

1 **BEFORE THE PUBLIC SERVICE COMMISSION**

2 **SURREBUTTAL TESTIMONY OF**

3 **DR. BRIAN K. STAIHR**

4 **January 28, 2004**

5  
6 **INTRODUCTION**

7  
8 Q. Please state your name, title, and business address.

9 A. My name is Brian K. Staihr. I am employed by Sprint as Senior Regulatory  
10 Economist. My business address is 6450 Sprint Parkway, Overland Park, Kansas  
11 66251.

12  
13 Q. Are you the same Brian Staihr who filed direct testimony in this proceeding on  
14 December 4, 2003 and rebuttal testimony in this proceeding on January 7, 2004?

15 A. Yes I am.  
16

17 Q. What is the purpose of your surrebuttal testimony?

18 A. In my surrebuttal testimony I respond to issues raised in the rebuttal testimonies  
19 of BellSouth witnesses Dr. Christopher Pleatsikas (market definition) and Mr.  
20 John Ruscilli (competitive trigger analysis).

21  
22 **Market Definition and Dr. Christopher Pleatsikas**

23 Q. In his rebuttal testimony Dr. Pleatsikas responds to Sprint's position that when the  
24 Commission is defining a market, the Commission should consider that "serving  
25 the market" is more than serving only "portions" of the market. Dr. Pleatsikas

DOCUMENT NUMBER DATE  
1 01290 JAN 28 2004

FPSC-COMMISSION CLERK

1 suggests that the “extent or magnitude” of current service is not determinative for  
2 market definition purposes as a matter of economics. Does the TRO agree with  
3 Dr. Pleatsikas?

4 A. The TRO clearly discusses the issue of “how much” of a market competitors are  
5 serving and does so in terms of “defining” and “establishing” the market.

6 Footnote 1552 states that where competitors are “... currently serving, or capable  
7 of serving, only part of the market, the state commission may choose to consider  
8 defining that portion of the market as a separate market for purposes of its  
9 analysis.”<sup>1</sup> So although Dr. Pleatsikas may not consider this issue relevant “as a  
10 matter of economics” it is clear the FCC considers it relevant as a matter of the  
11 economics of regulation.

12  
13 Q. In his testimony Dr. Pleatsikas mentions that it is reasonable to expect CLECs to  
14 “focus their network resources on particular customer types or geographic areas.”  
15 Do you disagree?

16 A. In terms of strategic decisions that any firm might make, I do not disagree with  
17 Dr. Pleatsikas. As BellSouth’s own data and testimony describe, CLEC do in fact  
18 target both areas and groups. But that is not the question being addressed in this  
19 proceeding, nor is it the question raised in my testimony. The actual question is  
20 this: If a CLEC is serving only a portion of a market, does this fact provide any  
21 evidence regarding the rest of the market? And does it provide evidence  
22 regarding the market as a whole? Not surprisingly, Dr. Pleatsikas answers this  
23 question to the affirmative in his rebuttal testimony when he writes, “If a CLEC

---

<sup>1</sup> TRO footnote 1552. A similar sentiment is found in footnote 1537 that discusses “establishing” markets.

1 serves one part of that market area using its own...switching, one can generally  
2 infer that the CLEC, if efficient, economically could serve another part”  
3 (Pleatsikas Rebuttal page 18).  
4

5 Q. Is Dr. Pleatsikas’ statement correct?

6 A. No. In fact, it is much more probable that exactly the opposite situation exists: If  
7 a CLEC is serving a part of a market but ignoring another part it is most likely  
8 because the CLEC *cannot* serve the other part of the market economically. This  
9 is particularly true in the case of the mass market. When a CLEC enters a market  
10 such as an MSA with its own switch many of the entrance costs do not vary with  
11 the number of wire centers served; for example, a television ad is broadcast to the  
12 entire metro area, not just the select wire centers where the CLEC is collocated.  
13 As a result, the CLEC has an incentive to spread such costs over as wide an area  
14 as possible. That is, the CLEC has a reason to enter every part of the market that  
15 is can enter economically. So if it has not entered a portion of the market it is  
16 more likely that it is not economic to do so.

17  
18 Furthermore, even if Dr. Pleatsikas was correct (which he is not), his inference  
19 has no applicability whatsoever to the analysis of actual deployment. The  
20 competitive triggers are intended to serve as an analysis of whether actual  
21 deployment provides evidence that rebuts the national finding of impairment. The  
22 fact that a CLEC is serving in one wire center provides no evidence that the  
23 CLEC can or cannot serve in another wire center. If Dr. Pleatsikas wishes to

1 argue that the CLEC *could* serve a neighboring wire center, then that is precisely  
2 the type of argument that the potential deployment analysis is intended to address.

3

4

**Competitive Trigger Analysis and Mr. John A. Ruscilli**

5

Q. In his rebuttal testimony Mr. Ruscilli takes exception to some of your arguments  
6 regarding the difference between an enterprise switch and a mass market switch  
7 and claims that “this contention is simply a distraction that the Commission  
8 should reject” (Ruscilli Rebuttal page 26). Please comment.

