers to enter into specific selling arrangements with them. Markets operate on the basis of  
19 voluntary transactions, with offer prices serving as a guiding mechanism for buying and selling.  
20 Thus, customers cannot be punished by denial of an arrangement that was never offered in the  
21 first place. When a customer has established service with an ALEC and later seeks to add DSL  
22 service, the ALEC must decide whether to offer DSL service. The ALEC has the ability to  
23 proactively offer that customer an inexpensive voice service, which service the customer can  
24 accept from the outset with the understanding that an overlay DSL service is not available.  
25 Alternatively, the ALEC can explore any number of options to provide broadband service to its  
26 customers. In the case of a customer that has existing FastAccess<sup>®</sup> service, the customer can be  
27 advised at the outset that BellSouth only offers its FastAccess<sup>®</sup> service in combination with its



1 local exchange service (retail or resold) as long as the customer receives service over BellSouth's  
2 facilities. If that customer prefers to have a more flexible serving arrangement, the customer can  
3 elect to purchase voice services from another carrier.

4 Customers often prefer to purchase different telecommunications services from the same  
5 provider (e.g., the FCCA's packages of local and long distance services), and frequently it is  
6 cheaper for a single firm to provide a package of different services to a customer than for  
7 different firms to provide the services (i.e., through economies of scope). Whenever either of  
8 these cases occurs, customers are better off if they can buy such packages, and firms that offer  
9 the full set of services have a competitive advantage over firms that do not. While Mr. Gillan [at  
10 10] interprets BellSouth's policy as "imposing a Hobson's choice on consumers—either the  
11 consumer is discouraged from using a competitive voice provider, or it must sacrifice its advanced  
12 services purchased from BellSouth," in reality, it is the FCCA that is seeking to limit consumer  
13 choice. If it succeeds in its Complaint, the FCCA's voice customers will be unable to buy a  
14 complete package of voice and DSL services from it because the FCCA would have no incentive  
15 to provide DSL services, and whatever additional utility or cost advantage that accrues to  
16 customers from joint supply of voice and DSL services from a single provider will be lost to the  
17 FCCA's voice customers as well.

18 **Q. SHOULD BELLSOUTH BE REQUIRED TO PROVIDE ITS FASTACCESS®**  
19 **SERVICE OVER AN ALEC'S UNE OR UNE-P FACILITIES SO THAT THE ALEC'S**  
20 **CUSTOMER IS NOT SOMEHOW PENALIZED?**

21 A. No. To understand why, it is necessary to consider the economics of joint provision of services.  
22 When BellSouth provides both voice (local exchange) service and FastAccess® service over  
23 different frequency ranges of the same access line, it incurs no incremental loop cost to provide  
24 one service *in addition to* the other. That is because the costs of providing these services are  
25 joint, i.e., the two services are provided in fixed proportions, and one cannot be provided without

1 it being possible to provide the other.<sup>5</sup> Therefore, if BellSouth is already providing one of the  
2 services over an access line, say, voice local exchange service, then it can also have available to it  
3 at no extra loop cost the means to provide the other service, namely, broadband Internet access  
4 service.

5 When BellSouth provides the access line, it currently has an obligation to share the high-  
6 frequency portion of the line with any ALEC that requests it in order for the ALEC to provide its  
7 own broadband service. However, when BellSouth has sold the entire access line (not just a  
8 portion of its frequency spectrum) to the ALEC, such as in a UNE or  
9 UNE-P arrangement, the ALEC may, of its own volition, provide its own local exchange service  
10 or its own broadband service, or a combination of the two. It also *may* contract with BellSouth  
11 or some other service provider to deliver broadband Internet access service over the high-  
12 frequency portion of the UNE or UNE-P access line with which it serves its customer. But, it  
13 certainly *may not* compel BellSouth to be that provider, and there can be no economic basis to  
14 *require* BellSouth to provide such service. If BellSouth were required to offer broadband access  
15 to an ALEC's voice customers because not doing so disadvantaged the ALEC in the voice  
16 market, where would the line be drawn? Would BellSouth be required to offer its inside wire  
17 maintenance contracts to ALEC customers? Its calling card services? For good economic  
18 reasons revolving around customer choice and cost, local exchange carriers in Florida offer some  
19 services exclusively to their basic exchange customers and other services more widely.

20 On the other hand, as Messrs. Milner and Fogle make clear, requiring BellSouth to provide its  
21 FastAccess<sup>®</sup> service in those circumstances would cause BellSouth to incur non-trivial  
22 operational difficulties and costs. These additional costs would be extraneous—imposed upon  
23 BellSouth by a policy to compel it to provide FastAccess<sup>®</sup> service over ALEC-purchased UNE  
24 or UNE-P facilities—rather than costs caused by BellSouth's own customers or costs arising  
25 from its own business and operational decisions. This would place an asymmetric burden on

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<sup>5</sup> Classic examples of such joint production are wool and mutton, beef and hide, and egg white and yolk.

1 BellSouth and be, in effect, anti-competitive. Moreover, Mr. Gillan suggests [at 15] that not only  
2 should BellSouth be required to provide its FastAccess service, he also suggests that BellSouth  
3 should provision such service “under the same terms, conditions, and prices.” Such a suggestion  
4 would entail price and quality regulation of a competitive service and completely disregards the  
5 additional costs imposed on BellSouth by such a requirement. If adopted, this suggestion would  
6 result in additional, asymmetric regulation and an economic burden placed on BellSouth.

7 **Q. DOES BELLSOUTH’S POLICY CONTRAVENE NATIONAL**  
8 **TELECOMMUNICATIONS PRIORITIES?**

9 A. No. Although Mr. Gillan alleges [at 9] that BellSouth is violating a federal policy goal of  
10 “increased broadband penetration,” this is simply untrue. On the contrary, BellSouth is investing  
11 heavily in facilities to provide broadband access to its customers. It is the FCCA that chooses  
12 not to contribute towards this federal policy goal by refusing to participate in the provision of  
13 broadband access to its voice customers.

14 **C. FCCA Allegation 3: BellSouth’s DSL Policy Discriminates Among**  
15 **Different Groups of Customers for Advanced Services**

16 **Q. PLEASE COMMENT ON MR. GILLAN’S ASSERTION [AT 10, ISSUE 3] THAT**  
17 **BELLSOUTH’S POLICY DISCRIMINATES AMONG SIMILARLY-SITUATED**  
18 **CUSTOMERS FOR ADVANCED SERVICES.**

19 A. The very basis for Mr. Gillan’s claim in this regard is flawed. Consider his argument about “two  
20 customers currently subscribing to FastAccess<sup>®</sup>” [at 10]:

21 One customer decides to subscribe to WorldCom’s new residential offering, the  
22 “Neighborhood,” while the other intends to remain with BellSouth. The *same*  
23 network facilities will be used to serve the customer choosing WorldCom’s voice  
24 service as are used today (or would be used to serve the customer staying with  
25 BellSouth for local voice service). Thus, there can be no question that the customers

1 are similarly situated—they are each being served over identical facilities.<sup>6</sup>

2 When Mr. Gillan refers to one customer's decision to subscribe to WorldCom's residential  
3 exchange service, he fails to clarify that this can only happen if the access line in question is either  
4 leased by WorldCom (as UNE or UNE-P) from BellSouth or deployed by WorldCom from out  
5 of its own facilities. In either instance, the access line *belongs* to WorldCom, even if, under the  
6 UNE lease arrangement, it is physically still a part of BellSouth's network. The important fact is  
7 that BellSouth has already been compensated—at least in theory—for the use of the line by  
8 WorldCom (and its customer). That transfer of ownership means that any delivery of service—  
9 whether voice or advanced—can only be initiated by WorldCom.<sup>7</sup> That is, the costs that arise  
10 from that point on to provide any service are those experienced solely by WorldCom. For  
11 example, once the customer has switched to WorldCom for local exchange service, WorldCom  
12 has to set about recovering the incremental cost of providing that service over the leased UNE or  
13 UNE-P line. At the customer's request, WorldCom can certainly offer its own version of  
14 broadband Internet access service over the *same* line at no (or trivial) additional line-related cost.  
15 However, if the customer desires BellSouth's FastAccess<sup>®</sup> service instead, over a line that is no  
16 longer in BellSouth's control, then (as explained in Mr. Milner's and Mr. Fogle's testimony)  
17 BellSouth would have to first solve the complex operational problems of delivering service over  
18 such a line, and then deal with having to recover the additional costs that doing so would entail.  
19 This cannot be—and is not—the most efficient way for a customer to receive both local exchange  
20 service and broadband Internet access service over the same access line. Also, the customer that  
21 migrates to WorldCom's facilities (whether leased or owned) cannot be similarly situated to a  
22 customer that remains with BellSouth, even if the access line used to serve WorldCom's  
23 customer remains physically a part of the same network to which the access line to serve  
24 BellSouth's customer belongs. WHY?

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<sup>6</sup> Emphasis in original.

<sup>7</sup> This situation differs fundamentally from total service resale under which WorldCom or some other competitor does *not* receive ownership of the underlying facilities.

1 **Q. WHAT OPTION COULD AN FCCA CUSTOMER THEN HAVE IF THE FCCA IS**  
 2 **UNWILLING, AS MR. GILLAN STATES [AT 11], TO “DUPLICATE**  
 3 **BELLSOUTH’S DSL-FOOTPRINT”?**

4 A. Local exchange competition entails that different service providers find ways to offer similar and  
 5 competing underlying functionalities (that customers want) through their own sources.  
 6 Recognizing how expensive entrants may find it to duplicate the incumbent’s existing network, the  
 7 1996 Act saw the creation and availability of UNEs as one of three crucial means of competitive  
 8 entry.<sup>8</sup> This was, however, an attempt to save entrants the large and potentially sunk costs of  
 9 *facilities*, i.e., the *means* of service provision, but never of *services* themselves.

10 I noted earlier that when it came to advanced broadband services, *all* service providers—  
 11 incumbents and entrants alike—started from a blank slate. Incumbency provided no economic or  
 12 technical advantage at all in the construction and delivery of these services. Nor did incumbency  
 13 guarantee an installed base of consumers for advanced services.<sup>9</sup> Moreover, BellSouth and other  
 14 incumbents have had to invest heavily in upgrading their existing networks to be able to provide  
 15 DSL services, as have alternative providers of DSL services and inter-modal competitors that  
 16 provide alternatives to DSL services. The race to serve consumers of DSL services has involved  
 17 investment, innovation, and change by incumbents and entrants alike. Public policy should *not* be  
 18 redesigned to change these facts after the investment has already occurred.

19 Contrary to Mr. Gillan’s assertion, there is no reason why the FCCA (and others like it)  
 20 should not have to bear the same burden as that borne by BellSouth and other incumbents when  
 21 it comes to services for which all competing service providers started from scratch. The rules that  
 22 currently apply to BellSouth for its supposed incumbency advantages with respect to voice  
 23 services should not be extended to cover advanced services for which no such advantage exists.  
 24 Doing otherwise would be a misguided application of public policy that, in the end, would only

<sup>8</sup> As is well known, the other two are total service resale and facilities-based provision.

<sup>9</sup> The word “incumbents” encompasses local exchange incumbents or ILECs, long distance incumbents (e.g., AT&T or WorldCom) and cable incumbents.

1 serve the self-interest of ALECs. This is readily evident from Mr. Gillan's statement [at 2]:

2 [T]he Commission should prohibit BellSouth from refusing to provide FastAccess ...  
3 to any customer that has chosen an alternative voice provider.

4 This is a naked attempt by the FCCA to secure for itself all the benefits of serving customers who  
5 want broadband Internet access service, while shifting all of the costs and risks of providing that  
6 service to BellSouth. This is decidedly not the model of competition to which the 1996 Act  
7 aspired.

8 **D. FCCA Allegation 4: BellSouth's DSL Policy Amounts to Illegal Tying**

9 **Q. WHAT IS "TYING" IN ANTITRUST ECONOMICS?**

10 A. Tying means that a monopoly supplier of service A refuses to supply that service by itself and  
11 requires customers to also purchase service B, for which it faces competition. Under some  
12 circumstances, the monopolist can make more money by following such a strategy and competing  
13 suppliers of service B can be placed at a competitive disadvantage. That is because any  
14 customer who buys the competitors' services must find a substitute for the monopolist's service  
15 A, which is, by definition, nearly impossible to do. Technically, tying is a form of monopoly  
16 leveraging in which market power in one market (A) is leveraged to give a competitive advantage  
17 in a more competitive market (B).

18 **Q. GIVEN THIS DEFINITION OF TYING, DOES MR. GILLAN'S THEORY [AT 3]  
19 THAT BELLSOUTH'S DSL POLICY "REPRESENTS A CLASSIC 'TYING  
20 ARRANGEMENT'" MAKE SENSE?**

21 A. No. Mr. Gillan has reversed the economic definition of "tying." In order for BellSouth's business  
22 plans to impair the FCCA's ability to compete for residential local exchange customers,  
23 BellSouth would have to be essentially a monopoly provider of broadband Internet access  
24 services to residential customers who are on the margin between subscribing to the FCCA or  
25 BellSouth for basic exchange service. Otherwise, the actions of which Mr. Gillan complains  
26 would have no effect on its business: potential FCCA customers would simply buy broadband

1 Internet access services from a service provider other than BellSouth. Earlier, I showed that  
 2 customers have available to them many substitutes for BellSouth's FastAccess<sup>®</sup> service. Thus,  
 3 the wholesale or retail provision of BellSouth's DSL services is not necessary for the FCCA to  
 4 compete for local exchange customers, and their absence does not impair the process of local  
 5 exchange competition in Florida.

6 **Q. DOES THIS THEORY OF TYING APPLY TO THE FCCA'S COMPLAINT?**

7 A. No. BellSouth's business decision not to supply DSL services as stand-alone retail services is  
 8 the very opposite of monopoly leveraging or tying, so none of the theory of tying applies in this  
 9 case. Tying occurs when a firm forces customers of its *less-competitive* service to also buy its  
 10 *more-competitive* service. In this case, BellSouth is requiring customers of its *more-*  
 11 *competitive* service (FastAccess<sup>®</sup>) to also buy its competitive, although arguably less  
 12 competitive, service (basic exchange voice service). Such a strategy is not tying, and it is not anti-  
 13 competitive because any FastAccess<sup>®</sup> customer that prefers not to buy BellSouth voice service  
 14 can readily find another supplier of broadband access. BellSouth can extract no additional profits  
 15 from its FastAccess<sup>®</sup> service by combining it with its basic exchange services because customers  
 16 have viable substitutes for BellSouth's FastAccess<sup>®</sup> service. Any attempt effectively to increase  
 17 the prices of that service would cause customers to switch suppliers. Thus, because BellSouth  
 18 has no monopoly position or dominant market power in the supply of broadband access, there  
 19 can be no harm to competition or competitors in the local exchange market from its business  
 20 decision not to supply its DSL services on either a wholesale or stand-alone retail basis.<sup>10</sup>

21 **Q. WOULD THIS CONCLUSION BE AFFECTED IF BELL SOUTH WERE FOUND TO**  
 22 **HAVE MARKET POWER FOR RESIDENTIAL AND SMALL BUSINESS BASIC**  
 23 **LOCAL EXCHANGE SERVICES?**

<sup>10</sup> Moreover, since BellSouth's prices for its local exchange services are generally regulated, it could not charge a higher-than-market price for local service even if it were able to require its local exchange customers to buy its DSL services.

1 A. No. Even if BellSouth had market power in local exchange markets, it would gain nothing by  
2 requiring its FastAccess<sup>®</sup> customers to also buy its local exchange services. FastAccess<sup>®</sup>  
3 customers who wanted to buy ALEC local exchange services could do that simply by switching  
4 broadband access suppliers.

5 What may be confusing in these circumstances is that, while requiring FastAccess<sup>®</sup> customers  
6 to buy local exchange service isn't profitable, the *opposite* strategy—requiring BellSouth local  
7 exchange customers to also buy FastAccess<sup>®</sup> service—could be profitable. If BellSouth had  
8 market power for basic exchange service and those prices were regulated, it is possible that  
9 requiring basic exchange customers (who, by assumption, have limited competitive alternatives) to  
10 also buy FastAccess<sup>®</sup> service could conceivably be profitable and anti-competitive. However,  
11 that strategy is emphatically *not* what BellSouth is doing and *not* what Mr. Gillan is complaining  
12 about.

13 **Q. IF BELLSOUTH ISN'T ENGAGING IN ANTI-COMPETITIVE TYING, WHY DOES**  
14 **IT CHOOSE NOT TO SUPPLY FASTACCESS<sup>®</sup> SERVICE TO THE FCCA'S LOCAL**  
15 **EXCHANGE CUSTOMERS?**

16 A. From the fact that BellSouth does not voluntarily supply FastAccess<sup>®</sup> service to the FCCA's  
17 local exchange customers, we can infer that it believes its profits in the long run will be higher  
18 under such a plan. However, such higher profits need not—and, in fact, cannot—stem from anti-  
19 competitive tying. They *cannot* be ascribed to anti-competitive tying because, as described  
20 above, BellSouth has no market power in the broadband access markets to attempt to leverage  
21 into local exchange markets. Indeed, there are a number of other, competitively benign,  
22 explanations.

23 First, such bundling of services should not be surprising because this behavior is prevalent in  
24 the industry. There are marketing and cost advantages associated with bundling, and few local  
25 exchange carriers offer stand-alone retail telecommunications services. For example, no local  
26 exchange carrier supplies stand-alone vertical services: the cost to supply call-waiting to another  
27 LEC's basic exchange customer—particularly the network costs and the costs of establishing,



1 measuring and billing the account—would be prohibitive.

2 Second, as explained in Mr. Milner's and Mr. Fogle's testimony, mandatory provision of  
3 FastAccess<sup>®</sup> service on a stand-alone retail basis to the FCCA's local exchange customers  
4 would entail operational problems and costs above and beyond those incurred in supplying the  
5 service to BellSouth's own local exchange customers.

6 In sum, there are generally thought to be large economies of scope in the supply of local  
7 exchange telecommunications and information services: that is, it is thought to be significantly  
8 cheaper to supply them together through one firm than to supply them separately through different  
9 sources. This technological fact is an important reason for a series of FCC decisions that made it  
10 possible for basic telephone and enhanced information services to be provided by the same  
11 entity, essentially regulating the underlying telecommunications network components while leaving  
12 the retail information service unregulated. In its complaint, the FCCA is asking the Commission  
13 to impose the *opposite* approach (re-regulating retail information services) on top of the  
14 regulatory structure established by the FCC. Imposing such conflicting regulations in Florida  
15 would raise difficulties for multi-state telecommunications providers. Economically, requiring  
16 BellSouth (and no other service provider) to supply ancillary information services on a stand-  
17 alone basis irrespective of their cost and profitability would significantly distort regulation as well  
18 as incentives to compete and invest in the markets for the ancillary and basic exchange services.

