

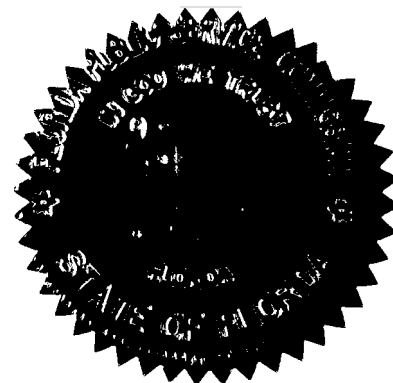
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BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 030851-TP

In the Matter of

IMPLEMENTATION OF REQUIREMENTS
ARISING FROM FEDERAL COMMUNICATIONS
COMMISSION'S TRIENNIAL UNE REVIEW:
LOCAL CIRCUIT SWITCHING FOR MASS
MARKET CUSTOMERS.



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VOLUME 11

Pages 1653 through 1770

PROCEEDINGS: HEARING

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

DATE: Tuesday, February 24, 2004

TIME: Commenced at 9:30 a.m.
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PLACE: Betty Easley Conference Center
4075 Esplanade Way, Room 148
Tallahassee, Florida

REPORTED BY: MARY ALLEN NEEL
Registered Professional Reporter

APPEARANCES: (As heretofore noted.)

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P R O C E E D I N G S

(Transcript follows in sequence from Volume 10.)

CHAIRMAN BAEZ: We'll go back on the record.

We had -- there was a request or an issue concerning the presentations that have been -- Ms. White, I know that your client that registered an objection to providing it. I'm having a hard time accepting any objection when Mr. Chapkis has one ahead and provided copies of his slide presentation, if you will. I know that you probably weren't anticipating it, so we're going to give you a little time to pass it over.

Now, that request -- and I don't know if at the end of the day Mr. Moyle is even here, but I think I'll provide this direction to all the parties involved, and certainly the CLECs which are coming up with their direct case. What's good for the goose is good for the gander.

So to the extent that you intend on using a slide presentation or any type of electronic presentation, I would advise you to start making copies now. I would expect you to provide them to the parties no later than the end of your -- than the end of the direct case for the impairment side, but I would strongly urge you to have them ready before it begins.

1 Ms. White, you were going to say something?

2 MS. WHITE: Chairman Baez, yes. I just wanted
3 to let you know that we have given -- we had not brought
4 a lot of copies with us, so I gave one copy to
5 Mr. Melson, and he said that he was going to have copies
6 made.

7 CHAIRMAN BAEZ: Okay. If Mr. Melson is feeling
8 that generous with our --

9 MS. WHITE: If he's not feeling generous, we
10 can --

11 CHAIRMAN BAEZ: -- resources --

12 MS. WHITE: We can try to have them made
13 tonight and hand them out tomorrow, but --

14 CHAIRMAN BAEZ: You know, Ms. White, if our
15 lawyer made the deal, I guess he's going to have to live
16 by it.

17 MS. WHITE: It probably didn't help that they
18 were in color either.

19 CHAIRMAN BAEZ: I'm just not sure he's the one
20 that's pushing the buttons on the machine. That's how
21 it got so easy.

22 But in any case, we will have those
23 presentations, no matter who's making the copies,
24 provided to the impairment side no later than tomorrow
25 morning?

1 Very well. That will give us plenty of time to
2 get all the witnesses in. I don't think we're going to
3 get too far into cross tonight. I do expect to be going
4 -- wrapping up no earlier than seven o'clock. The
5 rationale behind it is, I know -- I could probably count
6 on less than one hand anybody, the odd person that's
7 willing to be here on Saturday of their own accord. In
8 fact, I probably don't even need fingers to do it. So
9 what we're trying to work on is cutting down whatever
10 possibility there is of being here on Saturday, and
11 perhaps even cutting down to a reasonable time on Friday
12 so that most of you can get out of town on time. That's
13 why the late nights.

14 We're going to try and see how far we can get
15 by seven o'clock tonight. It may get progressively
16 worse as the time -- no, I'm not being facetious. We
17 could run progressively longer the less time we run out,
18 so let's see if I can use some of that tension to get
19 everybody focused.

20 With that, we have -- our first cross witness
21 up is Mr. Ruscilli. I need show of hands -- and I'm
22 assuming you all have gotten together and have one
23 person that will be crossing. And that will be you,
24 Mr. Magness, and you'll be doing -- just so that I get
25 it clear, will be doing it on behalf of all the

1 impairment parties?

2 MR. MAGNESS: Yes, Commissioner.

3 CHAIRMAN BAEZ: Very well. You have someone
4 beside you who hasn't been up here.

5 MR. HENRY: Commissioner, Mickey Henry with
6 AT&T. I just came up to give him moral support.

7 CHAIRMAN BAEZ: That's good. I'm sure he needs
8 it at this late hour.

9 Very well. Mr. Magness, you can proceed.

10 MR. MAGNESS: Thank you. Mr. Chairman, just on
11 a procedural note before I get started --

12 CHAIRMAN BAEZ: Yes.

13 MR. MAGNESS: We have arranged for a court
14 reporter to be here starting about 5:30 for Ms. Tipton.
15 I'm responsible for the cross-examination of
16 Mr. Ruscilli and Mr. Gallagher.

17 I would suggest, just for notice to anyone else
18 who wants to attend the deposition, perhaps after those
19 two witnesses, we could go then and start the
20 deposition, and if you want to continue on --

21 CHAIRMAN BAEZ: I think it's a fair bet we'll
22 continue on.

23 MR. MAGNESS: Sure.

24 CHAIRMAN BAEZ: Unfortunately, we're not going
25 to stop the train for a deposition.

1 MR. MAGNESS: No, I understand.

2 CHAIRMAN BAEZ: You all take your leave as you
3 see fit to attend. And I think if we need to make
4 adjustments in order, although I doubt it, we'll take it
5 as it comes.

6 MR. MAGNESS: Okay. Thank you.

7 CHAIRMAN BAEZ: Thank you for letting us know.
8 Go ahead. Mr. Ruscilli, you've been sworn, I
9 know.

10 MS. WHITE: Chairman Baez, just so you know, I
11 think I have to go to that deposition, so someone may be
12 stepping in for me to defend Mr. Ruscilli.

13 CHAIRMAN BAEZ: You know, you all manage -- I
14 think the Prehearing Officer was clear. You guys manage
15 your case how it is, and we're going to allow for --
16 we're going to make those kinds of adjustments.

17 Go ahead, Mr. Magness.

18 THE WITNESS: I've been sworn in, Mr. Chairman.
19 I didn't mean to not answer your question.

20 MR. MAGNESS: Okay. Thank you, Mr. Chairman.
21 Thereupon,

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

1 CROSS-EXAMINATION

2 BY MR. MAGNESS:

3 Q Good afternoon, Mr. Ruscilli.

4 A Good afternoon, sir.

5 Q Mr. Ruscilli, there's obviously a lot of
6 disagreements between the parties in this case. I think
7 I would like to start by talking to you about some areas
8 where maybe there aren't and see if we can clear a few
9 weeds, if possible.

10 And I want to talk to you a bit about the
11 distinction between enterprise and mass market, or
12 analog and digital. It's put different ways by
13 different witnesses. And so let me just give you a
14 couple of examples and see if we can agree on particular
15 treatments of those examples. Okay?

16 A Okay.

17 Q First example: A single-line residential
18 customer, what we traditionally call a POTS customer,
19 has nothing but voice service, residential, served by a
20 DS0. Would you characterize that as a mass market
21 customer or an enterprise customer?

22 A It's a mass market.

23 Q And when I ask you these questions, you
24 understand I'm talking about in the context of the
25 Triennial Review Order or the TRO? You understand

1 that's the context I'm asking you in?

2 A Yes.

3 Q Okay. Another example. Let's say the
4 single-line POTS customer, still served by a DS0 loop,
5 adds a second line. Say they want to, I don't know,
6 have a home office and put a fax machine in, or they
7 want to do dial-up Internet, so they add a second line.
8 In your view, is that a mass market customer or an
9 enterprise customer?

10 A It's a mass market customer.

11 Q Okay. The third example, take that same
12 residential line, but let's say some really good
13 salesman from BellSouth or AT&T or something comes in
14 and says, "You know what? You need a DS1 running into
15 this house." And I know it's a little farfetched, but
16 that customer decides for whatever reason that they want
17 to put in that channel bank and, you know, really have a
18 big pipe of data coming into their house, so they
19 install a DS1 and get all of their service off that
20 DS1. Would that customer be a mass market customer or
21 an enterprise customer?

22 A When they went to the DS1, they would be an
23 enterprise customer. And your example is not
24 necessarily that farfetched.

25 CHAIRMAN BAEZ: Mr. Ruscilli, can you get a

1 little closer to the mike or speak a little louder or
2 something? Remember, we have Commissioners on the
3 telephone that probably can't hear you.

4 THE WITNESS: Yes, sir. I apologize.

5 CHAIRMAN BAEZ: Thank you.

6 BY MR. MAGNESS:

7 Q Okay. And I'm not trying to pick a fight with
8 you about whether it's farfetched or not, but you would
9 agree that that simple example, that would be an
10 enterprise customer?

11 A When they purchase the DS0, they've gone to an
12 enterprise customer, yes, in the context of -- excuse
13 me, DS1, in the context of the TRO.

14 CHAIRMAN BAEZ: Mr. Ruscilli, I think now
15 you've got the court reporter on your back, so give it a
16 better shot.

17 THE WITNESS: Do you want me to try the other
18 -- can I just test --

19 CHAIRMAN BAEZ: You want to scoot over and try
20 the other mike for a second?

21 THE WITNESS: Is this better?

22 CHAIRMAN BAEZ: Is that working? No?

23 Thank you, sir.

24 BY MR. MAGNESS:

25 Q Okay. So our residence customer, when they

1 move up to the DS1 level service, your position is that
2 would be an enterprise customer then at that point?

3 A Yes. If we're framing this in what the TRO
4 said, the TRO said if it's a DS1, it's considered to be
5 enterprise.

6 Q Okay. And the same example, except now
7 switching to a business. A business decides for
8 whatever reasons that it wants DS1 level service, so it
9 has the necessary equipment installed and moves up to a
10 DS1 level service. Is that business then an enterprise
11 customer or a mass market customer?

12 A It's enterprise. And again, that example is
13 not that farfetched. There are offerings in the
14 marketplace today that CLECs offer to customers that
15 have, say, four lines, and they'll put a T1 out there
16 and a special box that will do this kind of multiplexing
17 for them so that they can take advantage of not only the
18 T1 for the voice, but then use it for the data. We see
19 that in the market a lot.

20 Q Okay. Now, where the shouting starts, I guess,
21 where the fights start getting picked is when we start
22 talking about -- and I guess kind of keying off what you
23 said there, where is it that a mass market customer,
24 because of the number of POTS lines they use -- and when
25 I say POTS lines, you understand I mean analog lines?

1 A That's fine.

2 Q Okay. And let me back just up a minute. Could
3 you just tell us, so we have kind of a -- to see if we
4 have a common definition, when you say a DS0, please
5 tell me what you mean.

6 A Analog line will be fine for this discussion.

7 Q Okay. And a DS1 is what?

8 A Is digital.

9 Q Okay. And a DS1, is it fair to say -- and
10 please correct me if I've got it wrong. Is a DS1
11 equivalent to 24 DS0 lines?

12 A That's sort of right. A DS1 can provide as
13 many as 24 channels that somebody could communicate on,
14 but you could also provide a DS1 to somebody where they
15 would only use, say, four channels for voice. And
16 that's a market that we see today by -- a product we see
17 today by Xspedius. ITC^DeltaCom has got one. XO has
18 got one that does it down to six. So it doesn't
19 necessarily have to be 24.

20 Q Okay. But that sort of transition number is
21 one you're familiar with, 24 DS0s is one DS1?

22 A Yes. The total capacity of a DS1, yes.

23 Q Okay. So that analog/digital distinction is
24 one that, at least in the sense we're talking about
25 here, drives a distinction between mass market and

1 enterprise; right?

2 A Well, I don't necessarily agree that it would
3 drive. I think what drives the distinction is just the
4 number of lines that a customer would have. And it's
5 BellSouth's position that it's adopting what the FCC has
6 -- as we're calling it, a default, which is three lines
7 or less, it's mass market; four or more is considered to
8 be enterprise.

9 Q Okay. So you don't agree with the slide Mr. --
10 I can't remember if it was Mr. Fulp or Dr. Taylor put up
11 for Verizon, where it just says as a blanket matter, DS0
12 loops equal mass market, DS1 or higher equals
13 enterprise; right? You have a different position?

14 A I have a different position. I respect, you
15 know, Verizon's, but I have a different position on
16 that.

17 Q So their position would be all the way up to 24
18 lines; right?

19 A Well, I don't think there's a ceiling on their
20 position. If they're just saying DS0s, one thing they
21 could be saying is that you could have a customer that
22 has 44, as an example, or 54 lines coming into their
23 house or into their business, and they're all considered
24 DS0s, so that would be mass market. It's kind of hard
25 to imagine a residential customer with 54 lines coming

1 into their house, or even a small business, for that
2 matter.

3 Q Now, Mr. Lackey was kind of disparagingly
4 referring to FCCA's recommendation of 12 lines.
5 Wouldn't you agree the dangerous radicals in this case
6 on this issue is Verizon?

7 A No, I don't agree with that at all.

8 Q Well, isn't there some of that horrible
9 inconsistency that Mr. Lackey saw in the CLEC positions
10 about how you and Verizon as ILECs are coming at this
11 issue?

12 A There is certainly inconsistency between
13 Verizon's approach and BellSouth's approach.
14 BellSouth's approach is just adopting what the FCC
15 offered. The FCCA has got a variety of positions,
16 depending on which witness you read. And actually,
17 within one witness, there's four positions, so there is
18 some discrepancy.

19 Q So amongst the ILECs, reasonable minds can
20 differ then, I guess; right?

21 A Oh, I certainly agree reasonable minds can
22 differ. I think that BellSouth's approach is a
23 conservative one. It's conservative simply because it
24 has been noted in the TRO that as you increase the
25 number of lines that you call mass market, that

1 increases the chances that you're going to find
2 impairment. So from that perspective -- excuse me, find
3 nonimpairment. So from that perspective, it's a
4 conservative approach. Likewise, just from a walking
5 around sense, does it make sense that customers who are
6 considered to be small customers have 10 lines or 12
7 lines coming into a residence, it just doesn't seem
8 likely. It's not consistent with what I've observed
9 about BellSouth in Florida.

10 Q Okay. There's an FCC rule about how we're
11 supposed to go about deciding that; right?

12 A Yes, sir.

13 Q Okay. And it's -- do you have a copy of the
14 TRO there with you?

15 A I have parts of it. And I might have that rule
16 handy. If you'll give me a moment, I'll see if I can
17 find it.

18 Q Sure. Let me be the first to direct someone to
19 the TRO. What I'm asking you to look at specifically is
20 Rule 51.319(d), then a -- you know where the
21 parentheticals are, don't you? Yes. Okay. It's
22 (2)(iii)(B)(4). And I believe you'll find that on page
23 22 and 23 of the rules as they were reprinted by the
24 FCC.

