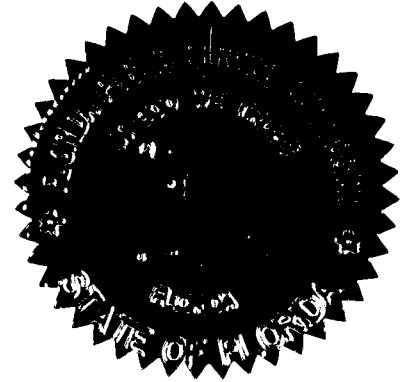


BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

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 18

Pages 2388 through 2555

PROCEEDINGS: HEARING

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

DATE: Thursday, February 26, 2004

TIME: Commenced at 9:00 a.m.

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APPEARANCES: (As heretofore noted.)

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I N D E X

WITNESSES

NAME:	PAGE NO.
JOSEPH GILLAN	
Direct Prefiled Testimony Inserted	2395
Rebuttal Prefiled Testimony Inserted	2465
Supplemental Prefiled Rebuttal Testimony Inserted	2528
Surrebuttal Prefiled Testimony Inserted	2533

EXHIBITS

1  
2  
3  
4  
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NUMBER:		ID.	ADMTD.
99			2392
105	Public Exhibits attached to Witness Gillan's Prefiled Testimony	2394	
105-B	Confidential Exhibits attached to Witness Gillan's Prefiled Testimony	2394	

## P R O C E E D I N G S

(Transcript follows in sequence from Volume 17.)

CHAIRMAN BAEZ: Go back on the record. Briefly, Mr. Susac, does everybody have a copy of this Exhibit 99?

MR. SUSAC: I will pass that out right now.

CHAIRMAN BAEZ: Okay. I forget who it was had the question about an extra Comcast exhibit or document that had been provided. Apparently it wasn't the same one that was included in the list, so what staff is passing out now is an amended list. So the document list identified as Miscellaneous Confidential 3, which constitutes Exhibit 99 also has added to it -- you can see the handwriting there, a Number 4, which is, in fact, a public document that is listed as Comcast Response to Request for Admissions 1 through 4. That is a public document. The rest of the documents listed there are confidentials. Mr. Meza.

MR. MEZA: Yes. The Comcast response is public?

CHAIRMAN BAEZ: Yes. I'm just trying to identify it for the record. Everything else on that list is confidential, and if there is no objections we are going to move that into the record. Okay. So, Exhibit 99 is admitted.

(Exhibit 99 admitted into the record.)

CHAIRMAN BAEZ: Now, we are about to start the impairment case, and I want to look at someone that can guide us through it. Ms. Kaufman, are you familiar enough with the

1 order or how the presentation is going to go to give us a  
2 brief --

3 MS. KAUFMAN: Yes, Mr. Chairman. I didn't know if  
4 you wanted to go through the testimony, our testimony and  
5 exhibits?

6 CHAIRMAN BAEZ: Very well. Let's do that.

7 MS. KAUFMAN: If you would like to begin with the  
8 FCCA, or whomever your pleasure?

9 CHAIRMAN BAEZ: Well, I've got a list of witnesses  
10 here if you want to follow. It starts with Gillan, Reith, and  
11 Dickerson. So we can --

12 MS. KAUFMAN: Mr. Gillan is appearing on behalf of  
13 the FCCA, and he has four sets of testimony; his direct, filed  
14 on December 4th, 2003 -- and, Mr. Chairman, if you would, you  
15 tell me your pleasure, if you would like to make all of the  
16 exhibits a composite except for his confidential ones, that  
17 would be fine.

18 CHAIRMAN BAEZ: We can work it that way.

19 MS. KAUFMAN: Okay. So let me go through the  
20 testimony first, if that would be all right. He has his direct  
21 testimony filed on December 4th, 2003; his rebuttal testimony  
22 filed on January 7th, 2004; his supplemental rebuttal filed  
23 January 22nd, 2004; and his surrebuttal filed January 28th,  
24 2004. And as to his surrebuttal, I just want to be sure there  
25 were two corrected pages that have been filed. That was filed

1 on February 18th. So I would move --

2 CHAIRMAN BAEZ: Okay. Go ahead.

3 MS. KAUFMAN: I would move the entry of Mr. Gillan's  
4 testimony into the record as though read.

5 CHAIRMAN BAEZ: Show the direct, rebuttal,  
6 supplemental rebuttal, and surrebuttal -- and you said the  
7 supplemental rebuttal as corrected?

8 MS. KAUFMAN: It's the surrebuttal that has corrected  
9 Pages 13 and 14.

10 CHAIRMAN BAEZ: And the surrebuttal as corrected of  
11 Witness Joe Gillan moved into the record as though read.

12 MS. KAUFMAN: Then Mr. Gillan's public exhibits are  
13 JPG-1 through 9, and JPG-9 has -- there was a revised JPG-9.

14 CHAIRMAN BAEZ: Okay. And we will show Witness  
15 Gillan's public Exhibits JPG-1 through 9 as revised marked as  
16 Composite Exhibit 105.

17 MS. KAUFMAN: And then Mr. Gillan had two  
18 confidential exhibits, JPG-10 and JPG-11.

19 CHAIRMAN BAEZ: JPG-10 and 11 will be -- and I think  
20 we had discussed this earlier, if you want to keep the  
21 numbering system consistent across we will mark that as  
22 Composite 105-B.

23 MS. KAUFMAN: That would be fine, Mr. Chairman.

24 (Composite Exhibit Numbers 105 and 105-B marked for  
25 identification.)





Docket No. 030851-TP  
Direct Testimony of Joseph Gillan  
On behalf of the Florida Competitive Carriers Association

1 past twenty years, I have provided testimony and/or sworn affidavits before more  
2 than 35 state commissions, five state legislatures, the Commerce Committee of  
3 the United States Senate, the Federal Communications Commission, and the  
4 Federal/State Joint Board on Separations Reform. In addition, I have provided  
5 expert reports to the Canadian Radio-television and Telecommunications  
6 Commission, as well as the Finance Ministry of the Cayman Islands. I currently  
7 serve on the Advisory Council to New Mexico State University's Center for  
8 Regulation. A complete listing of my qualifications, publications and expert  
9 testimony is attached in Exhibit JPG-1.

10

11 **Q. On whose behalf are you testifying?**

12

13 A. I am testifying on behalf of the Florida Competitive Carriers Association  
14 ("FCCA"). The FCCA is a coalition of Florida competitors committed to the  
15 advancement of policies that encourage local and long distance competition in the  
16 state. The jobs, services and customer savings that these companies provide  
17 represent the competitive hopes of both the federal Telecommunications Act of  
18 1996 ("federal Act") and Chapter 364, Florida Statutes, as well.

19

20 **Q. What is the purpose of your testimony?**

21

22 A. The purpose of my testimony is to provide the Commission with an understanding  
23 of competitive conditions in Florida's local exchange market so that it may

**Docket No. 030851-TP**  
**Direct Testimony of Joseph Gillan**  
**On behalf of the Florida Competitive Carriers Association**

1 approach the issues in this proceeding fully appreciating the effects of its  
2 decisions on the residential and small businesses consumers in this state. This is  
3 not an abstract debate with intellectual appeal but little practical effect – the  
4 decisions that the Commission reaches in this proceeding will have a real and  
5 immediate impact on the choices available to Florida consumers, and on the  
6 prices that they pay for their telecommunications services.

7  
8 As part of this overview, my testimony also provides a simplified “roadmap” to  
9 understanding the FCC’s Triennial Review Order (TRO) as it applies to  
10 unbundled local switching and its use as part of the unbundled network element  
11 platform (UNE-P) used to serve “mass market” customers. The TRO  
12 unfortunately requires that the Florida Commission follow a relatively complex  
13 path to reach a relatively simple conclusion, namely that conditions in Florida do  
14 not warrant reversal of the FCC’s *national* finding that CLECs are impaired in  
15 serving the mass market without access to unbundled local switching. Particularly  
16 in light of this state’s policy *favoring* unbundling -- as I explain in more detail  
17 below, the Florida Legislature has soundly endorsed UNE-based competition –  
18 there is no basis to conclude that there are Florida-specific conditions that would  
19 justify overturning the FCC’s national finding of impairment here. In addition, I  
20 explain why the Commission should not view its choices as favoring one form of  
21 entry over another, or as hampering incentives for greater facilities deployment.  
22 Unbundling the legacy telephone network encourages competition, and the more

**Docket No. 030851-TP**  
**Direct Testimony of Joseph Gillan**  
**On behalf of the Florida Competitive Carriers Association**

1 competition that exists for *today's* customers, the more investment that will occur  
2 to retain these customers in the *future* as their needs and options change.

3  
4 The stark reality is that before UNE-P became generally and operationally  
5 available to CLECs, there was no meaningful mass-market competition. If UNE-  
6 P is eliminated prematurely, there will be no viable alternatives for Florida  
7 consumers and the mass market will revert to a monopoly once again. In the  
8 BellSouth region alone, eliminating UNE-P would reduce local competition in  
9 2004 (based on BellSouth's projections) *by nearly 90%* -- a fact that underscores  
10 the critical importance of this proceeding. If the Commission is interested in  
11 competition for the average "plain old telephone service" ("POTS") customer –  
12 and it is clear that the Florida Legislature is critically interested in there being  
13 competition for the POTS subscriber – then the continued availability of UNE-P  
14 is the vehicle to attain that result.

15

16 **Q. Does your testimony also directly address the specific issues in this**  
17 **proceeding?**

18

19 A. Yes. In addition to providing the Commission the appropriate context for its  
20 evaluation of impairment, my testimony also directly addresses a number of listed  
21 issues. Specifically:

22

**Docket No. 030851-TP**  
**Direct Testimony of Joseph Gillan**  
**On behalf of the Florida Competitive Carriers Association**

Selecting the Appropriate Area for Impairment Analysis

1  
2  
3 Issue 1) For purposes of this proceeding, what are the relevant markets for  
4 purposes of evaluating mass market impairment and how are they  
5 defined?  
6

7 Issue 2) In defining the relevant geographic areas to include in each of the  
8 markets, how should the following factors be taken into consideration  
9 and what relative weights should they be assigned:

10  
11 a) the locations of mass market customers actually being served by  
12 CLECs;

13  
14 b) the variation in factors affecting CLECs' ability to serve each  
15 group of customers; and

16  
17 c) CLECs' ability to target and serve specific markets profitably and  
18 efficiently using currently available technologies?  
19

20  
21 Determining whether the FCC's "Triggers" are Satisfied

22  
23 Issue 4a) In which markets are there three or more CLECs not affiliated with  
24 each other or the ILEC, including intermodal providers of service  
25 comparable in quality to that of the ILEC, serving mass market  
26 customers with their own switches?  
27

28 4b) In which markets are there two or more CLECs not affiliated with each  
29 other or the ILEC, including intermodal providers of service  
30 comparable in quality to that of the ILEC, who have their own  
31 switches and are offering wholesale local switching to customers  
32 serving DS0 capacity loops in that market?  
33

34 Finally, the testimony concludes with recommended "next steps" to help the  
35 Commission to plan for the issues that will remain at the conclusion of this  
36 proceeding. First, it is useful to remember that BellSouth has voluntarily  
37 accepted, under the terms of Section 271's social contract, the obligation to offer  
38 unbundled local switching (at least as long as it desires to offer long distance  
39 services in its territory) at rates that are "just and reasonable and

**Docket No. 030851-TP**  
**Direct Testimony of Joseph Gillan**  
**On behalf of the Florida Competitive Carriers Association**

1 nondiscriminatory” and which provide entrants “meaningful access.” (TRO ¶  
2 603). As a result, the Commission will need to adjudicate (as the arbiter of  
3 interconnection disputes) rates that comply with this pricing standard for any local  
4 switching rate (such as the rate for DS-1 switch ports) that is no longer required  
5 under Section 251 of the Act. Second, the FCC has requested that states develop  
6 procedures to conduct periodic review of the incumbent’s unbundling obligations.  
7 (TRO ¶ 424). Consequently, at the conclusion of this proceeding, the  
8 Commission should establish the process it will use to conduct future inquiries.

**II. The Unbundling Policy of the State of Florida**

11  
12 **Q. Has the State of Florida adopted a policy concerning unbundling?**

13  
14 A. Yes. Nearly a year before the federal Act was enacted, the Florida Legislature  
15 passed groundbreaking legislation setting forth this state’s policy concerning local  
16 competition, unbundling and retail deregulation. The critical elements of that  
17 policy are set forth in section 364.051 (Price Regulation) and section 364.161  
18 (Unbundling and Resale) of the Florida Statutes. These sections were enacted as  
19 a package of reforms that deregulated the incumbent’s profits, while requiring that  
20 the incumbent make available its local network to entrants so that local  
21 competition would develop.