19 **1. Effects on Competitors**

20 **Q. HOW DOES BELLSOUTH'S DSL POLICY AFFECT THE ABILITY OF ALECS TO**  
21 **COMPETE FOR RESIDENTIAL AND SMALL BUSINESS CUSTOMERS IN THE**  
22 **MARKET FOR BASIC LOCAL EXCHANGE SERVICE?**

23 A. It does not. As documented earlier, Florida customers have many alternatives to BellSouth's  
24 retail FastAccess<sup>®</sup> service, and competitors have alternative mechanisms to provide those  
25 services if they wish to compete in those markets or to provide bundles of broadband access and  
26 local exchange services.

1 **Q. IS PROVISION OF BELL SOUTH'S FASTACCESS® SERVICE THROUGH RESALE**  
2 **A VIABLE SOLUTION FOR THE FCCA'S PROBLEM?**

3 A. Of course. The whole purpose of total service resale (as envisioned by the 1996 Act) was to  
4 enable competitors and new entrants to first gain a foothold and some traction in the market (by  
5 gaining customers on the strength of superior retail service), and then to move to serving  
6 customers out of some combination of leased or their own facilities. This transition would allow  
7 those entrants to grow their market presence without first having to commit to risky and large  
8 (and possibly sunk) investments in their own facilities.

9 Mr. Gillan has observed in a similar proceeding in Georgia that “[r]esale has never proved  
10 effective on a mass-market basis and is in decline in Georgia and throughout BellSouth’s  
11 region.”<sup>11</sup> That is certainly true, but not for the reason Mr. Gillan appears to imply, namely, that  
12 resale is inherently a failing strategy for growth in the local exchange market. Rather, resale  
13 should only be viewed as a temporary growth strategy (for reasons mentioned above), and a  
14 general decline in resale that corresponds to a general growth in UNE or facilities-based service  
15 from ALECs is a sign that what the 1996 Act intended is indeed coming true. It is hardly  
16 surprising that the FCCA and others have increasingly migrated to UNE and UNE-P for  
17 competing in the local exchange market. ALECs, particularly those that can bundle long distance  
18 services along with their local exchange services, stand to collect access charges under the UNE  
19 or UNE-P option, but not under resale. Mr. Gillan also claims that resale is “not effective”  
20 because it yields “substantially lower margins” than the UNE or UNE-P strategy.

21 It is not worthwhile for me to second-guess the FCCA’s apparent business decision to opt for  
22 UNE or UNE-P over resale. Being a profit-maximizer (at least, as it appears to me, in the short  
23 run), the FCCA may have chosen the strategy that best fits that goal. However, by not first using  
24 resale to secure an installed base of DSL service users, the FCCA has perhaps chosen to pass  
25 up the opportunity to maximize profits in the longer term. This the FCCA could have done by

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<sup>11</sup> Direct Testimony of Joseph Gillan [at 13], on behalf of MCI WorldCom, in Georgia Public Service Commission Docket No. 11901-U, October 21, 2002.

1 offering its own version of broadband Internet access service that either it, or a partner under a  
2 line-splitting arrangement, could offer through its leased or owned facilities. Rather, the FCCA  
3 has apparently gambled on the continuing availability of BellSouth's FastAccess<sup>®</sup> service even  
4 over its UNE and UNE-P lines. Now that BellSouth has refused to oblige the FCCA in carrying  
5 out such a strategy, the FCCA is crying foul. However, from an economic standpoint, the FCCA  
6 has nothing more than a claim of non-cooperation from its rival BellSouth to bring before the  
7 Commission at this point. There is no anti-competitive conduct on the part of BellSouth (for  
8 reasons explained above), and the FCCA can hardly expect a rival like BellSouth to play willing  
9 handmaiden to its own short-sighted profit-maximizing strategy. Non-cooperation by a  
10 competitor is hardly conduct worthy of litigation; rather, it is conduct that must be expected in  
11 competitive markets. The FCCA cannot expect to coerce BellSouth into offering the missing  
12 piece in the FCCA's grand strategy when there is no evidence of any economic malfeasance on  
13 BellSouth's part.

14 **Q. WHY DOES THE FCCA NOT PROPOSE TO USE LINE SPLITTING AS A MEANS**  
15 **TO OFFER ITS OWN COMPETING PACKAGE AND DSL SERVICE?**

16 A. As I noted earlier, no LEC—not even BellSouth—has been exempt from the need to invest  
17 heavily in network facilities and upgrades to permit the transport and delivery of broadband or  
18 advanced services. In fact, providers of inter-modal alternatives to DSL-based Internet access  
19 (primarily cable service providers) have been rewarded for such investments by market shares  
20 that exceed those of DSL service providers. As a long run business model, the FCCA and other  
21 such well-financed firms cannot expect to achieve success in the highly competitive market for  
22 advanced services if they choose to operate only by proxy, i.e., by attempting to bundle  
23 FastAccess<sup>®</sup> and similar services with their own voice services.

24 In reality, the FCCA could readily collaborate with a DSL service provider to offer a  
25 combination of voice and advanced services to its existing or potential customers. BellSouth's  
26 legal obligations should not be altered by the FCCA's apparently voluntary decision not to  
27 engage in line splitting.

1 In effect, the FCCA is asking the Commission to compel BellSouth to adjust its business plans  
2 for its retail information services to accommodate whatever business plan the FCCA might elect  
3 to follow. Whatever might result from such a requirement, it would not be competition in the  
4 markets for broadband Internet access or local exchange services. Such a requirement would  
5 also turn Federal and State policies favoring development of competition in telecommunications  
6 markets on their heads, and there can be no economic or policy basis for the Commission to turn  
7 back the clock in this manner.

8 **Q. WHY WOULD COMPETITION BE HARMED BY THE FCCA'S REQUEST?**  
9 **WOULDN'T COMPETITION BE ENHANCED BY PUTTING EVERY LOCAL**  
10 **EXCHANGE CARRIER ON AN EVEN FOOTING WITH RESPECT TO**  
11 **BROADBAND INTERNET ACCESS SERVICES?**

12 A. No. First, the costs of engaging in "managed competition" by regulators—particularly in markets  
13 subject to vigorous competition and rapid technical change—are immense, and it can be difficult  
14 to tell which firms, or which technologies, will gain or lose in this process. Second, competitors in  
15 the broadband Internet access market would not welcome the mandatory provision of  
16 BellSouth's FastAccess<sup>®</sup> service over the FCCA's UNE or UNE-P lines. Those competitors  
17 have already invested in their own infrastructure and marketed their products and services,  
18 presumably planning to sell broadband Internet access services to new local exchange  
19 competitors. Under the FCCA's plan, ALECs would have the option of using BellSouth services  
20 on the cheap rather than provisioning their own.

21 **2. Effects on Consumers**

22 **Q. BUT WOULDN'T THE FCCA'S CUSTOMERS BE BETTER OFF IF THEY COULD**  
23 **CONTINUE TO RECEIVE BELL SOUTH INFORMATION SERVICES AFTER**  
24 **SWITCHING TO FCCA'S LOCAL EXCHANGE SERVICE?**

25 A. No. In the long run, consumers would be injured by actions that have the effect of stifling  
26 competition for broadband Internet access service. Neither BellSouth nor its competitors would

1 have any incentive to invest in new facilities and technologies because (1) BellSouth would be  
 2 forced to share the benefits from its investment and its research and development and (2) by  
 3 being able to take advantage of BellSouth's investment and new service development, entrants  
 4 would have diluted incentives to develop their own services. Such competitive distortions could  
 5 have particularly large effects in high-investment, high-technology industries where investment is  
 6 sunk and risky, and where the market outcomes among competing technologies are  
 7 unpredictable.

8 **E. FCCA Allegation 5: BellSouth's DSL Policy Raises Barriers to**  
 9 **Competitive Entry**

10 **Q. HOW DOES THE FCCA EXPLAIN ITS BELIEF THAT BELLSOUTH'S DSL**  
 11 **POLICY THREATENS TO RAISE BARRIERS TO COMPETITIVE ENTRY?**

12 A. Mr. Gillan expresses this belief [at 3] but offers an explanation that is, at best, tangential. For  
 13 example, he argues [at 11] that no ALEC can hope to create "a DSL-footprint of comparable  
 14 scale and scope as BellSouth" because of the allegedly "prohibitive costs" of doing so, and  
 15 concludes from that entrants must "forego competing for customers" that desire the voice and  
 16 advanced services that BellSouth can offer in packaged form.

17 By portraying the ALEC's "predicament" in such stark terms, indeed by declaring this as  
 18 "artificially constricting the available market, particularly in the residential marketplace," Mr. Gillan  
 19 attempts to rationalize the need to compel BellSouth to change its competitive policies to serve  
 20 the FCCA's (and like-minded ALECs') interests.

21 The real situation, however, is neither as stark nor as polarized as Mr. Gillan depicts it.  
 22 Barriers to competitive entry are typically raised by the need to make large and risky sunk  
 23 investments prior to entry. Since, by definition, sunk costs are unrecoverable in the event of  
 24 failure, no firm would commit to such costs without a reasonable expectation or assurance of their  
 25 recovery eventually. The 1996 Act correctly recognized that entry into local exchange markets  
 26 for voice services was fraught with exactly such a barrier and, therefore, prescribed total service  
 27 resale and unbundling by incumbent networks as ways to mitigate or lower the sunk costs of

1 fledgling entrants. In this manner, new entrants did not have to face the specter of competing with  
2 dominant incumbents who experienced no corresponding costs of entry (or who had long since  
3 recovered, in full or part, their *own* costs of entry).

4 The story with respect to advanced services is radically different. No single firm enjoys an  
5 inherent advantage (as a first-comer or being an innovator) in providing these services. No  
6 incumbent has the ability to leverage whatever market power it may enjoy for any of its less-  
7 competitive services to favor its own offering of advanced services. All competitors—incumbents  
8 and entrants alike—start from scratch, including by having to make significant new network  
9 investments and upgrades, and having to develop customer interest in the advanced services. The  
10 new costs—whether sunk or not—are experienced symmetrically by all firms competing. In the  
11 absence of asymmetric costs to enter or compete, the specter of entry barriers for advanced  
12 services cannot be taken seriously.

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

14 A. Yes.

1 CHAIRMAN JABER: Ms. Mays, Mr. Ruscilli, was he  
2 sworn?

3 MS. MAYS: Yes, he was, Madam Chair.

4 CHAIRMAN JABER: Thank you.

5 JOHN RUSCILLI

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

9 DIRECT EXAMINATION

10 BY MS. MAYS:

11 Q Mr. Ruscilli, could you state your name, business  
12 address, and position for the record?

13 A My name is John Ruscilli. My business address is 675  
14 West Peachtree, Atlanta, Georgia, and I'm senior director of  
15 policy implementation and regulatory compliance for BellSouth  
16 Telecommunications.

17 Q And did you cause to be prefiled in this case  
18 22 pages of direct testimony?

19 A That's correct.

20 Q And did you also cause to be prefiled one exhibit  
21 with your direct testimony?

22 A Yes, ma'am, labeled JAR-1.

23 Q And did you cause to be prefiled 16 pages of rebuttal  
24 testimony?

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

1 Q And did you also cause to be prefiled an exhibit with  
2 your rebuttal testimony?

3 A Yes, ma'am, JAR-2.

4 MS. MAYS: For the record, Madam Chair, we prefiled  
5 prior to hearing a substitution for JAR-2 just to have the most  
6 recent data. It's been filed with the Commission, and we would  
7 ask that it be replaced for what was previously filed.

8 CHAIRMAN JABER: Okay. How would I know which page  
9 or what the replacements are? Do you know?

10 MS. MAYS: I believe we prefiled and served that on  
11 all parties. What we can do is at the next break make sure  
12 that the Commission is familiar. The headings are exactly the  
13 same. The simple change is that it's a June 2003 FCC report as  
14 opposed to a December 2002 FCC report.

15 CHAIRMAN JABER: Thank you for that clarification.  
16 The reason I'm asking is I've got the December 2002. I don't  
17 know if the Commissioners have the June one or not, but I  
18 don't. If you do have extra copies, it would be great if you  
19 make sure the Commissioners have it.

20 MS. MAYS: We'll make sure we bring those.

21 CHAIRMAN JABER: Thank you.

22 BY MS. MAYS:

23 Q Ms. Ruscilli, do you have changes to your direct and  
24 rebuttal testimony?

25 A Yes, ma'am, I do.



1 Q Could you give those now, please.

2 A Yes, ma'am, please. On Page 18, Lines 20 and 21, I  
3 need to change those three percentage numbers. The  
4 "64 percent" will change to "29 percent." The "34 percent"  
5 will change to "64 percent." And the "2 percent" will change  
6 to "7 percent."

7 On Page 19, Line 9, where it says, "providing no  
8 opportunity," please change that to "providing limited  
9 opportunities."

10 On Page 21, Line 10, please change "eight central  
11 offices" to "seven."

12 That's all on my direct.

13 Q With those changes, Mr. Ruscilli, if I were to ask  
14 you the same questions in your direct, would your answers be  
15 the same?

16 A Yes, ma'am.

17 MS. MAYS: I would ask that the prefiled direct be  
18 admitted, and we'll go through the rebuttal separately.

19 CHAIRMAN JABER: Okay. Let me go back. Commissioner  
20 Bradley, on Mr. Ruscilli's testimony in direct, he made changes  
21 to Page 18. Line 20, he changed "64 percent" to "29 percent,"  
22 29, 2-9. On the next line he changed "34 percent" to  
23 "64 percent," and the "2 percent" he changed to "7 percent."

24 I think that's the one you missed. Did you get  
25 Page 19?

1 COMMISSIONER BRADLEY: Yes.

2 CHAIRMAN JABER: Okay. Great.

3 MS. MAYS: If we could have the direct testimony  
4 admitted with those changes, Madam Chair.

5 CHAIRMAN JABER: The prefiled direct testimony of  
6 John A. Ruscilli shall be inserted into the record as though  
7 read.

8 BY MS. MAYS:

9 Q Could you give us the changes to your rebuttal  
10 testimony, please.

11 A Yes, ma'am, please. On Page 3, Line 13, change the  
12 word "contract" to "contradict."

13 On Page 6, Line 25, strike the word  
14 "telecommunications" at the end of that line.

15 COMMISSIONER BRADLEY: Page 6, what line?

16 THE WITNESS: I'm sorry, sir. On Page 6, Line 25.

17 On Page 8, Line 10 -- I'm sorry, Line 7, I apologize,  
18 change that from "December 2002" to "June 2003." And that's  
19 Line 7 again on Page 8.

20 And then on Line 10, change the "June 30th, 2002" to  
21 "December 31, 2002."

22 My apologies for all these erratas. I should have  
23 made a copy for everybody.

24 On Page 8, Lines 10 through 11, change where it says,  
25 "cable modem service continued to increase faster than

1 30 percent than high-speed ADSL service in the 29 percent"  
2 change that to "cable modem service continued to serve more  
3 high-speed lines (approximately 11.4 million lines) than ADSL  
4 service (approximately 6.5 million lines).

5 And then strike Lines 11 through 15.

6 And the last errata is on Page 14, Line 10, change  
7 the "581,000" to "595,000." And then after "Florida" add "as  
8 of April 30th, 2003."

9 BY MS. MAYS:

10 Q With those changes, Mr. Ruscilli, if I were to ask  
11 you the questions that appear in your rebuttal, would your  
12 answers be the same?

13 A Yes, ma'am, they would.

14 MS. MAYS: Madam Chair, we would ask that the  
15 rebuttal with changes be admitted as though read.

16 CHAIRMAN JABER: The prefiled rebuttal testimony of  
17 John A. Ruscilli shall be inserted into the record as though  
18 read.

19 BY MS. MAYS:

20 Q Mr. Ruscilli, can you please provide a summary of  
21 your testimony.

22 CHAIRMAN JABER: Let me identify exhibits JAR-1 and  
23 JAR-2 as composite Exhibit 17 because I did not do that; right?

24 MS. MAYS: Thank you, Madam Chair.

25 CHAIRMAN JABER: Composite Exhibit 17 with a notation

1 that JAR-2 is really the June 2003 --

2 MS. MAYS: 2003.

3 CHAIRMAN JABER: -- report. Thank you.

4 (Exhibit 17 marked for identification.)

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1 BELL SOUTH TELECOMMUNICATIONS, INC.  
2 DIRECT TESTIMONY OF JOHN A. RUSCILLI  
3 BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION  
4 DOCKET NO. 020507-TL  
5 NOVEMBER 26, 2002  
6

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

10  
11 A. My name is John A. Ruscilli. I am employed by BellSouth as Senior Director – Policy  
12 Implementation and Regulatory Compliance for the nine-state BellSouth region. My  
13 business address is 675 West Peachtree Street, Atlanta, Georgia 30375.

14  
15 Q. PLEASE PROVIDE A BRIEF DESCRIPTION OF YOUR BACKGROUND AND  
16 EXPERIENCE.

17  
18 A. I attended the University of Alabama in Birmingham where I earned a Bachelor of  
19 Science Degree in 1979 and a Master of Business Administration in 1982. After  
20 graduation I began employment with South Central Bell as an Account Executive in  
21 Marketing, transferring to AT&T in 1983. I joined BellSouth in late 1984 as an analyst  
22 in Market Research, and in late 1985 moved into the Pricing and Economics organization  
23 with various responsibilities for business case analysis, tariffing, demand analysis and  
24 price regulation. I served as a subject matter expert on Integrated Services Digital  
25 Network ("ISDN") tariffing in various public service commission staff meetings in

1 Tennessee, Florida, Alabama and Georgia. I later moved into the State Regulatory and  
2 External Affairs organization with responsibility for implementing both state price  
3 regulation requirements and the provisions of the Telecommunications Act of 1996 (“the  
4 Act”), through arbitration and 271 hearing support. In July 1997, I became Director of  
5 Regulatory and Legislative Affairs for BellSouth Long Distance, Inc., with  
6 responsibilities that included obtaining the necessary certificates of public convenience  
7 and necessity, testifying, Federal Communications Commission (“FCC”) and commission  
8 support, federal and state compliance reporting and tariffing for all 50 states and the FCC.  
9 I assumed my current position in July 2000.