25 A I have that.

1 Q Okay. And let's just take a look at it real
2 quick. Just to start out, it says, "As part of the
3 economic analysis set forth in the prior paragraph, the
4 state commission shall establish a maximum number of DS0
5 loops for each geographic market that requesting
6 telecommunications carriers can serve through unbundled
7 switching when serving multiline end users at a single
8 location." Is that a correct reading?

9 A Yes, sir.

10 Q Okay. And so what they're after here is
11 figuring out this place where the fights break out
12 amongst the ILECs and the CLECs about how do you treat
13 that multiline case where, you know, maybe you think a
14 lawyers office that has 10 lines shouldn't be considered
15 mass market, and maybe they think it should. But we
16 don't have to figure it out subjectively. We can kind
17 of look at what the rule says to do; right?

18 A As part of it, yes.

19 Q Okay. And then it gets specific. It says,
20 "Specifically, in establishing this cutoff, the state
21 commission shall take into account the point at which
22 the increased revenue opportunity at a single location
23 is sufficient to overcome impairment and the point at
24 which multiline end users could be served in an economic
25 fashion by higher capacity loops and a carrier's own

1 switching and thus be considered part of the DS1
2 enterprise market." Is that a correct reading?

3 A Yes, sir.

4 Q Okay. So the FCC provides -- I don't know, say
5 colloquially, a road map for how you go through figuring
6 this out?

7 A It does in part, yes. I mean, the rule is
8 clear in one aspect, and somewhat ambiguous, at least to
9 me, in another. I mean, it's clear that it says you've
10 got to make this cutoff determination, and it talks
11 about an economic analysis, but it says "shall take into
12 account." I'm not really sure what that means. And
13 then I go back and I look in the order, and the order
14 says it may be the economic crossover point. That's in
15 paragraph 474. So it's somewhat clear and somewhat not.

16 Q Okay. Now, this default that you all are
17 advocating, show me where in the rule there's a default.

18 A I think it's in --

19 Q I think I read the whole thing; right?

20 A Oh, I'm sorry. I apologize. It's not in the
21 rule. Thank you.

22 Q Okay. So in order to adopt your default, we
23 would have to rewrite this rule; right?

24 A Well, you would have to look back into the
25 order to interpret what did it mean by "shall take into

1 account."

2 Q Okay. So as far as this rule goes, you're kind
3 of like that fellow in Mr. Lackey's slide that wants to
4 kind of wad this rule up and throw it away?

5 A No, not at all.

6 Q No?

7 A No.

8 Q Well, what do you advise we do?

9 A In interpreting what "shall take into account"
10 means, I would go back and look and see what the order
11 says. And again, BellSouth's position is it just didn't
12 make sense for customers having 10 lines, as you just
13 said, in their homes, so we accepted the FCC's default
14 and the guidance the FCC gives in the order as, you
15 know, absent significant evidence to the other, we
16 expect to see it at this.

17 Q Okay. I imagine you're going to want me to
18 look at paragraph 497, and I would ask that you turn
19 there. Is that the place we should be looking for
20 guidance?

21 A Give me a second and I'll get to 497.

22 Q Sure.

23 A Give me a second and I'll get to 497.

24 Q It's page 316 at the FCC's version of the TRO.

25 A Yes, sir.

1 Q Okay. Now, as you mentioned, you've got to
2 look at the order to put things in context. And, for
3 example, while we're in this neighborhood, you see
4 there's that subheading of triggers on 498, et cetera.
5 But, for example, like when Mr. Lackey was talking about
6 the triggers, he referenced paragraph 462. And that
7 paragraph can still be relevant if it's -- there's not a
8 proximity rule, is there, in where you look for things
9 in the TRO; right?

10 A There's not a proximity rule, but you
11 mischaracterized my earlier testimony, sir. I didn't
12 say that you just go back and look into the order to
13 help interpret the rules. I said if there's some
14 confusion about a rule and what it means, then my
15 approach has always been to go back and look in the
16 order. If the rule is clear, there's no need to go back
17 and look in the order.

18 Q Okay. So what confused you about the rule was
19 -- tell me again which part was confusing to you. I'm
20 sorry to make you turn back to it, but --

21 A That's okay. The part where it says "shall
22 take into account the economic cross" -- or economic
23 whatever. I can't recite it. That's the part that was
24 confusing to me. And then if I can explain why, I'll be
25 glad to.

1 Q Okay. Well, we'll get there in a second. In
2 paragraph 497, I think --

3 MS. WHITE: Excuse me. I would like to --

4 CHAIRMAN BAEZ: Hold on. I got you.

5 Mr. Magness, you've got to let him elaborate.
6 Let's let him elaborate on his answer.

7 MR. MAGNESS: That's fine.

8 CHAIRMAN BAEZ: And we've done this a million
9 times. Cross, questions, yes or no, elaborate. Okay?

10 THE WITNESS: Yes, sir.

11 CHAIRMAN BAEZ: Has everybody got that?

12 THE WITNESS: Yes, sir. Thank you, sir.

13 Just to elaborate, what was confusing about
14 the "shall take into account" is exactly what do you
15 take into account. Do you look at the crossover of,
16 say, a residential customer that's in Rate Group 1, or
17 do you look at one that's in Rate Group 12? Do you look
18 at a business customer that's in Rate Group 1 or Rate
19 Group 12? What do you compare that to? Do you compare
20 it to, say, a megalink channel link service, or do you
21 compare it to primary rate interface? There's no clear
22 express direction saying what is the proper approach to
23 do an economic analysis.

24 If you look at what the CLECs do, they tend to
25 target the high end customers that offer a savings to

1 them based on long distance and area of calling and
2 scope of calling in their data. Is that the appropriate
3 crossover? If you were to look at the competitive data
4 in the marketplace, just like I mentioned a little while
5 ago, you would find CLECs are targeting customers that
6 are at four and six and eight lines.

7 So my whole point was, I was really confused
8 about the "shall take into account" in the economic
9 analysis, and so I chose the FCC's suggestion that said
10 we expect it to be this absent significant evidence
11 otherwise.

12 BY MR. MAGNESS:

13 Q Okay. Back to paragraph 497.

14 A Yes, sir.

15 Q Are you aware of any other paragraph in the
16 order besides this one that addresses this particular
17 issue?

18 A I think paragraph 430 also mentions it.

19 Q Okay.

20 A To the extent that it says significant portions
21 of mass market customers would be less than four lines,
22 and that, you know, very small business, I believe it
23 says, or something like that, is similar to residential
24 customers, and then there's a couple of footnotes.

25 Q Now, paragraph 430 is in the background

1 section, and that's talking about what was decided in
2 the UNE Remand Order; right?

3 A Yes.

4 Q Okay.

5 A Laying its foundation.

6 Q Okay. Paragraph 497 -- well, let me ask you.
7 Is there anywhere else where the FCC addresses what this
8 Commission ought to do under this order in establishing
9 the multiline cutover?

10 A Well, I think there were a couple of footnotes
11 where the FCC gave some additional guidance with respect
12 to the crossover.

13 Q Okay.

14 A In footnote --

15 Q Let's take a look at them.

16 A Okay. In footnote 1546, this is where
17 Commissioner Abernathy is talking about the fact that
18 with respect to the four-line carve-out that was out
19 there, that as you start to increase this, you're going
20 to increase the likelihood of making a finding of
21 nonimpairment. I just mentioned that a little bit ago.

22 And then footnote 1607, that's basically --
23 it's really not so much on the carve-out, but they're
24 saying they've got the authority to continue to offer --
25 or not offer, but to -- let me go read it. It's

1 basically saying that -- it's a legal argument that
2 deference is given to agencies on an interim basis; if
3 they want to say it's going to be four, that deference
4 is given to them, the authority to do it. It's really
5 more legal. And I know I'm not a lawyer. But that's
6 the other one that mentions it.

7 Q Okay. That footnote 1546 is attached to
8 paragraph 497; right?

9 A Yes.

10 Q Okay. Is there anywhere else we ought to be
11 looking?

12 A There might be. I don't find one.

13 Q Okay. Well, when you did your analysis that
14 led to your conclusion in your testimony, did you look
15 at any other part of the TRO?

16 A I looked at the whole TRO, but I summed my
17 analysis based on what I found in 497.

18 Q Okay. Now -- okay. So within this one
19 paragraph, down there towards the bottom of page 316 in
20 the text, it says, "This crossover point may be the
21 point where it makes economic sense for a multiline
22 customer to be served via a DS1 loop"; right?

23 A Yes.

24 Q Does that sentence confuse you?

25 A Well, again, I think that's where they're

1 pointing out may be the point. It might be that point,
2 but they're not being determinative there. It didn't
3 say it will be or it shall be. It said it may be.

4 Q Okay. Then I think the next sentence is
5 probably the magic sentence for you in this inquiry.
6 "We expect that in those areas where the switching
7 carve-out was applicable, i.e., density zone 1 of the
8 top 50 MSAs, the appropriate cutoff will be four lines
9 absent significant evidence to the contrary." What does
10 that tell you?

11 A That, at least to me, is speaking to what the
12 FCC believes that the crossover point should be based on
13 their analysis, and it's consistent with what I have
14 observed in BellSouth in general and Florida in
15 specific. If you were to look at our residential
16 customers, I think we probably have barely 6,000
17 customers that have got more than four lines. Strike
18 that. Put that against, you know, 2.8 or 2.9 million
19 that have got three lines or less. If you were to look
20 at our business customers, you'll probably see about a
21 little less than a quarter of them have got four lines
22 or more.

23 If you were to compute those averages,
24 excluding people that just have one line, then
25 residential customers have about 2-point -- maybe 2.1,

1 2.2, and business customers not more than that. It's
2 just -- it's consistent with data I've seen in the past.

3 Q Okay. Now, which of the top 50 MSAs is in
4 Florida?

5 A We have Miami, Fort Lauderdale, and Orlando, I
6 believe.

7 Q Okay. So was the switching carve-out
8 applicable in those three MSAs prior to the TRO?

9 A Yes, it was. And we had carved out four lines
10 and above. And I've looked into this, and we had at the
11 end of the year I think almost 50,000 lines that were
12 being billed at our market switching rate.

13 Q Now, are you recommending that this UNE Remand
14 Order switching carve-out be applicable in other MSAs as
15 well in Florida?

16 A It's my proposal to adopt what the FCC has
17 recommended as the way that they see that this crossover
18 point is going to be, and that would be applicable
19 everywhere.

20 Q Okay. Well, you say the FCC made a
21 recommendation. Now, it says, "We expect that in these
22 areas, the appropriate cutoff will be four lines absent
23 significant evidence to the contrary." They didn't tell
24 the states not to do the math that's required by the
25 rule, did they?

1 A No.

2 Q They didn't tell the states not to conduct the
3 analysis that's required by the rule, did they?

4 A No.

5 Q Wouldn't the Florida Public Service Commission
6 be in violation of this order if they just said, "We
7 don't need to do the calculation that's required in the
8 rule. We'll just pick four"?

9 A That I don't know. That would be a legal
10 conclusion.

11 Q Okay. Let me ask you something about that
12 footnote too. You said Commissioner Abernathy was
13 talking about some -- she wasn't in the majority who
14 wrote this order, was she?

15 A I get them confused, since you had a Republican
16 and a Democrat on either side. If you want to represent
17 she was in the minority, I'll take that. If you want to
18 represent she's in the majority, I'll take that.

19 Q Let's just look at the footnote. I believe
20 she's being addressed by the majority instead of doing
21 the addressing, but let me just read it. "Commissioner
22 Abernathy claims that our decision not to preserve the
23 previous Commission's four-line carve-out represents a
24 potentially massive expansion of unbundled switching,"
25 and cites her statement. "This claim makes no sense."

1 Isn't it fairly clear from that that the
2 Commission majority decided not to preserve the previous
3 Commission's four-line carve-out?

4 A It seems to me that what they were doing was
5 refuting that the argument would make no sense because
6 it would not cause a massive expansion of unbundling.
7 And their rationale was (1) it's got limited deployment;
8 (2) it's set at four. If you increase the number of the
9 crossover at four, then you're going to have a higher
10 likelihood of a finding of nonimpairment in the
11 marketplace, so you wouldn't have a massive expansion of
12 unbundling. You would have the opposite of that. You
13 would have a contraction of the unbundling of the
14 switching element.

15 Q I guess I'm stuck on that part of the sentence
16 where they say "our decision not to preserve the
17 previous Commission's four-line carve-out." You
18 wouldn't read that to mean that the majority who wrote
19 this order did not preserve the previous Commission's
20 four-line carve-out?

21 A I guess that could be a reading. I don't know
22 what the status of that carve-out is.

23 Q Well, it's not a default anymore, is it?

24 A I'm not sure that the carve-out itself was ever
25 a default.

1 Q Does the word "default" appear anywhere in
2 paragraph 497 or the accompanying footnotes?

3 A No. We've characterized it as a default.

4 Q Okay. So the Commission would need to rewrite
5 the order in order to actually adopt a default; right?

6 A No, I don't believe they would.

7 Q Okay. I want to ask you about something else.
8 Uh-oh. My order is coming apart.

9 I believe you have some testimony, and
10 Mr. Lackey certainly talked about it, about the
11 availability of UNE-P in Florida even if switching is
12 unbundled. I'm sorry. Strike that. Even if unbundled
13 local switching is no longer a 251 network element. Do
14 you know what I'm talking about?

15 A Yes.

16 Q Okay. And again, just to be sure we're kind of
17 talking on common terms, let me see if I can get you to
18 answer a few questions here.

19 When we talk about UNE-P, we're talking about
20 the unbundled network element platform, as it's called;
21 right?

22 A Yes.

23 Q Okay. And it consists of a few different
24 unbundled network elements under Section 251; correct?

25 A Yes.

1 Q That would include the local switching element
2 that's at issue here; right?

3 A Yes.

4 Q It would include a loop, now a DS0 loop, which
5 is not at issue in this case; right?

6 A It's a two-wire loop or a four-wire loop, but,
7 yes.

8 Q Okay. So you have a loop element. And the
9 carrier that does UNE-L as opposed to UNE-P also uses
10 the unbundled loop from the ILEC; right?

11 A They could.

12 Q Okay. When wouldn't they?

13 A Oh, I'm sorry. I answered too quickly. Repeat
14 your question. I might have --

15 Q I'm just saying the carrier that does UNE-L or
16 UNE loop strategy as opposed to UNE-P, they use the
17 unbundled loop as well; right?

18 A Thank you. Yes, they would. I'm sorry. I
19 spoke too soon.

20 Q Okay. And then I believe, and correct me if
21 I'm wrong, that there's an element of shared transport
22 that's a part of the UNE-P combination. Is that right?

23 A Right, part of the usage charge.

24 Q Is there anything else you would include in
25 the combinations of elements that are the UNE-P?

1 A You have a feature charge.

2 Q Okay. Now, I guess where the terms of the
3 debate are at this point, if switching is no longer
4 offered under 251, I believe Mr. Lackey was saying it
5 would still be required to be offered under Section 271
6 of the Telecom Act.

7 A Yes.

8 Q And so what we might face in the future is a
9 situation where part of what's in the UNE-P combination
10 is offered under Section 251, say the loop, and part of
11 it is being offered only under Section 271, and that is
12 the switching. Do you understand that?

13 A Yes.

14 Q Okay. And you're making a commitment to the
15 Commission that you would continue to offer UNE-P even
16 if it is -- even if switching is delisted and is only
17 available under Section 271; right?