22

**Docket No. 030851-TP**  
**Direct Testimony of Joseph Gillan**  
**On behalf of the Florida Competitive Carriers Association**

1 The Legislature was quite clear that the policy of the State of Florida is to  
2 encourage competition, including competition that results from unbundling. This  
3 policy, as embodied in Florida law, is very specific and clear (emphasis added):

4

5 364.161 Unbundling and resale –

6

7

8

9

10

11

12

13

(1) Upon request, each local exchange telecommunications  
company shall unbundle all of its network features, functions, and  
capabilities, including access to signaling databases, systems and  
routing processes, and offer them to any other telecommunications  
provider requesting such features, functions or capabilities for  
resale to the extent technically and economically feasible.

14

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26

The question as to whether requiring the ILECs to unbundle their networks is an  
appropriate policy is not before the Commission; that decision has already been  
made by the Florida Legislature and the Governor in the context of an overall  
reform package that included deregulating the ILECs' profits. In exchange for the  
opportunity to have their profits deregulated, the ILECs must unbundle every part  
of their local network, so long as it is technically and economically feasible to do  
so. Obviously, there can be *no* question that the unbundling of switching is  
technically and economically feasible, as unbundled local switching underlies  
most local competition in Florida today. Moreover, the Legislature directly  
ordered that switching be unbundled, through its specific direction that the  
incumbent offer "...access to signaling databases, systems and routing processes"  
to other providers.

**Docket No. 030851-TP**  
**Direct Testimony of Joseph Gillan**  
**On behalf of the Florida Competitive Carriers Association**

1       **Q.    Are you recommending that the Commission independently order the ILECs**  
2       **to offer unbundled local switching under state law?**

3  
4       A.    No, but only because such an action is unnecessary. The FCC has made a  
5       national finding that CLECs are impaired without access to unbundled local  
6       switching (at least to serve mass market customers), and the record of this  
7       proceeding will demonstrate that there is no basis for overturning that finding in  
8       Florida. I do believe, however, that the Florida Commission should analyze the  
9       issues in this proceeding through the prism of the state law and the policy choices  
10      that have already been made, fully cognizant that it is the *express* policy of the  
11      State of Florida to rely on unbundling as a means to foster competitive markets in  
12      Florida for telecommunications services, and that the state's unbundling policy  
13      was adopted as a critical companion to its policy deregulating the incumbent's  
14      profits.

15  
16      **Q.    Does Chapter 364 provide additional insight into the priorities of the Florida**  
17      **Legislature?**

18  
19      A.    Yes. Over the past several years, the incumbents have waged a public-relations  
20      campaign to avoid their unbundling obligations based on the false assertion that  
21      these unbundling obligations discourage investment (a claim that I address in  
22      more detail later in my testimony). To begin, I note that the Florida Legislature  
23      found no such tension. To the contrary, in the legislative intent section of

**Docket No. 030851-TP**  
**Direct Testimony of Joseph Gillan**  
**On behalf of the Florida Competitive Carriers Association**

1 Chapter 364, the Legislature expressed its belief that Chapter 364 *would*  
2 encourage investment in telecommunications infrastructure, even though its  
3 reforms required the incumbent to unbundle *every* feature and capability of its  
4 network:

5  
6 364.01(3). The Legislature finds that the competitive provision of  
7 telecommunications services, including local exchange  
8 telecommunications service, is in the public interest and will  
9 provide customers with freedom of choice, encourage the  
10 introduction of new telecommunications service, encourage  
11 technological innovation, and encourage investment in  
12 telecommunications infrastructure.  
13

14 In addition to its commitment to customer choice, the Legislature is just as  
15 concerned with jobs as it is with investment. The Legislature further stated in  
16 section 364.01(3):

17  
18 The Legislature further finds that changes in regulations allowing  
19 increased competition in telecommunications services could  
20 provide the occasion for increases in the telecommunications  
21 workforce; therefore, it is in the public interest that competition in  
22 telecommunications services lead to a situation that enhances the  
23 high-technological skills and the economic status of the  
24 telecommunications workforce.  
25

26 Just as most of the local competition in Florida today depends upon unbundled  
27 access to local switching, so too do most of the competitive telecommunications  
28 jobs in the state. As I explain in more detail later in this testimony, there is  
29 nothing mystically beneficial about encouraging the deployment of additional  
30 switching capacity in a state where switching capacity is already in excess supply.



**Docket No. 030851-TP**  
**Direct Testimony of Joseph Gillan**  
**On behalf of the Florida Competitive Carriers Association**

1           The policy of the State of Florida is to encourage additional competition and jobs,  
2           in part as a counter-balance to the deregulation already granted the incumbents in  
3           *anticipation* of the competition that is only now developing.

4

5

**III. Mass Market Competition in Florida**

6

7           **Q.     Why would the Legislature have been so concerned with establishing local**  
8           **competition?**

9

10          A.     When the Legislature permitted the incumbents to elect price cap regulation, the  
11          only consumer protection from the incumbent earning unreasonably high profits  
12          would be competition that had not yet developed.  Importantly, the basic POTS  
13          customer – i.e., the analog phone customer, principally interested in voice phone  
14          service, referred to in this proceeding as the “mass market” customer – provides  
15          the foundation of the incumbent’s monopoly and the market most in need of  
16          competitive reform.

17

18          **Q.     Does the mass market include both residential and business customers?**

19

20          A.     Yes.  Perhaps because we are all residential customers, we intuitively appreciate  
21          the fact that the residential marketplace is part of the mass market.  The forgotten  
22          customer of telecommunications policy, however, is the average (which is to say  
23          in this context, voice-centric) small business customer.  As I explain below

**Docket No. 030851-TP**  
**Direct Testimony of Joseph Gillan**  
**On behalf of the Florida Competitive Carriers Association**

1 (Section V defining the Mass Market), there is a fundamental difference between  
2 the enterprise and mass market customer that essentially follows the line dividing  
3 analog and digital services.

4  
5 The mass market POTS marketplace has long been the focus of traditional  
6 regulation, with users principally interested in basic voice services – dial tone,  
7 vertical features, local and long distance calling. Demonstrating the importance  
8 of this customer segment is the fact that a centerpiece of federal and state public  
9 policy has been the goal of “universal service” – i.e., assuring the widespread  
10 availability of these services at affordable prices. It would make little sense to  
11 adopt a commitment to the availability of POTS (i.e., universal service), without  
12 being equally committed to assuring that this same customer segment enjoys  
13 competitive choice.

14

15 **Q. What evidence is there that UNE-P is the primary engine of competition in**  
16 **the POTS market?**

17

18 A. The most obvious evidence is the FCC’s national finding that “... requesting  
19 carriers are impaired without access to unbundled local circuit switching when  
20 serving mass market customers.” (TRO ¶ 419). This conclusion is amply  
21 supported by the evidence before the FCC, as well as a review of local  
22 competition statistics here in Florida.

23

**Docket No. 030851-TP**  
**Direct Testimony of Joseph Gillan**  
**On behalf of the Florida Competitive Carriers Association**

1           The fact is that mass market competition – that is, competition for the average  
2           POTS customer – depends today on competitive carriers being able to have access  
3           to ILEC unbundled local switching and UNE-P. The Commission’s report to the  
4           Legislature confirms the importance of UNE-P -- the growth of UNE-P in the  
5           BellSouth region *alone* accounted for nearly 80% of the *statewide* growth in  
6           CLEC lines reported in the Commission's 2003 survey on local competition. As  
7           noted earlier, BellSouth expects that nearly 90% of the local competition in its  
8           region will be through UNE-P. Even in the Verizon region – not exactly the  
9           poster child for local competition -- UNE-P was responsible for approximately  
10          80% of the competitive activity during 2003 (through August. Source: Verizon  
11          Response to FCCA Interrogatory No. 4).

12  
13          These state-specific statistics are consistent with national data filed during at the  
14          FCC during the Triennial Review proceeding (and summarized below). As the  
15          following table shows, UNE-P is critical to POTS competition for residential  
16          customers *and* small businesses that desire analog-based telephone service.

17

**Docket No. 030851-TP**  
**Direct Testimony of Joseph Gillan**  
**On behalf of the Florida Competitive Carriers Association**

**UNE-P Penetration in Mass Market**

Holding Company	Penetration Rate	
	Business	Residential
BellSouth	12.2%	4.6%
Qwest	7.4%	2.1%
Verizon (Bell Atlantic)	7.6%	7.7%
SBC	6.2%	8.5%
Total	7.6%	6.7%

Source: UNE-P lines are from RBOC *Ex Parte* Filings in CC Docket 01-338, or as reported by Commerce Capital Markets, December 20, 2002. Vintage of data varies, but is generally from August or September, 2002. Relative penetration rate calculated as UNE-P lines (business or residential) as a percentage of residential and business analog lines. Source: ARMIS 43-08.

**Q. What type of carrier is using UNE-P to compete in the POTS market?**

A. Not surprisingly, the largest competitors using UNE-P to compete in the mass market are the traditional long distance carriers, AT&T and MCI. More recently, Sprint has announced its intention to compete in the local exchange POTS market using UNE-P, and has given added meaning to that announcement by admitting that CLECs are impaired without local switching in its own local exchange territory. The fact that Sprint, the nation's largest incumbent local exchange carrier (not affiliated with an RBOC) has concluded that UNE-P is needed to compete for mass market customers provides further validation that UNE-P is the efficient, economic choice (and, conversely, that other approaches simply will not produce comparable results).

**Docket No. 030851-TP**  
**Direct Testimony of Joseph Gillan**  
**On behalf of the Florida Competitive Carriers Association**

1           Because each of the traditional long distance carriers had a relatively large  
2           preexisting base of voice customers, they have also become the largest *individual*  
3           competitors using UNE-P. The largest *collective* purchaser of UNE-P, however,  
4           is the new wave of competitive entrants that rely on UNE-P to bring fresh energy  
5           and innovative ideas and services to this market segment. It is estimated that  
6           more than 40% of the UNE-P lines are purchased by non-IXC CLECs (nearly 1/3  
7           more than AT&T or MCI), demonstrating the importance of UNE-P to reducing  
8           entry barriers in the POTS market. (Source: *UNE-P Fact Report*, published by the  
9           PACE Coalition, July 2003).

10  
11           The bottom line is that UNE-P has brought needed competition to the POTS  
12           market to a degree that nothing else has (or can). The Commission must not  
13           eliminate the one entry strategy that is bringing competition and choice to the  
14           mass market throughout the state, until and unless it is confident that something  
15           else stands ready to take its place. This is particularly true where the ILEC is  
16           attempting to evade an unbundling obligation explicitly required by the Florida  
17           Legislature in *anticipation* of the very competition in the mass market that UNE-P  
18           is only just now beginning to provide Florida consumers.

19

20

**Docket No. 030851-TP  
Direct Testimony of Joseph Gillan  
On behalf of the Florida Competitive Carriers Association**

**IV. A Roadmap to the Triennial Review Order**

1

2

3 **Q. Did the FCC conduct a *comprehensive* evaluation of the impairment that**  
4 **limits mass market local competition?**

5

6 A. No. It is important to remember that the FCC focused its analysis – and rested its  
7 conclusion -- on only one source of impairment, the manual hot cut process used  
8 to provision analog loops to CLEC switches. Based on this single factor, the FCC  
9 concluded that impairment exists on a national scale. (TRO ¶ 423). Significantly,  
10 the FCC did not determine that the hot-cut process was the only source of  
11 impairment – rather, having *already* found impairment nationally, it left it to the  
12 states to identify other sources of impairment that would remain (even if it were  
13 possible to correct the problems created by the manual hot-cut process).

14

15 **Q. What tasks did the FCC outline for the states in the Triennial Review Order**  
16 **(TRO) as it relates to mass market local switching?**

17

18 A. The basic structure of the TRO is essentially a three-pronged analysis:

19

20 \* An “actual competition” analysis (i.e., triggers) to determine if there are  
21 markets where the level of actual competition is so vigorous, that the  
22 national finding of impairment must be wrong.

23

**Docket No. 030851-TP**  
**Direct Testimony of Joseph Gillan**  
**On behalf of the Florida Competitive Carriers Association**

1           \*     A “potential competition” analysis to determine whether, despite the  
2                   absence of “actual” competition and the finding of national impairment,  
3                   there are factors that would make competition possible nonetheless.

4  
5           \*     A “can impairment be fixed” analysis that looks at possible changes to  
6                   provisioning systems – specifically, a batch hot-cut process combined with  
7                   “rolling access” to unbundled switching – to determine whether the hot-  
8                   cut impairment can be corrected.

9  
10           It is important that the Commission not become distracted by the “scavenger  
11           hunt” feel of the various analyses that the FCC asked it to undertake in the TRO.  
12           Certainly the TRO instructs state commissions to evaluate a number of issues (at  
13           least to the extent that the ILEC demands that the state commission undertake  
14           such a comprehensive task). However, it is useful for the Commission to  
15           remember that this proceeding *starts* with a national finding that CLECs are  
16           impaired in serving mass market customers without access to ILEC unbundled  
17           local switching; the FCC simply asks the Commission to confirm there are no  
18           exceptions to this national finding.