10

11 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

12

13 A. The purpose of my testimony in this proceeding is to respond to Issues 1, 2, and 3 from  
14 the November 12, 2002 Order Establishing Procedure in this case.

15

16 *Issue 1: Does the Commission have jurisdiction to grant the relief requested in the*  
17 *Complaint?*

18 

19 Q. WHAT IS BELLSOUTH’S POSITION ON THIS ISSUE?

20

21 A. BellSouth’s position is that the Commission does not have jurisdiction to grant the relief  
22 requested in the Complaint. In its Complaint at ¶24, FCCA is seeking an order from this  
23 Commission requiring that BellSouth “cease and desist from its practice of refusing to  
24 provide its FastAccess service to customers who select another provider for voice  
25 service.” Moreover, Issue 6(a) and 6(b) relate to the rates, terms and conditions

1 applicable to BellSouth®FastAccess® (“FastAccess”) service. If the Commission were  
2 to order BellSouth to “cease and desist” certain practices concerning FastAccess and also  
3 set rates, terms, and conditions for BellSouth’s FastAccess service, it would effectively  
4 be ordering BellSouth to either violate or alter the express terms of BellSouth’s federal  
5 tariff. This Commission clearly has no authority over FCC tariffs and thus lacks the  
6 jurisdiction to grant the relief the FCCA is seeking.

7  
8 Because FastAccess is unregulated and wholesale DSL service is an interstate  
9 telecommunications service over which the FCC, and not the Commission, has  
10 jurisdiction, the inclusion of Issues 6(a) and (b) in this proceeding exceed this  
11 Commission’s jurisdiction. In fact, in an order addressing GTE’s DSL-Solutions-ADSL  
12 Service, the FCC found that “this offering, which permits Internet Service Providers  
13 (ISPs) to provide their end user customers with high-speed access to the Internet, is *an*  
14 *interstate service* and is *properly tariffed at the federal level.*”<sup>1</sup>

15

16 Q. WHAT ABOUT SECTION 364.01(4) OF THE FLORIDA STATUTES?

17

18 A. Although I am not a lawyer, BellSouth’s DSL policy, as explained below, does not  
19 violate any aspect of state law. Specifically, notwithstanding the Commission’s general  
20 jurisdiction to enforce the requirements of the Florida Statutes, it is my understanding  
21 that any obligation imposed under state law that is inconsistent with federal law is  
22 expressly preempted.<sup>2</sup> Regarding the issues in this case, the FCC has squarely held that  
23 BellSouth’s policy regarding the provision of DSL service is neither discriminatory nor

24

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25 <sup>1</sup> See Memorandum Opinion and Order, *In the Matter of GTE Telephone Operating Cos. GTOC Tariff No. 1*, 13  
F.C.C. red 22,466 at ¶1 (October 30, 1998) (emphasis added).

<sup>2</sup> 47 U.S.C. § 251(d)(3)(B).

1 anticompétitive under federal law, and a contrary ruling under state law would be  
2 expressly preempted.

3

4 The FCC recently addressed BellSouth's practice of not providing its federally tariffed  
5 wholesale DSL service over a combined UNE loop and port (UNE-P) in its order  
6 approving BellSouth's Louisiana/Georgia Section 271 application.<sup>3</sup> Parties to that  
7 proceeding raised complaints about BellSouth's DSL policy that are nearly identical to  
8 those asserted by FCCA in this proceeding, which the FCC rejected:

9

10 BellSouth states that its policy "not to offer its wholesale DSL service to  
11 an ISP or other network services provider [ ] on a line that is provided by a  
12 competitor via the UNE-P" is not discriminatory nor contrary to the  
13 Commission's rules. Commenters allege that BellSouth will not offer its  
14 DSL service over a competitive LEC's UNE-P voice service on that same  
15 line. *We reject these claims* because, under our rules, the incumbent LEC  
16 has no obligation to provide DSL service over the competitive LEC's  
17 leased facilities. Furthermore, a UNE-P carrier has the right to engage in  
18 line splitting on its loop. As a result, a UNE-P carrier can compete with  
19 BellSouth's combined voice and data offering on the same loop by  
20 providing the customer with line splitting voice and data service over the  
21 UNE-P loop in the same manner. *Accordingly, we cannot agree with*  
22 *commenters that BellSouth's policy is discriminatory.*

23  
24  
25 *Id.* at ¶157 (emphasis added). The FCC, therefore, was squarely presented with the issue  
of whether BellSouth's policy of not providing its federally tariffed, wholesale DSL  
service over UNE-P violates federal law. The FCC found no such violation. On the  
contrary, the FCC explicitly and unequivocally found that BellSouth's policy is not  
discriminatory and does not violate federal law. A contrary ruling by this Commission

<sup>3</sup> FCC Order No. 01-247, *In the Matter of Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and Bellsouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Georgia and Louisiana*, CC Docket No. 02-35, Rel. May 15, 2002. ("GA/LA 271 Order")



1 under state law would be inconsistent with the requirements of federal law, as interpreted  
2 by the FCC, and thus would be preempted.

3

4 Q. HAS THE FCC ADDRESSED BELLSOUTH'S DSL POLICY IN MORE RECENT  
5 DECISIONS?

6

7 A. Yes. The FCC again affirmed its conclusion reached in the Georgia/Louisiana Order  
8 when it approved BellSouth's 271 Application for Alabama, Kentucky, Mississippi,  
9 North Carolina and South Carolina. In paragraph 164 of its order,<sup>4</sup> the FCC concluded:

10

11 Finally, we reject claims by KMC and NuVox that BellSouth's practice of  
12 refusing to provide DSL service on the same line over which an end user  
13 subscribes to a competitive LEC's voice service warrants a finding of  
14 noncompliance. As we stated in the *BellSouth Georgia/Louisiana Order*,  
15 an incumbent LEC has no obligation, under our rules, to provide DSL  
16 service over the competitive LEC's leased facilities. Moreover, a UNE-P  
17 carrier has the right to engage in line splitting on its loop. As a result, a  
18 UNE-P carrier can compete with BellSouth's combined voice and data  
19 offering on the same loop by providing the customer with line splitting  
20 voice and data service over the UNE-P loop in the same manner.  
21 Accordingly, we cannot agree with KMC and NuVox that BellSouth's  
22 policies are discriminatory and warrant a finding of checklist  
23 noncompliance. [Footnotes omitted.]

19

20 Again, it is clear that BellSouth's DSL policy is not anticompetitive or discriminatory.

21

22 Further, as the FCC noted, Competitive Local Exchange Carriers ("CLECs") (referred to  
23 in Florida as Alternative Local Exchange Carriers - "ALECs") have the option of  
24 engaging in line splitting in order to provide DSL service to their voice customers -- an

24

25 <sup>4</sup> *In the Matter of Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Alabama, Kentucky, Mississippi, North Carolina, and South Carolina*, (CC Docket 02-150, Memorandum Opinion and Order, Released September 18, 2002 ("Five State Order")).

1 option that ALECs have conveniently elected to forego, despite prior representations by  
2 ALECs that line splitting is essential to competition.

3

4 Q. WHAT DOES FCCA POINT TO AS THE BASIS FOR THIS COMMISSION'S  
5 PURPORTED JURISDICTION TO GRANT THE RELIEF THE FCCA IS SEEKING?

6

7 A. The FCCA's assertions regarding jurisdiction of the Commission are not valid. The  
8 FCCA claims the Commission has jurisdiction over this Complaint pursuant to §364.01,  
9 Florida Statutes, which gives the Commission authority to regulate telecommunications  
10 companies, and §§364.10, 364.051 and 364.3381, Florida Statutes, which deal with the  
11 Commission's authority to prevent anti-competitive behavior of telecommunications  
12 services providers.

13

14 Q. DO THE FLORIDA STATUTES CITED BY THE FCCA GIVE THIS COMMISSION  
15 JURISDICTION OVER BELL SOUTH'S PROVISION OF DSL SERVICES?

16

17 A. No. When I review the policy behind the Florida Statutes cited by the FCCA, the clear  
18 intent of the statutes is to grant the Commission general jurisdiction over telephone  
19 companies. None of these provisions contains any reference to broadband services, and  
20 all are subject to the preemption provisions of the Telecommunications Act of 1996.  
21 Further, none of the statutes cited by the FCCA expressly grants the Commission any  
22 jurisdiction over an enhanced, nonregulated, nontelecommunications service like  
23 BellSouth's FastAccess service. As explained in BellSouth's Motion to Dismiss the  
24 Complaint in this docket, Chapter 364, Florida Statutes, grants the Commission  
25 jurisdiction over only telecommunications services that are offered by a

1 telecommunications company, not jurisdiction over any other activities of a  
2 telecommunications company. As the Commission has agreed in its Order in the FDN  
3 Arbitration case, BellSouth's FastAccess service is not a telecommunications service.  
4 Instead, it is an "enhanced, nonregulated, nontelecommunications Internet access  
5 service."<sup>5</sup> In fact, in that same Order, the Commission stated, "[t]his decision should not  
6 be construed as an attempt by this Commission to exercise jurisdiction over the  
7 regulation of DSL service, but as an exercise of our jurisdiction to promote competition  
8 in the local voice market."<sup>6</sup>

9  
10 Further, the FCCA, in its Complaint at p. 3 (and the Commission in its *FDN Arbitration*  
11 *Order* at p. 11), cites provisions of the Florida Statutes that, the FCCA claims, give the  
12 Commission jurisdiction over anti-competitive behavior (FCCA Complaint, citing  
13 Florida Statutes §§364.10, 364.051, and 364.3381, at p. 3.) Although I am not an  
14 attorney, and details of the applicability of the statutes is more appropriately addressed in  
15 the Post Hearing Brief, my understanding of the cited statute sections is as follows:

- 16  
17 (1) Section 364 only grants the Commission jurisdiction over telecommunications  
18 services. Thus, if BellSouth were to offer *voice lines* only to customers that  
19 purchase its retail FastAccess service, that arguably would be a term of condition  
20 under which BellSouth offers a telecommunications service, and the Commission  
21 arguably would have jurisdiction to determine whether such a term or condition  
22 violates Section 364.10(1). That, however, is not what the FCCA's Complaint  
23 alleges. Instead, the FCCA's Complaint centers around the fact that BellSouth

24  
25 <sup>5</sup> *In re: Petition by Florida Digital Network, Inc. for arbitration of certain terms and conditions of proposed interconnection and resale agreement with BellSouth Telecommunications, Inc. under the Telecommunications Act of 1996, Docket No. 010098-TP, FPSC Order No. PSC-02-0765-FOF-TP, p. 8 ("FDN Arbitration Order").*

<sup>6</sup> *Id.*, at p. 11.

1 offers its *retail FastAccess service* only to customers that purchase voice service  
2 from BellSouth. The FCCA's Complaint, therefore, addresses allegations  
3 regarding what arguably is a term or condition under which BellSouth offers a  
4 service *that is not a telecommunications service*. The Commission, therefore,  
5 has no authority to determine whether this term or condition violates §364.10(1).  
6

7 (2) Section 364.051 allows the Commission to hear allegations of anticompetitive  
8 acts or practices with regard to a price-regulated company's telecommunications  
9 offerings that are designed to meet offerings of its competitors. It does not give  
10 the Commission jurisdiction to hear allegations of anticompetitive acts or  
11 practices with regard to the offering of a nontelecommunications service by any  
12 company.  
13

14 (3) The only jurisdiction granted by §364.3381 is the jurisdiction to determine  
15 whether the manner in which a company prices its telecommunications services  
16 results in cross-subsidization or constitutes predatory pricing or other similar  
17 anticompetitive behavior, none of which have been alleged in FCCA's  
18 Complaint. This statute clearly does not grant the Commission jurisdiction to  
19 consider the FCCA's allegations regarding the terms and conditions under which  
20 BellSouth will provide a nontelecommunications service.  
21

22 ***Issue 2: What are BellSouth's practices regarding the provisioning of its FastAccess Internet***  
23 ***service to: (a) a FastAccess customer who migrates from BellSouth to a competitive voice***  
24 ***service provider; and (b) to all other ALEC customers.***  
25

1 Q. WHAT IS BELL SOUTH'S POLICY ON THIS ISSUE?

2

3 A. (a) BellSouth's policy is that it provides wholesale DSL and FastAccess DSL Internet  
4 access on BellSouth provided exchange line facilities. BellSouth will continue to provide  
5 wholesale DSL and BellSouth FastAccess DSL service to BellSouth voice customers  
6 who migrate from BellSouth to an ALEC only if the ALEC provides service via resale.  
7 If the ALEC provides voice service via UNE-P or via an individual UNE loop, BellSouth  
8 does not continue to provide BellSouth FastAccess to that customer, except as ordered by  
9 this Commission in the FDN and Supra cases. BellSouth respectfully disagrees with  
10 these orders.

11

12 (b) BellSouth does not, and has not been required to, provide its FastAccess DSL  
13 Internet service to customers of an ALEC who are not migrating their voice service from  
14 BellSouth. For this Commission to require BellSouth to provide its FastAccess DSL  
15 Internet service to end users who have never been BellSouth customers (or who had a  
16 break in service between being a BellSouth customer and becoming a customer of the  
17 requesting ALEC), goes even further beyond the bounds of the Commission's authority  
18 by regulating provision of a BellSouth nonregulated, nontelecommunications service on a  
19 stand-alone basis.

20

21 In order to understand BellSouth's DSL policy, it is first necessary to understand  
22 BellSouth's provision of DSL service.

23

24 Q. PLEASE DESCRIBE BELL SOUTH'S DSL SERVICE.

25

1 A. BellSouth has both a federally tariffed, federally regulated wholesale DSL transport  
2 service and an enhanced non-regulated high-speed Internet access service. BellSouth  
3 offers the federally tariffed wholesale DSL transport service through BellSouth's Special  
4 Access FCC Tariff No. 1. This tariffed DSL service is a regulated interstate  
5 telecommunications service offering and is designed for use by Internet service providers  
6 ("ISPs"), such as AOL, MSN, local ISPs and BellSouth's own ISP operations. This  
7 interstate service is subject to the exclusive jurisdiction of the Federal Communications  
8 Commission ("FCC").<sup>7</sup>

9  
10 FastAccess is BellSouth's enhanced retail high-speed DSL-based Internet access service.  
11 It uses the regulated wholesale DSL transport service as a component of the Internet  
12 access offering just as AOL, MSN and other ISPs do. BellSouth's retail FastAccess  
13 service is a non-regulated enhanced service that is not within the jurisdiction of the state  
14 public service commissions.<sup>8</sup> It consists of a DSL component (which can be thought of  
15 as a pipe) and Internet services (which can be thought of as water flowing through the  
16 pipe).

17  
18 Q. PLEASE ELABORATE ON BELL SOUTH'S POLICY REGARDING PROVISION OF  
19 DSL SERVICE.

20

21

22

23 <sup>7</sup> See Memorandum Opinion and Order, *In the Matter of GTE Telephone Operating Cos. GTOC Tariff No. 1*, 13 FCC Rcd 22,466 at ¶1 (October 30, 1998).

24 <sup>8</sup> See *In the Matter of Remand Proceedings: Bell Operating Company Safeguards and Tier 1 Local*  
25 *Exchange Company Safeguards*, 6 FCC Rcd. 7571 (1991).

1 A. BellSouth's policy is that it provides wholesale DSL and FastAccess on BellSouth  
2 provided exchange line facilities. This policy is embodied in BellSouth's FCC Tariff No.  
3 1, which establishes DSL as an overlay service, and which requires the existence of an  
4 "in-service, Telephone Company [i.e., BellSouth] provided exchange line facility." FCC  
5 Tariff No. 1, Section 7.2.17(A).

6  
7 It is not necessary for an end user customer to purchase voice service from BellSouth in  
8 order to receive DSL service, whether FastAccess from BellSouth or another DSL service  
9 from an ISP purchasing BellSouth's federally tariffed wholesale DSL transport service.  
10 This is because BellSouth will provide DSL service over a line that is being resold by an  
11 ALEC, since a resold line is a "BellSouth provided exchange line facility" within the  
12 meaning of BellSouth's FCC Tariff No.1. Thus, if an ALEC wants to provide both voice  
13 and DSL service to an end user over a single line, one option is for the ALEC to resell  
14 BellSouth's voice service with BellSouth-provided DSL service over the same line.

15  
16 When a BellSouth voice customer migrates to an ALEC for voice service via an  
17 individual UNE loop or via UNE-P, BellSouth will not continue to provide DSL service  
18 to that customer. To do so would violate BellSouth's FCC Tariff No. 1, since a UNE  
19 loop leased to an ALEC, either on a stand-alone basis or as part of a UNE-P arrangement,  
20 is not an "in-service, Telephone Company [i.e., BellSouth] provided exchange line  
21 facility." F.C.C. Tariff No. 1, Section 7.2.17(A).

22

23 Q. WHY DOES BELLSOUTH DISCONTINUE DSL SERVICE TO A CUSTOMER WHO  
24 MIGRATES TO AN ALEC UTILIZING UNE-P FOR VOICE SERVICE?

25

1 A. Although there are a number of reasons that justify BellSouth's DSL policy, as explained  
2 in the Direct Testimony of Eric Fogle and Keith Milner, I will focus on two. First, as  
3 explained above, discontinuing DSL service to a customer who migrates voice service to  
4 an ALEC utilizing UNE-P is consistent with the terms and conditions of BellSouth DSL  
5 service as set forth in BellSouth's FCC Tariff No. 1. Requiring BellSouth to provide  
6 DSL service over the high-frequency portion of a UNE loop leased by an ALEC would  
7 necessitate a change to BellSouth's FCC tariff.

8  
9 Second, once an ALEC purchases a UNE loop (or the UNE-P) from BellSouth, the  
10 ALEC has control over the entire loop, including the high-frequency portion of the loop.  
11 BellSouth has no right to use that loop for any purpose. Ordering BellSouth to provide a  
12 service over a facility controlled by an ALEC in order to provide a competitive service to  
13 that ALEC's customers that the ALEC could offer itself would be the imposition of a  
14 very unusual affirmative obligation on BellSouth to assist a competitor. While the  
15 Telecommunications Act of 1996 ("1996 Act") imposes certain affirmative obligations  
16 on BellSouth to assist competitors, this simply is not one of them. Furthermore, to the  
17 extent BellSouth were required to provide DSL service over the high-frequency portion  
18 of a UNE loop leased by an ALEC, BellSouth would have to negotiate rates, terms and  
19 conditions for provisioning this service with each ALEC. This would be no small task,  
20 given that there are 104 ALECs currently operating in Florida, which only adds to the  
21 complexity (not to mention time and expense) of the relief the FCCA is seeking.