18 A I would characterize it a little bit
19 differently, because you used the word UNE-P in there.
20 BellSouth will continue to offer what it's calling a
21 wholesale local platform, and that platform would -- in
22 areas where this Commission finds that there's no
23 impairment, all 21 of them, BellSouth will offer the
24 loop for the UNEs, and we will offer a market-rated
25 switching portion for that.

1 MR. MAGNESS: If Mr. Henry could approach the
2 witness, Mr. Chairman, he's going to just hand him a
3 document. I would like you to have a copy of this in
4 front of you as we discuss it.

5 THE WITNESS: Does my lawyer need to see this?

6 MS. WHITE: Excuse me. I would like to see a
7 copy.

8 MR. MAGNESS: Certainly.

9 CHAIRMAN BAEZ: Forgive me.

10 MR. MAGNESS: Certainly. I'm sorry.

11 CHAIRMAN BAEZ: Remember to provide one to
12 counsel too. Thank you.

13 MR. MAGNESS: Yes. We have one right here.
14 And what I've handed him is a filing at the Federal
15 Communications Commission dated October 2, 2003, in the
16 docket that was the triennial review, as well as the
17 local competition order docket. It's filed by BellSouth
18 Corporation, entitled "Petition for Clarification and/or
19 Partial Reconsideration."

20 BY MR. MAGNESS:

21 Q Mr. Ruscilli, I would ask you to turn to page
22 Romanette ii.

23 A I didn't catch that page number again.

24 Q I'm sorry. I'm sorry. I said ii. I meant
25 iii, Romanette iii. And there is a paragraph that

1 begins, "Fourth." That is, it's a list of things that
2 BellSouth is requesting. It says, "Fourth, if the
3 Commission does not hold that Section 251 and Section
4 271 unbundling obligations are coextensive, it should
5 clarify that services unbundled only under Section 271
6 need not be combined with either other services or
7 UNEs. This clarification reflects the Commission's
8 apparent intent and is effectively compelled by the
9 plain language of Section 271."

10 I would also direct your attention to page 15,
11 where BellSouth says in the paragraph beginning under
12 the heading Roman V, and the heading is, "The Commission
13 should state that services 'unbundled' only under
14 Section 271 need not be combined with either other
15 services or UNEs." The introductory paragraph says,
16 "For the reasons explained above, the Commission should
17 reconsider its holding that Section 271 imposes an
18 independent unbundling obligation," and we've got a
19 parenthetical, next sentence, "If it declines to do so,
20 however, then at a minimum, the Commission clarify that
21 transmission switching, transport, or signaling
22 unbundled only under Section 271 need not be commingled
23 with wholesale services or combined with UNEs."

24 Now, Mr. Ruscilli, is it fair to say that
25 BellSouth has taken the position at the FCC that if a

1 network element such as switching is unbundled only
2 pursuant to Section 271, it doesn't have to combine it
3 anymore with the 251 loop element?

4 A Yes.

5 Q Okay. So if you get what you want at the FCC,
6 let's say they grant your request in toto, you would no
7 longer have any legal obligation to combine the loop
8 with the switching to make the offering that looks like
9 the current UNE-P; right?

10 A That's true. We don't want the requirement
11 placed on us, but we may want to do that. And the UNE
12 market with market rate switching is something we want
13 to compete with, and we want to keep people on the
14 network, so we want to be able to combine them if we
15 decide to do so.

16 Q And does BellSouth reserve your right to change
17 your mind about what you've offered this Commission if
18 you get what you want at the FCC?

19 A If there's no restrictions or legal requirement
20 to put on us to do so, yes.

21 MR. MAGNESS: Okay. I have one other topic I
22 want to cover with you. And I've got -- there's a set
23 of exhibits we would like to show Mr. Ruscilli. I would
24 like to go ahead and distribute them as a package and
25 get them to all the parties.

1 Your Honor, it's at your pleasure how you would
2 like me to offer them or mark them. I think we have
3 them --

4 CHAIRMAN BAEZ: Well, let's see what we've got
5 first and see how we can --

6 MR. MAGNESS: Sure.

7 CHAIRMAN BAEZ: -- best handle it.

8 MR. MAGNESS: Mr. Ruscilli, I've provided you
9 an original of each one of these, to the extent
10 something off the Internet can be an original.

11 THE WITNESS: Mr. Magness, just for my
12 clarification, I want to make sure. There are basically
13 four separate sets of originals; is that correct?

14 MR. MAGNESS: Yes, sir. And I'll, just for the
15 record, identify each one of these before we get started
16 with them while they're being distributed.

17 The first one is a reprint of a document that
18 is found at 2003 WL, as in Westlaw, 62801023. The date
19 on the document is Thursday, November 13, 2003. It's
20 entitled "SBC Telecommunications Analyst Meeting -
21 Final."

22 The second document is a reprint of an article
23 from XCHANGE. That is X-C-H-A-N-G-E, magazine, the Web
24 version of it. The website it was obtained from is
25 listed at the bottom. I believe it says it was posted

1 on January 7, 2004.

2 The third document is an SBC Investor Briefing
3 dated January 27, 2004, which is -- these are all
4 obviously public documents. This one comes off the
5 sbc.com website, as does the final document called
6 "Investor Update, SBC 2003 Q4 Earnings Conference Call,
7 January 27, 2004."

8 CHAIRMAN BAEZ: Mr. Magness, you said that you
9 wanted them marked?

10 MR. MAGNESS: Your Honor, if we could walk
11 through them and see if we need to enter them, I will
12 not offer them at this time.

13 CHAIRMAN BAEZ: All right.

14 BY MR. MAGNESS:

15 Q Let me start by asking you -- are you familiar
16 with a company called Cingular?

17 A Yes, sir.

18 Q That you get your wireless service from?

19 A Yes, sir. Excellent wireless service.

20 Q And it's just going to get better; right?

21 A Yes.

22 Q Cingular is a joint venture owned by SBC and
23 BellSouth; right?

24 A Yes, sir.

25 Q And you probably read, like I did, the Wall

1 Street Journal articles I guess last week about
2 Mr. Whitacre and Mr. Ackerman coming up with a bid of
3 \$41 billion at the last minute.

4 Do you know what the respective company's
5 shares of that partnership are in Cingular?

6 A I believe it's 60% with Southwestern Bell and
7 40% with BellSouth.

8 Q Okay. I would like to direct you to the
9 document identified first that is printed from Westlaw,
10 the SBC Communications analyst meeting. I would be
11 happy to let you take as much time as you need to take a
12 look at this. I will represent to you it's a transcript
13 of a conference call with analysts conducted by SBC
14 Communications. I direct you to page 26. That's
15 actually the part I want to talk to you about, and I've
16 highlighted the portion that I would like to focus on.
17 And this is a question and answer session with
18 Mr. Whitacre. And you're aware Mr. Whitacre, Ed
19 Whitacre is the CEO of SBC Communications?

20 A I've read that, yes.

21 Q Okay.

22 A I don't know him.

23 Q Let me just read the question and answer that's
24 here, and I certainly -- I have a couple of questions
25 about it for you.

1 "Unidentified Participant. Hi. Number one,
2 would you take a look at MCI at the right price once it
3 comes out of bankruptcy? Had to ask that, sorry.

4 "Number two is, the outside are saying that
5 you're going to offer a voice-over-IP product out of
6 region. Won't that anger your Cingular joint venture
7 partner in the Southeast?"

8 Mr. Whitacre replies, "Well, for your first
9 question about MCI, we're focusing on growing our
10 business. We think we have a good strategy, and we are
11 going to focus organically or what we told you about
12 today. We're going to grow our company organically.

13 "Secondly, I've forgotten what it was.
14 Something about Cingular; what was it?"

15 The unidentified participant says, "Apparently
16 you're going to be offering a voice-over-IP product out
17 of region. Won't than anger perhaps BellSouth and" --

18 And Mr. Whitacre responds, "Well, absolutely it
19 will. And just like if they come in" -- and apparently
20 there was something inaudible when it was transcribed,
21 but he says, "And just like if they come in, it's going
22 to anger us. Of course, the answer to that is yes, but
23 it's a non-issue since we have a good partnership and
24 it's not happening. Impossible to speculate on things
25 that don't happen. It's kind of a curt answer, wasn't

1 it, but I don't know how to answer that any
2 differently."

3 Now, I read that correctly; right?

4 A Yes.

5 Q Okay. And in how many markets has BellSouth in
6 Florida named SBC Telecom as a trigger?

7 A I don't know. You'll have to ask Ms. Tipton
8 that question.

9 Q Okay. But you consider SBC Telecom to be a
10 mass market competitor here of BellSouth?

11 A I believe they are, but I just didn't look at
12 the individual trigger candidates. You need to talk to
13 Ms. Tipton. She has examined that in detail.

14 Q Okay. Let me direct you to the next, the one
15 from XCHANGE magazine. And again, I've highlighted the
16 part just to try to save us a little bit of time. And
17 we can certainly look at this in more detail. I believe
18 this is a summary of an earlier, that is, end of 2003,
19 investor call.

20 Down at the bottom it says, "Whitacre said the
21 company's main focus in the business market is large
22 enterprise customers. SBC will aggressively target the
23 \$140 billion enterprise market. To better serve
24 enterprises, SBC has built out-of-region networks and
25 established itself in 30 markets outside of its 13-state

1 territory, Whitacre said, and added single contracts and
2 service level agreements."

3 Is that a correct reading?

4 A Yes.

5 Q That was one of those Cingular phones going
6 off. I'm sorry. That wasn't mine.

7 Now, I guess you're not the person to talk to
8 about your choice of triggers in Florida; right?

9 A Right, that's correct. Ms. Tipton would be the
10 person to talk about it as far as the trigger
11 candidates.

12 Q Well, in your understanding of how the triggers
13 were supposed to operate, if a company is focused on the
14 enterprise market and what it's doing actively is trying
15 to serve in the enterprise market, wouldn't that company
16 fall out of the mass market trigger analysis?

17 A Not necessarily, but you need to talk to
18 Ms. Tipton about that. Just because that's their focus
19 -- if they're serving mass market customers off of that
20 switch, then they're a trigger candidate.

21 Q Okay. Let me have you look at the next two
22 documents together. These are what I understand to be
23 the most recent investor briefings from SBC. They're
24 dated January 27, 2004.

25 One is text for those who like reading text.

1 One is PowerPoint for everybody else. I think the
2 analysts read more text now than they did a few years
3 ago. Everybody only read PowerPoint a few years ago,
4 but now they've learned better.

5 In any event, on this first one, you see -- as
6 you flip through it, we see SBC focusing on their
7 different markets. "Wireline in Focus" is one area at
8 page 6, and I'm going to direct you to again something
9 I've highlighted. And I would welcome you to look at
10 this document in detail, but the only place I found
11 anything about out of region was at page 10. This is at
12 the tail end of the "Wireline in Focus" part. And it
13 says, "SBC's completion of approvals to enter the long
14 distance market in all states during the fourth quarter
15 has opened up new opportunities for SBC to compete more
16 fully for business from enterprise customers. To make
17 progress in this high potential market, SBC has taken a
18 number of steps to enhance its capabilities. It has
19 built out-of-region networks, including a national Layer
20 3 IP backbone. It has established a presence in 30
21 out-of-region metropolitan areas."

22 Do you think it's a fair reading here that SBC
23 has its out-of-region presence, at least as of today, in
24 order to serve large enterprise customers?

25 MS. WHITE: I'm sorry. I'm going to object on

1 the basis that all we've got is this document that
2 Mr. Magness handed out and then read. There's no
3 indication that Mr. Ruscilli has seen these documents
4 before, is familiar with these documents, or has studied
5 what SBC's out-of-region plans are or are not.

6 CHAIRMAN BAEZ: So your objection is based on
7 what?

8 MS. WHITE: Relevance, lack of foundation, and
9 hearsay.

10 CHAIRMAN BAEZ: Thank you. Mr. Magness.

11 MR. MAGNESS: Okay. Let me respond. First,
12 it's relevant in a couple of ways, probably three ways.
13 There's a live question about whether CLECs are really
14 actively providing under the order in the mass market as
15 opposed to any enterprise market. SBC Telecom is one of
16 the triggers named by BellSouth. Mr. Ruscilli has
17 testified that BellSouth only chose competing providers.
18 I would reference you to his surrebuttal at page 12,
19 lines 21 and 22. Mr. Ruscilli has also felt the liberty
20 to criticize at great length in surrebuttal and other
21 testimony the analysis of other trigger witnesses from
22 FCCA and from other CLECs. So he has invited these
23 questions. He may not know the answers, but that
24 doesn't make it irrelevant.

25 In addition, there's a question of whether the

1 partnerships that BellSouth and SBC have, any agreements
2 or arrangements that may lead to about what they do in
3 one another's territory, have anything to do with
4 whether they should really be considered unaffiliated
5 companies in the Commission's analysis.

6 CHAIRMAN BAEZ: Okay. You've got relevance.
7 You have other objections here.

8 MR. MAGNESS: Well, if Mr. Ruscilli can't rely
9 on hearsay, I might file a late-filed motion to strike a
10 good bit of his testimony.

11 CHAIRMAN BAEZ: Very well. I'll overrule the
12 motion. We'll let him answer the questions. Go ahead.

13 BY MR. MAGNESS:

14 Q Okay. Would it be fair from what I've shown
15 you -- you've had a little bit more chance to look at it
16 now -- that SBC seems to be saying that its focus in
17 out-of-region is to serve the enterprise market?

18 A That may be the case, sir. I've not read the
19 whole document and not, you know, studied SBC at all as
20 far as looking at them to purchase stock or otherwise,
21 so I don't know what all their strategies are.

22 Q Okay. Just as a person who has done some
23 analysis of Triennial Review Order, would the fact that
24 a company is providing service to enterprises on its
25 switch as opposed to mass market customers make any

1 difference in your -- in a trigger analysis?

2 A Can you repeat the question? I might have
3 missed just one portion of it.

4 Q Sure.

5 A I wasn't sure I heard you.

6 Q I'm asking you as a person who has spent some
7 time analyzing the TRO, and you've testified about it.
8 If it is true that a company is providing service to the
9 enterprise market, and that is where it is actively
10 providing, it is not trying to get new customers in the
11 mass market, does that have any impact on whether
12 they're a mass market trigger or not?

13 A I think regardless of whether they're trying to
14 recruit new mass market customers or not, if a customer
15 -- excuse me. If a CLEC is out there with a switch, and
16 they're serving enterprise customers and they're serving
17 mass market customers, they should be counted as a
18 trigger.

19 Q So we don't worry about what they're telling
20 their stockholders, investors, et cetera?

21 A Not with respect to this trigger case, no.

22 MR. MAGNESS: Okay. That's all I have. Thank
23 you.

24 THE WITNESS: Thank you, sir.

25 CHAIRMAN BAEZ: Thank you, Mr. Ruscilli.

1 MR. MAGNESS: And as to these exhibits, I
2 believe since they were discussed, I would offer them.

3 CHAIRMAN BAEZ: Let me just make sure. We've
4 got four documents --

5 MR. MAGNESS: Yes, sir.

6 CHAIRMAN BAEZ: -- that have previously been
7 identified. We'll call them "Investor Briefings, SBC."

8 MR. MAGNESS: We can call the first one
9 "Transcript of Investor Meeting."

10 CHAIRMAN BAEZ: Well, I want to take them up as
11 a -- just take them up all at once, so we're going to do
12 a composite exhibit, and we'll call them "Investor
13 Briefings Regarding SBC Communications."