19  
20           **Q.     Which of these basic analyses specified in the TRO – i.e., actual deployment**  
21                   **(triggers), potential deployment (the business case analysis), and operational**  
22                   **improvements – does your direct testimony address in most detail?**

23

**Docket No. 030851-TP**  
**Direct Testimony of Joseph Gillan**  
**On behalf of the Florida Competitive Carriers Association**

1       A.     The principal focus of my testimony is the role and application of the FCC's  
2             "actual competition" or "trigger" analysis set forth in the TRO. The FCC  
3             believed that the "principal mechanism" to judge impairment should be actual  
4             marketplace activity. (TRO ¶ 498). One cannot overstate the potential importance  
5             of the actual competition test – if satisfied, it *overrides* the FCC's national finding  
6             that CLECs are impaired without access to unbundled local switching to serve the  
7             mass market and *short circuits* further state review regarding the extent of  
8             economic and operational barriers (at least under the federal Act). Given the  
9             potentially critical role the trigger analysis plays, it is essential that the  
10            Commission apply the trigger analysis with a care that is scaled to the important  
11            consequences that could potentially follow if the trigger test is satisfied. (As I  
12            explain later in my testimony, there may be little consequence in the territory  
13            served by BellSouth from a trigger being satisfied because BellSouth would still  
14            be obligated to offer unbundled local switching under Section 271 of the Act). As  
15            a result, a discussion of the requirements for the FCC's "triggers" analysis forms  
16            the most detailed area of my testimony.

17  
18       **Q.     Does your testimony also address the "potential deployment" analysis**  
19             **required by the TRO?**

20  
21       A.     Yes, but not to the same extent as my discussion of "actual competition." The  
22             FCC's "potential deployment analysis" is mostly useful as a forensic examination  
23             designed to understand the *causes* underlying the CLECs' post-Act experience.



**Docket No. 030851-TP  
Direct Testimony of Joseph Gillan  
On behalf of the Florida Competitive Carriers Association**

1 This is not a case where CLECs *have not* tried to enter local markets with their  
2 own facilities and the Commission must rely on *predictions* about profitability  
3 and competition. The widespread failure of CLECs over the past several years is  
4 a “fact” of actual market experience that cannot be ignored. The FCC’s  
5 requirement that the states conduct a potential deployment analysis (at least where  
6 the incumbent insists) is useful mostly to determine *why* the CLECs’ competitive  
7 results have been what they are, and as a means to help illustrate the additional  
8 impairments (beyond the manual hot-cut process) that the FCC did not consider.  
9

10 **Q. Would it be reasonable for the Commission to remove a network element**  
11 **based on a potential deployment analysis?**

12  
13 A. I realize that the incumbent LECs have the opportunity (under the TRO) to  
14 attempt to “explain away” the absence of local competition in their mass market  
15 by sponsoring a “model” that shows such competition *should* occur, even if it has  
16 not yet done so. But is it really reasonable to conclude that local competition for  
17 mass market POTS customers in the absence of UNE-P is possible, in direct  
18 contradiction of the past seven years of experience, and with the most relevant  
19 measure of existing competition (i.e., the actual competition test) showing that  
20 alternative approaches to serving the mass market have yet to work? No, of  
21 course not.  
22

**Docket No. 030851-TP**  
**Direct Testimony of Joseph Gillan**  
**On behalf of the Florida Competitive Carriers Association**

1           The “potential deployment” analysis should not be about placing the Commission  
2           in the role of an omniscient “super investor,” able to design through a regulatory  
3           contested case the ultimate business case that has eluded real investors over the  
4           past seven years. If the ILECs were really interested in demonstrating that  
5           providing POTS services to mass market customers by deploying competitive  
6           switches to connect analog loops is feasible and profitable, they have had the  
7           same seven years to demonstrate this point by actually competing using this entry  
8           strategy in each other’s regions. That they have not done so speaks volumes  
9           about the credibility of any potential deployment business model that the ILECs  
10          may present in this proceeding. Rather than enter and compete for mass market  
11          customers in other ILEC regions, the chosen “entry” strategy of the RBOCs has  
12          been to buy other RBOCs in an ever increasing spiral of consolidation. As  
13          previously discussed, the largest non-RBOC ILEC (Sprint) has concluded that the  
14          only feasible way to serve mass market customers outside of its ILEC territory is  
15          to utilize unbundled local switching and UNE-P. Conclusions supported by the  
16          ILECs' actual behavior should be given more weight than any model they present.

17  
18          The point here is that a “potential deployment” model may be useful to explain  
19          why entry has *not* occurred, but only a flawed model with unrealistic revenue and  
20          cost assumptions will show that entry is possible after so much CLEC time, effort  
21          and capital has already been expended to actually test that claim in the real world.

22

**Docket No. 030851-TP**  
**Direct Testimony of Joseph Gillan**  
**On behalf of the Florida Competitive Carriers Association**

1       **Q.     Should the Commission expect that a batch hot-cut process would eliminate**  
2       **impairment?**

3  
4       A.     No, it should not. Although the operational impairment issues are discussed more  
5       fully in the testimony of other witnesses, the point that I would like to make here  
6       is that the manual batch hot-cut and rolling access “solution” that the FCC has  
7       suggested would be meaningful only if the manual hot-cut process were the only  
8       impairment preventing CLECs from serving mass market customers with their  
9       own switches. Although the FCC requires the states to consider such a  
10      “solution,” in the end, the process would still require the manual provisioning and  
11      movement of mass market customers' analog loops from the ILEC switch to the  
12      CLEC switch. There is no reason to believe that such an approach would be  
13      satisfactory to serve the mass market POTS customers who “have come to expect  
14      the ability to move freely from carrier to carrier in a seamless and rapid manner,”  
15      (TRO ¶ 474), similar to the consumers' change of long distance carrier with an  
16      automated PIC change

17  
18      Moreover, as indicated above, the “solution” would only materially reduce  
19      impairment if the manual hot-cut process were the *only* impairment – that is, if the  
20      only reason entrants relied on unbundled local switching to serve the mass market  
21      was to avoid the operational and economic impairments created by the manual  
22      hot-cut process, then the batch-cut system (with significantly lower loop  
23      migration costs) might alleviate those impairments. There are, however, other

**Docket No. 030851-TP**  
**Direct Testimony of Joseph Gillan**  
**On behalf of the Florida Competitive Carriers Association**

1           impairments and cost disadvantages that the approval of a batch hot-cut approach  
2           does nothing to lessen, including impairments and cost disadvantages associated  
3           with the requirement to digitize and backhaul traffic from the ILEC switch where  
4           all mass market analog loops terminate to a distant CLEC switch (as described in  
5           the testimony of AT&T's witness Steve Turner), as well as other cost  
6           consequences of the economies of scale and scope that the ILEC inherited, but  
7           that the new entrant must overcome.

8  
9           Finally, there is no reason to believe that a batch hot-cut "solution" would be as  
10          reliable, cost-efficient and, perhaps most importantly, transparent to the customer  
11          as the "electronic hot-cut" effected when a CLEC customer is provisioned on  
12          UNE-P. In effect, the batch hot-cut approach presupposes that competitors can  
13          build a relatively stable customer base, with virtually all of the customers won  
14          from the incumbent (and few from each other). The FCC never explains in the  
15          TRO *why* a competitive local market would exhibit these characteristics –  
16          certainly these are not the lessons learned in the years after the long distance  
17          market became competitive, with customers frequently moving between carriers,  
18          including moving *among* competitive carriers and not just from AT&T (the long  
19          distance incumbent).

20  
21          As a practical matter, in order for a new hot-cut system to materially change  
22          competitive conditions in the "mass market," it would have to facilitate rapid and  
23          inexpensive customer changes between competing providers on a scale

**Docket No. 030851-TP**  
**Direct Testimony of Joseph Gillan**  
**On behalf of the Florida Competitive Carriers Association**

1 comparable to the electronic process that currently exists for provisioning of a  
2 CLEC customer via UNE-P. Thus, while it is important that the Commission  
3 work to improve the “hot-cut” process, it should not begin that work under the  
4 assumption that a batch-system is what will be needed to have a meaningful effect  
5 in the marketplace.

**V. Defining the “Mass Market”**

6  
7  
8  
9 **Q. What basic questions must the Commission address to fully define the “mass**  
10 **market”?**

11  
12 **A.** The mass market is generally defined by the FCC as the POTS market – that is,  
13 the market of customers obtaining analog voice service. There are two  
14 parameters, however, that the FCC has asked the state commissions to establish  
15 in order to define the “mass market” in its state. The first is to determine the  
16 “cross-over” that will define the upper boundary of the mass market in terms of  
17 the number of voice lines a customer should have before the customer should be  
18 viewed as an “enterprise customer.” The second parameter is that the FCC has  
19 asked the states to determine the appropriate “geographic boundary” of the mass  
20 market in which it will conduct its impairment analysis.

21

**Docket No. 030851-TP**  
**Direct Testimony of Joseph Gillan**  
**On behalf of the Florida Competitive Carriers Association**

1       **Q.    As a threshold question, does your direct testimony recommend a specific**  
2       **cross-over and geographic area for the Commission to use in evaluating**  
3       **impairment?**

4  
5       A.    No, not at this time.  As I have noted before, this proceeding begins with a  
6       national finding of impairment that justifies the unbundling of local switching to  
7       serve analog customers.  I believe it is the ILECs' obligation in the first instance  
8       to explain *why* and *where* impairment does not exist, with that claim being tested  
9       by other parties in this proceeding.  As a result, my testimony provides overall  
10      guidance as to how the Commission should approach these questions, while  
11      specific recommendations will be provided after I have reviewed the ILECs'  
12      claims in their direct testimony.

13

14                   **A.  Establishing the Upper Bound of the Analog Mass Market**

15

16      **Q.    How does the TRO define the mass market customer?**

17

18      A.    The TRO provides a basic definition of the "mass market customer" and contrasts  
19      it with the "enterprise customer."  The mass market customer is (a) primarily  
20      interested in basic voice POTS service; (b) widely geographically dispersed; and  
21      (c) unaccustomed to complex or disruptive provisioning schemes.  As the FCC  
22      explains, "mass market customers are analog voice customers that purchase only a  
23      limited number of POTS lines, and can only be economically served via DS0

**Docket No. 030851-TP**  
**Direct Testimony of Joseph Gillan**  
**On behalf of the Florida Competitive Carriers Association**

1 lines.” (TRO ¶ 497). Mass market customers are not located in concentrated  
2 geographic locations, such as central business districts; rather residential and  
3 small business customers are located across all urban, suburban, and rural  
4 locations. These customers expect that using their telephone services, as well as  
5 changing service providers, will not be a complicated transaction (“mass market  
6 customers demand reliable, easy-to-operate service and trouble-free installation,”  
7 TRO ¶ 467).

8  
9 **Q. How does an “enterprise” customer differ from a “mass market” customer?**

10  
11 A. Enterprise customers demand a level of service and capacity – particularly for  
12 data services – quite different than for the mass market customer. As the FCC  
13 explained: “DS1 enterprise customers are characterized by relatively intense,  
14 often data centric, demand for telecommunications services sufficient to justify  
15 service via high-capacity loops at the DS1 capacity and above.” (TRO ¶ 451).

16  
17 **Q. Does the TRO recognize this distinction in the DS0/DS1 cutover analysis to**  
18 **be performed by the Commission?**

19  
20 A. Yes. The TRO provides that a customer should be considered part of the DS1  
21 enterprise market when “it is economically feasible for a competitive carrier to  
22 provide voice service with its own switch using a DS1 or above loop. We  
23 determine that this includes all customers that are served by the competing carrier

**Docket No. 030851-TP**  
**Direct Testimony of Joseph Gillan**  
**On behalf of the Florida Competitive Carriers Association**

1 using a DS1 or above loop and all customers meeting the DS0 cutoff," (TRO ¶  
 2 421, n.1296), with the cutoff defined as "the point where it makes economic sense  
 3 for a multi-line customer to be served via a DS1 loop." (TRO ¶497).

4

5 **Q. How should the DS0/DS1 cutover point be established?**

6

7 **A** The most straightforward way to establish the cutover is through a simple  
 8 calculation that determines when the cost of a UNE DS1 (including non-recurring  
 9 activities and the installation of customer premises equipment necessary to utilize  
 10 DS1 level service) is less than continued use of multiple UNE analog loops for  
 11 voice service. This point forms the "upper bound" of the analog mass-market,  
 12 i.e., the point at which a mass market customer should be considered an enterprise  
 13 customer based on the number of analog lines used to obtain voice service.

14

15 Generally, to estimate the line-count of mass-market lines at which a DS-1 is the  
 16 more efficient choice, the following formula should be used:

17

$$\text{Crossover} = \frac{(\text{CPE} + \text{UNE DS-1})}{\text{UNE Loop}}$$

18

19 Where "CPE" includes all the costs associated with the equipment and inside-wire  
 20 changes needed to make the customer's analog service compatible with a DS-1  
 21 loop, and where the values for "UNE DS-1" and "UNE Loop" include all  
 22 relevant costs of leasing these facilities from the incumbent (including non-



**Docket No. 030851-TP**  
**Direct Testimony of Joseph Gillan**  
**On behalf of the Florida Competitive Carriers Association**

1 recurring charges to establish service). Although there are other factors that  
2 might be included in a more sophisticated analysis, the above approach captures  
3 the essence of the calculation.