22  
23 Q. IN PARAGRAPH 13 OF ITS COMPLAINT, FCCA CLAIMS THAT "IT IS  
24 BELLSOUTH'S PRACTICE TO REFUSE TO PROVIDE ITS FASTACCESS

25



1 SERVICE TO END USERS WHO DESIRE TO RECEIVE VOICE SERVICE FROM A  
2 CARRIER OTHER THAN BELL SOUTH.” IS FCCA CORRECT?

3

4 A. No. While it is true that BellSouth does not provide FastAccess over a UNE loop or  
5 UNE-P, BellSouth will provide its FastAccess service over a line on which an ALEC is  
6 reselling BellSouth’s voice service. As explained above, a resold line is a BellSouth  
7 provided exchange access line facility that would allow a customer to receive voice  
8 service from an ALEC reseller and BellSouth-provided DSL service over the same line.

9

10 If an ALEC were serious about serving a residential customer that wished to retain  
11 BellSouth’s DSL service, the ALEC could provide local voice service to that customer  
12 over a resold line. By utilizing the resale alternative, the ALEC could further expand its  
13 local customer base. If, at some later point, the ALEC served a significant number of  
14 voice customers over resold lines out of a particular central office or remote terminal, the  
15 ALEC could elect to collocate a small DSLAM at that central office or remote terminal,  
16 convert the resold lines to UNE-P arrangements, and use the collocated DSLAM to  
17 provide DSL service to those customers.

18

19 Q. HAVE ALECS BEEN SUCCESSFUL IN FLORIDA IN PROVIDING VOICE  
20 SERVICE ON A RESALE BASIS, WITH BELL SOUTH CONTINUING TO PROVIDE  
21 ITS DSL SERVICE ON THE SAME LINES?

22

23 A. Yes. As of the end of October 2002, ALECs were providing voice service to  
24 \*PROPRIETARY [REDACTED] PROPRIETARY\* of their end user customers over resold  
25 lines within the state of Florida that were also carrying BellSouth’s wholesale DSL

1 transport service. Included in that total were \*PROPRIETARY [REDACTED]  
2 PROPRIETARY\* resold lines also carrying BellSouth FastAccess.

3

4 *Issue 3: Do any of the practices identified in Issue 2 violate state or federal law?*

5

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

7

8 A. None of the practices identified in Issue 2 violates state or federal law. As discussed  
9 under Issue 2, the FCC has found that BellSouth's DSL practices are not discriminatory  
10 or anticompetitive. Further, the Florida statutes do not confer upon the Commission the  
11 authority to regulate BellSouth's nonregulated, nontelecommunications services, which  
12 includes BellSouth's FastAccess DSL service. However, in addition to asking this  
13 Commission to unduly expand its jurisdiction by requiring that BellSouth change the  
14 terms and conditions of its FCC tariff or by regulating the terms and conditions of an  
15 unregulated service, the FCCA does not stop there. For the Commission to make a  
16 determination of the competitive or anticompetitive nature of BellSouth's DSL policy, it  
17 would have to address whether BellSouth has a monopoly in the provision of its DSL  
18 service. As we will discuss below, since BellSouth does not have such a monopoly, such  
19 a determination would amount to extending the Commission's jurisdiction to regulation  
20 of the provision of all broadband services, including cable modem service.

21

22 Q. ON PAGE 3, AND PAGES 6-9 OF ITS PETITION, THE FCCA ALLEGES THAT  
23 BELLSOUTH'S DSL PRACTICE "IS A BARRIER TO COMPETITION AND  
24 INTERFERES WITH CONSUMERS' ABILITY TO SELECT THE PROVIDER OF  
25 CHOICE." DO YOU AGREE?

1

2 A. No. FCCA's allegation is that BellSouth's DSL policy interferes with the consumers'  
3 selection for local voice telecommunications service. Although I am neither a lawyer nor  
4 an economist, extensive competition exists in the local voice market in Florida, which  
5 contradicts the FCCA's assertion as cited above. The fact is that local voice competition  
6 is flourishing in Florida, notwithstanding the FCCA's claim to the contrary.

7

8 Q. WHAT IS THE CURRENT STATE OF COMPETITION IN THE LOCAL VOICE  
9 MARKET IN FLORIDA?

10

11 A. Competition in the local Florida voice market is strong and is continuing to increase.  
12 When BellSouth filed its application for interLATA authority with this Commission,  
13 BellSouth estimated that ALECs in Florida served 714,535 access lines as of February  
14 2001. When BellSouth filed its Reply Affidavits in the Florida/Tennessee 271  
15 Application with the FCC, BellSouth estimated that, as of September 2002, ALECs in  
16 Florida were serving 1,324,819 access lines. A further breakdown of these estimates is  
17 set forth in the following chart.

18

19

20

21

22

23

24

25

**FLORIDA – February 2001**

ALEC PROVIDERS	NUMBER OF ALECS	RESIDENTIAL LINES	BUSINESS LINES	TOTAL LINES
FACILITIES-BASED (*)	45	128,629	397,589	526,218
FACILITIES-BASED/RESALE		19,322	79,442	98,764
RESALE-ONLY	67	72,731	16,822	89,553
ALEC TOTAL	112	220,682	493,853	714,535
TOTAL LINES		4,942,021	2,670,936	7,612,957
ALEC % OF TOTAL LINES		4.5%	18.5%	9.4%
BELLSOUTH LINES		4,721,339	2,177,083	6,898,422

**FLORIDA – September 2002**

ALEC PROVIDERS	NUMBER OF ALECS	RESIDENTIAL LINES	BUSINESS LINES	TOTAL LINES
FACILITIES-BASED (*)	53	480,449	737,307	1,217,756
FACILITIES-BASED/RESALE		57,478	5,407	62,885
RESALE-ONLY	51	43,370	808	44,178
ALEC TOTAL	104	581,297	743,522	1,324,819
TOTAL LINES		4,694,647	2,500,649	7,195,296
ALEC % OF TOTAL LINES		12.4%	29.7%	18.4%
BELLSOUTH LINES		4,113,350	1,757,127	5,870,477

NOTE: BellSouth estimates Facilities-Based lines using ALEC reported 911 listings plus UNE-P lines. This is "Method Two" in BellSouth's FPSC and FCC filings and includes ALECs serving 10 lines or more. The February 2001 line counts are as revised in Rebuttal Testimony of Cynthia Cox filed August 20, 2001 in FPSC Docket No. 960786-TL. The September 2002 line counts are from the Reply Affidavit of Elizabeth Stockdale filed November 1, 2002 in FCC WC Docket No. 02-307.

1 As is shown above, in the nineteen-month period from February 2001 to September 2002,  
2 the ALECs' number of lines and market share (for both residence and business) increased  
3 significantly. At the same time, the number of lines served by BellSouth and BellSouth's  
4 market share decreased, which hardly suggests that BellSouth's DSL policy is a "barrier  
5 to competition" in the local voice market, as the FCCA claims. This Commission has  
6 found that the Florida local telecommunications market is open to competition, and none  
7 of the intervenors in BellSouth's Florida/Tennessee 271 Application before the FCC have  
8 asserted otherwise. Nevertheless, the FCCA invites this Commission to overlook these  
9 facts by giving all ALECs a regulatory helping hand in order to compete against  
10 BellSouth. The Commission should decline this invitation.

11

12 Q. WHY DOES THE FCCA CLAIM THAT BELLSOUTH'S DSL POLICY KEEPS  
13 ALECS FROM WINNING NEW VOICE CUSTOMERS?

14

15 A. The FCCA, in ¶14 of its Petition, claims that "Consumers are reluctant to change voice  
16 carriers, when, as a consequence of exercising their right to choose a particular voice  
17 provider, they lose the ability to receive DSL service." Telling prospective customers  
18 that they cannot keep their DSL service if they switch to the ALEC for local voice service  
19 is a business decision on the part of the ALEC. They actually have other options for  
20 serving these potential customers, but they have chosen not to pursue them.

21

22 Q. WHAT OTHER CHOICES DO ALECS HAVE FOR PROVIDING DSL SERVICE TO  
23 VOICE CUSTOMERS MIGRATING FROM BELLSOUTH?

24

25

1 A. As discussed above, ALECS can resell BellSouth's voice service in order to serve those  
 2 BellSouth customers with FastAccess; however ALECs have made business decisions not  
 3 to do so. Likewise, an ALEC could invest in its own facilities in order to provide a  
 4 competing DSL service. Another option, which the FCCA conveniently overlooks, is the  
 5 ability to engage in line splitting by which an ALEC would provide voice service using  
 6 the UNE-P and another carrier would provide the DSL service. In short, ALECs have a  
 7 number of options at their disposal to provide voice service to customers with FastAccess  
 8 from BellSouth.

9  
 10 Q. WOULD GRANTING THE RELIEF THE FCCA SEEKS PROMOTE LOCAL VOICE  
 11 COMPETITION IN RURAL FLORIDA?

12  
 13 A. No. Even assuming the Commission had the jurisdiction and the basis to grant the relief  
 14 the FCCA is seeking (which is not the case), requiring BellSouth to provide FastAccess  
 15 to customers migrating their voice service to ALECs via the UNE-P or an individual  
 16 UNE loop would do little to promote voice service in rural Florida. This is because  
 17 ALECs provide voice service predominantly to the most profitable customers in the most  
 18 lucrative areas of the State and have little interest in serving customers in rural Florida.

19  
 20 BellSouth's records reflect that, as of October 1, 2002, <sup>29%</sup>~~64%~~ of ALECs' UNE-P  
 21 arrangements in Florida are in Zone 1, <sup>64%</sup>~~34%~~ in Zone 2, and only <sup>7%</sup>~~2%~~ in Zone 3.

22 Accordingly, granting the FCCA the relief it is seeking will only allow ALECs to  
 23 continue to concentrate their efforts in urban areas, while continuing to ignore the more  
 24 rural areas of Florida.

25

1 Q. WOULD GRANTING THE FCCA'S REQUESTED RELIEF PROMOTE  
2 COMPETITION IN THE BROADBAND MARKET?

3

4 A. No. Requiring that BellSouth continue to provide its FastAccess service to voice  
5 customers migrating to ALECs via the UNE-P would do nothing to promote competition  
6 in the broadband market. In fact, granting such relief would have the opposite effect by:  
7 (i) saddling economic burdens on BellSouth that could adversely impact BellSouth's  
8 DSL deployment; (ii) providing no incentive for ALECs to continue to expand in their  
9 own DSL network in Florida; and (iii) providing ~~no opportunity~~ <sup>limited opportunities</sup> for competing DSL  
10 providers to offer DSL service to ALEC voice customers through line splitting.

11

12 Q. WHAT IS THE CURRENT STATE OF COMPETITION IN THE BROADBAND  
13 MARKET?

14

15 A. The highly competitive nature of the broadband market was recently confirmed by the  
16 Court of Appeals for the District of Columbia in its order vacating the FCC's Line  
17 Sharing Order.<sup>9</sup> The Line Sharing Order required incumbents to unbundle the high  
18 frequency spectrum of copper loops to enable ALECs to provide DSL services. The D.C.  
19 Circuit vacated the FCC's order because the FCC had failed to take into account the  
20 substantial competition for broadband services today. (290 F.2d at 428-29).  
21 Significantly, the Court noted that "[the FCC's] own findings (in a series of reports under  
22 §706 of the 1996 Act) repeatedly confirm both the robust competition, and the dominance  
23 of cable, in the broadband market." (*Id.* at 428). The D.C. Circuit was appropriately  
24 concerned that unbundling requirements "come[] at a cost, including disincentives to  
25 research and development by both ILECs and ALECs and the tangled management

---

<sup>9</sup> See *United States Telecom Ass'n v. FCC*, 290 F.3d 415 (D.C. Cir. 2002).

1 inherent in shared use of a common resource.” (*Id.* at 429). The D.C. Circuit concluded  
2 that “[the FCC’s] naked disregard of the competitive context risks” inflicting costs on the  
3 economy where the competitive conditions would not allow the FCC to conclude that  
4 imposing those costs “would bring on a significant enhancement of competition.” (*Id.*)

5  
6 Q. IS BELLSOUTH THE DOMINANT PROVIDER IN THE BROADBAND MARKET?

7  
8 A. No. Not only is BellSouth not the dominant provider of broadband services, cable  
9 modem service, not DSL, is the prevalent technology in the broadband market. Attached  
10 to my affidavit as Exhibit JAR-1 is the FCC’s July 2002 Report on High-Speed Services  
11 for Internet Access. Table 5 shows that, as of December 31, 2001, cable represented 55%  
12 of total high-speed lines nationally, DSL represents 31%, and other categories represent  
13 14%. Table 6 reflects that, in Florida as of December 31, 2001, there were a total of  
14 twenty-six (26) (unduplicated) providers of high-speed Internet access, including eight  
15 (8) ADSL providers, ten (10) cable providers, and nineteen (19) providers using a  
16 technology other than ADSL. Table 7 reflects that there were 911,261 high-speed lines  
17 in Florida as of December 31, 2001, only 306,015 of which were ADSL lines (34%).

18  
19 Statistics published on the website for the National Cable & Telecommunications  
20 Association (NCTA)<sup>10</sup> show that 96.7% of TV Households have cable available, with  
21 69.4% cable penetration of TV Households, which numbered 105 million as of February  
22 2002. The same report shows that 66.4% of TV Households have cable modem  
23 available, with 6.8% subscribing to cable modem as of December 2001.

24  
25 As the above evidence demonstrates, BellSouth is not the dominant provider of

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<sup>10</sup> [www.ncta.com/industry\\_overview](http://www.ncta.com/industry_overview)



1 broadband services in Florida, although BellSouth has been successful in providing DSL  
2 service in the State. However, focusing on the DSL market, as the FCCA attempts to do,  
3 misstates and, in fact, side steps the real issue, which is competition in the broadband  
4 market as a whole.

5

6 Q. DOES BELLSOUTH SERVE THE HIGH SPEED INTERNET ACCESS MARKET IN  
7 FLORIDA UBIQUITOUSLY?

8

9 A. No. BellSouth does not provide DSL services throughout Florida ubiquitously. There  
10 are ~~eight~~<sup>seven</sup> central offices in Florida in which BellSouth has not yet deployed DSL  
11 capability. These central offices are located in Florida's most rural areas. There also are  
12 numerous remote terminals located throughout the State that BellSouth has yet to fit with  
13 DSL functionality in order to overcome the distance limitations inherent in DSL  
14 technology so that those end users that are located the greatest distances away from  
15 BellSouth's central offices also have a competitive choice for broadband services.

16

17 Q. WOULD GRANTING THE RELIEF THE FCCA SEEKS PROMOTE BROADBAND  
18 COMPETITION BY OTHER DSL PROVIDERS?

19

20 A. No. In fact, it would have precisely the opposite effect. As long as ALECs are permitted  
21 to rely upon BellSouth to assume the risk and expend the capital necessary to provide  
22 DSL services to the ALECs' voice customers, DSL competition would be hampered  
23 because the ALECs would have no incentive to use another DSL provider to meet their  
24 customers' DSL needs. Florida is likely to experience enhanced DSL competition only if  
25 ALECs are forced to make their own arrangements for a competing DSL service –

1 whether through their own facilities from another DSL provider engaged in line splitting  
2 with the ALEC.

3

4Q. DOES THIS CONCLUDE YOUR TESTIMONY?

5

6 A. Yes.

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8 #469965

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1                   BELLSOUTH TELECOMMUNICATIONS, INC.  
2                   REBUTTAL TESTIMONY OF JOHN A. RUSCILLI  
3                   BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION  
4                   DOCKET NO. 020507-TL  
5                   DECEMBER 23, 2002  
6

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

10

11 A.   My name is John A. Ruscilli. I am employed by BellSouth as Senior Director – Policy  
12       Implementation and Regulatory Compliance for the nine-state BellSouth region. My  
13       business address is 675 West Peachtree Street, Atlanta, Georgia 30375.

14

15 Q.   HAVE YOU PREVIOUSLY FILED TESTIMONY IN THIS PROCEEDING?

16

17 A.   Yes. I filed direct testimony, including one exhibit, on November 26, 2002.

18

19 Q.   WHAT IS THE PURPOSE OF YOUR TESTIMONY?

20

21 A.   The purpose of my rebuttal testimony is to respond to certain policy aspects of the direct  
22       testimony of Mr. Joseph Gillan filed on behalf of the Florida Competitive Carriers  
23       Association ("FCCA") on November 26, 2002.

24

25

1 Let me begin by making sure that what the FCCA is requesting is clear to everyone. The  
2 FCCA is asking that the Commission order BellSouth to provide its unregulated  
3 broadband service to any requesting end user – regardless of whether the end user has  
4 ever purchased broadband services from BellSouth or for that matter, has ever been a  
5 customer of BellSouth at all. For instance, under the FCCA’s scheme, an ALEC in  
6 Florida could purchase unbundled network elements from BellSouth (at rates below cost  
7 in BellSouth’s view) to provide its subscribers with local telephone service. The law  
8 currently allows that and the ALEC’s ability to do so is not in question. However, the  
9 FCCA and the ALECs don’t stop there. Even though an ALEC can voluntarily contract  
10 with other carriers to provide broadband service to the ALEC’s customer using the  
11 unbundled network elements the ALEC has purchased from BellSouth, the FCCA wants  
12 this Commission to force BellSouth to provide its unregulated broadband service to the  
13 ALEC’s customer anytime the ALEC demands that BellSouth do so. The fact that Mr.  
14 Gillan evidently views this as “competition” demonstrates the problem that BellSouth has  
15 with most of his positions. Taken to its logical conclusion, if the Commission can force  
16 BellSouth to provide its unregulated broadband services to ALEC subscribers, can the  
17 Commission use those same powers to force other broadband providers, such as Covad,  
18 to provide that service against Covad’s wishes? That is the logical place that Mr. Gillan’s  
19 testimony takes this Commission, even though everyone ought to agree that the notion is  
20 nonsensical. The Commission has already addressed the issue of what occurs when a  
21 BellSouth customer that uses BellSouth’s broadband service moves to another voice  
22 provider. BellSouth has objected to the Commission’s conclusion in those instances  
23 where the Commission has addressed the matter, and would point out that this is where  
24 those decisions have brought us. Now evidently the FCCA believes that the Commission  
25 should feel free to just order BellSouth to do whatever the FCCA wants, irrespective of

1 whether the service involved is regulated or unregulated. Evidently all that matters is that  
 2 the FCCA and the ALECs want something that BellSouth has, and that the ALECs are  
 3 not willing to provide at their own cost.