9

10

11

12

13

14

15

A. It is not surprising that Mr. Ruscilli would try to characterize this issue as a  
“distraction.” In doing so, he attempts to dismiss certain facts from consideration  
that lie at the very heart of the FCC’s nationwide finding that impairment exists  
with regard to mass market local switching. He claims that “there is no  
distinction between a so-called “enterprise” and “mass-market” switch” (Ruscilli  
Rebuttal page 26).

16

Q. Is his claim correct?

17

18

19

20

21

22

A. Not according to the TRO. In footnote 1300 the FCC discusses potential  
deployment analysis and writes, “We make clear that evidence of *enterprise*  
*switch* deployment must be given “substantial weight” and the existence of a  
single competitively deployed *mass market switch* must be given “particularly  
substantial weight”” (emphasis supplied). If there was no distinction between  
what the FCC considers an enterprise switch and a mass market switch one would

1 have to question why the FCC refers to them as two different things. In fact, the  
2 same distinction between the two is also found in footnote 1561.<sup>2</sup>

3  
4 Mr. Ruscilli's testimony next suggests that when the TRO discusses "enterprise  
5 switches"<sup>3</sup> or "switches serving the enterprise market"<sup>4</sup> it is discussing switches  
6 that are used *exclusively* to serve enterprise customers. He writes, "...the FCC  
7 has precluded the use of switches that serve *only* the enterprise market for from  
8 qualifying for the trigger analysis" (Ruscilli Rebuttal page 27, emphasis in  
9 original).

10

11 Q. Is Mr. Ruscilli's interpretation correct?

12 A. No. At no point in the TRO does the FCC describe an enterprise switch as a  
13 switch that is *used exclusively* to serve enterprise customers. In fact, in the same  
14 paragraph that Mr. Ruscilli cites in his testimony, TRO paragraph 441, the FCC  
15 states, "competitors using their own switches are currently serving extremely few  
16 mass market customers, through enterprise switches or otherwise." This  
17 statement makes it clear that mass market customers are served through enterprise  
18 switches, and having a few mass market customers on an enterprise switch does  
19 not magically turn the enterprise switch into something else; it is still an  
20 enterprise switch even if it is not used exclusively to serve enterprise customers.  
21 Furthermore, in paragraph 437 the TRO discusses the deployment of switches to  
22 serve large business customers, and in footnote 1338 to that paragraph the TRO

---

<sup>2</sup> "...we require the states to give evidence of a single competitively deployed *mass market switch*  
"particularly substantial weight" and evidence of *enterprise switch* deployment "substantial weight"..."  
TRO footnote 1561, emphasis supplied.

<sup>3</sup> TRO footnote 1354

<sup>4</sup> TRO paragraph 508

1 describes many of these switches as being used “almost exclusively to provide  
2 service to large businesses.”<sup>5</sup> This suggests that small portions of these same  
3 switches may be (or are) used to serve mass market customers. Yet this  
4 occurrence—the act of serving a few mass market customers off of what is  
5 otherwise a switch deployed to serve enterprise customers—was obviously  
6 insufficient for the FCC to find no impairment in terms of mass market local  
7 switching.

8  
9 Q. Mr. Ruscilli suggests, on page 27, that Sprint would exclude as trigger candidates  
10 switches that serve both mass market customers and enterprise customers (“It is  
11 ludicrous to exclude as triggers candidates switches that serve both markets”).  
12 (Ruscilli Rebuttal page 27 lines 24-25)) Is his characterization of Sprint’s  
13 position correct?

14 A. Not at all. Just as the TRO does not suggest that an enterprise switch only serves  
15 enterprise customers, nor does it suggest that a mass market switch can only serve  
16 mass market customers. Mr. Ruscilli is correct when he states that carriers will  
17 (and do) use switches to serve both types of customers. But as stated above and  
18 in my direct testimony, the FCC makes a clear distinction between enterprise  
19 switches and mass market switches, and between switches *deployed* to serve large  
20 enterprise customers and switches *deployed* to serve mass market customers.  
21 And, to refer to an example from my rebuttal testimony, if 99.93% of the utilized  
22 capacity of a switch is used to serve enterprise customers—as is the case for one  
23 of BellSouth’s purported trigger-meeting CLEC switches—then it would be

---

<sup>5</sup> TRO footnote 1338, emphasis supplied.

1 difficult for anyone to consider that as anything other than an enterprise switch.<sup>6</sup>  
2 Such a switch does not and *should* not count toward meeting the trigger, and for  
3 good reason: such a switch says nothing about an entrant's ability to come into an  
4 area and serve *the mass market* in that area.

5  
6 Q. Mr. Ruscilli also suggests that it would be "absurd" to examine the utilized  
7 capacity of the switch to determine if it should be considered an enterprise switch  
8 or a mass market switch (Ruscilli Rebuttal page 28). Can you comment on his  
9 remark?