4

5 **Q. Are there any considerations that the Commission should keep in mind when**  
6 **it adopts the “DS0/DS1” cross-over?**

7

8 A. Yes. The purpose of the cross-over is to establish a governmentally drawn upper  
9 boundary to the mass market – in effect, substituting the Commission’s judgment  
10 of how a customer *should be* served (via a DS-1), for the customer’s judgment of  
11 how it *has chosen* to be served (multiple analog loops). While the above formula  
12 complies with the direction of the TRO, the Commission should be aware that this  
13 simple calculation does not take into account a number of factors that, in the real  
14 world, would explain why a customer with multiple voice loops would not want  
15 to move its POTS service to a higher-capacity facility.

16

17 For example, a customer may not desire a DS1-based service because of the  
18 requirement that it make space available for channel bank equipment on its  
19 premises. Customers may not want to give up the space for such equipment, or  
20 may resist the telecommunications provider’s need to have access to the premises  
21 to maintain or repair the equipment. Alternatively, because of provisioning  
22 problems or the customer’s individual traffic patterns, the CLEC might need to  
23 use higher priced special access rather than UNE DS1 facilities (which would

**Docket No. 030851-TP**  
**Direct Testimony of Joseph Gillan**  
**On behalf of the Florida Competitive Carriers Association**

1 significantly increase the cross-over). In these circumstances, the customer would  
 2 have good reasons to preserve its analog POTS service, even if it were at or above  
 3 the theoretical cut-over point described above.

4  
 5 By failing to consider these factors, the DS0/DS1 cut-over required by the FCC  
 6 will strand some customers from competitive choice because they will not *really*  
 7 be in a position to take advantage of a DS-1 connection, they will only be  
 8 *presumed* able to do so. Consequently, the Commission should be especially  
 9 careful that it not adopt a cut-over that is unreasonably low, because even a  
 10 “theoretically correct” cut-over is likely to adversely effect some customers.

11

12 *B. The Appropriate Geographic Area for the Evaluation of Impairment*

13

14 **Q. What general approach should the Commission use in selecting the**  
 15 **geographic area for its impairment analysis?**

16

17 A. The TRO lays out a relatively simple (yet reasonably useful) approach – look at  
 18 the areas being served by a particular network element and determine whether an  
 19 alternative could reasonably produce the same result. Such an approach is  
 20 obviously (and correctly) customer-centric, with the states being directed to  
 21 consider, among other things (TRO ¶ 495):

22 :



**Docket No. 030851-TP**  
**Direct Testimony of Joseph Gillan**  
**On behalf of the Florida Competitive Carriers Association**

1 is important that it define “geographic areas” in a manner that permits it to  
2 recognize the unique competitive signature of UNE-P, so that it may test other  
3 entry strategies to see whether they could produce the same level of competitive  
4 choice.

5

6 **Q. Have you quantified the competitive profile of UNE-P in Florida?**

7

8 A. Yes. Exhibit JPG-2 analyzes the competitive profile of UNE-P in the exchanges  
9 served by BellSouth, based on BellSouth’s in-service UNE-P volumes (by  
10 exchange) reported in its Schedule 8 filing with the Florida Commission. The  
11 bar chart in Exhibit JPG-2 plots the competitive penetration achieved by UNE-P  
12 in each of BellSouth’s exchanges in Florida, ranked by the size (measured in  
13 access lines) of the exchange. BellSouth’s largest exchange (Miami with over  
14 900,000 lines) is farthest on the left, while BellSouth’s smallest exchange  
15 (Munson, with 600 lines) is on the right. BellSouth’s remaining exchanges are  
16 arranged in-between according to size.

17

18 As the Exhibit JPG-2 clearly shows, CLECs utilizing UNE-P to serve mass  
19 market customers have brought competition to *every* BellSouth exchange in  
20 Florida, irrespective of the size of the exchange. The significance of this  
21 competitive profile cannot be overstated – the competitive signature of the UNE-P  
22 entry strategy is its ability to serve the mass market across the *entire* mass market

**Docket No. 030851-TP**  
**Direct Testimony of Joseph Gillan**  
**On behalf of the Florida Competitive Carriers Association**

1 without geographic limitation. No other competitive entry strategy can provide  
2 this result.

3

4 **Q. Have you also analyzed the competitive profile of *current* activity?**

5

6 A. Yes. Exhibit JPG-3 evaluates the pattern of recent competitive activity in the  
7 BellSouth territory by analyzing the *growth* in UNE-P during 2003 (through  
8 September) across BellSouth's exchanges (again, ranked from largest to  
9 smallest). As Exhibit JPG-3 demonstrates, UNE-P is making it possible for  
10 customers throughout the state to benefit from local competition.

11

12 **Q. Have you evaluated similar information for Verizon?**

13

14 A. Yes. Although Verizon has not yet produced in-service quantities of UNE-P (by  
15 exchange), they have provided the number of UNE-P orders by exchange. This  
16 means that while the overall penetration of UNE-P cannot be calculated (at least  
17 until Verizon fully responds to FCCA Interrogatory #4), it is possible to analyze  
18 recent competitive activity.

19

20 Exhibit JPG-4 plots the average number of UNE-P lines/month provisioned by  
21 Verizon over the last six months for which data is available (March 2003 through  
22 August 2003). As with the earlier exhibits for BellSouth, Exhibit JPG-4 provides  
23 this data for each of Verizon's wire centers in Florida, ranked by size (measured

**Docket No. 030851-TP**  
**Direct Testimony of Joseph Gillan**  
**On behalf of the Florida Competitive Carriers Association**

1 in access lines). Verizon's largest wire center (Brandon) is farthest on the left,  
2 while Verizon's smallest wire center (Bradley) is on the right. Verizon's  
3 remaining exchanges are arranged in-between according to size.

4

5 **Q. Does the data indicate that UNE-P is similarly bringing local competition to**  
6 **all of Verizon's wire centers?**

7

8 A. Yes. During the past six months, customers have chosen a competitor providing  
9 service using UNE-P in every wire center in the Verizon territory with the single  
10 exception of Bradley.

11

12 **Q. What conclusion should the Commission draw from the competitive profile**  
13 **illustrated in Exhibits JPG-2 through JPG-4?**

14

15 A. The competitive profile of UNE-P clearly demonstrates that "the locations of  
16 customers actually being served (if any) by competitors" is, in fact, the entire  
17 territory of the incumbent. This is not to say that *every* carrier will offer service  
18 across the entire profile, but rather the *strategy* itself supports competition in each  
19 wire center. As the Commission judges alternatives to UNE-P, it should do so  
20 fully aware that UNE-P produces statewide competition – and it should not  
21 restrict the availability of unbundled local switching and UNE-P unless it can  
22 conclude that an alternative will produce a similar competitive profile.

23

**Docket No. 030851-TP**  
**Direct Testimony of Joseph Gillan**  
**On behalf of the Florida Competitive Carriers Association**

1       **Q.    Do you believe that statewide competition was intended by the federal Act**  
2       **and Chapter 364?**

3  
4       A.    Yes.  For its part, the Florida Legislature has certainly expressed concern that  
5       POTS services "...are available to all consumers in the state at reasonable and  
6       affordable prices," and that the Commission should "...ensure the availability of  
7       the widest possible range of consumer choice in the provision of all  
8       telecommunications services." (§ 364.01(4)(a) and (b), Florida Statutes, emphasis  
9       added).  There is certainly nothing in Chapter 364 that would suggest that the  
10      Legislature intended for the Commission to favor particular geographic areas over  
11      others, permitting selected forms of competition in some areas, while denying  
12      customers in other areas of the state the same choices.

13  
14      In addition, it is clear that one of the goals of the federal Act is to encourage broad  
15      competition throughout an entire state.  For instance, the Act fundamentally  
16      judges whether local markets are open (in Section 271) on a state-by-state basis:

17  
18                   The requirement of an operational competitor is crucial because ...  
19                   whatever agreement the competitor is operating under must be  
20                   made generally available throughout the State.  Any carrier in  
21                   another part of the State could immediately take advantage of the  
22                   "agreement" and be operational fairly quickly.  By creating this  
23                   potential for competitive alternatives to flourish rapidly throughout  
24                   a State, with an absolute minimum of lengthy and contentious  
25                   negotiations once an initial agreement is entered into, the  
26                   Committee is satisfied that the "openness and accessibility"  
27                   requirement is met.  
28

**Docket No. 030851-TP**  
**Direct Testimony of Joseph Gillan**  
**On behalf of the Florida Competitive Carriers Association**

1  
2  
3  
4

*Ameritech Michigan Order*, Federal Communications Commission, CC Docket 97-298, Footnote 169, citing House Report, emphasis added.

5

The bottom line is that the Commission is observing in the market exactly the

6

type of statewide competitive activity that the Florida Legislature and the U.S.

7

Congress hoped to see when they opened these markets to competition.

8

Consequently, the Commission should take great care that it not take any action to

9

curtail UNE-P based competition, unless it is confident that an alternative would

10

produce the same result.

11

12

**VI. Applying the Actual Competition Test: Triggers**

13

14

**Q. How should the Commission approach the trigger analysis?**

15

16

**A.** When the FCC asked the states to conduct the trigger analysis, it did so with the

17

expectation that the states would apply the “actual competition test” embodied in

18

the trigger analysis with judgment as well as actual data. As the FCC indicated,

19

“We find that giving the state this role [as fact-finder on triggers and other

20

impairment issues] is most appropriate where, in our judgment, the record before

21

us does not contain sufficiently granular information and the states are better

22

positioned than we are to gather and assess the necessary information.” (TRO ¶

23

188).

24



**Docket No. 030851-TP**  
**Direct Testimony of Joseph Gillan**  
**On behalf of the Florida Competitive Carriers Association**

1 The FCC is relying on the states to examine local markets based on the  
2 Commission's knowledge and familiarity with local conditions. The  
3 Commission's role in this context obviously is not to merely review the data that  
4 was already provided to the FCC regarding the deployment of CLEC switches,  
5 but rather to conduct a full inquiry into whether the trigger criteria set forth in the  
6 TRO are satisfied.

7  
8 The application of the triggers requires an in-depth approach that gets at the key  
9 question of whether actual competition for mass market customers exists in a  
10 given market, other than through access to UNE-P. The FCC sought to create  
11 triggers "keyed to objective criteria," (TRO ¶ 498), (which criteria are described  
12 in more detail below) and provided insights into the judgment that the  
13 Commission should apply.

14  
15 **Q. Please describe the trigger analysis established by the FCC.**

16  
17 A. The trigger analysis is fleshed out by the FCC in several paragraphs in the TRO,  
18 but are summarized in the following (TRO ¶ 499):

19  
20 The triggers we set forth rely on the number of carriers that self-  
21 provision switches or the number of competitive wholesalers  
22 offering independent switching capacity in a given market. In both  
23 cases, the competitive switch providers that the state commission  
24 relies upon in finding either trigger to be satisfied must be  
25 unaffiliated with the incumbent LEC and with each other. In  
26 addition, they should be using or offering their own separate

**Docket No. 030851-TP**  
**Direct Testimony of Joseph Gillan**  
**On behalf of the Florida Competitive Carriers Association**

1 switches. This requirement avoids counting as a true alternative a  
2 provider that uses the switching facilities of the incumbent LEC or  
3 *another* alternative provider that has already been counted.

4 Moreover, the identified competitive switch providers should be  
5 actively providing voice service to mass market customers in the  
6 market. Identified carriers providing *wholesale* service should be  
7 actively providing voice service used to serve the mass market and  
8 be operationally ready and willing to provide wholesale services to  
9 all competitive providers in the designated market. However, the  
10 competing carriers' wholesale offerings need not include the full  
11 panoply of services offered by incumbent LECs. (emphasis in  
12 original)  
13

14 Additional criteria to be applied in the switching trigger analysis are included in  
15 portions of the TRO that both precede and follow the description above. For  
16 example, the FCC noted that CMRS providers should not be considered by a  
17 Commission in its analysis the triggers, (TRO ¶ 499, n.1549), and the FCC  
18 reiterated the importance of distinguishing between "enterprise switches" and  
19 "mass market switches" in the trigger analysis. (TRO ¶441 and n. 1354, ¶ 508).  
20

21 **Q. What criteria are included in the FCC's framework for the "Self-**  
22 **Provisioning Trigger"?**

23  
24 A. In the TRO, the FCC provides guidance and criteria as to the basic qualities a  
25 competitive LEC must exhibit in order to be considered a legitimate candidate for  
26 the "self-provisioning" trigger. At each step, these criteria are designed to  
27 conform to the touchstone purpose of the trigger evaluation -- to determine  
28 whether there is sufficient actual mass market competition being offered by

**Docket No. 030851-TP**  
**Direct Testimony of Joseph Gillan**  
**On behalf of the Florida Competitive Carriers Association**

1 switch-based CLECs to justify a “no impairment” finding in a market in *spite* of  
2 the national finding of mass market switching impairment.

3

4 The self-provisioning trigger criteria can be organized into six categories. Before  
5 a “trigger candidate” can be found to qualify as satisfying the self-provisioning  
6 trigger, the criteria contained in the TRO for each of these categories must be  
7 satisfied. The six categories are as follows:

8

9 \* The self-provisioning trigger candidate’s switches must not be  
10 “enterprise” switches.