4

5 *Issue 1: Does the Commission have jurisdiction to grant the relief requested in the*  
 6 *Complaint?*

7

8 Q. ON PAGE 3, MR. GILLAN OPINES THAT BELLSOUTH'S POLICY IS CONTRARY  
 9 TO THE BASIC INTENT OF FLORIDA LAW. DO YOU AGREE?

10

11 A. No. The FCCA's request that the Commission force BellSouth to provide an unregulated  
 12 broadband service to end users, when no other provider has a similar obligation, seems to  
 13 directly ~~contract~~ <sup>contradict</sup> the policy behind Florida Statutes, Chapter 364.01(4)(g), which seeks to  
 14 "ensure that all providers of telecommunications services are treated fairly, by preventing  
 15 anticompetitive behavior and eliminating unnecessary regulatory restraint." It is a  
 16 mystery to BellSouth how, under Mr. Gillan's view, it is fair to require BellSouth alone  
 17 (since this docket does not include any consideration of all carriers) to provide an  
 18 unregulated broadband service to any requesting end user. Entering such an order would  
 19 hardly be treating BellSouth fairly; and more fundamentally would chill future broadband  
 20 deployment in Florida.

21

22 While I acknowledge that neither Mr. Gillan nor I are lawyers, it is the positions  
 23 advocated by FCCA and not the positions advocated by BellSouth that are contrary to the  
 24 policy and intent of the Florida Statutes. For example, Chapter 364.01(3), cited by Mr.  
 25 Gillan, provides that:

1           364.01(3) “The Legislature finds that the competitive provision of  
2           telecommunications services, including local exchange  
3           telecommunications service, is in the public interest and will provide  
4           customers with freedom of choice, encourage the introduction of new  
5           telecommunications service, encourage technological innovation, and  
6           encourage investment in telecommunications infrastructure.” (Emphasis  
7           added.)

8           The statute cited above addresses the competitive provision of telecommunications  
9           services. Mr. Gillan’s approach requires the Commission to exert regulatory authority  
10          over an enhanced non-telecommunications information service provided by BellSouth.  
11          Further, although state law makes clear the Legislature’s intent for the Commission to  
12          “encourage competition through flexible regulatory treatment among providers of  
13          telecommunications services in order to ensure the availability of the widest possible  
14          range of consumer choice in the provision of all telecommunications services”  
15          (364.01(4)(b)) (emphasis added), that is the polar opposite of what Mr. Gillan wants. Mr.  
16          Gillan and the FCCA want government-controlled competition to be driven by an  
17          ALEC’s business model such that, if BellSouth finds new products and invests in them,  
18          BellSouth is not allowed to benefit from such innovation. From a policy perspective, this  
19          seems flatly contradictory to subsection (e) of 364.01(4), which seeks to “encourage all  
20          providers of telecommunications services to introduce new or experimental  
21          telecommunications services free of unnecessary regulatory restraints.” The FCCA also  
22          wants to excuse ALECs from investing in new technologies, since, in Mr. Gillan’s world,  
23          ALECs could readily take advantage of such investments by BellSouth.

24  
25

1 Q. MR. GILLAN STATES THAT THIS COMMISSION HAS ALREADY RULED ON  
2 ITS AUTHORITY OVER THE ISSUES PRESENTED IN THIS DOCKET (P. 5). IS  
3 THIS CORRECT?

4  
5 A. Not entirely. Mr. Gillan conveniently ignores that this Commission agreed that  
6 BellSouth's FastAccess service was "an 'enhanced, nonregulated,  
7 nontelecommunications Internet access service.'" Mr. Gillan also ignored the fact that  
8 the Commission exercised jurisdiction only in the context of considering "BellSouth's  
9 practice of disconnecting customers' FastAccess Internet Service" when customers  
10 switched voice service to another provider.<sup>1</sup> While BellSouth respectfully disagrees that  
11 the Commission has any authority over the issues presented in this docket, it is  
12 abundantly clear that the Commission itself distinguished between exercising authority  
13 over BellSouth's existing customers as compared to exercising authority to require  
14 BellSouth to provide an enhanced, nonregulated, nontelecommunications Internet Access  
15 service to customers that have never had such service.

16  
17 Q. ON PAGE 3, MR. GILLAN POSTULATES THAT BELLSOUTH'S FASTACCESS  
18 POLICY DENIES CUSTOMERS THE OPPORTUNITY TO MAKE A CHOICE OF  
19 PROVIDERS. DO YOU AGREE?

20  
21 A. No. BellSouth's approach is simply to offer a customer an overlay DSL service to meet  
22 that customer's broadband needs. Customers choose products and providers based on the  
23 best fit for their needs. It seems that Mr. Gillan feels that any competitor that offers a

24  
25 <sup>1</sup> *In re: Petition by Florida Digital Network, Inc. for arbitration of certain terms and conditions of proposed interconnection and resale agreement with BellSouth Telecommunications, Inc. under the Telecommunications Act of 1996*, Docket No. 010098-TP, Final Order on Arbitration, Order No. PSC-02-0765-FOF-TP, issued June 5, 2002 ("FDN Arbitration Order").

1 better product is trying to keep the market for itself. A more appropriate view is that  
2 providers of products in a free marketplace should be able to differentiate their offerings  
3 to encourage customers to buy them.

4  
5 As an example, Cadillac is known for its luxury. Mercedes-Benz is known, among other  
6 things, for its reliability and durability. Volkswagen is known for its lower price and fuel  
7 efficiency. Customers would probably prefer to have a car built with the durability of a  
8 Benz, the luxurious appointments of a Cadillac, but at a Volkswagen price and with a  
9 Volkswagen's fuel economy. However, to my knowledge, such a vehicle does not exist;  
10 so customers must make choices that best fit their needs. The same is true in the  
11 telecommunications market in Florida. As an example, MCI offers its Neighborhood  
12 plan that includes local and nationwide long distance in one package at a discounted rate.  
13 BellSouth does not currently have a similar offering nor does it have switches deployed  
14 nationwide to do so. BellSouth currently offers its customers the opportunity to purchase  
15 FastAccess as an overlay to voice service (regardless of whether the voice provider is  
16 BellSouth or a CLEC reselling BellSouth's local exchange service).

17  
18 Consumers can choose which arrangement best suits their needs. For some consumers, it  
19 appears that long distance is more important, which may make a plan such as MCI's  
20 Neighborhood Plan attractive (assuming the consumer is eligible). For other customers,  
21 FastAccess may be more important. This is consistent with free market choice, and there  
22 is nothing evil in allowing customers to have different choices. In Mr. Gillan's world of  
23 competition, if BellSouth develops a better product or service for consumers, BellSouth  
24 must make that choice available for all consumers, including those served by BellSouth's  
25 competitors. In a sense, he is recommending that all telecommunications services are



1 commodity products provided by and subsidized by BellSouth that should be available to  
2 all players, except that the ALECs get the choice of providing the product only to the  
3 elite customers they choose to serve and generate the most profit.

4

5 ***Issue 2: What are BellSouth's practices regarding the provisioning of its FastAccess Internet***  
6 ***service to: (a) a FastAccess customer who migrates from BellSouth to a competitive voice***  
7 ***service provider, and (b) to all other ALEC customers.***

8

9 Q. IS MR. GILLAN'S DESCRIPTION (PAGES 5-6) OF BELLSOUTH'S CURRENT  
10 PRACTICES ACCURATE?

11

12 A. No. Mr. Gillan ignores the fact that BellSouth provides FastAccess to customers that  
13 receive voice service from an ALEC over resold lines. BellSouth's policy is to provide  
14 its FastAccess services (an investment BellSouth chose to deploy) over BellSouth  
15 exchange lines, whether they are retail or resold lines. Mr. Gillan's statement that  
16 BellSouth refuses to provide its service to "any consumer . . . that obtains voice service  
17 from a provider other than BellSouth" is incorrect.

18

19 ***Issue 3: Do any of the practices identified in Issue 2 violate state or federal law?***

20

21 Q. MR. GILLAN STATES BELLSOUTH'S POLICIES VIOLATE STATE AND  
22 FEDERAL LAW, AND SUPPORTS THIS ALLEGATION BY CLAIMING THAT  
23 BELLSOUTH'S POLICIES ARE: (1) COMPETITIVELY SIGNIFICANT; (2)  
24 PROBLEMATIC, AND LIKELY TO INCREASE; (3) INCONSISTENT WITH A  
25 COMPETITIVE ENVIRONMENT; (4) CONTRARY TO THE GOAL OF INCREASED

1 BROADBAND PENETRATION; (5) DISCRIMINATORY; AND (6) CREATES A  
 2 BARRIER TO COMPETITION. DO THESE CONTENTIONS HAVE ANY BASIS IN  
 3 REALITY?

4  
 5 A. Absolutely not. All of Mr. Gillan's unfounded contentions completely ignore the entire  
 6 broadband market, and instead focus on only a subset of that market, which is DSL  
 7 service. Attached as Exhibit JAR-2 is the FCC's <sup>June 2003</sup> ~~December 2002~~ Report on High-Speed  
 8 Services for Internet Access, which is the same report that was attached to my direct  
 9 testimony as Exhibit JAR-1, but with the most recent FCC data. Exhibit JAR-2 includes  
 10 information through <sup>December 31, 2002</sup> ~~June 30, 2002~~. Cable modem service continued to <sup>serve more high-speed</sup> ~~increase faster~~  
 11 ~~lines (approximately 11.4 million lines) than ADSL service (approximately 6.5 million lines).~~  
 12 ~~(30%) than high-speed ADSL service (29%). Overall the state of Florida experienced an~~  
 13 ~~increase of 23%, less than the overall increase. If positions such as those advocated by~~  
 14 ~~Mr. Gillan are adopted, it is likely that the overall increase in high-speed lines in Florida~~  
 15 ~~will lag behind states that encourage rather than discourage the deployment of broadband~~  
 16 ~~technology.~~

17 Q. ON PAGE 8 OF HIS TESTIMONY, MR. GILLAN OPINES ON CONSUMER  
 18 EMPOWERMENT AND HOW IT IS THE CONSUMER WHO PUNISHES  
 19 UNRESPONSIVE BEHAVIOR. HE ALLEGES BELL SOUTH'S POLICY TURNS  
 20 THIS RELATIONSHIP ON ITS HEAD. IS HE CORRECT?

21  
 22 A. No. BellSouth's policy is not turning this relationship on its head. Rather, it appears that  
 23 Mr. Gillan and the FCCA's members may be feeling the heat from customers who may  
 24 seek to punish ALECs' unresponsive behavior. As I discussed, both BellSouth and the  
 25 ALECs have different product sets, and customers are choosing between the companies

1 for their services. An ALEC could provide DSL service in Florida by investing in its  
2 own DSL equipment, engaging in a line splitting arrangement with another DSL  
3 provider, or offering BellSouth's FastAccess service by reselling BellSouth's voice  
4 service. ALECs have chosen not to avail themselves of these alternatives, and, to the  
5 extent customers decide not to purchase voice service from an ALEC, the ALEC is being  
6 "punished," as well it should, for its lack of responsiveness to customer needs.

7

8 Q. MR. GILLAN, ON PAGES 9-10, REITERATES HIS ALLEGATION THAT  
9 BELL SOUTH'S POLICY IS CONTRARY TO THE POLICY GOAL OF INCREASED  
10 BROADBAND PENETRATION. DO YOU AGREE?

11

12 A. No. Mr. Gillan mischaracterizes the requirements of section 706 in the 1996 Act. I agree  
13 that section 706 charges the FCC and each state commission with the responsibility to  
14 encourage the deployment of advanced services. Consistent with the intent of this  
15 legislation, BellSouth has significantly deployed broadband services in the marketplace  
16 as discussed in Mr. Smith's direct testimony. By contrast, Florida ALECs have done  
17 little to demonstrate their commitment to deploy advanced services. Instead, FCCA is  
18 asking the Commission to require BellSouth to share its investment in new technology in  
19 Florida, not just with BellSouth's customers, but, a day-late and a dollar short, with  
20 ALEC customers too. Such a requirement does not represent encouraging the  
21 deployment of advanced services. Rather, it would represent moving the advantage from  
22 one competitor's deployment of advanced services to the balance sheet of another.  
23 Further, as Mr. Smith explains in his direct and rebuttal testimony, granting the FCCA's  
24 request would provide a disincentive to further deployment of advanced services by  
25 BellSouth.

1 Q. IS COMPETITION IN THE ADVANCED SERVICES MARKET WHAT FCCA IS  
2 COMPLAINING ABOUT?

3

4 A. No. In its Complaint in this case (p. 2), the FCCA's allegation is that, "It has been, and  
5 continues to be, BellSouth's practice to refuse to provide its FastAccess service to  
6 customers who exercise their right in the market place to choose a carrier other than  
7 BellSouth for voice service." (Emphasis added.) Section 706 of the Act states as  
8 follows:

9

10 The Commission and each State commission with regulatory jurisdiction  
11 over telecommunications services shall encourage the deployment on a  
12 reasonable and timely basis of advanced telecommunications capability to  
13 all Americans ... by utilizing, in a manner consistent with the public  
14 interest, convenience, and necessity, price cap regulation, regulatory  
15 forbearance, measures that promote competition in the local  
16 telecommunications market, or other regulating methods that remove  
17 barriers to infrastructure investment." (Emphases added)

18

19 Section 706 directs State commissions to take measures that promote competition for the  
20 express purpose of "encourag[ing] the deployment on a reasonable and timely basis of  
21 advanced telecommunications capability..." (Emphasis added.) FCCA's request purports  
22 to remedy BellSouth's alleged anticompetitive behavior (which BellSouth denies) toward  
23 the provision of voice service, not advanced services. Accordingly, Section 706 of the  
24 Act does not support the decision that FCCA is requesting.

25

1 Q. WOULD GRANTING FCCA'S REQUEST RESULT IN COMMISSION  
2 REGULATION OF BELL SOUTH'S PROVISION OF DSL SERVICE?

3

4 A. Yes it would. This Commission acknowledged in the FDN Arbitration Order, p. 11 that  
5 its decision was not designed to regulate the deployment of advanced services. Instead,  
6 the Commission's decision was designed to remove what is erroneously perceived to be a  
7 "competitive barrier in the voice market." (*Id.* at 8) (emphasis added). However, as  
8 explained in detail in the rebuttal testimony of Mr. Fogle, the steps that BellSouth must  
9 take to comply with the Commission's order in the FDN Arbitration undeniably amount  
10 to regulation of BellSouth's provision of unregulated advanced services.


11

12 Q. ON WHAT BASIS DOES SECTION 706 AUTHORIZE THE FCC AND STATE  
13 COMMISSIONS TO TAKE ACTION TO ACCELERATE DEPLOYMENT OF  
14 ADVANCED SERVICES?

15

16 A. Section 706 states:

17

18  "[T]he commission shall determine whether advanced telecommunications  
19 capability is being deployed to all Americans in a reasonable and timely  
20 fashion. If the Commission's determination is negative, it shall take  
21 immediate action to accelerate deployment of such capability by removing  
22 barriers to infrastructure investment and by promoting competition in the  
23 telecommunications market."

24 Thus, section 706 gives the FCC and State commissions the authority to remove barriers  
25 to advanced services infrastructure investment, *if* there is a finding that advanced services

1 capability is not being deployed in a reasonable and timely fashion. This Commission  
2 did not make such a finding in the FDN case, and is not being asked to make such a  
3 finding in this case. Further, rather than removing barriers to investment to promote  
4 advanced services, granting FCCA's request would effectively create a barrier to, and  
5 discourage BellSouth from, deploying advanced services infrastructure in the future.

6

7 Finally, section 706 of the Act states that the FCC and State Commissions are to use  
8 "regulatory forbearance" in taking measures that promote competition for the deployment  
9 of advanced telecommunications capability. Rather than using regulatory forbearance<sup>2</sup>,  
10 granting FCCA's request would result in increased regulation, not restraint of regulation  
11 of non-telecommunications services.

12

13 Q. IS BELLSOUTH THREATENING CUSTOMERS WITH DISCONNECTION OF  
14 FASTACCESS IF THEY LEAVE BELLSOUTH? (GILLAN, P. 10). IS BELLSOUTH  
15 PUNISHING CUSTOMERS WHO LEAVE BELLSOUTH?

16

17 A. No. Contrary to Mr. Gillan's accusation on p. 10, BellSouth does not threaten its  
18 customers. BellSouth will continue to provide its FastAccess service over a resold line  
19 from an ALEC. If customers choose to leave BellSouth, the ALECs must provision  
20 service for them over their facilities. At that point, the choice is that of the ALECs.  
21 ALECs that choose not to offer a DSL solution to their customers are doing so in spite of  
22 the variety of existing options from which to do so.

23

24

25

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<sup>2</sup> Webster's Ninth New Collegiate Dictionary defines "forbearance" as a refraining from the enforcement of something; patience; leniency.

1 Q. AT PAGE 10, MR. GILLAN ALLEGES THAT BELLSOUTH'S POLICY IS  
2 INHERENTLY DISCRIMINATORY, EVEN CLAIMING "NO CLEARER EXAMPLE  
3 OF DISCRIMINATION CAN BE FOUND." (P. 11) DO YOU AGREE?

4

5 A. Absolutely not. In BellSouth's recent section 271 applications, the FCC considered and  
6 rejected, not once but three times, the argument that BellSouth's policy is discriminatory.  
7 Specifically, in the recent Florida/Tennessee 271 decision, CC Docket No. 02-307, Rel.  
8 December 19, 2002, the FCC stated:

9

10 "Network Telephone claims that BellSouth is 'tying' its DSL-based high-speed Internet  
11 access service to BellSouth local exchange service. As BellSouth points out, the  
12 Commission has repeatedly reviewed this same BellSouth policy and determined that it is  
13 not a bar to section 271 compliance . . . . BellSouth is correct that we have previously  
14 rejected this argument." (¶ 178).

15

16 In the Georgia/Louisiana 271 application, CC Docket No. 02-35, AT&T submitted the  
17 Supplemental Declaration of Bernadette Seigler, in which she claimed (¶ 26) that  
18 BellSouth's DSL policy "is clearly anticompetitive and inconsistent with its obligations  
19 under the Act to make unbundled network elements available on a nondiscriminatory  
20 basis." The FCC disagreed (¶ 157), noting, "we cannot agree with commenters that  
21 BellSouth's policy is discriminatory." Surprisingly, Mr. Gillan never mentions the  
22 FCC's decision. Apparently, it is so clear that BellSouth's policy is discriminatory that  
23 only Mr. Gillan can see it.