14 And I forget. I'm showing Number 79. Is that
15 right?

16 MR. MAGNESS: That's what we have too, yes.

17 CHAIRMAN BAEZ: Okay. Composite 79.

18 (Exhibit 79 was marked for identification.)

19 CHAIRMAN BAEZ: We're done with Mr. Ruscilli;
20 right?

21 MR. MAGNESS: Yes.

22 CHAIRMAN BAEZ: Okay. Mr. Ruscilli -- I'm
23 sorry. I'm fragged.

24 MS. WHITE: I think we're supposed to be doing
25 redirect at the end of everybody's cross.

1 CHAIRMAN BAEZ: Yes, that's right.

2 MR. TEITZMAN: Mr. Chairman?

3 CHAIRMAN BAEZ: So, Mr. Ruscilli, you're
4 excused for now. There's going to be some --

5 MR. TEITZMAN: Mr. Chairman?

6 CHAIRMAN BAEZ: I'm sorry, Adam.

7 MR. TEITZMAN: The way I understand things to
8 work, if staff had less than 10 minutes of
9 cross-examination questions, which in this case we do,
10 we would proceed.

11 CHAIRMAN BAEZ: Yes, the strap trump. I'm
12 sorry. You're correct. Go ahead, Mr. Teitzman.

13 CROSS-EXAMINATION

14 BY MR. TEITZMAN:

15 Q Good evening, Mr. Ruscilli.

16 A Good evening, sir.

17 Q I just have a few questions for you tonight.

18 During 2002, did BellSouth make a price change
19 for access to UNE-P?

20 A I don't recall what our changes were. We had
21 the UNE docket that had them in 2002, and there was a
22 span or period of time, so I'm not sure what part UNE-P
23 was included in. But there were some changes that were
24 made to that price as part of that UNE docket.

25 Q Do you recall if those changes were a reduction

1 in price?

2 A Yes, they were.

3 Q And would you characterize those reductions as
4 significant?

5 A Yes.

6 Q And BellSouth's current UNE-P prices are lower
7 than those offered by other Florida ILECs; is that
8 correct?

9 A I believe so. I've not studied all their
10 prices, but I believe we're at the low end.

11 Q Now, would you agree that lower UNE-P rates
12 have led to growth in UNE-P in BellSouth's Florida
13 territory since 2002?

14 A Yes. I mean, you see it today, where CLECs are
15 choosing not to use their own switches and use our UNE-P
16 because it's cheaper. Several months ago we had an
17 arbitration here with ITC^DeltaCom, and their witness,
18 Jerry Watts, said exactly that, that it's cheaper for
19 them to use our switch, our UNE-P, rather than use their
20 own switch.

21 Q Now, you're familiar with the testimony of FCCA
22 witness Gillan; correct?

23 A Yes.

24 Q Now, Mr. Gillan asserts in his testimony that
25 the POTS market is shrinking. Do you agree?

1 A To one degree, yes, in that there's new
2 technologies that are coming out there that folks are
3 trying to drift to and folks are trying to market, one
4 of which I just discussed a while ago, which is these
5 new kinds of boxes that you can buy, and you can bring a
6 T1 to your place and deliver high-speed data and a few
7 voice lines. So, yes, there's a change in that market
8 from that perspective, and certainly the market is
9 migrating towards IP as a form of transmission.

10 Q Now, Mr. Gillan also asserts that Comcast has
11 been reporting a decaying telephony base, and Comcast is
12 a cable telephony provider. Would you agree that the
13 POTS market is shrinking, no matter what technology is
14 being used, i.e, cable telephony?

15 A No, I wouldn't agree. I don't know why Comcast
16 is going down, but I wouldn't agree with that.

17 MR. MAGNESS: Staff has no further questions.

18 CHAIRMAN BAEZ: Go ahead, Commissioner Deason.

19 COMMISSIONER DEASON: Mr. Ruscilli, do you have
20 a copy of the Prehearing Order?

21 THE WITNESS: I don't think I have it up here
22 with me, sir. I'm sorry.

23 COMMISSIONER DEASON: Maybe your counsel can --
24 (Document tendered to the witness.)

25 THE WITNESS: Yes, sir.

1 COMMISSIONER DEASON: If you could turn to page
2 63 and look at the Public Counsel position. This has to
3 do with Issue 5F. And the first statement in that
4 position -- and I'll just read it. It says, "Setting a
5 high cutover may exacerbate the risk that the impact of
6 this proceeding will be to reduce competitive options
7 for residential and small business customers." And the
8 cutover rate, I assume, here is talking about at what
9 point do you distinguish between mass market and
10 enterprise customers.

11 Do you have an opinion on that statement as to
12 how -- where we set that cutover, how that's going to
13 impact residential and small business customers?

14 THE WITNESS: Well, I'll take that in two
15 parts, sir, if I may. Yes, I have an opinion that the
16 cutoff should be at four. And Dr. Johnson, who is their
17 witness, recognized pretty much the same thing that was
18 recognized in the footnote in the TRO that I pointed
19 out, that if you're at four and you start to raise the
20 number of what you would call a mass market -- as it
21 even says in the footnote, there are dozens of CLECs out
22 there offering service to customers that are, say,
23 between four and eight. And so if you're calling them
24 mass market and CLECs are serving them, by the trigger
25 analysis, then you'll determine that there's lack of

1 impairment, and because of that, you will no longer
2 require unbundled switching to be provided by the ILEC
3 to those customers.

4 To the second part about competitive options
5 for residential and small business customers, I don't
6 necessarily agree with that characterization.

7 COMMISSIONER DEASON: Thank you.

8 CHAIRMAN BAEZ: Commissioners, any other
9 questions?

10 Thank you, Mr. Ruscilli. We're going to
11 continue your redirect after all this is --

12 THE WITNESS: Yes, sir. Thank you.

13 CHAIRMAN BAEZ: After cross is over. Thank
14 you.

15 MS. WHITE: I'm sorry. Chairman Baez, just to
16 make clear, we're not going to move any exhibits in
17 until the end, or should I move Mr. Ruscilli's exhibits
18 in?

19 CHAIRMAN BAEZ: I would like to do them
20 wholesale, if possible. That way which there's no
21 confusion as to who's in and who's out.

22 MS. WHITE: That's fine.

23 CHAIRMAN BAEZ: We'll just keep them either all
24 in or all out.

25 MS. WHITE: Thank you.

1 CHAIRMAN BAEZ: It's a whole new process, and
2 old habits, as a wise Commissioner said, die hard.

3 Next up I'm showing Ms. Tipton.

4 MR. MAGNESS: Yes, Mr. Chairman. And because
5 we're taking her deposition this evening, we asked that
6 she be passed till later. We'll take up Mr. --

7 CHAIRMAN BAEZ: You're absolutely right, so we
8 can move to Mr. Gallagher if that's available. Is
9 Mr. Gallagher sworn already?

10 THE WITNESS: Yes, sir.

11 CHAIRMAN BAEZ: He must have been. He
12 testified earlier, huh?

13 Who's crossing Mr. Gallagher? Mr. Magness?
14 Okay.

15 THE WITNESS: I'm ready.

16 CHAIRMAN BAEZ: Give Mr. Gallagher a moment to
17 get his materials.

18 THE WITNESS: I'm ready.

19 CHAIRMAN BAEZ: Okay. Go ahead, Mr. Magness.

20 MR. MAGNESS: I just have one piece of paper to
21 pass out as a possible exhibit for Mr. Gallagher. We'll
22 go ahead and do that, and I'll, just for the record,
23 identify it. It's a reprint from the Internet version
24 of an article from September 9th of 2002 in the Miami
25 Herald entitled "Florida Digital Network succeeds with

1 local focus." The article actually was obtained -- I
2 think it's reflected on what you've seen -- from the
3 fdncommunications.com website. Ms. Kaufman is passing
4 it around to the parties.

5 CHAIRMAN BAEZ: I'm sorry. Did you say the
6 article was contained or obtained off the FDN website?

7 MR. MAGNESS: Yes, sir.

8 CHAIRMAN BAEZ: Okay. Thank you.

9 MR. MAGNESS: I believe at the bottom it should
10 have a representation of <http://www.fdncommunications.com>.

11 CHAIRMAN BAEZ: I see it. Thank you.

12 Thereupon,

13 MICHAEL P. GALLAGHER
14 was called as a witness on behalf of Florida Digital
15 Network, Inc., and having been duly sworn, testified as
16 follows:

17 CROSS-EXAMINATION

18 BY MR. MAGNESS:

19 Q Good afternoon, Mr. Gallagher.

20 A Good afternoon.

21 Q I believe you had a question earlier from
22 Commissioner Davidson about the extent to which FDN is
23 in a good financial position today. Do you remember
24 that?

25 A Yes.

1 Q And FDN, I believe you say in this article, is
2 now debt-free and profitable; is that right?

3 A Yes.

4 Q Would you be able to be debt-free and
5 profitable if you had not changed a lot of arrangements
6 that you originally had with your banks to pay your
7 debts?

8 A It's possible that we could have, yes.

9 Q Okay. And in this article, I believe you're
10 quoted, and there in the middle of the article it says,
11 "'We're now debt-free and profitable,' Gallager says."
12 It says, "More telling, and perhaps more distressing, is
13 how desperate banks are these days to get out of the
14 telecom sector." And that was as of September of 2002;
15 right?

16 A Right.

17 Q Okay. You originally had some credit
18 facilities with banks to finance your company; right?

19 A That's correct.

20 Q Okay. And some of those facilities were you
21 going to have trouble paying off if they weren't
22 renegotiated?

23 A No. No, that's not how our restructuring went
24 down, no.

25 Q Okay. Well, then why didn't you maintain your

1 debt obligations with the banks as you had originally
2 contracted for them?

3 A We were in violation of certain covenants.

4 Q Okay. So the banks --

5 A Although -- I just have to elaborate. I have
6 read the part in the TRO that -- regardless of whether
7 or not, say, something bad happened to us and we would
8 have defaulted on our loan and gone through bankruptcy
9 like some of your clients have and, you know,
10 restructured nonconsensually, somebody else would be
11 operating our assets, and the FCC recognizes that. Our
12 assets would be employed by someone somewhere probably.
13 So therefore, the financial condition of whatever
14 trigger company is not to be -- it not really to be
15 dealt with. That's my understanding of the TRO.

16 Q Okay.

17 A But I'll answer whatever questions, you know,
18 up to the point of confidentiality.

19 Q Sure, sure.

20 Do you believe that you've got a good UNE-L
21 business plan?

22 A Yes.

23 Q And when you originally -- you're one of the
24 founders of the company; right?

25 A Yes.

1 Q And when you founded the company, it wasn't
2 part of your business plan to not pay off your creditors
3 as you had contracted to pay them originally, was it?

4 A You never know what's going to happen when you
5 start a company.

6 Q But that's not part of -- that wasn't part of
7 your original UNE-L business plan, was it?

8 A Our original UNE-L business plan was to obtain
9 financing to cover our cash burn up until the time we
10 became profitable. You can use equity or you can use
11 debt financing to do that, and we probably took on a
12 little more debt than we should have. In retrospect, if
13 we had to do it all over again, we would have taken all
14 equity. We did not take in bond debt and default on
15 that. We didn't fleece common shareholders. We had
16 four very large banks that we consensually restructured
17 our company with a consensual agreement.

18 Q Okay. And the way in which you got out of this
19 situation, I believe it says in the article, you went to
20 your equity -- your existing equity holders and got them
21 to put some more money in the company to work out the
22 workout with the banks; right?

23 A Correct.

24 Q Do you believe you would be in as good a
25 financial position today if you had not been able to get

1 your banks to not take what they originally owed?

2 MR. FEIL: Objection. Calls for speculation.

3 MR. MAGNESS: I'll withdraw the question.

4 CHAIRMAN BAEZ: Thank you.

5 BY MR. MAGNESS:

6 Q Let me ask you something about the TRO. You
7 talked about what's in it and your views on it. Would
8 you agree with me that it's important for this
9 Commission not to just try to connect the dots or count
10 to three when it looks at how to apply the trigger
11 analysis?

12 A I believe that the trigger -- the rules should
13 be followed pursuant to the TRO.

14 Q And if that requires a fairly thorough-going
15 analysis of all the provisions in the rule and in the
16 order, that's what the Commission ought to do; right?

17 A Yes, that sounds -- yes, they should.

18 Q Now, you criticized Mr. Gillan and I believe
19 Mr. -- forgive me if it's Doctor. Is it Mister or
20 Doctor, Mr. Staihr?

21 MS. WHITE: Doctor.

22 BY MR. MAGNESS:

23 Q Dr. Staihr, excuse me. Let me direct you to
24 your prefiled rebuttal testimony on page 7 at lines 9
25 and 10. You say, "FDN maintains that the Commission

1 should critically evaluate the TRO trigger test
2 embellishments advocated by Mr. Gillan and Dr. Staihr."
3 And then at line 21, you say, "For instance, both Gillan
4 and Staihr argue that any switch counted against the
5 trigger must serve predominantly mass market customers,
6 not enterprise customers." Is that a correct reading?

7 A Yes.

8 Q Okay. Now, do you understand that the FCC said
9 in the TRO that enterprise switches shouldn't be counted
10 in the mass market triggers?

11 A Yes.

12 Q Okay. So you've got to figure out a way to
13 distinguish the enterprise switch from the mass market
14 switch; right?

15 A As I told you before, I don't believe that
16 they're two separate switches. I believe that most --
17 all those switches can do both. Certain CLECs just
18 choose to do one or the other.

19 Q Okay. And you understand that triggers are not
20 about can be or could be. They're about what is; right?

21 A Right.

22 Q Okay. When we're looking at triggers then and
23 not the potential, doesn't this Commission have to
24 figure out some way to distinguish enterprise versus
25 mass market in order to meet the FCC requirement that

1 you don't count the enterprise switch?

2 A I believe the triggers have been met. Whether
3 or not they are choosing to hook more customers up with
4 UNE-L or whether they're choosing to just hook up T1
5 level customers, it's their choice. It's my
6 understanding the triggers have been met, and we see
7 these competitors -- as I said, if you can do one UNE-L
8 hot cut, you can do as many as you want. It's not that
9 you can't. It's just that you're choosing not to.

10 Q But if this Commission didn't really take a
11 look at everything that's required to figure out if the
12 triggers have been met, wouldn't that be connecting the
13 dots, overly simplistic?

14 A I don't understand the question.

15 Q Well, you said you agreed with me that there is
16 -- the FCC said don't count an enterprise switch in the
17 mass market triggers. So it seems like the next step in
18 the analysis is, how do we distinguish between an
19 enterprise switch and a mass market switch. The
20 question I'm asking you is, if the Commission failed to
21 undertake that analysis and couldn't get the answer to
22 that question, wouldn't they have failed to apply the
23 triggers properly?

24 A No, I don't believe that, because at FDN, we
25 hook up very large corporations, enterprise customers to

1 our switch, and we hook up mass market customers, and I
2 see our competitors doing the same thing. So I'm more
3 in the camp that if you have a switch, you're providing
4 switching, you can do it to all facets of the market.