11

12 \* The self-provisioning trigger candidate must be actively providing  
13 voice service to mass market customers in the designated market,  
14 including residential customers, and is likely to continue to do so.

15

16 \* The self-provisioning trigger candidate should be relying on ILEC  
17 analog loops to connect the customer to its switch.

18

19 \* If the self-provisioning trigger candidate provides an “intermodal  
20 service,” its service must be comparable to the ILEC service in  
21 cost, quality, and maturity.

22

Docket No. 030851-TP  
Direct Testimony of Joseph Gillan  
On behalf of the Florida Competitive Carriers Association

1 \* The self-provisioning trigger candidate may not be affiliated with  
2 the ILEC or other self-provisioning trigger candidates.

3  
4 \* The existence of the self-provisioning trigger candidate should be  
5 evidence of sustainable and broad-scale mass market competitive  
6 alternatives in the designated market.

7

8 Only if each of these trigger criteria is met does a candidate qualify as one of the  
9 three self-provisioning providers necessary to satisfy the FCC's self-provisioning  
10 trigger.

11

12 **Criteria 1: Enterprise Switches Do Not Qualify as Triggers**

13

14 **Q. You identify the first criterion as requiring that the self-provisioning trigger**  
15 **candidate's switches must be "mass market" switches rather than**  
16 **"enterprise" switches. Please describe the FCC's discussion of this criterion**  
17 **in the TRO.**

18

19 A. The analytical importance of the distinction between the "mass market" and  
20 "enterprise market" pervades the TRO. The FCC found that, even based on the  
21 limited record before it, there was a clear distinction between the mass market and  
22 the enterprise market, both in terms of customer profile and the state of CLEC  
23 switch deployment.

**Docket No. 030851-TP**  
**Direct Testimony of Joseph Gillan**  
**On behalf of the Florida Competitive Carriers Association**

1

2

I have already explained the difference between mass market and enterprise customers (see V.a. above). Similarly, the FCC found that CLEC switch deployment is significantly different in the mass market and the enterprise market: “[W]e find that the record demonstrates significant nationwide deployment of switches by competitive providers to serve the enterprise market, but extremely limited deployment of competitive LEC circuit switches to serve the mass market.” (TRO ¶ 435).

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**Q. How does the FCC distinguish between “mass market” and “enterprise” switches?**

**Docket No. 030851-TP**  
**Direct Testimony of Joseph Gillan**  
**On behalf of the Florida Competitive Carriers Association**

1

2

A. To begin, the FCC recognized that enterprise switches may incidentally serve

3

some non-enterprise customer lines. (TRO ¶ 441). This recognition is based on

4

the simple fact that there are a variety of reasons a CLEC serving the enterprise

5

market with its own switch may provide some incidental analog service and,

6

therefore, obtain some analog loops as an ancillary extension of its operations.

7

This could occur in the case of a CLEC's enterprise customer requesting fax lines

8

(serving an analog data need, but not providing evidence that a mass market

9

POTS service is made available). Incidental analog services and loops may also

10

result from service to a large, multi-location enterprise customer buying a package

11

of services from the CLEC that includes, for a particular branch office, a small

12

number of analog lines. It would be contrary to common sense, as well as to the

13

FCC's trigger criteria, to declare a switch to be serving the mass market when the

14

number of analog loops provisioned to that enterprise switch is small compared to

15

the number of digital loops serving enterprise customers. Consequently, the

16

Commission must examine the type of customer loops (analog versus DS1 and

17

above) being provisioned to a CLEC switch to determine whether the switch is, in

18

fact, a "mass market switch" that potentially satisfies the requirements to be a

19

self-provisioning trigger candidate for mass market switching.

20

Docket No. 030851-TP  
Direct Testimony of Joseph Gillan  
On behalf of the Florida Competitive Carriers Association

1                   Criteria 2: Self-Providers Must Be Actively Providing Mass Market Service

2

3           **Q.    The second trigger criterion you describe requires that the self-provisioning**  
4           **trigger candidate must be actively providing voice service to mass market**  
5           **customers in the designated market, including residential customers, and is**  
6           **likely to continue to do so. Please identify the provisions of the TRO which**  
7           **discuss this criterion.**

8

9           A.    This measure summarizes several criteria that the FCC requires before a CLEC  
10           satisfies the self-provisioning trigger. To break this category into its component  
11           parts, the TRO requires that a self-provisioning trigger candidate: (a) provide  
12           voice service to mass market customers, (TRO ¶ 499); (b) that it is “actively”  
13           providing such service, (TRO ¶ 499); and (c) that the self-provisioning trigger  
14           candidate is likely to continue actively providing voice service to mass market  
15           customers in the future. (TRO ¶ 500).

16

17           **Q.    How should the Commission determine whether a CLEC is providing “voice**  
18           **service to mass market customers”?**

19

20           A.    In determining whether this criterion is met, the Commission must first *exclude*  
21           potential trigger candidates who do not provide *voice service* and who do not  
22           serve *mass market customers*, including those that do not serve any residential  
23           customers. For example, as noted above, some analog loops that have been

**Docket No. 030851-TP**  
**Direct Testimony of Joseph Gillan**  
**On behalf of the Florida Competitive Carriers Association**

1           provisioned to a CLEC switch are used for purely data purposes (e.g. DSL or fax  
2           lines), and thus do not provide voice service. Such lines should not be included in  
3           determining whether the self-provisioning trigger candidate provides voice  
4           services to the mass market.

5  
6           Perhaps more significantly, the Commission must ensure that the voice services  
7           provided by self-provisioning trigger candidates are being provided to mass  
8           market customers rather than to enterprise customers. A customer purchasing  
9           voice and data services provisioned by a DS1 loop is by definition an enterprise  
10          customer (TRO ¶ 451) and not a mass market customer (even if only a small  
11          number of voice lines are being served along with the data pipe). The  
12          Commission's trigger analysis must focus on the appropriate customer market,  
13          and exclude self-provisioning trigger candidates that are not serving customers  
14          that are the proper focus of the mass market switching impairment analysis.

15  
16          **Q.    How should the Commission determine whether a self-provisioning trigger**  
17          **candidate is “actively” providing voice service to mass market customers?**

18  
19          A.    The FCC recognized the importance of evidence that a CLEC is actually in the  
20          marketplace and actively marketing POTS services to mass market customers.  
21          Without evidence that a self-provisioning trigger candidate is actively providing  
22          POTS services, a CLEC that no longer serves mass market customers could  
23          satisfy a trigger that is intended to assess actual competition in the present rather



**Docket No. 030851-TP**  
**Direct Testimony of Joseph Gillan**  
**On behalf of the Florida Competitive Carriers Association**

1 than the past. In the real world (the world the triggers seek to analyze), this is a  
2 significant concern. There are CLECs who attempted to serve mass market  
3 customers using their own switches, but found the operational and economic  
4 impairments too formidable to overcome. As a result, these CLECs abandoned  
5 the mass market segment. Those CLEC switches may still serve a limited number  
6 of “legacy” analog loops connected to customers who took advantage of an early  
7 CLEC offering and may still be served even though the CLEC is no longer adding  
8 mass market customers. It would be nonsensical for such legacy analog lines  
9 (which are remnants of business plans scrapped due to impairment) to serve as  
10 evidence that the CLEC’s switch today is being used to “actively” serve the mass  
11 market. The FCC captures this concern by requiring that self-provisioning in the  
12 mass market must be occurring in an active manner today, that the providers “are  
13 currently offering and able to provide service.”

14  
15 One way to assess whether a self-provisioning trigger candidate is “actively”  
16 serving mass market customers is to review the types of unbundled loops  
17 provisioned to the CLEC’s switch more recently (for instance, in the last 6 month  
18 period). If the loops provisioned to the switch in the last 6 months are  
19 predominantly DS1 and above, that is strong evidence that the self-provisioning  
20 trigger candidate is not actively providing POTS services to mass market  
21 customers. Moreover, as previously discussed, even where there are analog loops  
22 being provisioned to the CLEC’s switch, the Commission should evaluate  
23 whether the carrier is actively marketing to mass market customers, or whether

**Docket No. 030851-TP**  
**Direct Testimony of Joseph Gillan**  
**On behalf of the Florida Competitive Carriers Association**

1 the analog lines that it is adding are the by-product of sales to enterprise  
2 customers or some other anomaly.

3

4 **Q. How should the Commission determine that the self-provisioning trigger**  
5 **candidate is likely to continue actively providing POTS services to mass**  
6 **market customers in the future?**

7

8 A. The TRO asks the Commission to determine whether the self-provisioning trigger  
9 candidate is “likely to continue” offering and able to provide voice POTS services  
10 to mass market customers in the future. This determination requires that the  
11 Commission make an informed assessment of the viability of the self-  
12 provisioning trigger candidate's mass market offerings in the future. This  
13 assessment, if it is to be meaningful, should include evidence regarding the  
14 CLEC’s future business prospects. If a CLEC is on the verge of exiting the market  
15 for providing mass market services (or has already left it), then it is demonstrably  
16 not “likely to continue” providing POTS services to mass market customers in the  
17 future.

18

19 Admittedly, the FCC complicated the Commission’s work in this regard with its  
20 comment that “states shall not evaluate any other factors, such as the financial  
21 stability or well-being of the competitive switching providers.” (TRO ¶ 500).

22 State Commissions are directed to carry out the FCC’s mandate to consider

23 whether CLECs are likely to continue providing competitive switching

**Docket No. 030851-TP  
Direct Testimony of Joseph Gillan  
On behalf of the Florida Competitive Carriers Association**

1 alternatives, while simultaneously indicating that they not review what might be  
2 the most salient evidence on the topic – i.e., whether the CLEC’s business plan  
3 has been successful to date. Nevertheless, the Commission must conduct the  
4 necessary review of financial information to determine whether a self-  
5 provisioning trigger candidate is “likely to continue” to provide POTS services to  
6 mass market customers after the close of the record in this proceeding.  
7 Otherwise, the competitive choices that supposedly would be available to  
8 consumers if UNE-P is eliminated due to the trigger analysis may be entirely  
9 illusory.

**Criteria 3: Self-Providers Must Be Relying on ILEC Loops**

10  
11  
12  
13 **Q. The third criterion you reference is that self-provisioning trigger candidates**  
14 **should be relying on ILEC loops. What is the reference point in the TRO for**  
15 **this trigger criterion?**

16  
17 A. Although the FCC suggested that the Commission “consider” intermodal  
18 alternatives in the switching trigger analysis, it also instructed the states to give  
19 less weight (as the FCC did) to switches that do not provide a means of access to  
20 the ILEC local loop. The TRO recognizes that for most entrants in a world  
21 without unbundled local switching, access to the ILEC’s loops will be critical. It  
22 would make little sense, therefore, to eliminate unbundled local switching and  
23 UNE-P switching if the only alternative in a market was, for example, used by

**Docket No. 030851-TP**  
**Direct Testimony of Joseph Gillan**  
**On behalf of the Florida Competitive Carriers Association**

1 cable telephony providers that utilize their own loops. That atypical situation  
2 would provide no meaningful evidence of whether new entrants without legacy  
3 cable plant could compete on a UNE-L basis. The FCC made this point several  
4 times in the TRO. For example:

5  
6 Specifically, many of the [CLEC residential] lines cited by the  
7 incumbents are served by carriers that, for one reason or another,  
8 are able to use their own loops. We have made detailed findings  
9 that competitors are impaired without access to incumbents' voice-  
10 grade local loops. Indeed, no party seriously contends that  
11 competitors should be required to self-deploy voice-grade loops.  
12 *Thus, for the typical entrant, entry into the mass market will likely*  
13 *require access to the incumbents' loops, using the UNE-L strategy.*  
14 *... Indeed, as discussed above, a crucial function of the*  
15 *incumbent's local circuit switch is to provide a means of accessing*  
16 *the local loop.” (TRO ¶ 439, emphasis supplied).*

17  
18 \*\*\*

19  
20 “We note that an important function of the local circuit switch is as  
21 a means of accessing the local loop. Competitive LECs can use  
22 their own switches to provide services only by gaining access to  
23 customers' loop facilities, which predominantly, if not exclusively,  
24 are provided by the incumbent LEC. Although the record indicates  
25 that competitors can deploy duplicate switches capable of serving  
26 all customer classes, without the ability to combine those switches'  
27 with customers' loops in an economic manner, competitors remain  
28 impaired in their ability to provide service. *Accordingly, it is*  
29 *critical to consider competing carriers' ability to have customers'*  
30 *loops connected to their switches in a reasonable and timely*  
31 *manner. (TRO ¶ 429, emphasis supplied).*

32  
33 \*\*\*

34  
35 “We are unaware of any evidence that either [cable or CMRS]  
36 technology can be used as a means of accessing the incumbents'  
37 wireline voice-grade local loops. Accordingly, *neither technology*  
38 *provides probative evidence of an entrant's ability to access the*  
39 *incumbent LEC's wireline voice-grade local loop and thereby self-*  
40 *deploy local circuit switches.” (TRO ¶ 446, emphasis supplied).*

**Docket No. 030851-TP**  
**Direct Testimony of Joseph Gillan**  
**On behalf of the Florida Competitive Carriers Association**

1

2 **Q. What does the TRO direct the Commission to do when considering evidence**  
3 **regarding switch-based CLECs that do not rely on ILEC unbundled loops?**

4

5 A. The TRO notes that the Commission should give such evidence less weight in the  
6 trigger analysis than evidence regarding a self-provisioning trigger candidate that  
7 relies on ILEC unbundled analog loops (i.e., a UNE-L based provider). In  
8 describing the self-provisioning trigger, the TRO states: “We recognize that when  
9 one or more of the three competitive providers is also self-deploying its own local  
10 loops, this evidence may bear less heavily on the ability to use a self-deployed  
11 switch as a means of accessing the incumbents’ local loops.” (TRO ¶ 501,  
12 n.1560).