24

25

1 Q. ON PAGE 11, MR. GILLAN STATES THAT BELLSOUTH'S POLICY  
 2 EFFECTIVELY FORECLOSES VOICE COMPETITION FOR THOSE CUSTOMERS  
 3 DESIRING FASTACCESS SERVICE. DO YOU AGREE WITH HIS  
 4 ALLEGATIONS?

5  
 6 A. I disagree completely. FCCA appears be willing to plead with this Commission that its  
 7 members just cannot compete unless they are given even more than what is required by  
 8 the law or the Act. This is contrary to the ALECs' own testimony and to the realities of  
 9 the competitive world. ALECs in Florida have been extremely successful in competing  
 10 in the voice market, serving more than <sup>595,000</sup>~~581,000~~ residential customers in Florida <sup>as of April 30, 2003.</sup> See  
 11 Ruscilli Direct Testimony at page 16. BellSouth's FastAccess policy has had no  
 12 demonstrable impact on competition in the voice market, particularly given the  
 13 significant share of the local market the ALECs have been able to garner in Florida. To  
 14 the extent ALECs are "foreclosed" from serving a segment of the voice market that  
 15 demands DSL service, ALECs have only themselves to blame.

16  
 17 Q. AT PAGES 12-13, MR. GILLAN ASSERTS THAT THERE IS NO DISTINCTION  
 18 BETWEEN EXISTING BELLSOUTH FASTACCESS CUSTOMERS THAT ARE  
 19 CHANGING VOICE PROVIDERS AND OTHER CUSTOMERS. IS THIS TRUE?

20  
 21 A. No. Although BellSouth disagrees with most provisions of the Commission's order in  
 22 the FDN Arbitration Case, the Commission squarely addressed this issue and concluded:

23  
 24 BellSouth believes that the Commission did not intend to require  
 25 BellSouth to provide retail FastAccess service to any and every FDN end



1 user that may want to order FastAccess. Rather, BellSouth was to provide  
2 FastAccess only to those BellSouth end users who decided to change their  
3 voice provider. We agree.

4

5

...

6

7

We believe that we were clear in our decision requiring BellSouth to

8

continue to provide FastAccess Service to those BellSouth customers who

9

choose to switch their voice provider. The Order clearly demonstrates that

10

we considered the arguments raised by FDN. (Emphasis added.)<sup>3</sup>

11

12

Gillan readily points to the FPSC's jurisdiction but completely ignores that the

13

Commission has addressed this very question already.

14

15

Despite Mr. Gillan's contentions, there is a difference between existing FastAccess

16

customers and customers that have never had FastAccess. A customer that has never had

17

FastAccess service and establishes voice service with an ALEC selects that provider with

18

knowledge of the ALEC's available offerings. If the ALEC does not provide DSL

19

service, the customer accepts service anyway, presumably because the availability of

20

DSL service is not important to that customer. A customer that has FastAccess service

21

and that desires to change providers has evidenced an interest in broadband service prior

22

to deciding to switch voice providers. From BellSouth's perspective, both customers

23

have sufficient flexibility to choose from available voice and broadband service

24

25 <sup>3</sup> *In re: Petition by Florida Digital Network, Inc. for arbitration of certain terms and conditions of proposed interconnection and resale agreement with BellSouth Telecommunications, Inc. under the Telecommunications Act of 1996*, Docket No. 010098-TP, Order Denying Motions for Reconsideration, Cross-Motion for Reconsideration and Motion to Strike, Order No. PSC-02-1453-FOF-TP, issued October 21, 2002 ("FDN Reconsideration Order").

1 providers. However, Mr. Gillan's position requires the provision of a new broadband  
2 service to a customer that never had a broadband service relationship with BellSouth.  
3 Mr. Gillan seeks to impose on BellSouth a new, rather than a continued, obligation that  
4 did not previously exist. This Commission recognized this distinction previously, and  
5 should reject Mr. Gillan's attempt to burden BellSouth with newly created obligations  
6 that are not shared by other broadband providers.

7

8 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

9

10 A. Yes.

11

12

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14 #471841

15

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1           CHAIRMAN JABER: Mr. Ruscilli, you can go ahead and  
2 provide your summary.

3           THE WITNESS: Thank you, Madam Chair. Good  
4 afternoon. My testimony focuses on BellSouth's policy. I also  
5 address three of the issues in this proceeding. First, does  
6 this Commission have jurisdiction to grant the relief sought in  
7 the complaint, which is Issue 1. Next, I will outline  
8 BellSouth's practices regarding provisioning of FastAccess to  
9 both migrating CLEC customers as well as other CLEC customers,  
10 that's Issue 2. And finally, I will explain how BellSouth's  
11 practices are fully consistent with federal and state law,  
12 Issue 3.

13           To understand BellSouth's policies on these issues, I  
14 will outline what BellSouth's DSL service consists of. There  
15 are two components of BellSouth's DSL service. First is  
16 BellSouth's federally tariffed, federally regulated wholesale  
17 DSL transport service which is a regulated interstate offering  
18 designed for use by Internet service providers. Second, it's  
19 FastAccess which is BellSouth's enhanced retail high-speed  
20 DSL-based Internet access service and is the service at issue  
21 in this case. FastAccess uses the federally regulated  
22 wholesale DSL transport as a component of the retail service  
23 like the other ISPs do and adds Internet services to the DSL  
24 transport. We often describe the wholesale DSL transport --  
25 excuse me, the wholesale DSL component as the pipe and

1 FastAccess Internet service as the water flowing through the  
2 pipe. Again, in this case, the issues are limited to  
3 BellSouth's enhanced retail Internet access service,  
4 FastAccess.

5           Jurisdiction. Because the issues focus on  
6 BellSouth's unregulated enhanced retail Internet access  
7 service, it is BellSouth's position that this Commission has no  
8 jurisdiction to regulate the manner in which BellSouth provides  
9 the service. This is not the first time the Commission has  
10 addressed jurisdiction. With all due respect to the  
11 Commission, BellSouth fundamentally disagrees that the  
12 Commission has jurisdiction in this area. The issues here  
13 include consideration of the rates, terms, and conditions  
14 related to BellSouth's enhanced retail Internet access. These  
15 are Issues 6A and 6B. Witness Gillan suggests that because of  
16 prior arbitration rulings this issue is settled. I would  
17 simply note that BellSouth has appealed these prior arbitration  
18 decisions and that BellSouth's position on jurisdiction has not  
19 changed.

20           This case also varies from previous arbitration  
21 decisions. The CLECs here want more. They don't want to  
22 require BellSouth to continue to provide FastAccess to a CLEC  
23 end user that is changing voice providers. The CLECs want to  
24 make BellSouth provide its nonregulated enhanced product to any  
25 CLEC voice customer even if that end user moves into Florida,

1 initially establishes voice service with, say, AT&T, and then  
2 six months later decides he wants BellSouth's FastAccess  
3 service. In that scenario, the CLECs want to make BellSouth  
4 provide its FastAccess service to the CLEC voice customer and  
5 the CLEC wants to limit BellSouth's ability to change the  
6 rates, terms, and conditions of its nonregulated enhanced  
7 product. This relief is simply beyond the regulatory  
8 jurisdiction of this Commission.

9           The provisioning of FastAccess. I also outlined  
10 BellSouth's DSL policies which are based on BellSouth's FCC  
11 Tariff Number 1 which establishes DSL as an overlay service and  
12 which requires the existence of an in-service telephone company  
13 BellSouth provided exchange line facility. Consistent with the  
14 BellSouth's tariffs, BellSouth will provide either its  
15 wholesale DSL service or its retail FastAccess service over a  
16 line that is being resold by a CLEC since a resold line is a  
17 BellSouth provided exchange line facility.

18           When a BellSouth voice customer migrates or  
19 establishes services with a CLEC for voice service by a  
20 stand-alone UNE loop or by a UNE-P, BellSouth will not continue  
21 to provide DSL service and will not provide DSL service to that  
22 customer with an exception. The exception is that as ordered  
23 in connection with the FDN and the Supra arbitrations, if a  
24 CLEC has language in its interconnection agreement that  
25 addresses customer migrations, then BellSouth will continue to

1 provide DSL service in that scenario as long as those  
2 arbitration decisions remain effective.

3 State and federal law. BellSouth's policy is fully  
4 consistent with state and federal law. BellSouth will provide  
5 its FastAccess service over a resold BellSouth line. Thus, the  
6 voice customers of each of the CLECs here can have BellSouth's  
7 FastAccess service if he or she has a resold BellSouth line.  
8 If these CLECs are serious about wanting to serve residential  
9 customers that want BellSouth FastAccess service, they can do  
10 so today, and then later, as their business plans develop,  
11 these CLECs can add their own facilities to provide broadband  
12 services. These CLECs can also utilize their own facilities or  
13 partner with other carriers to provide DSL service.

14 In closing, I would stress that although the CLECs  
15 claim BellSouth's policy has adversely impacted competition in  
16 the voice market, the facts do not support this claim.  
17 Extensive competition exists in the local voice market in  
18 Florida. Granting the relief, the CLECs' desire will not help  
19 the competitive broadband market in which cable, not DSL,  
20 dominates. At the end of the day, the CLECs' rationale for not  
21 pursuing the various options available to offer broadband  
22 services to its voice customers comes down to money. To meet  
23 the broadband needs of theirs customers, AT&T, MCI, AIN, and  
24 DeltaCom want BellSouth to utilize its resources. The  
25 Commission should reject this request and make clear that CLEC

1 profits will have to be achieved through investment and  
2 innovation and not through regulatory fiat. That concludes my  
3 summary.

4 CHAIRMAN JABER: Thank you, Mr. Ruscilli.

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

6 CHAIRMAN JABER: Thank you. Mr. Melson.

7 MR. MELSON: Chairman Jaber, I'm going to take just a  
8 moment and hand out a package of exhibits so we only get up  
9 once.

10 CHAIRMAN JABER: Thank you.

11 CROSS EXAMINATION

12 BY MR. MELSON:

13 Q Good afternoon, Mr. Ruscilli. I'm Rick Melson  
14 representing MCI.

15 A And, sir, I didn't hear your last name. Is it  
16 Nelson?

17 Q Melson.

18 A Melson. Thank you, sir.

19 Q You're not the first one to call me Nelson though.

20 A My name gets butchered a lot, too, sir.

21 Q One of the issues you touched on in your summary is  
22 Issue 1 which is the jurisdictional issue.

23 A Yes, sir.

24 Q And it's basically your testimony, if I understand  
25 it, that one reason the Commission cannot grant the relief is

1 that FastAccess is an enhanced nonregulated,  
2 nontelecommunications Internet access service; is that correct?

3 A That's correct.

4 Q Would you agree that in both the FDN and Supra  
5 arbitrations the Commission held that it did have jurisdiction  
6 to require BellSouth to provide FastAccess to CLEC voice  
7 customers not because it was regulating the FastAccess but  
8 because of the anticompetitive effect that BellSouth's practice  
9 was having on the voice market?

10 A I can remember those orders. I don't remember the  
11 word "anticompetitive." I think they said "barrier to entry,"  
12 but I'll go with whatever is in those orders.

13 Q All right. Well, why don't we -- and frankly, now  
14 having asked the question, I'm not sure whether it does say  
15 "barrier to entry" or "anticompetitive." Let's look at the  
16 Supra order which is the first document --

17 A In the free stack?

18 Q -- in the free stack.

19 Yes, sir.

20 A Okay.

21 Q And what we've duplicated here is the first page of  
22 the order and then the pages of the order, 49 through 51, that  
23 deal with the FastAccess issue. I guess I'll direct you to  
24 Page 50, and ask you to take just a moment to read through the  
25 section of this order that says "Decision."



1 A I read it.

2 Q All right. And just a couple of questions about it.  
3 The first, you would agree that the Commission in the Supra  
4 arbitration reconsidered its decision on its own motion in  
5 order to apply a consistent rule with what they had decided in  
6 the FDN arbitration; is that correct?

7 A Yes. Do you mean they reconsidered their FDN  
8 decision? Yes.

9 Q And they found, and I'm looking now in the bottom  
10 full paragraph on Page 50, BellSouth's policy impeded  
11 competition in the local exchange market. Do you see that?

12 A Yes.

13 Q And then on Page 51, and I guess this is probably the  
14 language you corrected me on, in the first sentence of the  
15 first full paragraph, the Commission found in the Supra docket  
16 that BellSouth's practice created a barrier to competition in  
17 the local exchange telecommunications market.

18 A Yes, sir.

19 Q Now, you said in your summary that while BellSouth  
20 disagrees with the FDN order and the Supra order, that they  
21 would essentially follow those orders, as I took it, for  
22 anybody who adopts the FDN or Supra interconnection agreement  
23 language; is that correct?

24 A Yes. I think that's also an important point. That  
25 language has been out there, and to my knowledge, I don't think

1 anybody has adopted it other than FDN has agreed to it. So if  
2 this is an issue in the marketplace, I'm not seeing it by the  
3 adoption of languages.

4 Q Let me ask you this. FDN is only a UNE loop  
5 agreement; is that correct?

6 A That's true.

7 Q So to the extent the carriers at this table were  
8 interested in UNE-P, the FDN agreement would not do them any  
9 particular good?

10 A I disagree. Mr. Bradbury said that the proprietary  
11 number was five figures of loops that AT&T had. So I think  
12 they have an opportunity to take advantage of that.

13 Q But that agreement is useful to a carrier who is  
14 using UNE loops, not to a carrier who is using exclusively  
15 UNE-P; is that correct?

16 A It is for UNE loops, that's correct.

17 Q All right. The Supra agreement is for UNE-P; is that  
18 right?

19 A Yes, it is.

20 Q As we sit here today, BellSouth and Supra are having  
21 a disagreement as to how to implement that interconnection  
22 agreement language; is that correct?

23 A I understand there's a disagreement. I don't know  
24 the nature of it.

25 Q Are you aware that there's a complaint pending at the

1 Commission between Supra and BellSouth about that agreement?

2 A I guess there is. I'm not really refreshed on that,  
3 but I'll take that subject to check.

4 Q Okay. Do you know, as we sit here today, whether  
5 BellSouth is actually providing FastAccess service to any  
6 customers of Supra who obtain -- who are serving customers via  
7 UNE-P?

8 A I don't know. One of the other BellSouth witnesses  
9 may know, but I don't know.

10 Q In talking about BellSouth's practice, your testimony  
11 identifies a couple of reasons that you contend support your  
12 practice of refusing to provide FastAccess service to a CLEC  
13 UNE-P customer. And your first reason is that it's  
14 inconsistent with language in BellSouth's FCC tariff for  
15 FastAccess; is that correct?

16 A That's correct.

17 Q And in your testimony, you refer to the tariff  
18 section. Would you take a look at the second document in the  
19 nonconfidential package and tell me if that, in fact, is the  
20 BellSouth tariff to which you refer?

21 A What I have is just the first page of it, but --

22 Q Is that the section?

23 A Oh, that's the section, yes. I thought you meant is  
24 this the tariff. I had the first page of that tariff, yes.

25 Q This is the section that contains the language that

1 BellSouth relies on for its position that the tariff precludes  
2 it from providing FastAccess service over UNE-P loop; is that  
3 correct?

4 A Yes, sir.

5 Q And isn't it true that that tariff language was not  
6 language that was dictated to BellSouth by the FCC or by any  
7 commission, that's a result of a business decision by BellSouth  
8 as to how to describe and how to tariff their service?

9 A I mean, yes and no. Absolutely the language that's  
10 in this tariff is because of BellSouth's business decision to  
11 generate -- or provide a tariff that says this is an overlay  
12 service based on our existing network operations of what we're  
13 going to do with FastAccess. The fact that it is tariffed in  
14 the FCC was actually determined by a GTE order that I also  
15 mention in my direct testimony -- I don't remember the exact  
16 cite -- that said that service is properly tariffed before the  
17 FCC.

18 Q So the requirement to file the tariff is an FCC  
19 requirement. The details of what the tariff -- how the tariff  
20 defines the service was a BellSouth business decision?

21 A Absolutely.

22 Q To the best of their knowledge, there's nothing in  
23 any FCC rule or order that would prohibit you from providing  
24 FastAccess service to a customer who receives his voice service  
25 via UNE-P; is that correct?

1           A     To the best of my knowledge, when I've looked at the  
2 line sharing orders and the Texas orders and a few other  
3 orders, there's nothing that prohibits, there's nothing that  
4 requires it. What would prohibit it would be, does it make  
5 business sense to do so.

6           Q     I'm sorry? Does it make --

7           A     What would prohibit it would be whether or not it  
8 made business sense to do so.

9           Q     All right. To the extent a state commission were to  
10 find that you should be required to do so, there's nothing,  
11 just to be clear, an FCC rule or order that would prohibit you  
12 from implementing that state commission decision?

13          A     Well, there I don't know. And I'm certainly not a  
14 lawyer. The Supreme Court came out on June 2nd with an  
15 order -- with a Federal Energy Reserve or Regulatory Commission  
16 against Entergy where they talked about the fact that tariffs  
17 that are filed before a federal body would be -- you'd give  
18 deference to that tariff over a state tariff because you may  
19 impermissibly trap cost that the carrier cannot recover, and  
20 that we built this tariff based on an overlay network that we  
21 filed with the FCC. If this Commission were to order us to  
22 change that tariff or we had to change that tariff, we may be  
23 in a similar situation, but beyond that, everybody in the room  
24 clearly knows I'm not a lawyer, so I can't talk anymore about  
25 it, but I think we might have a problem with it.

1 Q Let me ask you this. The FCC did not do any --  
2 BellSouth didn't file any cost justification with this  
3 FastAccess tariff when it filed with the FCC; is that correct?

4 A I don't know if they did or they did not. I didn't  
5 look at the filing package.

6 Q If they didn't file cost justification, then is it  
7 fair -- strike that. I'll withdraw it.

8 A second reason you give in your testimony to support  
9 BellSouth's practice is that when a CLEC obtains a UNE-P loop,  
10 BellSouth has no right to use the high frequency portion of the  
11 loop unless it's negotiated an agreement with a specific ALEC;  
12 is that correct?

13 A That's true. When UNEs were developed, the CLECs  
14 argued in the UNE Remand Order that those are elements; they're  
15 not services. They have all rights to those elements as if  
16 they owned those elements. As a matter of fact, Mr. Gillan  
17 said that similar this morning, and so we have no right to  
18 anything associated with that element other than the  
19 responsibility to maintain it for you.