5 Q Okay. Do you know who Mr. Ryan Hand is?

6 A Yes.

7 Q Was he one of the founders with you of --

8 A Yes.

9 Q FDN? And I'm looking at some testimony he
10 filed in Docket No. 030852-TP, and that's the loop and
11 transport case.

12 A Okay.

13 Q And he says that BellSouth counted too many
14 FDNs on transport, and then concludes, "Instead,
15 BellSouth arrived at a wholly inaccurate conclusion
16 because it based its analysis on a connect-the-dots
17 approach in which it simply assumes that a transport
18 route exists between each and every FDN collocation."
19 So is it your company's position that this Commission
20 needs to do a fairly thorough and nuanced analysis when
21 your UNEs are at stake?

22 A You know, I haven't seen Mr. Hand's testimony.
23 I do know that we believe that there were some routes
24 counted there where we were not providing our own
25 transport.

1 Q Do you have any reason to disagree with what I
2 read from Mr. Hand?

3 A No. I don't have any reason to disagree with
4 it, but I have not seen it.

5 Q Okay. And you testified before this Commission
6 before this case; right?

7 A Yes.

8 Q In the past, you testified that UNE loop rates
9 are too high; right?

10 A Yes.

11 Q Have you ever testified that the switching rate
12 is too high?

13 A No.

14 Q Does FDN have its own loops?

15 A Yes. No, I'm sorry. We use UNE loops from the
16 ILEC.

17 Q Okay. So you use ILEC UNE loops?

18 A Correct.

19 Q Does FDN have its own switches?

20 A Yes.

21 Q So you use UNE loops, but you don't use UNE
22 switching?

23 A Correct.

24 Q Was there a national finding of impairment for
25 loops in the TRO?

1 A Yes.

2 Q Was there a national finding of impairment for
3 switching in the TRO?

4 A Subject to the trigger analysis, yes.

5 Q Okay. Now, isn't the national finding for
6 loops also subject to a trigger analysis?

7 A Yes. Well, I don't know that there's a trigger
8 analysis for copper loops.

9 Q Okay. So your loops that you're using now from
10 BellSouth ought to remain UNEs; right? Is that your
11 belief?

12 A Correct, yes.

13 Q But switching shouldn't be UNE anymore?

14 A As I said before, I believe loops -- and the
15 reason we started our company was, loops are impossible
16 to get. It would be impossible to duplicate this
17 infrastructure. Therefore, it's impaired, and it's
18 something that we should all have access to. And it's a
19 key part of the Act to allow us competitors to break the
20 monopolists' hold on the market.

21 Switching has never been impaired. It has been
22 easy to purchase switches, install -- not easy, but it's
23 certainly doable to install switches, interconnect them
24 to the ILEC, get connected and provide the active
25 switching.

1 So that's where I come down on whether things
2 should be UNEs or not.

3 Q Haven't you also testified before this
4 Commission that packet switching in certain instances
5 should be unbundled?

6 A Yes, but you're referring to remotely
7 collocated DSLAMs in the 15,000 RTUs in Florida, and I
8 think that's a -- you're missing the point on that.

9 Q Okay. I guess where I got confused was where
10 in Docket No. 990649A-TP, you testified, "Therefore,
11 BellSouth should be required to unbundle packed-switched
12 broadband loops in Florida," and where you also
13 testified that the broadband switching capacity should
14 be unbundled because, "As I stated previously, the
15 Florida Commission can and should order unbundling of
16 packet switching if it finds that CLECs would be
17 impaired without such access pursuant to the terms of
18 FCC Rule 51.317."

19 A What's the question?

20 Q Well, I guess I'm confused about what I'm
21 confused about. Your recommendation was that in the
22 circumstances you identified, packet switching should be
23 unbundled; right?

24 A We were in that case litigating against
25 BellSouth that we could not get access to pure copper

1 loops from COs where we had collocations. In the way of
2 those COs were some 15,000 remote terminal units, which
3 we still argue to this day, there's no room in those
4 remote terminal units to put one of FDN's DSLAMs;
5 therefore, we have no access to that loop. So we
6 believe that without access to that loop, we could not
7 provide DSL service to that customer. Therefore, we are
8 impaired, and we want access to the loop.

9 It just so happened that packet switching,
10 which is the act of aggregating DSLAMs, which are ATM
11 multiplexers, is the only way to acquire that particular
12 loop UNE. You're trying to make me a switching
13 unbundled advocate, and that's just not the context of
14 that case.

15 Q Is there a national finding of impairment for
16 packet switching in the TRO?

17 A I don't know.

18 Q But there is one for circuit switching; right?

19 A Yes.

20 Q Okay. Do you charge CLECs for intrastate
21 access? What I mean is, when calls -- you talked a lot
22 about IXCs in your opening is what got me thinking about
23 it. If an IXC has a customer who is also your local
24 customer, and that person picks up the phone and they
25 make a long distance call, do you call the IXC

1 originating access?

2 A Yes, if we were not the picked carrier. Is
3 that what you're saying?

4 Q Uh-huh.

5 A Yes, we would.

6 Q Okay. And your originating or switched -- I'm
7 sorry. Let me strike that. Your switched access rate
8 includes a local switching element; right?

9 A I would have to look at the tariff.

10 MR. FEIL: Commissioner, I want to pose an
11 objection. I'm not exactly sure of the relevancy of any
12 of this.

13 CHAIRMAN BAEZ: You can respond, Mr. Magness.

14 MR. MAGNESS: Well, it's responsive primarily
15 to the allegations Mr. Gallagher kept making in his
16 opening about what IXCs do and what IXCs are up to in
17 the marketplace, which I feel like there's a right to
18 respond to.

19 And in addition, it goes to the question of the
20 triggers, in that this issue of whether a company is
21 likely to continue has to do with how is it that they're
22 out there providing their service and what are they
23 doing.

24 I think based on what he has said, particularly
25 about members of the FCCA, it's a fair inquiry.

1 MR. FEIL: Mr. Chairman, if I may respond, what
2 Mr. Gallagher said earlier about IXCs concerned
3 provisioning of hot cuts, not anything to do with access
4 charges. And in terms of the relation of intrastate
5 access charges to triggers, what Mr. Magness said
6 completely escapes me.

7 CHAIRMAN BAEZ: Mr. Magness, I'll be honest
8 with you. I'm trying to recall Mr. Gallagher's
9 testimony regarding the IXCs, and I don't remember
10 access charges ever coming into it. So if you can --

11 MR. MAGNESS: I am happy to let it go. That's
12 all I have.

13 CHAIRMAN BAEZ: If you're happy, I'm happy too.

14 MR. MAGNESS: That's all I have, Your Honor.

15 CHAIRMAN BAEZ: All right. Thank you.

16 MR. MAGNESS: I'm sorry, Your Honor. There was
17 one other question I promised someone I would ask.

18 BY MR. MAGNESS:

19 Q You have approximately 2,000 residential
20 customers in Florida; right?

21 A Yes.

22 MR. MAGNESS: Okay. Thank you, Your Honor.
23 Sorry about that.

24 CHAIRMAN BAEZ: Thank you, Mr. Magness.

25 Mr. Teitzman, is this one of those witnesses

1 that you've got --

2 MR. MAGNESS: We just have one question,
3 Chairman.

4 CHAIRMAN BAEZ: Great. Go ahead.

5 CROSS-EXAMINATION

6 BY MR. TEITZMAN:

7 Q Good evening, Mr. Gallagher.

8 A Good evening.

9 Q I have one question for you. If a CLEC offers
10 annual contracts to mass market customers to lock in
11 lower prices, would those customers still be mass market
12 customers?

13 A You know, I read that in the TRO where the FCC
14 was trying to describe the different classes of
15 customers, I believe in paragraph 124, and I was
16 struggling with that. It used to be that way, where
17 smaller customers didn't take contracts. The ILEC in
18 their win-back arrangements started offering lower rates
19 for longer terms, and we followed, and it seems like the
20 whole rest of the market followed.

21 So, no, I would not say -- I would say a
22 customer taking a contract does not mean they're not a
23 mass market customer, since small customers do take
24 contracts now.

25 MR. TEITZMAN: Thank you very much. No further

1 questions.

2 CHAIRMAN BAEZ: Thank you. Commissioner
3 Davidson, I see you --

4 COMMISSIONER DAVIDSON: Just one question, and
5 possibly a follow-up.

6 Mr. Gallagher, were your investors troubled in
7 any way by the fact that Florida Digital Network
8 self-provisions switching? In other words, did that
9 fact impair your ability to get financing?

10 THE WITNESS: No, I think it helped.

11 COMMISSIONER DAVIDSON: Thank you. No further
12 questions.

13 CHAIRMAN BAEZ: Commissioners, any other
14 questions at this time?

15 COMMISSIONER JABER: Mr. Chairman, I hope this
16 is a quick question. I'm stuck on that hot cut batch
17 process and why it doesn't apply to UNE-L, so while
18 Mr. Gallagher is on the stand, if, Mr. Gallagher, we
19 disagree with BellSouth's position in that regard, how
20 would you recommend we modify their batch process to
21 accommodate what you would envision the UNE loop hot cut
22 process being?

23 THE WITNESS: I would suggest that the playing
24 field just be leveled between UNE-P and UNE-L, where I
25 pay 70 some dollars to install a loop and the UNE-P

1 folks pay, say, some \$2. It would allow us to pursue
2 and maybe invest that money, and other UNE-L people to
3 invest that money in more mass market advertising and
4 level the playing field. I would reject BellSouth's 10%
5 discount as too light, and also reject their
6 classification of a BellSouth retail customer porting to
7 a UNE-L CLEC as not qualifying for a hot cut. That
8 should qualify for a hot cut batch cut discount.

9 COMMISSIONER JABER: So it's a pricing issue
10 for you then?

11 THE WITNESS: Correct. There is a pricing
12 issue there.

13 COMMISSIONER JABER: Okay. I didn't get that
14 out of your testimony.

15 All right. Then you want the same level
16 playing field as it relates to pricing, and for that to
17 work, they have to agree to migrate in batches UNE-L
18 customers under the TRO?

19 THE WITNESS: Yes, I believe that's how the
20 law would have to be applied.

21 COMMISSIONER JABER: Okay. Thank you. Thank
22 you, Mr. Gallagher.

23 CHAIRMAN BAEZ: That's all, Commissioner?

24 COMMISSIONER JABER: Yes, sir.

25 CHAIRMAN BAEZ: Thank you.

1 MR. FEIL: Mr. Chairman, if I may, I don't know
2 whether Mr. Magness intended on offering this as an
3 exhibit or not.

4 CHAIRMAN BAEZ: Yes, we never settled that,
5 Mr. Magness.

6 MR. MAGNESS: That was the next thing I
7 intended to do, was offer it as Exhibit -- I believe it
8 would be Exhibit 80.

9 MR. FEIL: Well, if that's the case, I have an
10 objection to it.

11 CHAIRMAN BAEZ: How about that?

12 MR. FEIL: That's why I brought it up. Did you
13 want to deal with it at a later point in time or address
14 it now? And one of the reasons I'm asking is because I
15 haven't confirmed with Mr. Meza or Mr. Chapkis, but I
16 wouldn't intend any redirect for Mr. Gallagher, and if
17 he could be excused, that would work well for him.

18 CHAIRMAN BAEZ: You know, I'm loath, Mr. Feil
19 -- as much as I want Mr. Gallagher out of here as
20 anybody else, I'm loath to open a door. I mean, we're
21 going to have a minor mess trying to get all of this in,
22 but I'm going to try and -- I'm trying to keep it
23 organized in my head, and I know it's a lot easier for
24 you guys than it is for me.

25 MR. FEIL: And part of --

1 CHAIRMAN BAEZ: What's your objection exactly?

2 MR. FEIL: Well, Mr. Magness didn't ask
3 Mr. Gallagher whether or not Mr. Gallagher said the
4 things that he's quoted as saying in this document.
5 It's not relevant to the case, and it hasn't really been
6 properly authenticated. But in terms of whether or not
7 Mr. Gallagher is accurately quoted here, Mr. Magness did
8 not ask that question.

9 CHAIRMAN BAEZ: I'm sorry, Mr. Feil.
10 Mr. Magness never asked that question?

11 MR. FEIL: No, sir.

12 CHAIRMAN BAEZ: Okay. So you have foundation
13 questions, or you have relevance questions?

14 MR. FEIL: Foundation and relevance.

15 CHAIRMAN BAEZ: Okay, Mr. Magness.

16 MR. MAGNESS: Mr. Chairman, as to relevance,
17 paragraph 500 of the TRO asks the Commission to consider
18 whether a CLEC is likely to continue providing service.
19 And this issue was raised, obviously, in Commissioner
20 Davidson's question that came before. There was no
21 objection to that question as being irrelevant to the
22 proceedings, and I certainly wouldn't think it is
23 either. I guess Mr. Feil knows better. I would too.

24 But in any event, the question of likely to
25 continue is one that the TRO unfortunately is a bit

1 self-contradictory about, but it tells the Commission it
2 needs to look at that. And Mr. Feil and I disagree
3 about what is to be looked at and what counts or not,
4 but I think it is certainly relevant to that paragraph.

5 And as to the foundation, Mr. Chairman, I mean,
6 this came off FDN's own website. I just have a hard
7 time believing that FDN would post this and ask anyone
8 who wants to come see their website to look at it if it
9 believes it's fraught with error, or are so troubled by
10 the quotes from Mr. Gallagher that he now wants to
11 disown them. I think, you know, if he would like to go
12 to Mr. Gallagher and say, "Ms. Garcia from the Miami
13 Herald misquoted me," I'm happy for Mr. Feil to ask that
14 question if it would clear it up, but I think there's
15 sufficient foundation by the fact he puts this in his
16 own advertising.

17 CHAIRMAN BAEZ: Mr. Feil, you want to say
18 something else?

19 MR. FEIL: Two things. First, paragraph 500
20 says, "We find the states shall not evaluate any other
21 factors, such as the financial stability or well-being
22 of the competitive switching providers." I don't know
23 what could be ambiguous about that.

24 But I would like to ask Mr. Gallagher the
25 question of whether or not he was accurately quoted in

1 this document, and if you permit me to do so, I'll
2 withdraw my objection to the document as an exhibit.

3 CHAIRMAN BAEZ: Just this once, I'll go off
4 track. You can go ahead and get that question on the
5 record quickly so that we can get --

6 MR. FEIL: Certainly.

7 CHAIRMAN BAEZ: Go ahead, Mr. Feil.

8 REDIRECT EXAMINATION

9 BY MR. FEIL:

10 Q Mr. Gallagher, are you accurately quoted in
11 this article?

12 A I cannot remember the exact interview, but I do
13 remember when it came out, there was a little bit of
14 dramatic license added to the story to make it sound a
15 little bit more interesting, I believe, yes.

16 CHAIRMAN BAEZ: All right. That concludes your
17 redirect of Mr. Gallagher.

18 MR. FEIL: Yes, sir.

19 CHAIRMAN BAEZ: Mr. Gallagher, since we've
20 stepped outside the box, you're excused.

21 THE WITNESS: Thank you.

22 CHAIRMAN BAEZ: We're going to mark this Number
23 80. We're marking this Number 80. Did you want to
24 offer it?

25 MR. MAGNESS: I offer it as Exhibit 80.

1 CHAIRMAN BAEZ: Okay. And that is Miami Herald
2 article obtained off the FDN website.

3 (Exhibit 80 was marked for identification and
4 admitted into evidence.)