10 A. Interestingly, when Mr. Ruscilli makes that remark in his testimony he fails to  
11 provide a single word of explanation as to *why* he feels it would be "absurd" to  
12 examine utilized switch capacity. With due respect, what could truly be  
13 considered "absurd" is the concept—apparently advocated by Mr. Ruscilli—that a  
14 switch that is used overwhelmingly to serve large business customers, and serves  
15 perhaps a handful of mass market customers, somehow provides evidence that  
16 there is no impairment in terms of an entrant serving the mass market.

17  
18 This last point is most apparent when one considers the *source* of the FCC's  
19 national finding of impairment: the cut-over process.<sup>7</sup> In discussing the economic  
20 and operational barriers that are caused by the cut-over process the TRO is  
21 extremely clear that the issue of *volume of transactions* plays a key role their  
22 analysis.<sup>8</sup> Simply put, the problems created by the cut-over process, which are the

---

<sup>6</sup> Utilized capacity measured in voice grade equivalents, see Staihr Rebuttal page 12.

<sup>7</sup> TRO paragraph 459.

<sup>8</sup> TRO paragraph 468.

1 source of impairment, are exacerbated in cases of significant volume (or potential  
2 significant volume).

3  
4 As stated in my direct testimony, BellSouth has put forth a purported trigger-  
5 meeting CLEC that is serving (at most) exactly seven (7) mass market customers  
6 in a market. For Mr. Ruscilli and BellSouth to suggest that this switch  
7 demonstrates that the causes of impairment (the cut-over process and associated  
8 volume issues) have been overcome, when the total volume of transactions on the  
9 switch is *seven* mass market customers, is, to use Mr. Ruscilli's term, "absurd."

10

11 Q. In his rebuttal testimony Mr. Ruscilli also takes issue with the criteria that trigger-  
12 meeting CLECs should be serving a non-de-minimis portion of the market, and on  
13 page 22 he states that this criteria "is not supported by the TRO". Please  
14 comment.

15 A. It is obvious from his testimony that Mr. Ruscilli would prefer that the  
16 Commission conduct its analysis of actual deployment by simply counting to  
17 three, and never bother to consider *why* it is counting to three. As stated in the  
18 TRO, the trigger analysis is intended to demonstrate the technical and economic  
19 feasibility of an entrant serving the mass market with its own switch. If Mr.  
20 Ruscilli believes that a miniscule market share demonstrates this feasibility then  
21 we must ask why BellSouth required a 15% market share *obtained by a single*  
22 *CLEC* in order to demonstrate the economic feasibility of serving these same  
23 markets with its BACE cost model. We must also ask why BellSouth used a 5%  
24 market share, again *obtained by a single CLEC*, to demonstrate economic



1 feasibility in its filings before the FCC, and even then only found feasibility in  
2 larger wire centers.<sup>9</sup> If BellSouth truly believes a CLEC using an enterprise  
3 switch, and leveraging that switch to serve seven mass market customers,  
4 demonstrates the economic and technical feasibility of serving the mass market  
5 then why did they not conduct their potential deployment analysis that way?  
6 Doing so would have worked to their advantage, because it is extremely likely  
7 that many more markets would have demonstrated profitability.  
8 Furthermore, evidence of actual deployment (in the form of triggers) is intended  
9 to show that, in the area being examined, the FCC's national finding of  
10 impairment is not applicable. Therefore, at a minimum, the volumes of service  
11 that the purported trigger-meeting CLEC is currently providing must demonstrate  
12 that it has overcome the cut-over problem which forms the basis for the  
13 nationwide finding.

14  
15 Simply put, Mr. Ruscilli would have the Commission decide that if a CLEC is  
16 serving any mass market customers—even one or two mass market customers—  
17 anywhere in a market then the FCC's trigger criteria is satisfied. But such a  
18 finding does not provide any evidence regarding whether the cut-over problem  
19 has been overcome, and it does not provide any evidence of the economic  
20 feasibility of serving the mass market.

21  
22 **Sprint Switch in Orlando Market**

---

<sup>9</sup> See Attachment to Letter of Mr. Glenn T. Reynolds, BellSouth Ex Parte filing in CC Docket No. 01-338, 96-98, 97-147 January 21, 2003.

1           Q. In BellSouth's testimony that was filed on 12/4/03 a Sprint switch is listed as one  
2                   of the trigger-meeting CLEC switches for the Orlando market? Does this switch  
3                   meet the criteria to be included as a trigger-meeting CLEC switch?

4           A. No it does not. Despite Mr. Ruscilli's claims to the contrary, the switch identified  
5                   by BellSouth does not count toward meeting the competitive triggers because it is  
6                   a switch that was deployed to serve enterprise customers (as referred to in the  
7                   TRO), and the vast majority of the utilized capacity of the switch is used to serve  
8                   enterprise customers. Furthermore, this switch does not provide service to any  
9                   residential customers in the Orlando market at all.

10

11          Q. Does this conclude your surrebuttal testimony?

12          A. Yes it does.

13

14