20 Q You are aware, aren't you, that all of the CLECs in  
21 this case have said that they're willing to make the high  
22 frequency portion of that loop available to BellSouth at no  
23 cost to enable BellSouth to provision FastAccess service over  
24 the loop?

25 A Mr. Gillan said as much, Ms. Lichtenberg for MCI, and

1 Mr. Bradbury for AT&T, and I was unclear when he was testifying  
2 if he was testifying on behalf of all four of you-all of FCCA.  
3 That representation was made, but at the same time I know MCI  
4 is a member of the party that was involved in the Louisiana,  
5 and at that point MCI and that particular carrier associated  
6 wanted to reserve the right to be able to come back and charge  
7 for that high frequency portion. So I'm not sure exactly where  
8 you-all stand. If this is a change in position, then, okay,  
9 I'll accept it.

10 Q So far as you know, the carriers in this case have  
11 represented that they would provide the high frequency portion  
12 of the loop to BellSouth at no charge; is that correct?

13 A Today, yes.

14 Q And we'll get to --

15 CHAIRMAN JABER: Excuse me, Mr. Melson. I'm sorry.  
16 Mr. Ruscilli, does that change your position in this  
17 case?

18 THE WITNESS: No, ma'am.

19 CHAIRMAN JABER: Why not?

20 THE WITNESS: Well, again, one, we're just dealing  
21 with the few carriers that are here. This is language that  
22 could be adoptable. That's the number one reason. Number two,  
23 it's a product we've invested in. It's a product that we think  
24 we have the right to determine where we want -- determine the  
25 destiny of that product, not our competitors.

1 CHAIRMAN JABER: Let me understand the first part of  
2 what you said. If you were to accept the offer being made by  
3 MCI, AT&T, and AIN in this case with regard to the high  
4 frequency portion being available to you at no cost, you're  
5 worried that decision would be incorporated by other carriers?

6 THE WITNESS: Yes, that decision can be, and I'm not  
7 a contract person, so I can't say with specificity. But I know  
8 that language can be adopted. I know there are other carriers  
9 that do not want to give it to us for free.

10 CHAIRMAN JABER: Okay. But if the language is  
11 adopted, then the carriers that are adopting it would also have  
12 to provide the high frequency loop at no cost; correct?

13 THE WITNESS: Yes, ma'am, that would make sense.  
14 Again --

15 CHAIRMAN JABER: Or not adopt it.

16 THE WITNESS: Right.

17 CHAIRMAN JABER: Okay. Does that change your  
18 position?

19 THE WITNESS: No, ma'am. Again, going back to my  
20 Item Number 2, it's a product that we've invested in that we  
21 want to determine the outcome of that product.

22 BY MR. MELSON:

23 Q Would it change your position if the Commission said  
24 very explicitly in its order that BellSouth is required to  
25 provide FastAccess over a UNE-P loop if and only if the CLEC



1 agreed to make the high frequency portion available at no cost?

2 A You know, we will comply with a commission's order as  
3 long as it stands. That's not the issue. Will BellSouth  
4 change its position on whether or not it wants to offer  
5 FastAccess on a voluntary basis over a UNE-P, no.

6 Q And just so I understand that position, assume you've  
7 got a customer who is a BellSouth voice and FastAccess customer  
8 today and that customer migrates his voice service to MCI. If  
9 I understand your policy, BellSouth would disconnect that  
10 FastAccess service; correct?

11 A Well, in Florida if MCI had adopted the set of  
12 language that Supra would have, and let's assume we settle it,  
13 then you could do that. Barring the adoption of that language,  
14 yes, we would disconnect that service.

15 Q And so even though BellSouth has already got the  
16 investment in the equipment to provide DSL service to that  
17 customer, has already incurred whatever costs there was to hook  
18 up the customer, it would disconnect the customer and forego  
19 \$600 a year of revenue as part of a business decision as to  
20 whom it wanted to offer to?

21 A That was some of the discussion that Commissioner  
22 Deason and Mr. Gillan had this morning. A couple of things I  
23 think were -- probably need to be flushed out there a little  
24 bit better. Number one, the revenue is assuming that that's  
25 \$600 in BellSouth's pocket. Well, there's also a lot of cost

1 associated with the service FastAccess by itself. Secondly, as  
2 the other BellSouth witnesses are going to testify after me  
3 about the operational procedures that we're going to have to go  
4 through and the database updates that we'll have to do, there's  
5 now additional costs that are being posed. So the cost of  
6 FastAccess at one time you can't say is fully recovered when it  
7 starts to move to a UNE-P environment because now we have new  
8 costs that we have to play into that equation -- plan into that  
9 equation, excuse me. And at that point in time, BellSouth has  
10 made a decision it would rather not go down that track in  
11 offering its product. But now, we haven't left you without an  
12 alternative. You can provide service on a resale basis. You  
13 can get a 21.83 percent discount here in Florida on your UNE-P,  
14 and you can have the FastAccess customer.

15 Q Let me ask you about that just a minute. Would  
16 you -- as you sit here today --

17 A I'm sorry, I misspoke. I said on the UNE-P, that was  
18 incorrect. 21.83 percent discount on the retail product. I  
19 apologize.

20 Q Okay. As you sit here today, are you aware of any  
21 CLEC in the United States that has ever successfully offered  
22 residential service on a mass-market basis using resale?

23 A Well, again, that's some of Mr. Gillan's testimony.

24 Q No, sir. I'm asking what you know. As you sit here  
25 today, do you know if any CLEC has successfully offered a

1 mass-market residential service using resale?

2 A We have 102,000, 104,000 lines that are being resold  
3 in the state of Florida today. It's not as many as we used to  
4 have. Mr. Gillan tends to paint that as a failing market, but  
5 at least for 104,000 lines and the businesses that support  
6 those lines it doesn't appear to be a failing market to me at  
7 all.

8 Q Do you have a copy of BellSouth's responses to MCI's  
9 first set of interrogatories?

10 A No, sir. Could you provide it with me, please -- or  
11 provide it to me?

12 Is this mine to look at? Okay.

13 Q Interrogatory Number 4 which is part of what's been  
14 admitted as Exhibit Number 5. Are you with me?

15 A Yes, sir.

16 Q That shows the number of total BellSouth lines, UNE-P  
17 lines and resale lines, in Florida going back for some number  
18 of years; correct?

19 A Yes, sir.

20 Q Looking at that -- on the resident side, is it fair  
21 to say that number of resale lines peaked in December of 2001  
22 and has declined every six-month period thereafter through  
23 June of 2003?

24 A Yes, it has.

25 Q Is it also fair to say that during that same time

1 period, December 2001 to June 2003, the number of UNE-P lines  
2 has increased dramatically?

3 A Yes.

4 Q All right. So when you suggest that one option  
5 available to a CLEC is to move to resale, at least the data in  
6 this interrogatory answer suggests that in Florida it is a  
7 dying breed?

8 A Again, I would not characterize it as a dying breed  
9 or a market that's failing. I see that CLECs are taking  
10 advantage of the very low TELRIC prices associated with UNE and  
11 making those conversions where they want to. I see other CLECs  
12 that are still providing resale.

13 Q You are aware -- and I believe you've mentioned  
14 Louisiana on at least one occasion. The Louisiana Commission  
15 has ordered BellSouth to make FastAccess available to customers  
16 who obtain voice service from a CLEC by a UNE-P; is that right?

17 A Yes.

18 Q And that order applies both to customers who have  
19 FastAccess when they migrate to a competitive voice carrier and  
20 to customers who are served by a competitive voice carrier and  
21 want to subsequently add FastAccess service; is that correct?

22 A That's my understanding.

23 Q And the Louisiana order requires service in either  
24 event be provided over the single UNE-P line, not over a second  
25 line; is that correct?

1           A     That part I'm unfamiliar with.  If it's in there, I  
2 just don't remember it.  I know that we're implementing it  
3 under a separate line, or that's what the discussion is in  
4 Louisiana now.  It's really probably Mr. Fogle's area more than  
5 mine as far as implementing that order.

6           Q     I'd like you to pick up the Louisiana clarification  
7 order that was in the nonconfidential packet I gave you.

8           A     Yes, sir.

9           Q     Give me just a minute.  I need to get to my  
10 color-coded copy or I'll never find it.

11                     If you read the first ordering paragraph which is on  
12 Page 16 of the order, doesn't that say in essence that while  
13 BellSouth can file a two-line proposal for consideration by the  
14 Commission, that it does not delay or suspend BellSouth's  
15 obligation to provide it under this order over the single UNE-P  
16 line?

17           A     That's what the last sentence of that ordering  
18 paragraph says, yes.

19           Q     Let's go back to jurisdiction.  Would you also agree  
20 that the Louisiana Commission essentially took the same  
21 position on jurisdiction as Florida took in the FDN and Supra  
22 orders and said, we're not regulating the FastAccess service,  
23 we are preventing impairment in competition for voice service?

24           A     That was the tactic they used to exert authority over  
25 how we were providing our FastAccess service.  At the same time

1 South Carolina and North Carolina have said just straight up  
2 front it's not within their jurisdiction.

3 Q Your concern with FCC tariff inconsistency, is that  
4 the same concern throughout the BellSouth region?

5 A Yes. We have one FCC tariff.

6 Q Okay. BellSouth has executed an interconnection  
7 agreement amendment with MCI and others to implement the  
8 Louisiana order; is that correct?

9 A I don't know if they have or they haven't, but I see  
10 a letter that you've just handed to me. Is that where we're  
11 going?

12 Q Yes. Let's pick up the May 23rd letter from Jim  
13 Tamplin at BellSouth to Linda Prior that encloses an executed  
14 signature page for the DSL amendment. Do you see that?

15 A Yes.

16 Q Would you take a look at Paragraph 4.24.1 which is on  
17 the first page of the agreement itself, and just read that to  
18 yourself for a moment.

19 A Yes, I've read it.

20 Q And that says in essence that notwithstanding any  
21 contrary provisions in the FCC tariff, BellSouth will provide  
22 FastAccess over UNE-P to customers of MCI; correct?

23 A That's what it says.

24 Q So the FCC tariff concern was not great enough for  
25 you to modify your federal tariff, you decided to run the risk

1 of violating it in order to comply with the Louisiana order?

2 A Well, we certainly are in violation of what was  
3 written in our tariff, because it says that it has to be over a  
4 BellSouth exchange line. But we have also appealed this order,  
5 as we have appealed the order in Cinergy, and we have appealed  
6 down here. And so at this point in time, I don't -- maybe the  
7 lawyers need to brief us, but I don't see a need for us to  
8 change that tariff under a state action.

9 Q Okay. At this point in time the FCC tariff was not  
10 enough to prevent you from signing this agreement?

11 A No, we are going to comply with the Commission's  
12 orders.

13 Q Okay. Your concern with BellSouth's right to access  
14 the high frequency portion of a UNE-P loop was the same concern  
15 that you had in Louisiana, correct?

16 A Yes. That concern was the same, but we had similar  
17 concerns. I mean, other concerns besides those, yes.

18 Q Okay. And the Louisiana order specifically prevents a  
19 CLEC from charging BellSouth for access to the high frequency  
20 portion of the loop, is that correct?

21 A That was my understanding.

22 Q And, in fact, if you look in Paragraph 4.24.2 of this  
23 Louisiana amendment, the very last sentence of that is the  
24 contractual grant by MCI to BellSouth to the right to use the  
25 high frequency portion of the loop without charge?

1 A That is what it says.

2 Q All right. So regardless of some position you may  
3 recall MCI taking in a proceeding, you have got a contract with  
4 them in Louisiana that says they won't charge you for the loop?

5 A Yes, sir. And I wasn't familiar with this contract.

6 Q Could you turn to your direct testimony at Page 21, I  
7 guess the question and answer that begins at Line 17?

8 A Yes, sir.

9 Q And if I am reading correctly, at Line 20 you  
10 essentially say, as long as ALECs are permitted to rely on  
11 BellSouth to assume the risk and expend the capital, DSL  
12 competition would be hampered because ALECs would have no  
13 incentive to use another DSL provider. Do you see that?

14 A Yes.

15 Q Is it your testimony that BellSouth adopted its  
16 policy in order to promote ADSL competition?

17 A No. Again, BellSouth's policy is in place because of  
18 how BellSouth designed its FastAccess and its DSL tariff  
19 offering. And we looked at it as an overlay to our network,  
20 and based assumptions on that. But I think that one of the  
21 things that will happen is if everything that BellSouth chooses  
22 to invest in, that is nontelecommunications, it's enhanced,  
23 anything, if CLECs are unencumbered in their access to getting  
24 to those facilities, or those services, or those products, what  
25 incentive do they have to invest? Why not just come before the



1 Commission and say it is anticompetitive, and I should have  
2 access to it because BellSouth has already spent the money and  
3 I don't have it.

4 Q So in your view an incentive for -- an incentive for  
5 other competitors in the DSL market is sort of a beneficial  
6 side-effect to BellSouth's business practice?

7 A I guess sort of in an obscure way. I think what I'm  
8 saying is that true market competition in this sense is not  
9 really being, you know, brought forward by anything that the  
10 CLECs or the ALECs are doing. They are not putting any money  
11 in the ground and BellSouth is, and they are just riding on our  
12 investment.

13 Q You also talk in your testimony, I believe in your  
14 summary about BellSouth facing significant competition from  
15 cable modems, is that correct?

16 A That is true. They lead us about two-to-one in  
17 access to broadband customers.

18 Q And every time you disconnect a FastAccess customer,  
19 doesn't that have the potential that it is going to force them  
20 to your competitor?

21 A That is certainly a possibility, yes, it is.

22 Q And isn't it true that BellSouth would run that risk  
23 of losing even more customers to cable modems only if you  
24 thought that the threat of disconnecting the FastAccess was  
25 going to be enough to keep the customer on your service?

1           A     I got lost in your question. Can I have it -- I  
2 think I understand, but I got lost in it. Can you just repeat  
3 it for me.

4           Q     Sure. Let me use Mr. Gillan's terminology. Wouldn't  
5 you play chicken with the customer and risk losing him to cable  
6 modem or another provider only if you thought the customer was  
7 going to say, well, now that I understand my options, I'm going  
8 to stay exactly where I am and keep BellSouth's voice service?

9           A     I don't think we are playing chicken with the  
10 customer at all. I think what has literally happened in this  
11 marketplace is BellSouth has spent about four years investing  
12 in a technology and nurturing a market and developing a market  
13 for DSL type products, ours is FastAccess. And I think what we  
14 have done is we have built a very strong competitive offering,  
15 both to cable companies and to our ALEC friends who had the  
16 equal opportunity to do the exact same things. And now  
17 consumers have choices.

18                     And one of the choices they have, and the decisions  
19 that they are making is is The Neighborhood more important to  
20 me, as an example, because I have got this free long distance  
21 calling for an extended period of time or is DSL more important  
22 to me. If both are important to me and BellSouth doesn't offer  
23 the long distance calling like The Neighborhood, then I would  
24 be turning to MCI and saying how come you don't have a DSL.  
25 And MCI's only response is, or AT&T only response is, or AIN's,

1 or DeltaCom's is I haven't spent the money like BellSouth.

2 So I think we have built a better competitive  
3 product, and I think we have the right to deem that product's  
4 future as far as BellSouth's portfolio.

5 Q Mr. Ruscilli, you said that BellSouth does not offer  
6 a competitive unlimited long distance product, did I hear that  
7 correctly?

8 A If I said that, at the time we were writing these  
9 testimonies, we didn't have one. I know that BellSouth has got  
10 some promotions that they rolled out for long distance with its  
11 long distance company. But at the time I wrote the testimony,  
12 no, and I didn't mean to confuse anything.

13 Q Just to be clear, as we sit here today, if I go to  
14 BellSouth's website I will see an offering for unlimited long  
15 distance service for a flat rate price, is that correct?

16 A Yes, I think that is available. And there is another  
17 interesting thing you would pull off the website. Whereas AT&T  
18 and MCI have got switches all over the country and we do not,  
19 we are spending the extra money to lease that capacity from  
20 other carriers so we can provide that product. What we don't  
21 see MCI, AT&T, and the other two of you sitting up here today  
22 is spending money in this market, the DSL market to offer a  
23 competing product.

24 Q You do see us spending money to lease UNE-P  
25 facilities from BellSouth, though?

1           A     Yes.  But I don't think any of the long distance  
2 carriers are giving us TELRIC-based access to their long  
3 distance networks.

4           Q     The availability of long distance leased facilities,  
5 is it fair to say that is a pretty highly competitive market at  
6 this point?

7           A     It certainly is.  All the carriers are competitive  
8 and offer -- they want to cut deals.  But none of them are  
9 required to provide it at TELRIC.

10          Q     Let's talk about what it would require for an MCI,  
11 for example, to provide DSL service to the same sort of  
12 footprint that BellSouth serves today?

13          A     Okay.

14          Q     BellSouth provides FastAccess service, I think you  
15 said out of all but seven of your central offices, is that  
16 correct?

17          A     Yes, and about a third of our remotes.

18          Q     And so out of 190, give or take, central offices,  
19 there are seven that you don't provide FastAccess, correct?

20          A     Seven central offices.  But the central offices have  
21 a limited area they can cover, as Ms. Lichtenberg was  
22 discussing.  In addition, we have 9,600 or 9,800 remotes, and I  
23 think we only have it in about 3,600 of those.

24          Q     Will you accept subject to check that you told AT&T  
25 you have got it in about 3,945 remote terminals?

1           A     I was calling it off the top of my head, so I will  
2 accept your precision, sir.

3           Q     So if MCI wanted to provide DSL service using its own  
4 facilities to the same footprint, it would have to have  
5 collocations in 185 central offices and collocations in 3,945  
6 remote terminals, is that fair?

7           A     If MCI tomorrow wanted to become like what BellSouth  
8 spent over four years investing and putting money in the  
9 ground, yes, that is correct. But I think it is a completely  
10 unfair comparison for a number of reasons. One, as Ms.  
11 Lichtenberg mentioned, you have got DSL equipment in 18 central  
12 offices which happen to be in the largest metro areas in the  
13 State of Florida, which gives you a fairly large access to a  
14 lot of customers you could serve out of those offices today.

15                     Two, if FastAccess is important to you and to your  
16 customers, you can resell a retail line to those customers,  
17 continue to provide FastAccess, and build up your base in a  
18 particular wire center or a particular remote terminal served  
19 area, and then deploy that equipment. Which, by the way, was  
20 not an advantage that BellSouth had when it began to spend its  
21 money. It put its money out there with no customers and went  
22 and tried to build a market. You have got one that is sort of  
23 ready/set that you can go after, and we are giving you the  
24 tools to do it.