13

14 The Commission should apply the terms of the TRO with the logic and rationale  
15 of the trigger analysis, and its consequences at the forefront. As the FCC notes,  
16 self-deployed switches tell us something about impairment only to the extent that  
17 they provide evidence that a CLEC using its own switch in conjunction with  
18 ILEC provisioned analog loops to provide mass market POTS services (i.e. the  
19 UNE-L entry strategy) is or is not impaired in a market. Evidence regarding a  
20 provider that does not need ILEC unbundled loops (because it has its own) may  
21 demonstrate the feasibility of market entry at some theoretical level for a limited  
22 set of entrants, but it does nothing (as the TRO itself recognizes) to show whether  
23 typical entrants are impaired. I recommend that the Commission follow the logic

Docket No. 030851-TP  
Direct Testimony of Joseph Gillan  
On behalf of the Florida Competitive Carriers Association

1 of the TRO's trigger framework, the FCC's direction to give such evidence less  
2 weight, and the dictates of rational thought. This path leads to considering  
3 CLECs to have qualified as self-provisioning trigger candidates only if they use  
4 ILEC unbundled analog loops to actively compete for POTS services to mass  
5 market customers.

6  
7 **Criteria 4: Intermodal Self-Providers Must Be Comparable to the ILEC**

8  
9 **Q. The fourth trigger criterion you identify is that if the self-provisioning**  
10 **trigger candidate provides "intermodal service," the service must be**  
11 **comparable to the ILEC's service in terms of cost, quality, and maturity.**  
12 **Please explain the TRO basis for this criterion.**

13  
14 A. The TRO directs the Commission to "consider carriers that provide intermodal  
15 voice service using their own switch facilities" that otherwise meet the  
16 "requirements of these triggers." (TRO ¶ 499, n.1549). However, the FCC also  
17 notes that states may exclude intermodal providers from the trigger analysis: "In  
18 deciding *whether to include* intermodal alternatives for purposes of these triggers,  
19 states should consider to what extent services provided over these intermodal  
20 alternatives are comparable in cost, quality, and maturity to ILEC services." (TRO  
21 ¶ 499, n.1549, emphasis supplied). Thus, any time an intermodal trigger  
22 candidate is identified, the Commission must first examine the nature of the mass

**Docket No. 030851-TP**  
**Direct Testimony of Joseph Gillan**  
**On behalf of the Florida Competitive Carriers Association**

1 market voice services it offers before declaring the company has satisfied the self-  
2 provisioning trigger.

3  
4 The FCC conducted such an analysis in the TRO in considering CMRS (wireless  
5 services) as an intermodal alternative. The FCC found that CMRS services fell  
6 short of the trigger criteria standard. (TRO ¶499, n.1549). “Thus,” the FCC  
7 concluded, “just as CMRS deployment does not persuade us to reject our  
8 nationwide finding of impairment ... at this time, we do not expect state  
9 commissions to consider CMRS providers in their application of the triggers.”

10 The FCC’s analysis of CMRS providers and services under the “cost, quality, and  
11 maturity” standards in the TRO is instructive and demonstrates that the  
12 Commission should carefully consider intermodal trigger candidates under this  
13 same standard.. An intermodal provider that may be proffered as an self-  
14 provisioning trigger candidate and may appear to be a mass market competitive  
15 alternative on the surface – either due to industry hype or ILEC wishful thinking –  
16 may not hold up to the trigger criteria when the facts are carefully analyzed by  
17 this Commission.

18  
19

**Docket No. 030851-TP  
Direct Testimony of Joseph Gillan  
On behalf of the Florida Competitive Carriers Association**

**Criteria 5: ILEC Affiliates Do Not Qualify as Triggers**

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**Q. The fifth trigger criterion you identify is that the self-provisioning trigger candidate not affiliated with the ILEC or other self-provisioning trigger candidates. Please explain the TRO basis for this criterion.**

4

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7

**A.** The FCC held that the “competitive switch providers that the state commission relies upon in finding either trigger to be satisfied must be unaffiliated with the incumbent LEC and with each other.” (TRO ¶ 499). The FCC added that affiliated companies will be counted together in the trigger analysis. The FCC held that this restriction is necessary to prevent the ILECs from “gaming” of the trigger criteria.

8

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**Criteria 6: De Minimis Competitive Activity Does Not Qualify as a Trigger**

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**Q. Please explain the final trigger criterion you recommend the Commission apply: “The self-provisioning trigger candidate should be sufficiently large to offer sustainable broad-scale mass market competitive alternatives in the designated market.”**

16

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**A.** The TRO establishes trigger analysis as a something of a “sudden death” round of analysis, where the outcome of the analysis could potentially eliminate unbundled local switching and UNE-P in a market without further analysis of economic and operational impairment, at least under section 251 of the Act. When it established

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**Docket No. 030851-TP**  
**Direct Testimony of Joseph Gillan**  
**On behalf of the Florida Competitive Carriers Association**

1 the trigger analysis, the FCC pointed out that it believed the application of the  
2 trigger-based analysis would identify where competition for mass market  
3 customers by CLECs using their own switches and ILEC analog loops was  
4 actually occurring and achieve the policy goal of ensuring the continued existence  
5 of mass market competition. (*See, e.g.*, TRO ¶ 501). Given this belief, it is critical  
6 that the Commission not undertake its “trigger analysis” untethered from the  
7 reality of the marketplace in Florida.

8  
9 In addition, the FCC acknowledged it would be unreasonable to conclude that its  
10 national finding of impairment had been overcome based on relatively low levels  
11 of competitive share gain. Specifically, the FCC rejected BOC arguments that  
12 CLECs were not impaired in the mass market by noting the low relative number  
13 of residential lines served by CLEC-deployed switches. (TRO ¶ 438). The FCC  
14 dismissed the BOC argument finding that, at best, “less than three percent of the  
15 ... residential voice lines” were being served by CLEC switches. The FCC  
16 understood the common sense notion that at a certain *de minimus* level of  
17 competition, it is simply not rational to declare that the facts show impairment has  
18 been overcome.

19  
20 The need to recognize market reality in the trigger analysis is particularly acute in  
21 this proceeding. Today, UNE-P (the bedrock of which is unbundled local  
22 switching) is responsible for the vast majority of the bundled services (local and  
23 long distance) competition that is reshaping the voice services marketplace. As

**Docket No. 030851-TP**  
**Direct Testimony of Joseph Gillan**  
**On behalf of the Florida Competitive Carriers Association**

1 discussed above, UNE-P reaches broadly and deeply into urban and rural markets  
2 throughout the state. If UNE-P availability is diminished or eliminated due to  
3 findings that the FCC’s national finding of impairment” should be reversed, the  
4 Commission – and the FCC – should expect assurance from the record evidence  
5 that a real world (as in sizable and scalable) UNE-L strategy would offer a  
6 meaningful alternative to the statewide competitive choices that CLECs using  
7 UNE-P offer to the mass market today. The FCC could find no such assurances  
8 in its record when it rejected the BOC argument of “no impairment” for  
9 unbundled local switching based on the presence of CLEC switches. In doing so,  
10 the FCC made clear that it would not eliminate access to local switching as a  
11 section 251 UNE when the record showed only *de minimus* levels of mass market  
12 competition were being provided by alternative approaches.

13  
14 **Q. Must each of the trigger criteria be met before a State Commission declares**  
15 **that the “Self-Provisioning Trigger” is satisfied in a market?**

16  
17 A. Yes. Each of the trigger criteria for self-provisioning are rooted in the TRO.  
18 Each of them is tied to one of the specific rationales or findings the FCC made in  
19 establishing the trigger analysis as the “sudden death” payoff of the impairment  
20 analysis. As is clear from the discussion above, the TRO’s trigger analysis for  
21 switching leaves questions, judgment calls, and ambiguities open for the  
22 Commission to resolve. It is up to the Commission to put flesh on the bones, in  
23 the form of informed analysis of the trigger criteria established by the FCC. Only

**Docket No. 030851-TP**  
**Direct Testimony of Joseph Gillan**  
**On behalf of the Florida Competitive Carriers Association**

1 by applying judgment, experience and knowledge of local competitive conditions  
2 can the Commission implement the switching triggers as they are formulated in  
3 the TRO.

4

5

**VII. The False Tension Between Unbundling and Facilities Deployment**

6

7

**Q. If the Commission retains the incumbents' obligation to unbundle local  
switching as you recommend, would it be discouraging facilities investment?**

8

9

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A. No. The “unbundling discourages investment” argument is a bogeyman, a copper-herring used by the ILEC to wrap their narrow self-interest in the public interest. There is no evidence that unbundling local switching discourages the deployment of new facilities or the introduction of advanced services. For its part, the FCC *rejected* the incumbent’s claims that unbundling discourages investment, finding that the evidence was inconclusive. (TRO ¶ 447). To the contrary, unbundling the legacy network encourages competition, and the more competition that exists for *today’s* customers, the more investment that will occur to retain these customers in the *future* as their needs and options change.

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Although I would *also* disagree with the incumbents that unbundling discourages them from investing in new technologies, it is important to leave that debate for a future date. The issue here concerns access to the legacy switched network to

**Docket No. 030851-TP**  
**Direct Testimony of Joseph Gillan**  
**On behalf of the Florida Competitive Carriers Association**

1 offer the most basic of telecommunications services, POTS. As I explain in this  
2 section of the testimony:

3  
4 \* The incumbent would be financially harmed by a shift of UNE-P  
5 lines to UNE-L. The only reason for an incumbent to dismantle  
6 UNE-P is if it expects a return of UNE-P lines to its retail services,  
7 thereby strengthening its local monopoly. If the lines were to shift  
8 to UNE-L, the incumbent would see a significant reduction in its  
9 wholesale revenues, without any decrease in its costs.

10  
11 \* The incumbent's network would be disrupted by a shift of UNE-P  
12 lines to UNE-L. The incumbent's interoffice network is designed  
13 to handle the traffic from UNE-P lines through a network of first-  
14 route and final trunk groups starting at the originating end-office,  
15 with the filter of the end-office directly terminating all traffic to  
16 nearby subscribers without ever relying on interoffice facilities. If  
17 the base of UNE-P lines were shifted to UNE-L, this traffic would  
18 re-enter the ILEC network at a different point in the interoffice  
19 network, increased by the minutes that must be returned to their  
20 initial end-office for termination. The result to the ILEC: a  
21 redesigned network and higher costs.

22

**Docket No. 030851-TP**  
**Direct Testimony of Joseph Gillan**  
**On behalf of the Florida Competitive Carriers Association**

1           \*     The deployment of competitive advanced services to the  
2                     consumer/small business market would be reduced substantially  
3                     without access to unbundled local switching, in direct conflict with  
4                     the *only* facilities-goal in the Act (i.e., to encourage the deployment  
5                     of *advanced* technologies). With the elimination of line-*sharing* by  
6                     the FCC, the only meaningful vehicle to market competitive DSL  
7                     services to smaller users is through line-*splitting*. The effect has  
8                     been to reduce the addressable market for a competitive xDSL  
9                     provider (such as Covad) from the 9.8 million lines served by  
10                    Florida's ILECs, to the 0.66 million lines served by UNE-P  
11                    providers. If UNE-P is eliminated, the mass market closes entirely.

12

13       **Q.    Before you address each of these points in more detail, does it make sense for**  
14       **an incumbent to want its competitors to develop duplicative networks?**

15

16       A.    No. The Commission should be highly suspicious of ILEC claims that they  
17             support the elimination of unbundling so as to “encourage” CLEC investment.  
18             Why would an ILEC desire the replication of its network, when the effect of such  
19             a strategy (if successful) would be lower revenues, higher costs, and the very real  
20             possibility of excess capacity that produces a permanent reduction in the value of  
21             its network?

22

Docket No. 030851-TP  
Direct Testimony of Joseph Gillan  
On behalf of the Florida Competitive Carriers Association

1 The issue here is whether the incumbent should make available local switching at  
2 cost-based, wholesale rates to competitors so that they may offer competitive  
3 POTS. There is *already* sufficient local switching capacity across the state.  
4 BellSouth and Verizon have seen a decline in their switched access lines of 11%  
5 in Florida over the past 3 years, indicating (if anything) that switch ports are in  
6 excess supply. There is no inherent gain to the economy or society – much less  
7 the incumbent – by encouraging/forcing additional investment in a commodity  
8 (analog switch ports) that is already in over-supply.