5 CHAIRMAN BAEZ: And let me just say this one
6 time. I have a weak spot for getting stuck in this
7 room, but I would appreciate it if everybody's
8 inconvenience gets spread all around. I've got places
9 to be. You have no idea. All right? So let's try and
10 keep the inconveniences out of order to a minimum.
11 Thanks. That's just a personal request.

12 Mr. Gallagher, thank you. You're excused.

13 (Witness excused.)

14 MR. MAGNESS: Mr. Chairman?

15 CHAIRMAN BAEZ: Yes, sir.

16 MR. MAGNESS: In that spirit of maybe getting
17 everybody home in time for the second half of the big
18 Monday game, I'm prepared to go take Ms. Tipton's
19 deposition at this point. If there are others who want
20 to come along, I invite you to do so, unless now is not
21 a good time for other people who need to be involved.

22 CHAIRMAN BAEZ: I would appreciate someone --

23 MS. WHITE: I assume you want Ms. Tipton to go.

24 MR. MAGNESS: Ma'am?

25 MS. WHITE: I assume you want Ms. Tipton to go.

1 MR. MAGNESS: I would appreciate her presence,
2 yes.

3 MS. WHITE: Okay.

4 CHAIRMAN BAEZ: All right. And who's taking
5 witness Stegeman? It's not you, is it?

6 MR. MAGNESS: I'm sorry, sir?

7 CHAIRMAN BAEZ: Who is taking witness Stegeman,
8 who would be next witness in order?

9 MR. MAGNESS: I think Ms. -- Tami is going to
10 come up for that, Mr. Phillips and Mr. Azorsky, and I
11 will be excused. Thank you.

12 CHAIRMAN BAEZ: All right, Mr. Magness.
13 Ms. White, who are you leaving behind?

14 MS. WHITE: I'm leaving behind Mr. Shore.

15 CHAIRMAN BAEZ: Okay. Thank you. Hello,
16 Mr. Shore.

17 MR. SHORE: I'm glad to be back.

18 MR. PHILLIPS: Mr. Chairman?

19 CHAIRMAN BAEZ: Yes, sir.

20 MR. PHILLIPS: This is Ed Phillips for Sprint.
21 If I could, could I have a minute or two to get
22 organized and ready to go?

23 CHAIRMAN BAEZ: You've got two minutes.

24 MR. PHILLIPS: Very good. Thank you, sir.

25 (Short recess.)

1 MR. PHILLIPS: Thank you for your indulgence.
2 I appreciate it, sir.

3 CHAIRMAN BAEZ: Not at all.
4 Thereupon

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

9 CROSS-EXAMINATION
10 BY MR. PHILLIPS:

11 Q Good evening, Mr. Stegeman. How are you?

12 A I'm doing fine.

13 Q Let's see. The last time we saw each other was
14 about what, a week ago now? A little less.

15 MR. SHORE: Objection. Relevance.

16 THE WITNESS: I remember the day.

17 CHAIRMAN BAEZ: Which reminds me. And I have
18 to say this before we get too farther down. Everybody
19 realizes we've thrown accolades and congratulations and
20 pats on the back to everybody that was involved in
21 coming up with this process, but I hope everybody
22 realizes that, you know, the timing, it cuts both ways.
23 So I will encourage the leading questions to be as quick
24 as possible and the elaborated answers that we normally
25 allow to be as succinct as possible. I hope that you

1 all can appreciate the importance for this Commission to
2 try and get everybody, all the witnesses that are
3 supposed to testify up here.

4 Thank you.

5 MR. PHILLIPS: Thank you, sir.

6 CHAIRMAN BAEZ: Objection overruled. Go ahead,
7 Mr. Phillips.

8 BY MR. PHILLIPS:

9 Q First, Mr. Stegeman, I would like to sort of
10 just lay out for the Commission's sake an understanding
11 of when your group, CostQuest, started to develop this
12 model. If you could, sir, when in 2003 was CostQuest
13 first approached by BellSouth to develop the BACE model?

14 A I believe it was in the April time frame.

15 Q And if I recall correctly, once you were
16 approached, you began -- CostQuest began working in the
17 April 2003 time frame?

18 A Yes, that's correct.

19 Q Okay. How long did it take CostQuest to
20 prepare a working version of the model?

21 A The original version of the model was filed in
22 this proceeding. The first version of the model was
23 filed in this proceeding on December 4th, so it was
24 April until December.

25 Q Very good. So approximately eight months of

1 time?

2 A It was probably seven months. It was --
3 December 4th was when it was filed, so it was actually
4 the end of November.

5 Q Okay. And CostQuest, how many employees did
6 you have working on the model?

7 A CostQuest had its four employees and
8 approximately four subcontractors working on the model.

9 Q And those subcontractors were independent of
10 BellSouth; is that correct?

11 A That is correct.

12 Q So in total, we had eight -- you had eight
13 folks working on the BACE model?

14 A That is correct.

15 Q Okay. And if you recall, I went down this line
16 of questioning a little bit during the deposition. At
17 that point, had you estimated approximately 400 workdays
18 of time involved in producing and developing the model;
19 is that correct?

20 A Yes. I said -- I think I -- I believe I said
21 400 hours, give or take 20%.

22 Q I think the deposition testimony was 400
23 workdays that were eight-hour days.

24 A 400 working days, give or take 20%.

25 Q Very good. Thank you.

1 During that time, did CostQuest or the
2 subcontractors working for CostQuest have any access to
3 an executable version of the source code?

4 A During the time period from April until
5 December, we developed the executable version of the
6 source code.

7 Q Very good. Thank you.

8 On December 20th, did BellSouth cause to be
9 filed a .pdf source code file or make it somehow
10 available?

11 A I can't attest to the exact date, but in that
12 time frame, yes, a .pdf version of the source code was
13 made available.

14 Q And that was not a printable version of the
15 source code; is that correct?

16 A Yes, that is correct.

17 Q And as I understand it, that is not an
18 executable version of the source code.

19 A No. It was a non -- let me clarify just for
20 the record. There's some confusion, I think, in the
21 terms used in various testimony and the deposition, and
22 what I'm trying to clarify in later testimony is
23 editable source code, in that the user has the ability
24 to open up the source code, edit it in Visual Basic,
25 save it, and run it. Some people refer to executable as

1 the actual .exe that you get in your application and you
2 can run it, and I just want to make that clarification.

3 Q Thank you for the clarification.

4 So as I understand it then, the .pdf version --
5 and this is for the Commission's sake as well so they
6 understand it. This is a hard copy, a copy of paper, in
7 essence, that is available for a user, and it cannot be
8 -- what was the word you used again? It wasn't --

9 A Edited.

10 Q What was that word?

11 A Edited.

12 Q Edited. Okay. So it cannot be edited; is that
13 correct?

14 A Yes, that is correct. And let me just clarify
15 why we did it that way. In the BellSouth UNE
16 proceedings where the BSTLM was filed, which contained
17 -- which was a similar approach, we filed the same
18 version of the code, which was a nonprintable .pdf of
19 the code in that proceeding as well.

20 Q Did you say for the BCPM model?

21 A BSTLM.

22 Q Okay. I'm sorry. I misunderstood. Sorry.
23 Very good. Thank you.

24 Did CostQuest make any subsequent changes to
25 the model that were later filed with the Commission?

1 A Yes, we have.

2 Q Could you tell the Commission when that was and
3 how many corrections were made?

4 A To the source code itself, from the original
5 filing made on December 4th, which was Version 2.0, we
6 have filed in Florida Version 2.2. That version was
7 filed, I believe, on January 22nd. That version of
8 software had updates to some of the optimization code
9 that was not contained in the original 2.0 filing. In
10 addition, we corrected some reports that were not
11 impacting of the impairment results. They were more
12 informative reports for users, but they did not impact
13 the impairment results.

14 Q On January 28th, in the filing of your
15 surrebuttal testimony, did you cause to be filed any
16 corrections to the BACE model?

17 A The BACE model was not modified on January
18 28th. Rather, there was a new scenario provided. A
19 scenario is a collection of data that is used in the
20 model. The model itself, the source code was not
21 changed.

22 Q But was the model changed? Were any
23 calculations or any inputs or any other pieces of the
24 model changed for the January 28th filing of your
25 surrebuttal?

1 A No portion of the model itself was changed.
2 And when I say model, I typically as the modeler refer
3 to the collection of the source code. The source code
4 was not changed. The collection of data which is used
5 in the source code was changed. So there's -- I just
6 want to make that clarification, because the user
7 controls the data. CostQuest controls the source code.

8 Q Speaking of data for the BACE model, who
9 provided the inputs to CostQuest for the purpose of
10 developing the BACE model?

11 A I believe there was a data request that I
12 provided in -- it was one of the staff interrogatories.
13 It was either interrogatory number 6 or interrogatory
14 number 7. And in that interrogatory, I listed out those
15 people that assisted in the provision of data into the
16 model. I can find it if you want me to.

17 Q No, that's fine. But you as the modeler, if I
18 understand it, and the folks at CostQuest were not
19 responsible for developing the inputs?

20 A We provided a few of the input tables. The
21 high cost loop table which we got from the USAC
22 website. And for Florida, there are no high cost loop
23 dollars. We also populated the interexchange access
24 table, which is -- TBLIAS is the name of the table.
25 That is the universal service funds that are received by

1 a carrier. We also populated that from the website.
2 And there may have been some support tables used in the
3 model. The Wizard tables we may have populated.

4 But the majority of inputs, the price tables,
5 the demand curves, the product penetrations, many of
6 those inputs were provided by Dr. Aron. The network
7 inputs for the most part were, and the UNEs, were
8 provided by BellSouth.

9 Q And let me ask you this question. With regard
10 to the data that was provided by BellSouth, do you know
11 if that data was specifically related to BellSouth's
12 operations, or were they related to a CLEC operation?

13 A The data that BellSouth provided is pertinent
14 to a CLEC, in that it's the UNE rates that the CLEC has
15 to pay for unbundled loops. It's the UNE rates that the
16 CLEC has to pay for nonrecurring charges associated with
17 those loops. It's the disconnect charges.

18 In addition to those UNE rates, the model was
19 also populated with material prices. Those material
20 prices account for the equipment that goes in the collo
21 space. It's the material prices for the switches,
22 et cetera. And as such, those material prices should be
23 representative of a telecommunications firm such as a
24 CLEC.

25 Q Was the cost of capital based on BellSouth's

1 cost of capital?

2 A You would have to ask that of Dr. Billingsley.
3 I'm not the cost of capital expert.

4 Q All right. Fair enough.

5 Mr. Stegeman, the model you've developed does
6 not define an efficient CLEC, does it?

7 A No, but let me elaborate on what that means.
8 The model itself does not define the efficient CLEC.
9 The inputs into the model define the efficient CLEC.
10 The model, though, has to be capable to allow the user
11 to provide inputs that can model an efficient CLEC. And
12 some of those routines in the model that allow that is,
13 it has optimization routines in the model that try and
14 determine which products should be offered, what's an
15 efficient footprint to be operating within, and what
16 customers should be offered service, all based upon
17 economic principles of what an efficient CLEC might or
18 should do.

19 Q So what you're saying is if a CLEC had the
20 BellSouth model available to them, they would never fail
21 in business, would they?

22 A No, I don't believe that's what I said. I said
23 it's up to the user to provide inputs into the model.

24 Q The user being the CLEC?

25 A Whoever the user may be of the model. If it's

1 a CLEC using the model as a business case to evaluate
2 whether they should enter a market or not, then they
3 would provide the inputs. That business case would come
4 back, and it may tell you that in a market, it may not
5 be effective or efficient to enter that marketplace
6 because the net present value within that marketplace is
7 below zero, therefore, it's not an efficient decision to
8 enter that market.

9 Q Would the results of running the model
10 concerning NPV, are there situations in which the NPV
11 will be below zero?

12 A Yes, there are situations in the model where
13 the NPV will be below zero, primarily where it is not,
14 quote, profitable to enter a market.

15 Q CostQuest and you, Mr. Stegeman, are not
16 specifically testifying that the inputs that BellSouth
17 produced for this proceeding necessarily represent an
18 efficient CLEC, are you?

19 A No. I am here to attest that the model is
20 capable to allow a user to populate the model with the
21 inputs of an efficient CLEC and that the model will be
22 capable to provide outputs for that efficient CLEC and
23 have the routines to help the user determine what is
24 that optimal footprint, what are the optimal products to
25 offer.

1 Q It's a pretty handy tool, isn't it?

2 A Yes, it is.

3 Q So after this proceeding, a CLEC could
4 conceivably use the BACE model to do their market
5 analysis as to whether they're going to enter a market,
6 couldn't they?

7 A Yes, it could be used for that. It is a very
8 detailed model. It has granular capabilities, in that
9 it can take granular inputs. It can take all the
10 capital requirements of the CLEC, it can look at the
11 demand profile over time, and it can produce an
12 effective business case so that they can determine where
13 to enter certain markets.

14 Q Speaking of capital requirements, say, for
15 example, in the cost of a collocation, do the inputs in
16 the model consider the CLEC cost for buildout of a
17 collocation site?

18 A Yes, the model does capture that.

19 Q Where in the model?

20 A In the input file that the user provides.

21 Q So is it your testimony today that the CLEC is
22 responsible for developing their input for the
23 collocation cost?

24 MR. SHORE: I want to object. I'm not sure
25 he's talking about the CLEC.

1 CHAIRMAN BAEZ: Can you repeat your question,
2 Mr. Phillips? I didn't get it.

3 MR. PHILLIPS: All right.

4 BY MR. PHILLIPS:

5 Q Let's strike that. Let's say the user of the
6 model is developing the buildout cost for this
7 hypothetical efficient CLEC. Is that correct?

8 A Yes, the user provides the inputs that would
9 determine the buildout cost of a CLEC for the business
10 case.

11 Q And BellSouth does not provide in the model any
12 buildout cost for collocation locations; is that
13 correct?

14 A No, that's not correct. As filed, BellSouth
15 provided a fully populated scenario that would model an
16 efficient CLEC in the State of Florida, and as part of
17 that, it includes collocation costs.

18 Q Did it include DC power costs?

19 A It was my understanding that DC power costs are
20 included in the model.

21 Q Are you familiar with Mr. Kent Dickerson's
22 deposition testimony?

23 A I have not seen his deposition testimony.

24 Q Okay. Let's save that line of questioning for
25 a little later. Let's go to something else for a

1 minute, if we could.

2 In BellSouth's BACE model, I know you said you
3 did not provide the input for cost of capital, but are
4 you familiar with the cost of capital that's in the
5 model?

6 A Yes, I am.

7 Q Okay. Is that cost of capital representative
8 of an efficient CLEC entering the market, or is it
9 representative of an existing incumbent?

10 MR. SHORE: Let me interpose an objection, if I
11 may. We filed a witness, Dr. Billingsley, who testified
12 extensively about the calculation of the cost of capital
13 and what it is intended to represent. And Mr. Stegeman,
14 I remember when the questions came up this morning from
15 Commissioner Deason about that, that was what
16 Mr. Stegeman told Commissioner Deason at that time as
17 well.