25           Q     Let me ask you, when you went out and started

1 deploying DSL service, though, you had 100 percent or close to  
2 100 percent of the voice market, is that correct?

3 A It was not 100 percent. I don't remember what the  
4 percentage was in 1999 of the local lines we had, but we  
5 started in central offices, just like MCI has a few central  
6 offices, and we went to some areas to see if we could scout up  
7 some business, and we grew from there a month at a time.

8 Q And we will look at that in a moment, but isn't it  
9 true that when you started deploying DSL BellSouth had the vast  
10 majority of the voice customers in its service territory?

11 A Yes. I mean, it was 90 percent, perhaps. But I just  
12 don't remember the exact numbers in 1999.

13 Q Sure. And to match the same footprint and to put DSL  
14 equipment in 3,945 remote terminals, how many remote terminal  
15 collocations are there in Florida today?

16 A In Florida I don't think there are any, and we have  
17 some in other states.

18 Q So, essentially, to compete, a carrier over some  
19 period of time would have to go to 4,100-plus locations with  
20 equipment in order to serve whatever percent -- in order to  
21 have the potential to serve DSL to whatever percentage of the  
22 voice market it has been able to capture?

23 A Well, again, I think what I said is that we have  
24 already put that equipment out there, but we didn't do it  
25 overnight. And the approach that we took was deploy it where

1 we built up a base and then move forward. And we give you the  
2 same opportunity to collocate your DSLAMs in central offices,  
3 and your DSLAMS in RTs to do that.

4 In addition, the advantage you have that we did not  
5 have is that you can provide a product today through resale, no  
6 investment on your part, and you can build up a number of  
7 customers in an area and then deploy that DSLAM. We did not  
8 have that advantage. We took a 100 percent risk when we went  
9 out there.

10 Q Could you turn to the red folder, and I'm going to  
11 ask you just to look at the top document in it, which is  
12 BellSouth's proprietary response to Item Number 4 of MCI's  
13 first set of interrogatories. Do you see that?

14 A Yes. Item Number 4?

15 Q Yes, sir. And I will ask you to turn to the second  
16 page, but please don't blurt out any of those shaded numbers  
17 because those are secret.

18 A It's the first time I have seen them.

19 Q Does the top line on this chart show the growth in  
20 FastAccess lines from December 31 of 1999 to June 30 of 2003?

21 A Yes. The top row labeled A. The top line is a  
22 legend, but the top row labeled A, yes.

23 Q Okay. If I were to look at the number under the June  
24 30, 2003 column, those are the number of customers BellSouth  
25 has today who would potentially lose their FastAccess service

1 if they chose to move to a competitive voice carrier who used  
2 UNE-P, is that correct?

3 A If the competitive carrier did not have DSL, or the  
4 competitive carrier chose not to take advantage of the resale  
5 option, yes, that would happen. But you have two options you  
6 are not exploring.

7 MR. MELSON: Give me just a moment.

8 Madam Chairman, could I have -- I don't need to have  
9 the confidential exhibit marked, because that is already a part  
10 of MCI's Number 6. I would ask -- and the Louisiana order is  
11 one that the Commission can take official notice of. Could I  
12 have marked as a composite the section of BellSouth's FCC  
13 tariff and the letter dated May 23rd and attached Louisiana  
14 contract between MCI and BellSouth?

15 CHAIRMAN JABER: Okay. So Composite Exhibit 18 will  
16 be the FCC tariff on BellSouth's ADSL service, the May 23rd,  
17 2003 letter from Jim Tamplin, with the attached agreement  
18 between MCI and BellSouth dated June 17th, 2002.

19 (Exhibit 18 marked for identification.)

20 MR. MELSON: And I think that's all I've got,  
21 Commissioner Jaber.

22 CHAIRMAN JABER: Okay. Staff.

23 CROSS EXAMINATION

24 BY MS. CHRISTENSEN:

25 Q Mr. Ruscilli let me direct you to Page 4 of your



1 direct testimony, Lines 10 through 12. Do you have a copy of  
2 that?

3 A Yes. Is this the indented section that you are  
4 talking about?

5 Q Yes.

6 A Okay. Yes, ma'am, I'm there.

7 Q Okay. And it has a quote from FCC Order Number  
8 01-247, and the quote begins, "BellSouth states that its policy  
9 not to offer its wholesale DSL service to an ISP or other  
10 network service provider on a line that is provided by a  
11 competitor via UNE-P is not discriminatory nor contrary to the  
12 Commission rules."

13 Did the order specifically address BellSouth's policy  
14 to disconnect FastAccess from a retail end user that migrates  
15 its local voice service from BellSouth to a CLEC?

16 A Well, it talks about wholesale DSL here, but you  
17 can't separate one from the other with respect to FastAccess.  
18 FastAccess is the enhanced product of which wholesale DSL  
19 service is a component of it.

20 Q Okay. What is BellSouth's rationale for continuing  
21 FastAccess service to those customers receiving local voice  
22 service from a CLEC reselling BellSouth's local service yet  
23 discontinuing the FastAccess until the local service is  
24 provided through a UNE-P platform arrangement?

25 A A resold line, number one, is a BellSouth exchange

1 provided line. It is one that we have. We built this is an  
2 overlay service. And as Mr. Fogle and Mr. Milner are going to  
3 talk a little later, it then will flow through all the systems,  
4 we know everything about it, and we can keep track of it. And,  
5 most importantly, we have complete unencumbered access to the  
6 high frequency portion of that loop because it is a resold  
7 BellSouth product.

8           A UNE-P or a UNE loop is not a product, it is an  
9 element. It was defined specifically in the UNE remand order  
10 as being an element that provides all the features and  
11 functionality but not specific to any one service. And the  
12 CLECs are purchasing those and have full right of ownership of  
13 those.

14           Q     Would you agree that there is a growing demand for  
15 DSL in Florida?

16           A     Well, the evidence certainly shows that the DSL  
17 penetration is growing, and that is a great thing, and also one  
18 of BellSouth's concerns, because we worked very hard to develop  
19 this market.

20           Q     Would you agree, subject to check, that the FCC in  
21 its Second Report and Order and memorandum and opinion and  
22 order in Docket Number 96-98 states that Congress intended that  
23 the provision of this new section would help competition grow  
24 in the market for exchange and exchange access and related  
25 telecommunications services?

1           A     That is a long thing you read, so I will take it  
2 subject to check that that is what that order says.

3           Q     And in response to Staff's Interrogatory Number 21 to  
4 BellSouth, Statement Number 4, do you have a copy of that?

5           A     I don't have a copy, and I will need one. Because  
6 there has been so many of these I can't keep them straight in  
7 my head anymore.

8           Q     We are looking at Hearing Exhibit 7, and specifically  
9 we are talking about BellSouth's response to Interrogatory 21,  
10 which should be Page 13.

11          A     Yes, I'm there now.

12          Q     Statement Number 4 indicates that the ALECs currently  
13 have an incentive to cherry-pick solely the ILEC's high end,  
14 primarily urban voice customers?

15          A     I must be at the wrong page. My statement says in --

16          Q     Sorry, that's Number 3. Check Item Number 3 under  
17 that response. Number 3.

18          A     Okay. Thank you.

19          Q     Okay. Can you tell us why do ALECs currently have an  
20 incentive to focus on the high end, primarily urban voice  
21 customers?

22          A     Certainly. It is where the profit margin is. I  
23 think that is what Mr. Gillan was talking about, that they see  
24 those customers that have a lot of the high-end features and  
25 the high-end customer -- amount of money the customer is

1 willing to spend as being the ones where they can make the most  
2 profit, and so that is the one they are focused on.

3 Q Okay. I'm going to read you a couple of things from  
4 attachments to Order Number PSC-03-0690-FOF, and we are going  
5 to go ahead and provide you a copy of that.

6 A Thank you very much.

7 Q Okay. Specifically looking at -- I guess I need to  
8 wait a minute.

9 A And this is the order approving the interconnection  
10 agreement, to make sure I've got the right thing this time?

11 Q Right.

12 A Yes. Thank you.

13 Q Specifically looking at that, and then we are  
14 referring to Attachment A of that order. And in there it  
15 details the provisions of the FastAccess to FDN end users. And  
16 looking specifically at Attachment 1, Page 4, it contains  
17 Statement 2.10.1.3. which reads, "Where BellSouth's FastAccess  
18 could be provisioned over the high frequency portion of the  
19 loop coexistent with FDN's circuit switched voice services on  
20 the same loop, BellSouth may elect to maintain the BellSouth  
21 FastAccess on the same loop such that the FastAccess is not  
22 altered when the end user switches to FDN's voice service."

23 And then referring further in the attachment to  
24 Section 2.10.1.10, I will refer you to that section on the  
25 subsequent page, it states, "In the event BellSouth elects to

1 comply with this Section 2.1 by provisioning FastAccess on an  
2 FDN UNE-loop, FDN shall make available to BellSouth at no  
3 charge the high frequency spectrum on such UNE-L loop for the  
4 purposes of provisioning the underlying DSL transport."

5 A Yes.

6 Q Would you agree that these provisions require  
7 BellSouth to modify its FCC tariff?

8 A I don't see where they would require us to modify the  
9 FCC tariff. It certainly would be inconsistent, but it said  
10 that BellSouth may provide. It didn't say BellSouth shall  
11 provide. And I think with FDN we are actually providing it  
12 over a second loop rather than the FDN loop.

13 Q Well, to the extent that BellSouth elects to provide  
14 it over the same loop, wouldn't that require that BellSouth  
15 make a change to its FCC's tariff, otherwise it would be  
16 violation of its FCC tariff?

17 A It is in violation of the tariff. But we don't see  
18 where a state order or an interconnection agreement that was  
19 generated from a state order, a state PSC order on an enhanced  
20 unregulated product would be a requirement for us to make a  
21 change to the FCC. And as I said in my deposition, I'm not  
22 sure the FCC would agree that they are subject to state  
23 authority on how we would file things with the FCC.

24 Q Well, I'm assuming that BellSouth doesn't take as its  
25 practice doing acts or entering into agreements that require it

1 to violate its federal tariff. That it would do everything  
2 within its discretion not to violate its FCC tariff, if that  
3 included changing its FCC tariff?

4 A We are sort of caught between a rock and a hard place  
5 here. We are going to be compliant with this Commission's  
6 orders. We are also appealing this order, as we are appealing  
7 Louisiana and as we are appealing Kentucky and taking it to  
8 court. And at the same time, we have got an FCC tariff that is  
9 out there that says it has to be an exchange line. Again, I  
10 don't know, maybe the lawyers can brief this better than me,  
11 but I don't see that it is in our best interest to make a  
12 change in that tariff at this time.

13 Q Assume for sake of argument that the Louisiana order  
14 is upheld on appeal and you are now required, after being  
15 thoroughly litigated through the federal courts, to provide  
16 this and the jurisdictional issue is upheld. Wouldn't you  
17 agree then that you would be required to change your FCC  
18 tariff?

19 A I just don't know. I guess we would have to look at  
20 it at that time how we decided to restructure the product.

21 Q And let me follow up with that. You are not arguing  
22 that there is anything that prohibits BellSouth of its own  
23 accord from changing its FCC tariff to comply with this?

24 A No. If we had a business reason to make a change to  
25 that tariff, and if that business reason was consistent with

1 what is ordered here, which right now we don't have a business  
2 reason that is consistent with what is ordered here, we could  
3 make a change to that tariff, yes.

4 Q Okay. So basically what you are saying is it is  
5 BellSouth's discretion whether or not it wants to actually  
6 change its FCC tariff?

7 A At this time, yes. Again, we are going to be  
8 compliant with the state order, but we see no business decision  
9 that is driving us to change that FCC tariff.

10 Q So it is BellSouth's business decision to be in  
11 violation of its FCC tariff to comply with the state?

12 A Of three orders that we have under appeal with the  
13 courts, yes.

14 Q Let me ask you, you had brought up the Entergy  
15 decision early on in your testimony with Mr. Melson. Wouldn't  
16 you agree that that Entergy case was basically a FERC decision,  
17 a FERC tariff, not an FCC tariff that was in question?

18 A Well, certainly it was not an FCC tariff, it was a  
19 FERC tariff, but --

20 Q And wouldn't you also agree that that was regarding a  
21 ratemaking decision, that I think FERC had actually made a rate  
22 decision --

23 A No, actually --

24 Q -- that the state Commission went against?

25 A No, actually FERC did not make the rate decision.

1 Entergy and its associated companies in several states made  
2 decisions on how they were going to allocate cost to the  
3 different state units on the reserve electrical capacity. And  
4 in that decision, what happened is that the Louisiana Public  
5 Service Commission took exception to the amount of cost that  
6 was being allocated to its state and disallowed it. And then  
7 FERC -- it was a tariff that was filed before the federal  
8 authorities, and then Entergy appealed that.

9           And it went to Supreme Court, and the Supreme Court  
10 said that impermissibly trapped those costs, because you left  
11 Entergy with a point where it couldn't capture costs that were  
12 duly and correctly filed before the Federal Energy Commission.  
13 Because those were interstate in nature, just like DSL is  
14 interstate in nature. And then I think there is even some  
15 discussion of filed rate doctrine that goes along inside that  
16 order that would also be applicable in this area. But I'm not  
17 a lawyer.

18           Q     But that is a different procedure than what is used  
19 before the FCC? I mean, it is a different agency, different  
20 procedure for the tariff proceedings, correct?

21           A     Yes. But, you know, I don't think it is uncommon for  
22 those kinds of things to get passed back and forth by the  
23 Supreme Court between different agencies where the application  
24 of the law seems to be the same.

25           Q     But, as you said, you are not a lawyer?



1 A But I'm not a lawyer, I'm really not.

2 Q Let me bring you back to another question. On Page  
3 20 of your direct testimony -- I swear this is the last  
4 question I have -- Lines 19 through 22, you state that 96  
5 percent of the TV households have cable available.

6 A Yes.

7 Q Of those households that have cable available, how  
8 many have access to cable modem service?

9 A 66.4 percent of TV households have cable modem  
10 service available is what I say in my testimony. That was  
11 taken off of a report I found on the web from the National  
12 Cable Telecommunications or something association, National  
13 Cable Communications Association or something like that.

14 MS. CHRISTENSEN: Okay. Staff has no further  
15 questions.

16 CHAIRMAN JABER: Thank you, Ms. Christensen.

17 Commissioners, do you have any questions?

18 Commissioner Baez.

19 COMMISSIONER BAEZ: Mr. Ruscilli, going back to the  
20 discussion we all just enjoyed on the Entergy case, can you  
21 explain to me what costs exactly are those? I mean, if you are  
22 trying to draw an analogous situation with the Louisiana  
23 Commission and what might result based on a decision our  
24 Commission might make, exactly which costs are getting trapped  
25 in this example?

1 THE WITNESS: Again, with Entergy what happened is  
2 they had some costs that --

3 COMMISSIONER BAEZ: Yes, recovery was disallowed for  
4 something that was federally tariffed. Where is that dynamic  
5 here?

6 THE WITNESS: With BellSouth it has filed a tariff  
7 that it has developed for DSL in its interstate tariff based on  
8 a structure and a method of how it wanted to deploy it, which  
9 was as an overlay network. At this point in time we are being  
10 asked to do something that is going to be contrary to that,  
11 which the other witnesses will testify that that changes  
12 procedures, it changes BellSouth's cost.

13 Where can we recover that cost? We are very limited  
14 in our choices. We could go back to that tariff and raise that  
15 rate for all network service providers, we could raise our  
16 FastAccess customers, or we could eat it.

17 COMMISSIONER BAEZ: And let me ask you, I think Mr.  
18 Lackey asked Mr. Gillan earlier today if there would be  
19 anything wrong, from his perspective, if depending on the  
20 situation whether you had a FastAccess service only rather than  
21 a bundled complete choice FastAccess, or whatever combination  
22 BellSouth currently provides its own customers. Would the  
23 notion of a higher price or different pricing such that  
24 whatever costs could be recovered was that particularly  
25 offensive to him, or is that something that he was purporting,

1 and I think he answered no. Exactly what is the problem with  
2 having -- what might be the problem with having different  
3 pricing, pricing more reflective of those costs that you are  
4 referring to, in the event you do have to provide?

5 THE WITNESS: If we have to provide it and we are  
6 providing it on a stand-alone basis, in other words, apart from  
7 BellSouth products, we would really want to seek the recovery  
8 of those kinds of costs. We see that the cable companies are  
9 doing that. That gets us past a little part of the issue, but  
10 it doesn't get us past the bigger part of the issue, which is  
11 to be able to determine the destiny of our investments.

12 COMMISSIONER BAEZ: Okay. Thank you.

13 CHAIRMAN JABER: Redirect?

14 MS. MAYS: No redirect, Madam Chair.

15 CHAIRMAN JABER: Thank you, Ms. Mays.

16 Mr. Ruscilli, thank you for your testimony.

17 THE WITNESS: Thank you, ma'am.

18 Okay. Exhibits. We have Exhibit 17, Ms. Mays, JAR-1  
19 and JAR-2. Without objection, Exhibit 17 is admitted into the  
20 record.

21 MCI Exhibit 18 is the tariff and the May 23rd letter  
22 with the agreement. Without objection, Exhibit 18 is admitted  
23 into the record.

24 (Exhibits 17 and 18 admitted into the record.)

25 CHAIRMAN JABER: We will close for tonight. We are

1 going to start at 9:00 o'clock in the morning, and try to  
2 finish in the morning. So we will see you back here at 9:00.

3 MS. MAYS: Madam Chair, may Mr. Ruscilli be excused?

4 CHAIRMAN JABER: Absolutely.

5 Mr. RUSCILLI: Thank you.

6 (The hearing adjourned at 5:07 p.m.)

7 - - - - -

8 (Transcript continues in sequence with Volume 3.)

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1 STATE OF FLORIDA )  
2 COUNTY OF LEON )

CERTIFICATE OF REPORTER

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WE, JANE FAUROT, RPR, LINDA BOLES, RPR, and TRICIA DeMARTE, RPR, Official Commission Reporters, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that we stenographically reported the said proceedings; that the same has been transcribed under our direct supervision; and that this transcript constitutes a true transcription of our notes of said proceedings.

WE FURTHER CERTIFY that we are not a relative, employee, attorney, or counsel of any of the parties, nor are we a relative or employee of any of the parties' attorneys or counsel connected with the action, nor are we financially interested in the action.

DATED THIS 4th DAY OF AUGUST, 2003.

Linda Boles  
LINDA BOLES, RPR  
Official Commission Reporter  
(850) 413-6734

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

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