9  
10 **Q. Are you saying that a CLEC would never choose to install a competitive**  
11 **switch?**

12  
13 **A.** No. There are a number of reasons why a CLEC would decide to install a local  
14 switch; my point is that there is no reason for the ILEC to encourage the result  
15 unless it stood to gain financially by forcing such an investment by its rival.

16  
17 One reason that a CLEC would install its own switch is to realize the same cost-  
18 structure as the incumbent. Because the ILEC leases switching at its forward  
19 looking average total cost (i.e., TELRIC), the additional cost to the CLEC is the  
20 *same* for each and every switch port that it orders. As a result, a CLEC that leases  
21 unbundled local switching pays the average cost for every switch port. In  
22 economics terms, this means that the CLEC's variable and marginal cost of  
23 switching is the same as its average cost (a fixed cost per port).

**Docket No. 030851-TP**  
**Direct Testimony of Joseph Gillan**  
**On behalf of the Florida Competitive Carriers Association**

1

2

In contrast, a CLEC that purchases a local switch (as well as the ILEC itself) enjoys a lower marginal or variable cost per port, providing it greater flexibility in its pricing. For instance, a CLEC owning its own switch could offer the most price-sensitive customers lower prices based on the *incremental* cost of service (such as the cost of the switch's line card, or even lower if excess capacity existed on the switch), whereas a UNE-based competitor would always incur the full average total cost for each switch port. In addition, by owning its own switch, a CLEC controls when (and whether) to upgrade its software, and reduces its dependency on its principal rival, the incumbent. The point is that a CLEC leasing switching would still face the appropriate economic incentive to invest, even with the option of unbundled local switching (assuming that the cost to move a loop to a new switch were rendered inconsequential through an automated hot-cut system).

12

13

14

15

16

**Q. Are entrants precluded from offering new services when they lease switching capacity from the incumbent?**

17

18

19

A. No. First, it is important to emphasize again that this proceeding is fundamentally about competition -- more precisely, the impairments that would otherwise prevent competition -- in the POTS market. The reason that the market is known as "plain old telephone service" is because it is provided over technically standardized facilities, such as the circuit switches that have been deployed in the

20

21

22

23

**Docket No. 030851-TP**  
**Direct Testimony of Joseph Gillan**  
**On behalf of the Florida Competitive Carriers Association**

1 ILEC network. These are *generic* facilities, deliberately engineered to provide a  
2 uniform, reliable and predictable customer experience. Whether a carrier leases  
3 capacity in a Lucent 5E – or purchases and installs an essentially identical Lucent  
4 5E – does not fundamentally change the services that can be offered.

5  
6 It is important to understand that most new services in the POTS marketplace are  
7 generally the product of pricing and service innovations unrelated to the  
8 underlying network, even where an entrant attempts to use its own facility.  
9 (Network-related innovations generally remove the customer from the POTS  
10 market, which is defined as basic voice service). There is nothing shameful,  
11 however, about pricing and service-related innovations – bundling, the  
12 elimination of distance from landline pricing, and more personalized customer  
13 service, not to mention lower prices, are useful and highly valued by customers.  
14 Moreover, competition is showing that there are ways to derive additional value  
15 from the existing network, by integrating other services with basic POTS. As  
16 illustration, I encourage the Commission to focus on the testimony of Z-Tel  
17 Communications, a Florida-based, but nationally-recognized leader in the  
18 integration of basic POTS with personal messaging service.

19  
20 **Q. Why would an ILEC want to force its competitors to install their own**  
21 **switches, thereby increasing the excess supply of switch ports in the market?**

22



**Docket No. 030851-TP**  
**Direct Testimony of Joseph Gillan**  
**On behalf of the Florida Competitive Carriers Association**

1       A.     Obviously, an ILEC would not want to force its competitor to make any  
2             investment that improved the competitive position of its rival. The only reason an  
3             ILEC would want to encourage “facilities-based” competition would be if it  
4             believed that the result would be less competition, not more.

5  
6             Nowhere are these incentives clearer than with respect to additional investment in  
7             local switching capacity. The financial performance of CLECs that installed  
8             circuit switching capacity has been abysmal, with most CLECs declaring  
9             bankruptcy to reduce/eliminate the debt they incurred to obtain the switching  
10            capacity they installed. The investment community is well aware of this track  
11            record, and is unlikely to provide more capital to pursue a business strategy that  
12            has a documented pattern of failure.

13  
14            The reason that the incumbent is so interested in forcing its rivals into a switch-  
15            based entry strategy is because it expects that most UNE-P lines (in an  
16            environment where UNE-P is no longer available) will return to it as retail lines.

17

18       **Q.     Are there other effects on the ILEC from a forced UNE-P to UNE-L**  
19             **migration?**

20

21       A.     Yes. In Florida today, there are more than 660,000 UNE-P lines, spread over  
22             hundreds of wire centers. If each of the lines were actually forced to move to a  
23             UNE-L arrangement (assuming that it could actually be done successfully from

**Docket No. 030851-TP**  
**Direct Testimony of Joseph Gillan**  
**On behalf of the Florida Competitive Carriers Association**

1 the CLEC's -- which is to say the customer's -- perspective , as claimed by the  
2 ILEC), there would be a significant impact on the incumbent's local network.

3  
4 The ILECs' network has been engineered with the expectation that all of the  
5 traffic from these 660 thousand UNE-P lines will originate at the end-office  
6 currently serving the line today. The incumbent has engineered its interoffice  
7 network recognizing that much of this traffic will terminate on lines served by  
8 that same end-office (and, therefore, requiring no interoffice facilities). For  
9 minutes that do require interoffice transport to other end-offices, the ILEC has  
10 engineered the shared transport network to efficiently use "first-route" facilities  
11 where justified, with "overflow" traffic relying on more costly tandem-routes  
12 during peak periods (or for all traffic from very small end-offices).

13  
14 If these minutes are forced into a UNE-L arrangement, however, they will no  
15 longer "originate" at the existing end-office, but rather would "reappear" on  
16 interconnection trunks located elsewhere in the network. Suddenly, the minutes  
17 that had terminated directly on lines connected to the same end-office as the  
18 customer had been served by, and which had required no interoffice transport,  
19 would now need to be transported back to the original end-office. Moreover, the  
20 remaining minutes would need new interoffice facilities to reach destination end-  
21 offices, and would frequently rely on tandem-switched transport facilities due to  
22 the relatively (compared to the ILEC) small traffic volumes of the CLEC.

23

**Docket No. 030851-TP**  
**Direct Testimony of Joseph Gillan**  
**On behalf of the Florida Competitive Carriers Association**

1           The bottom line: The ILEC would only want to eliminate UNE-P if it was  
2           confident that there is, in fact, impairment and that the primary consequence of a  
3           forced migration would be the return of lines to the incumbent's retail monopoly.

4

5           **Q.     In your view, does UNE-P availability encourage investment?**

6

7           A.     Yes. As I have explained above, this proceeding is about whether CLECs should  
8           be allowed to use the legacy LEC network to offer conventional POTS services.  
9           Although I would disagree generally with the claim that unbundling discourages  
10          investment, there should be no debate as to whether sharing the inherited legacy  
11          network to offer conventional POTS has that effect.

12

13          First, UNE-P (like any business) requires investment – investment in billing  
14          systems, computer systems, offices and, perhaps most importantly, human capital  
15          (or, more colloquially, jobs). There is nothing magical about Class 5 circuit  
16          switching equipment that makes having more such investment socially desirable.  
17          These switches perform a commodity switching function that is necessary to offer  
18          basic POTS, but it is not a facility investment endowed with any particular  
19          opportunity for creativity. Indeed, the most useful “new function” offered by the  
20          circuit switch is its important role “... as a means of accessing the local loop”  
21          (TRO ¶ 429) -- i.e., as a critical component of the UNE-P wholesale offering that  
22          makes POTS competition possible.

23

**Docket No. 030851-TP**  
**Direct Testimony of Joseph Gillan**  
**On behalf of the Florida Competitive Carriers Association**

1 Second, where new investment does hold the opportunity of dramatically  
2 changing the types of services that a customer receives (such as broadband  
3 capability), UNE-P is now the primary voice-option for carriers (such as Covad)  
4 that are making just such an investment. With the elimination of line-sharing,  
5 providers of advanced services have no more ability to provide their data service  
6 over the same loop as the incumbent provides its voice service. Consequently, to  
7 approach the mass market, these providers require a different “voice partner” so  
8 that they may offer data in combination with voice over the same facility (as so  
9 many mass market customers desire). UNE-P provides that capability.

10  
11 Third, the mere fact that that a carrier does not invest in Class 5 circuit switching  
12 does not mean that it is not investing in other facilities. For instance, AT&T and  
13 MCI are two of the largest UNE-P purchasers in the nation, and each have  
14 invested billions of dollars in (what are commonly called) long distance  
15 networks. Ironically, the RBOCs compete in long distance in *exactly* the same  
16 manner that AT&T and MCI (and now Sprint) compete in local markets: leasing  
17 wholesale services that provide the generic capability of switching and  
18 transmitting voice calls. While such an approach has clearly been great for the  
19 “goose” – BellSouth now provides long distance service to 24% of the residential  
20 market and 34% of the business mass market – BellSouth complains that making  
21 available a similar local arrangement to others unfairly benefits the “gander”  
22 (even though competitors using UNE-P serve less than 10% of the local market).

23

**Docket No. 030851-TP**  
**Direct Testimony of Joseph Gillan**  
**On behalf of the Florida Competitive Carriers Association**

1           UNE-P is central to mass market competition for basic POTS. The POTS market  
2           is shrinking as customers chose (for themselves, and not under regulatory  
3           direction) to move to more advanced services. There is no valid policy reason to  
4           encourage additional investment in the generic local exchange facilities that  
5           underlie UNE-P. POTS competition is essential, however, to the development of  
6           competition for more advanced services where investment is likely. The relevant  
7           question is “will there be more advanced services investment if the POTS market  
8           is competitive, or less?”

9  
10       **Q.    Should the Commission expect more investment in advanced services if the**  
11       **POTS market is competitive?**

12  
13       A.    Yes. First, the initial focus of mass market competition is bundling – offering  
14       consumers ‘packages’ that combine local and long distance services into a  
15       seamless offering. Over time, however, this form of differentiation will reach a  
16       competitive balance and companies will need to find other ways to differentiate  
17       themselves and their services. Moreover, as noted earlier, the POTS market is  
18       shrinking, with a natural evolution towards more advanced digital services.  
19       Consequently, with the market moving away from POTS, and the principal  
20       source of POTS differentiation (bundling) losing its advantage, companies will  
21       have to respond with different strategies. The more companies there are in the  
22       POTS market today, the more companies there will be that need to differentiate

**Docket No. 030851-TP**  
**Direct Testimony of Joseph Gillan**  
**On behalf of the Florida Competitive Carriers Association**

1           their services in the future, and the more investment (in new technologies, not  
2           duplicative facilities) that will result.

3

4           **Q.     Assuming that UNE-P remains available, how would you expect to see the**  
5           **market evolve in the future?**

6

7           A.     As I indicated earlier, UNE-P is part of a natural market transition whose duration  
8           unknown because it is in the hands of customers themselves. The POTS market  
9           is shrinking, as customers increasingly desire services with higher bandwidth (for  
10          data) or different features. As the market changes, carriers that rely on UNE-P  
11          (to one degree or another) will have to evolve in response.

12

13          There are two directions where the evolution is most likely. The first will be a  
14          greater integration of voice/data customers onto shared platforms using soft-  
15          switch technology. In lay terms, soft-switches (i.e., software-defined switches)  
16          essentially treat voice conversations as a special type of “data” session that is  
17          governed by unique instructions. Soft-switches will become increasingly  
18          prevalent in the enterprise market because they (in the first instance) enable the  
19          digital-pipe to the customer to be used more efficiently. One consequence of this  
20          will be that more customers that are mass market today will chose to become  
21          enterprise customers in the future.

22

**Docket No. 030851-TP**  
**Direct Testimony of Joseph Gillan**  
**On behalf of the Florida Competitive Carriers Association**

1 A different evolution is likely in the market of voice-oriented customers. Over  
2 the past several years, a silent transformation has been underway in the circuit  
3 switch network through the deployment of the “advanced intelligent network”  
4 (AIN) architecture. In lay terms, the AIN architecture is a system which moves  
5 the software that defines a particular service from the switch itself to a remote  
6 database. Various “triggers” are incorporated into the traditional local switch  
7 that, when activated, suspend call processing and signal a remote database (a  
8 “Service Creation Point” or SCP) to request an instruction as to how it should  
9 proceed. In an AIN environment, service definition is no longer controlled by the  
10 switch manufacturer when it releases a generic upgrade to its switch, but rather  
11 can be developed by the incumbent or CLEC.