18 CHAIRMAN BAEZ: So it's beyond the scope of
19 his testimony.

20 MR. SHORE: Yes, sir.

21 CHAIRMAN BAEZ: Mr. Phillips?

22 MR. PHILLIPS: Thank you, Chairman.

23 CHAIRMAN BAEZ: Objection sustained by default.

24 MR. PHILLIPS: No, I understood, sir, and
25 that's -- I'm sorry.

1 CHAIRMAN BAEZ: No, I was waiting for to you
2 respond, but --

3 MR. PHILLIPS: Oh, no. No, I wasn't going to
4 go there. I accepted it and moved on.

5 CHAIRMAN BAEZ: Thank you.

6 MR. PHILLIPS: Sometimes you do that.

7 BY MR. PHILLIPS:

8 Q With regard to the cost of capital,
9 understanding that you are not Dr. Billingsley, but with
10 regard to the cost of capital, did you do any analysis
11 related to that input in the model, verifying the
12 results you would get if you ran the model on a cost of
13 capital for this efficient CLEC?

14 A The answer is probably yes, from the fact that
15 we did do testing, and we did have different test data
16 sets that may have contained different cost of capitals,
17 just to verify that when the cost of capital flowed
18 through or a different value was entered, that it would
19 flow through appropriately and change the outputs.

20 Q Thank you. Mr. Stegeman, you're not sponsoring
21 the prices that were input into the model to generate
22 the revenue output, are you?

23 A No. I believe that's Dr. Aron.

24 Q Dr. --

25 A Aron.

1 Q Oh, okay. I'm sorry. I couldn't hear. I
2 think I'm going deaf.

3 And you are not sponsoring the market share
4 inputs, are you?

5 A No. Again, I think that's Dr. Aron.

6 Q And you are not sponsoring inputs, say, related
7 to customer demand, are you?

8 A No. Again, that's Dr. Aron.

9 Q If we could, let's go back to the notion of the
10 .pdf file versus the editable, your word, the editable
11 electronic file that Sprint had access to last week. In
12 the .pdf file, were there three tables that were not
13 viewable to the user?

14 A No. The .pdf file was just the source code.

15 Q Let me ask it this way. Were there portions of
16 the source code that were marked proprietary so the
17 underlying formulas and calculations could not be seen?

18 A I'm not sure I understand your question. Can
19 you ask it again?

20 Q All right. In the .pdf version of the source
21 code document, there were tables -- were there tables
22 that could not be seen by a user of that file?

23 A Again, it's -- no. There's no data in that
24 source code file. It's just source code of how the
25 program works. So I'm not sure I understand your

1 question.

2 Q All right. Let me ask it this way. Would a
3 user using the .pdf source code have access to exchange
4 demographics information, baseline product, and baseline
5 demand?

6 A I mean, I hate to dance around it, but the
7 answer is no again. That .pdf file is just a source
8 code document that doesn't give you access to tables.
9 The tables you're talking about are in the scenarios
10 that are used by the source code and used in the
11 processing. So I guess I'm getting a disconnect of your
12 question to the source code. The source code is just
13 the code written in Visual Basic of how the program
14 runs. That code doesn't have any data within it.

15 Q I understand that.

16 A Okay.

17 Q And maybe I'm not phrasing this correctly. Let
18 me try it a different way, from a different angle.

19 If a user is using the .pdf version of that
20 document rather than the editable electronic version, in
21 other words, they've printed off a hard copy of this
22 source code. Without the ability to edit or get behind
23 the information on the source code, can the user do
24 their own calculations to verify the results of the
25 model?

1 A Yes, they can, and let me explain. The .pdf
2 version of the source code, think of it just as the text
3 listing of the commands used to run the code. It has
4 the syntax of Visual Basic within it, and it has the
5 syntax of Access within it, because we use a lot of
6 queries to populate intermediate tables. That .pdf
7 version of the source code is very similar to the same
8 type of document I as the developer of the model use. I
9 do not have an editable version of the source code. I
10 do not have Visual Basic on my machine. I use a Word
11 version of the document that is filed in this proceeding
12 to do my development, to do my testing, to develop the
13 platform that has been filed.

14 And let me explain how then you can use that
15 document to actually do the testing and verification
16 much in the same way I do. What I do is, I take that
17 code -- and you have to have some telecommunications
18 experience because you have to understand what it's
19 trying to do. When you're trying to build a
20 telecommunications network, you have to understand the
21 telecommunications network. So you just can't be a
22 coder and walk through the code and understand it. You
23 have to have some experience, and that's -- in the
24 presentation earlier today, I said a seasoned
25 telecommunications programmer.

1 With that background, you can walk through.
2 And if you are lucky enough to understand Sequel, you
3 can read that code. You can interpret that code and
4 understand what it does. In the deposition, I walked
5 through line by line that code and explained what the
6 code did.

7 Now, what I do then as the developer, as the
8 tester of the model, I take that code, I look at the
9 code section, and I look at the intermediate tables that
10 are produced by it. And we did provide a demonstration
11 scenario in this proceeding that allows a user to see
12 all tables. So I have the tables open, the intermediate
13 tables, and there's a processing step that, "Says
14 populate Table P1, and populate Table P1 with this set
15 of instructions." What I then do is, I then replicate
16 that code process in Access or in Excel or in some other
17 tool so that I can verify that the code is performing as
18 I would expect it to perform based upon either the
19 specifications, the description of what it's supposed to
20 do, or in reading how it's constructed.

21 In that separate verification file that I have
22 in Access, I can then populate a temporary table that I
23 call, you know, Temporary Table P1. I compare what that
24 table has within it to what the model produces and
25 populates into P1. If my test stream of population of

1 that table matches what the system produces, then, yes,
2 I can rest assured that the process is working properly.

3 I did not have the Visual Basic application on
4 my machine. I did not step through the code on my
5 machine. I stepped through the code in an external
6 process so that I could verify it, and that's how I
7 developed the system. If I can develop the system that
8 way and I can verify the system in that way, and I've
9 never had the source code on my machine, then any other
10 seasoned telecommunications programmer should have the
11 same capabilities to walk through that code and verify
12 the steps.

13 Q Okay, Mr. Stegeman. I'm glad you pointed that
14 out. When we talk about this well-seasoned
15 telecommunications programmer out there, I would assume
16 you're a well-seasoned telecommunications programmer; is
17 that correct?

18 A I think so.

19 Q Okay. That's fair.

20 MR. SHORE: We'll stipulate to that.

21 MR. PHILLIPS: Thank you.

22 BY MR. PHILLIPS:

23 Q How long did it take you to develop that code,
24 to develop the source code to get this model to run?

25 A As we discussed earlier, the full duration of

1 the project took from the April time frame to the
2 December time frame. But that's not testing and
3 verifying. That's developing. That's looking at data
4 and trying to understand where you need to -- what to
5 have, where you need to go, understanding the TRO. So
6 you can't equate the development time with the review
7 time frame.

8 Q Let me ask you this question. When did you
9 begin your review of the BACE model?

10 A There really is no planned -- I'm not sure how
11 best to answer that other than to say that as we
12 developed the model, we continually tested it and we
13 continually verified it. We brought in other parties to
14 look at the code. We had LECG review the model. We had
15 BellSouth look at the model and look at the results to
16 verify that it was a valid tool. And I think as
17 Dr. Aron stated earlier, she was comfortable in the
18 results that it produced. I was comfortable in the
19 results that it produced.

20 Q All right. Mr. Stegeman, you said during the
21 development process you were also reviewing the model
22 and testing the model. Do you have any notion of how
23 many days, weeks, or months that took?

24 A No, because I really can't break out the time
25 frame or the time increments of development and testing

1 versus reviewing. Reviewing is separate that you do --
2 that I would do if I received a model. Then I'm
3 reviewing the model. If I'm the developer of the model,
4 I don't necessarily review the model. I developed it, I
5 verified it along the way, and at the end of the
6 process, I've done my steps, and I've done my testing,
7 and I'm comfortable that what has been produced meets
8 the requirements of my user. And that user is
9 BellSouth, as they are the client.

10 Q In your -- let's try to do it this way. After
11 you developed the model sometime in November of 2003,
12 how long was CostQuest actively involved in a review
13 process of that model from that point forward?

14 A The question was how long since we filed the
15 model?

16 Q No, no. The question is how long since
17 CostQuest finished developing the model in November of
18 2003 did CostQuest review that model?

19 A At the end of November 2003, we provided the
20 model then to parties on December 4th. Actually, we
21 provided it to many of the parties in this room before
22 December 4th. From that time to now, it has been a
23 continual review driven by comments from other parties
24 in this proceeding, also comments from our own internal
25 testing.

1 If you'll look at what has been filed, the
2 corrections to the model, those were not driven outside
3 of BellSouth and CostQuest. They were driven inside.
4 We looked at the data, we found some issues, and we
5 corrected those issues and filed a new model.

6 I live with the model. I'm not sure how I can
7 say, you know, how much time have I spent reviewing it.
8 It sleeps with me at night.

9 Q I understand. Much to the chagrin of your
10 loved ones, I assume.

11 A Yes.

12 Q Now, with regard to -- well, let me ask it this
13 way. Is it fair to say then that your review has lasted
14 from November of 2003, some point in that time frame,
15 until now?

16 A Yes, it's fair to say that. As a coder and as
17 a witness, I have to continually verify that the model
18 is working appropriately, and that just takes continual
19 upkeep. It's like owning a car. You have to fill it
20 with gas, you have to check the oil, you have to make
21 sure that it's running properly. If you don't do that
22 stuff, it's going to break or it's going to fall apart.
23 It's the same with developing a system.

24 If you look at the BSTLM that was filed in this
25 proceeding, we continually looked at that model. Any

1 model, you continually look at it to see (a) are there
2 ways to improve it; (b) are there issues with the model
3 that you need to address.

4 Q Okay. So let's just say on December 4th when
5 you filed that model after, you know, time of review and
6 developing and testing, that on December 4, 2003, you
7 were under the impression that the model was correct as
8 it was filed. Is that correct?

9 A Yes. As the model was filed on December 4th,
10 to the best of my knowledge, it was a valid and verified
11 model.

12 Q Okay. So then when the next set of corrections
13 came long, which was on January 22, 2003, when it was
14 filed, that, to the best of your belief, again was a
15 correct and accurate working model?

16 A Yes. As the model was filed -- I believe you
17 said January 22nd?

18 Q The 22nd. I believe that's correct.

19 A As the model was filed at that point in time,
20 it, to the best of our knowledge, was the most -- it was
21 a valid platform for this proceeding.

22 Q And so your corrections from December 4th to
23 January 22nd -- or it may have been the 23rd, but I'm
24 pretty sure it was January 22nd -- came about through
25 continual review; is that correct?

1 A That is correct. If you look at the
2 supplemental testimony, we discovered four wire centers
3 that were missing, we inserted additional optimization
4 code for enterprises, and we allowed the user to have
5 greater flexibility so that they could select the market
6 over which the platform was optimized.

7 But the results from December 4th to January
8 22nd did not change significantly. The impairment
9 markets did not change at all.

10 Q Didn't you also change the five-digit to
11 three-digit codes? Was that for the January 22nd
12 correction, or was that the January 28th correction?

13 A That was the January 28th.

14 Q Okay. That's what I thought. And that was for
15 the LATA code; is that correct?

16 A Yes, that is correct.

17 Q So six days later, you again made some sort of
18 correction to the model?

19 A Yes, that is correct.

20 Q How many people worked on this review process,
21 let's say, from November through January 28th?

22 A I don't have a good number of the number of
23 people. I mean, it is -- there are BellSouth people who
24 looked at either results or information, there are LECG
25 people who looked at results, and there are my own

1 internal staff that looked at the results of the model.
2 So I can't attest to a number, but it's more than a few.

3 Q Was it greater than eight that you had --

4 A No, it's not greater than eight.

5 Q Okay.

6 A Or, again, I can't attest to that it was
7 greater than eight, but I know it wasn't greater than
8 eight of my staff.

9 Q All right. Including the contractors?

10 A Correct.

11 Q Okay. But as far as BellSouth personnel or
12 LECG personnel, you have no idea how many folks were
13 involved?

14 A Correct.

15 Q Okay. So it could have been two, or it could
16 have been 10. We just don't know?

17 A Correct. I don't know.

18 Q Okay. And during all this time, the parties to
19 this proceeding were supposed to review, verify, and
20 audit the model; is that correct?

21 A Yes, that's correct.

22 Q And if I understand it correctly as well, with
23 regard to -- I want to go back to this .pdf hard copy
24 source code. In order to verify results looking at the
25 source code, a reviewer would have to rehash all of the

1 calculations in order to verify the results; is that
2 correct?

3 A Yes, that's correct, because that's what I did.

4 Q And how many calculations are there in the run
5 of the BACE model?

6 A I can't attest to the exact number. I think in
7 our deposition, I mentioned that it was hundreds of
8 thousands, if not millions.

9 Q All right. So we're looking at hundreds if
10 thousands, if not millions, of calculations that would
11 have to be manually reproduced without access to an
12 editable version of the source code; is that correct?

13 A Yes. And I reiterate again, it's what I do. I
14 do not have the editable version. I found and corrected
15 the code. I had to do that.

16 Q I understand. So from April 2003 until
17 February 24th, 2004, almost a year's time, you and your
18 staff have had that luxury; is that correct?

19 A What luxury is that?

20 Q The luxury of the time to review and verify and
21 test; is that correct?

22 A No, it's not. From April until November, we
23 were developing. Developing is different from
24 verification and updating.

25 Q Excuse me. I thought you just testified

1 earlier that during the development process, you were
2 also reviewing. Is that not correct?

3 A We were testing and verifying. We review --
4 the question you asked is not reviewing. The question
5 you asked, if I can recall -- maybe it was reviewing.
6 And I indicated that we were developing from April until
7 November. During that time frame, as you develop, you
8 test and review the code, but it's a development
9 process. A development process, as I think I indicated
10 earlier, is much different than reviewing the code
11 post-development.

12 Q So the post-development process, though, we've
13 had -- according to your testimony, you've had from
14 November 2003 until February 24, 2004, to continually
15 review and edit and correct?

16 A You have had from the time it was filed, which
17 would have been December 4th --

18 Q That's not the question I was asking. The
19 question I'm asking is, did CostQuest and the folks at
20 BellSouth and LECG have from post-development, November
21 2003 until -- let's just pick the day of your
22 deposition, February 16, 2004, to review and correct and
23 change the model? Is that correct?

24 A Yes, I believe that's correct.

25 Q Okay. And is it also your testimony that your

1 staff of eight people plus BellSouth and LECG personnel
2 assisted in that review process?

3 A LECG and BellSouth assisted in the process of
4 verifying the results or verifying code.

5 Q But that's still part of the review process; is
6 that correct?

7 A That is correct.

8 Q Okay. Did you do any verification of the
9 results produced by the BACE model? Did you personally
10 do any work to verify the results?

11 A Yes, I did.

12 Q Okay. If you had an anomaly in the results,
13 that would have surprised you; correct?

14 A It would disappoint me. I don't mean to be
15 flip about it, but as a coder and developer, there is a
16 potential, given the amount of lines in the code, that
17 there may be something that slips by.

18 Q So is it your testimony today that there is a
19 potential that this model still may have some areas that
20 need to be corrected?

21 A There's the potential with anything that there
22 are errors that could be corrected into the future.

23 Q So this model, is it fair to characterize it as
24 a work in progress?

25 A I think if you look at Microsoft Excel and

1 Microsoft Windows, I think there are patches issued
2 every day in those products. If you call those works in
3 progress, then I guess you would call BACE a work in
4 progress, because it's of a similar nature.

5 Do you trust the results coming out of Excel?
6 Do you trust the results coming out of any issued
7 software product? Yes, you do. Are there patches
8 issued all the time for software products? Yes, there
9 are.

10 Do you not do anything? Do you sit and wait
11 idly by until someone can provide a 100% guarantee that
12 nothing will change ever into the future? No. You
13 can't. You have to work with the best tool you have,
14 which is what we filed. What we have filed is the best
15 tool, from my standpoint -- I have reviewed this model,
16 and I believe that this model is a valid tool for this
17 proceeding, and we have made every effort to find every
18 error in the model, if there were any, and we've made
19 every effort to correct those.

20 Q BellSouth is in the business of selling
21 telecommunications services; is that correct?

22 A I believe so, yes.

23 Q BellSouth doesn't sell any software programs,
24 do they?

25 A You would have to ask a BellSouth person that.

1 Q Okay. But isn't that a comparison of apples
2 and oranges? Isn't this Commission tasked with the
3 decision-making to determine if there's impairment?
4 Isn't that different than Microsoft Excel and Microsoft
5 Word and what those programs do?

6 A I don't believe so. There are software
7 products used to develop many things, such as Visual
8 Basic. Visual Basic is a Microsoft tool. There are
9 patches coming out on Visual Basic. There are patches
10 coming out on all types of software. Does that impede
11 the use of that product? No, it does not.

12 Q Mr. Stegeman, let me ask it this way. Are
13 people being asked to make -- is an adjudicatory body
14 being asked to make a decision based on patches to a
15 software program for Microsoft, or are they being asked
16 to make an adjudicatory decision based on the results of
17 your model?

18 A Based on the results of my model.

19 Q And if that model has errors, does that
20 adjudicatory process become questionable?

21 A No, I don't believe so. I think -- I mean,
22 you would have to -- if you're holding me to a higher
23 standard as a model developer than the witnesses in this
24 proceeding and the lawyers in this proceeding, then I
25 think that is -- it's not correct.

1 Look at the witnesses in this proceeding. Have
2 they filed errata? Yes, they have. Did Sprint
3 witnesses file errata two days after they filed
4 testimony on Friday for testimony I had to file
5 yesterday? Yes, they did. Did that mean that that
6 testimony, which is used in the same proceeding to set
7 impairment or nonimpairment, does that impact this
8 proceeding?

9 I think your witnesses did the work to the best
10 of their ability to file valid testimony. That is the
11 same thing I as a modeler do. I file the model to the
12 best of my ability. Are there going to be errors?
13 Potentially. Do I think there are any in the model
14 right now that impact the results that we have here
15 today? I don't believe there are. Do your witnesses
16 believe that there are no errors left in their testimony
17 that will not impact the results of their findings? I
18 leave that to you.

19 Q Let me go down that road. I wish you hadn't
20 done that, but I will.

21 Is it your understanding that Sprint witnesses
22 filed additional testimony on Friday, February 20th, as
23 a result of being given access by the Prehearing Officer
24 to an editable version of the source code?

25 A They filed testimony that had nothing to do

1 with source code.

2 Q Is that your opinion?

3 A Yes, it is my opinion, and I think I filed
4 testimony on Monday that showed that every item that
5 they pointed out was a data input item, and it can be
6 verified based upon the documents that they provided
7 that those inputs could have been identified on December
8 4th as the data was filed, because none of those data
9 inputs changed. The source code did not help find those
10 data issues that they found. They have four data issues
11 that they found. Did the source code help in any way
12 find those data issues? No, in my opinion.

13 Q And I think the Commission has Mr. Dickerson's
14 and Ms. Londerholm's testimony before them in order to
15 make a decision as to whether your opinion is correct;
16 is that not true?

17 A That would be correct. But hopefully my
18 opinion carries some weight, in that I developed the
19 code of the model, and I would understand whether what
20 they found was the result of greater access to code or
21 was it a data issue that was discoverable on December
22 4th.

23 MR. PHILLIPS: All right. I appreciate that
24 Mr. Stegeman. That was my last question.

25 CHAIRMAN BAEZ: Staff, do you have any

1 questions?

2 MR. SUSAC: We have about 20 minutes worth of
3 questions.

4 CHAIRMAN BAEZ: Go ahead.

5 MR. SUSAC: Okay. Thank you.

6 CHAIRMAN BAEZ: This is the breaking point.
7 Just so anybody needs to pack their bags, do it quietly.
8 Go ahead, Mr. Susac.

9 CROSS-EXAMINATION

10 BY MR. SUSAC:

11 Q Hello, Mr. Stegeman. I just have a few
12 questions here.

13 In order to step through the source code using
14 the Access and/or the Excel as you described just
15 briefly earlier, do you need the access to the exchange
16 demographics table, the baseline demand table, and the
17 baseline price table?

18 A Yes, you do, and that's why we filed the
19 demonstration scenario which opened up all those tables.

20 Q And were those tables made available to the
21 parties in this case?

22 A The demonstration table -- or the demonstration
23 scenario was filed to all parties in this proceeding.

24 Q Okay. And the demo scenario that you filed I
25 believe on January 22nd, that contains the hypothetical

1 data in these three tables and allows the user to view
2 all these tables, including those three tables mentioned
3 earlier; is that correct?

4 A That is correct.

5 Q Let me ask you this. When was the source code
6 filed in this docket?

7 A I believe I answered that earlier, but I think
8 it was mid December that it was filed. I can't attest
9 to the exact date.

10 Q Okay. During your deposition last week, you
11 indicated that the BACE model which you are sponsoring
12 generates revenue and cost results at a wire center
13 level; is that correct?

14 A That is correct.

15 Q And am I correct that the wire center results
16 can be rolled out to various geographic levels?

17 A That is correct.

18 Q And the result from the BACE model can be
19 rolled out to LATAs, MSAs, CEAs, and UNE zones, and any
20 combination of those; is that correct?

21 A Could you repeat that, please?

22 Q Sure. The results from the BACE can be rolled
23 out to LATAs, MSAs, CEAs, and UNE zones, and any
24 combination of these options; is that correct?

25 A To a point. It's not like a three combination.

1 UNE zones can be combined with MSAs, but it's not MSAs,
2 UNE zones, and CEAs combined together. So the answer is
3 in part yes.

4 Q Okay. Am I correct that BellSouth proposes
5 that the market definition to be used for this
6 proceeding is based on CEAs overlaid by UNE zones?

7 A Yes, that's my understanding.

8 Q And am I correct that a CEA is just a fixed
9 geographic area?

10 A Yes, that's my understanding.

11 Q And for BellSouth, there are three UNE zones in
12 Florida, and these same zones reflect the geographic
13 cost differences; is that correct?

14 A I can't attest that they represent cost
15 differences. They were the result of the UNE
16 proceedings, and I believe they represent cost
17 differences.

18 Q Okay. So laying UNE zones over CEAs basically
19 subdivides a CEA into three different areas according to
20 cost characteristics, again yielding a fixed geographic
21 area?

22 A Yes, that's my understanding.

23 Q Okay. And overlaying these CEAs with UNE zones
24 yields approximately 30 markets in the State of Florida?

25 A Yes. I think it's 31.

1 Q Thirty-one?

2 A For the BellSouth footprint. It's 31 in the
3 BellSouth footprint.

4 Q Thank you. Thank you for clarifying that.

5 If a wire center overlaps more than one CEA UNE
6 zone, is it assigned based on the CEA UNE zone that
7 contains the largest portion of the wire center's land
8 area?

9 A Yes. And just let me clarify. The wire
10 centers are fully contained within -- or a wire center
11 is fully assigned to a UNE zone, but the CEA can cross
12 the wire center. When a CEA crosses a wire center, it
13 is assigned where the greatest land mass falls.

14 Q Okay. Mr. Stegeman, do you have your revised
15 Exhibit JWS-3 with you today?

16 A Yes, I do.

17 Q We discussed at the deposition on how the BACE
18 model's optimization routines work. One of the model's
19 optimization routines on page 24 is labeled "Filter
20 Negative Margin CLLIs." Could you briefly explain how
21 this filter works?

22 A Yes, I can. What the model does is, it
23 actually calculates the total costs and total revenues
24 of each and every wire center, and that total cost
25 includes the allocations of overhead, such as maybe the

1 OSS systems. It includes the apportionment of some
2 potentially fixed costs, like the getting started
3 investment of a switch that is driven above the wire
4 center. It's actually per LATA. We apportion that down
5 based upon whatever the user specifies as the
6 apportioning agent. So in the end, we get total costs
7 and total revenues at a wire center level.

8 Q Okay. And does this filter --

9 A I'm sorry. I forgot to finish the whole
10 question. I lost my train of thought.

11 So as you get that total cost and total
12 revenue, we developed the NPVs of those values so that
13 we can actually get an NPV of the wire center. And as
14 Dr. Aron can attest to, if the NPV is greater than zero,
15 then that means it should be a -- it provides return
16 that makes sense for an efficient CLEC. But we do that
17 at -- that determination, though, is done at the direct
18 cost level.

19 So when I said we apportion out the -- such as
20 the getting started investment of a switch or
21 potentially some of the fixed costs of the corporation
22 like the OSS, we may not apportion those out in that
23 decision, because what we're looking at is do the
24 revenues exceed the marginal costs of that wire center.
25 If so, then it is covering its own costs, and it's

1 providing a contribution to a higher level geographic
2 unit. As such, we keep it in the optimization. If the
3 NPV is negative, that is, the revenues do not cover the
4 direct costs, then we drop it out, because you're losing
5 money on every -- or in that wire center. It doesn't
6 even provide a contribution to a higher level fixed
7 cost.

8 That was it.

9 Q Okay. Thank you. And I just have one last
10 hypothetical. Assume there's a CEA UNE zone that
11 consists of 20 wire centers. If any of those 20 wire
12 centers in the aggregate yielded a negative NPV, it
13 would be excluded from the calculation of the CEA UNE
14 zone NPV; correct?

15 A If the user set that flag in the model to
16 "yes," yes, it would be.

17 Q Okay. So following along in the hypothetical,
18 if we have five wire centers yielding negative NPVs,
19 would they be excluded?

20 A Yes, they would. If you as the user in your
21 hypothetical set the flag to "yes" for that, eliminate
22 negative wire centers, then it would be eliminated, and
23 you would end up with 15 wire centers.

24 Q Okay. Thank you very much.

25 And so does this mean -- with these 15 wire

1 centers, does this mean that the determination of
2 whether or not the particular CEA UNE zone is unimpaired
3 would be based on a group of wire centers whose
4 geographic area is now less than that of the total CEA
5 UNE zone?

6 A Yes, it would.

7 Q Then under BellSouth's proposal, wouldn't this
8 result in a finding of no impairment throughout the CEA
9 UNE zone, even though the BACE model only demonstrated
10 that there was no impairment in 15 out of the 20 wire
11 centers in that CEA UNE zone?

12 A In your hypothetical, yes, but for the
13 BellSouth proposal, no. BellSouth in their proposal did
14 not set that flag to "yes." They set that flag to "no,"
15 so the wire center optimization is not used, so those
16 five wire centers would have remained in the 20.

17 Q Okay. If this filter is turned off and the
18 overall net present value for the mass market is
19 indicated by the BACE model to be positive, there can be
20 individual wire centers that have negative NPVs; is that
21 correct?

22 A That is correct.

23 Q And, Chairman, I just have one last question.
24 I just want to briefly revisit the three tables that I
25 mentioned earlier.

1 A Yes.

2 Q When and where were those tables filed --
3 excuse me. Strike that.

4 Were those tables filed with the initial BACE
5 model filing in this proceeding?

6 A The three tables that we discussed earlier, the
7 exchange demographics, the baseline price, and the
8 baseline demand?

9 Q Yes, sir.

10 A Yes, they were filed with the original
11 proceeding. They were filed with a password protection.

12 Q Okay. And was the user able to access that
13 when it was first filed?

14 A They were not able to open up those tables.
15 They were able to use the tables.

16 MR. SUSAC: Okay. That is all, Chairman.

17 CHAIRMAN BAEZ: Thank you, Mr. Susac. By my
18 count, we've got nine, nine and a quarter hours of cross
19 left. Tomorrow we're going to start at nine o'clock.
20 We're going to run short lunches. We're going to run
21 very few short breaks for everyone's convenience, and
22 we're going to get through, at the very least, the end
23 of the impairment cross, if not better.

24 Thanks for your indulgence. I know it has been
25 very hard and extended, but I think we're going to pull

1 through.

2 Mr. Susac, you have something?

3 MR. PHILLIPS: Yes. I would just like to say
4 that the -- I'm sorry. I would just like to say the
5 copies of the BellSouth presentation this morning are
6 now available if you would like to come pick up a copy
7 for the parties.

8 Also, if you could please bring your filings
9 over to this corner of the room, we would greatly
10 appreciate it.

11 MS. KAUFMAN: Mr. Chairman?

12 CHAIRMAN BAEZ: Thank you. Ms. Kaufman?

13 MS. KAUFMAN: One item very quickly. Since
14 this --

15 CHAIRMAN BAEZ: Hold on, everybody. Hold on.
16 Ms. Kaufman.

17 MR. SUSAC: I just have one other thing. If
18 Verizon could pick up the confidential information that
19 they passed out earlier.

20 CHAIRMAN BAEZ: Yes, the red folders on top of
21 the dais.

22 Ms. Kaufman, you were going to say something
23 quickly.

24 MS. KAUFMAN: I was just going to say,
25 Mr. Chairman, since Ms. Tipton's deposition is still

1 going on, as so I understand it, just so we're clear,
2 we're going to move Ms. Tipton down in the witness
3 order?

4 CHAIRMAN BAEZ: I think to the extent we're
5 done with Dr. Stegeman's, we're going to probably move
6 Ms. Tipton up first. Is that --

7 MS. KAUFMAN: Well, Mr. Chairman, we would ask
8 that we be able to -- we need to digest and figure out
9 what she said in her deposition. We wanted to take her
10 after the hot cut panel. It would still be done as you
11 suggested. We just want to move her down in the order
12 of witnesses.

13 CHAIRMAN BAEZ: Can't you digest her over
14 dinner so that we can stay on order?

15 MS. KAUFMAN: That was probably a poor choice.
16 We will not --

17 CHAIRMAN BAEZ: I'm sorry. Let me turn the
18 page here so that we can get this settled.

19 We'll take -- I'll give you Dr. Aron, and then
20 we're going to take Ms. Tipton. Okay? Work on it.
21 Work on it.

22 Thank you. Good night.

23 (Proceedings recessed at 7:20 p.m.)

24 (Transcript continues in sequence in Volume 12.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF LEON)

I, MARY ALLEN NEEL, do hereby certify that the foregoing proceedings were taken before me at the time and place therein designated; that my shorthand notes were thereafter transcribed under my supervision; and that the foregoing pages numbered 1653 through 1769 are a true and correct transcription of my stenographic notes.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, or relative or employee of such attorney or counsel, or financially interested in the action.

DATED THIS 27th day of February, 2004.



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