12  
13 **Q. Why do you characterize the AIN architecture as effecting a “silent”**  
14 **transformation of the network?**

15  
16 A. The reason I characterize this as a “silent” evolution is because the architecture is  
17 generally underutilized, with few new services being introduced despite the fact  
18 that the architecture is now widely deployed. The reason, however, is that the  
19 AIN architecture is not yet open to *competitive* innovation and the incentive to  
20 deploy new services is different for an incumbent than an entrant. To the  
21 incumbent, a new service should produce incremental revenues, largely from  
22 existing customers; for a new entrant, however, a service can be justified by its  
23 ability to attract new subscribers, even if no discrete revenues are the result.

**Docket No. 030851-TP**  
**Direct Testimony of Joseph Gillan**  
**On behalf of the Florida Competitive Carriers Association**

1

2

For instance, AIN could be used to replace the familiar dial-tone with an

3

announcement (of the time, the weather or even the number of voice mails

4

awaiting action). It is unlikely that an incumbent could charge its customers a

5

higher price based on a different dial-tone, but a unique dial tone could be a way

6

for an entrant to differentiate its services from the incumbent.

7

8

I offer these observations not as criticism of the incumbent, but rather to again

9

emphasize that competitive differentiation (and consumer benefit) can arise from

10

a variety of strategies, almost none of which requires duplication of the Class 5

11

switching hierarchy of the ILEC. It would be far more useful for regulators to

12

open the AIN architecture so that non-ILEC service-defining databases could be

13

accessed by switch triggers activated on switch ports leased from the incumbent,

14

than to encourage the wasteful duplication of switching investment that is neither

15

the source of innovation nor amenable to mass market competition.

16

17

**Q. What would be the consequence of the ILEC maintaining a POTS**

18

**monopoly?**

19

20

A. If the ILEC retains its POTS monopoly, it will enjoy a base of captive customers

21

and revenues that it will be able to leverage against rivals in those narrow

22

submarkets where other entry strategies are beginning to take hold. The nation

23

can ill afford the ILEC leveraging its inherited monopoly through narrowly



**Docket No. 030851-TP**  
**Direct Testimony of Joseph Gillan**  
**On behalf of the Florida Competitive Carriers Association**

1 targeted rate reductions or other strategies that foreclose competition in other  
2 areas. The only way that competition can take root is if the core of the  
3 incumbent's monopoly – the POTS market – is the beneficiary of aggressive  
4 competition.

5

6

**VIII. Next Steps**

7

8 **Q. Are there other issues that the Commission should prepare to address?**

9

10 **A.** Yes, there are two follow-up proceedings that the Commission should prepare to  
11 conduct at the conclusion of this case. . The first concerns how the “post-251”  
12 price of unbundled local switching is determined, should there be any  
13 circumstance where a finding of non-impairment applies (such as switching used  
14 to serve enterprise customers). The second concerns the procedures that should  
15 be used to develop prescribed filing windows and other requirements to govern  
16 future challenges to impairment (for switching or other network elements).

17

18 As to the first point, it is important to recall that BellSouth is required to provide  
19 meaningful access to switching at just and reasonable rates, irrespective of  
20 whether it is also required to be offered under section 251 of the Act. This is  
21 because the social contract in section 271 establishes a separate obligation to offer  
22 items listed in the checklist, (TRO ¶ 653), which includes the requirement to offer

**Docket No. 030851-TP**  
**Direct Testimony of Joseph Gillan**  
**On behalf of the Florida Competitive Carriers Association**

1 switching. Although the FCC has determined that such rates need not necessarily  
2 be TELRIC, they must still be “just and reasonable” (TRO ¶ 663):

3

4 Thus, the pricing of checklist network elements that do not satisfy  
5 the unbundling standards in section 251(d)(2) are reviewed  
6 utilizing the basic just, reasonable, and nondiscriminatory rate  
7 standard of sections 201 and 202 that is fundamental to common  
8 carrier regulation that has historically been applied under most  
9 federal and state statutes, including (for interstate services) the  
10 Communications Act.  
11

12 Even if one accepts the view (as does the FCC) that there may be a difference  
13 between a just and reasonable TELRIC rate, and a just and reasonable non-  
14 TELRIC rate, the difference can be no more than a just and reasonable difference.  
15 For instance, the section 271 rate could be established to produce a higher profit  
16 (i.e., return on equity), so long as it remained within just and reasonable levels.

17

18 For purposes of administrative efficiency, I recommend that the Commission  
19 initiate a new proceeding to establish the “replacement rate” for any network  
20 element that is no longer required under section 251 so as to avoid having to  
21 address this same issue in multiple, parallel arbitrations. Moreover, because the  
22 existing cost-based rate has already been found to be just and reasonable, that rate  
23 should remain in effect until the Commission establishes a new rate.

24

25 **Q. How should the Commission approach developing procedures for subsequent**  
26 **hearings following this “9-month” case?**

**Docket No. 030851-TP**  
**Direct Testimony of Joseph Gillan**  
**On behalf of the Florida Competitive Carriers Association**

1

2       A.     In addition to issues that the Commission must address within the 9-month  
3 proceeding, the FCC has also requested that states develop procedures to conduct  
4 periodic review of the incumbents' unbundling obligations. (TRO ¶ 424). Given  
5 the substantial requirements already outlined for the current proceeding, I  
6 recommend that the Commission take two actions here, to set the stage for any  
7 subsequent investigation.

8

9             First, I recommend that the Commission initiate a rulemaking to determine the  
10 “pre-filing” requirements that an incumbent must satisfy before requesting a  
11 reduction in its unbundling obligation. Because the FCC generally requires that a  
12 state must complete its review of any such request within six months, it will foster  
13 administrative efficiency to have agreement in advance as to the information  
14 needed to conduct such a review.

15

16             Second, I recommend that the Commission adopt “prescribed filing windows”  
17 that specify when an incumbent LEC may first request a further reduction in its  
18 unbundling obligations. The FCC specifically invites states to establish  
19 “prescribed filing windows,” (*See*, for instance, footnote 1291), and I recommend  
20 that the Commission do so here. By establishing specific windows for additional  
21 review, the Commission can provide needed certainty to the industry. Following  
22 the FCC’s lead, I recommend a 2-year quiet period during which the incumbent

**Docket No. 030851-TP**  
**Direct Testimony of Joseph Gillan**  
**On behalf of the Florida Competitive Carriers Association**

1 LEC may not seek further reduction of its obligations at the conclusion of the 9-  
2 month proceeding, (TRO ¶ 710):

3

4 We [the FCC] conclude that reopening every issue on a biennial  
5 basis is not in the public interest because it would increase  
6 regulatory uncertainty unnecessarily in this area. We also note that  
7 in the period between biennial reviews, it will be the policy of this  
8 Commission not to entertain *ad hoc* motions or petitions to remove  
9 or add UNEs, and we will summarily dismiss such petitions to  
10 ensure certainty in the marketplace.

11

12

**IX. Summary**

13

14 **Q. Please summarize your testimony.**

15

16 A. Florida remains in the early stages of local competition, with competitors just now  
17 beginning to gain traction, particularly in the mass market. A very simple truth is  
18 captured by the following quotation from John Gaule:

19

20 A complex system that works is invariably found to have evolved  
21 from a simple system that works.

22

23 The reason that UNE-P is under pressure from the incumbents is because it  
24 works. Given time, local competition will transform industry pricing (through,  
25 for instance, the elimination of distance from telephone rates), and it will set the  
26 foundation for a competitive future using as its baseline the legacy POTS  
27 network.

**Docket No. 030851-TP  
Direct Testimony of Joseph Gillan  
On behalf of the Florida Competitive Carriers Association**

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In my testimony I have explained that UNE-P is critical to POTS competition, and why POTS competition is critical to competition overall. No other strategy is going to produce the competitive benefits in this market that have come from UNE-P.

6

7

The Florida Commission should stay the course. There is no reason – and no basis – to overturn the FCC’s national impairment finding in Florida. The Florida Legislature has clearly established that the priority of the State of Florida is competition for all of its citizens, and has already deregulated the ILECs' profits (in 1995) and permitted rate rebalancing (in 2003) in *anticipation* of that result. This is the proceeding where the Florida Commission delivers on that promise.

10

11

12

13

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

15

16 **A. Yes.**

**Docket No. 030851-TP  
Rebuttal Testimony of Joseph Gillan  
On behalf of the Florida Competitive Carriers Association**

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**I. Introduction**

**Q. Please state your name and the party you are representing.**

A. My name is Joseph Gillan. I filed direct testimony on behalf of the FCCA in this proceeding.

**Q. What is the purpose of your rebuttal testimony?**

A. The principal purpose of my rebuttal testimony is to address the claim by BellSouth and Verizon that there is sufficient mass market local competition by switch-based CLECs in Florida to justify the Commission concluding that the FCC-described “triggers” are satisfied. Since Sprint, which is also a major ILEC in Florida, is not joining in the challenge to the FCC’s finding of switching impairment, I refer in this testimony to BellSouth and Verizon as the “challenging ILECs,” to distinguish them from Sprint. As I explain below, the trigger candidates proffered by BellSouth and Verizon do not satisfy even the most basic criteria needed to qualify as self-providing switch triggers for mass market services. Among other deficiencies, the challenging ILECs count enterprise switches (which the FCC has ruled may not be included in a trigger analysis), ignore whether carriers are *actively providing* mass market services today (indeed they count carriers that may never have offered mass market services), and entirely disregard whether such trigger candidates are likely to continue providing mass market services in the future.

**Docket No. 030851-TP**  
**Rebuttal Testimony of Joseph Gillan**  
**On behalf of the Florida Competitive Carriers Association**

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The Commission’s evaluation of potential trigger candidates must not be taken lightly. As the FCC explained, the purpose of its trigger analysis is to consider whether “actual marketplace evidence shows whether new entrants, as a practical matter, have surmounted barriers to entry in the relevant market,”<sup>1</sup> so that “...it is feasible to provide service without relying on the incumbent LEC.”<sup>2</sup> Particularly now that the Commission has authorized the ILECs to raise the basic local rates charged to mass market customers throughout the state (as intended by the Legislature), the Commission must be especially diligent that it protect the mass market competition that those increases were intended to encourage. Fortunately for Florida consumers, the facts show that the mass market switching triggers have not been satisfied in Florida. Thus the challenging ILECs’ claims that they should be excused from their federal obligation to offer unbundled local switching should be denied.<sup>3</sup> This will allow Florida customers to continue to benefit from the emerging POTS competition that unbundled local switching permits.

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<sup>1</sup> Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, CC Docket Nos. 01-338, 96-98 and 98-147, Released August 21, 2003 (“Triennial Review Order” or “TRO”) ¶ 99.

<sup>2</sup> TRO ¶ 93.

<sup>3</sup> As explained in the Direct Testimony of Joseph Gillan, the challenging ILECs are required to offer unbundled local switching under state law (as part of a package of regulatory reforms that deregulated their profits), and BellSouth remains obligated to offer unbundled local switching under section 271’s competitive checklist.

**Docket No. 030851-TP**  
**Rebuttal Testimony of Joseph Gillan**  
**On behalf of the Florida Competitive Carriers Association**

1       **Q.    In addition to responding to the challenging ILECs' claims regarding the**  
2       **self-provider switch trigger candidates, does your rebuttal testimony address**  
3       **any other issues?**

4  
5       **A.    Yes. In addition to evaluating the trigger assertions of BellSouth and Verizon, the**  
6       **rebuttal testimony also addresses:**

7  
8       \*       The appropriate "market area" that the Commission should use for the  
9       evaluation of impairment, and

10  
11       \*       The appropriate DS0 to DS1 crossover point that sets the "regulatory"  
12       upper limit of the mass market.

13  
14       As the testimony below explains, the Commission should reject BellSouth's  
15       proposal to use "component economic areas" (CEAs) to define the relevant  
16       geographic area of the mass market. These areas have nothing to do with  
17       telecommunications – indeed, prior to BellSouth's testimony in this proceeding,  
18       the Commission would have been hard pressed to find anyone in the industry that  
19       was even familiar with the term. The Commission should instead adopt a larger  
20       area that more closely reflects the broad nature of the mass market, such as the  
21       LATA boundaries that have defined Florida's "exchange markets" for the past  
22       two decades.

23



**Docket No. 030851-TP**  
**Rebuttal Testimony of Joseph Gillan**  
**On behalf of the Florida Competitive Carriers Association**

1 As to the calculation of the “DS0-to-DS1” crossover, Verizon is correct – in the  
2 real world, the *customer* decides whether it wants analog (i.e., mass market) or  
3 digital (i.e., enterprise) service. The DS0/DS1 crossover is an artificial *regulatory*  
4 limit that the Commission should approach with caution. I agree with Verizon  
5 that the customer is in the best position to know what type of facilities  
6 arrangements it needs for the services it buys and that, therefore, the most  
7 *accurate* dividing line between the analog mass market and the digital enterprise  
8 market tracks the service choice made by the customer.<sup>4</sup> To the extent that an  
9 ILEC (such as BellSouth) insists that the mass market be defined by regulatory  
10 rule, however, the Sprint proposal should be used. In no event should the  
11 Commission adopt BellSouth’s proposed “3-line cutoff,” which is not (and could  
12 not be) supported by any evidence in this proceeding.

13  
14 **Q. Have you completed your analysis of the challenging ILECs’ trigger**  
15 **candidates?**

16  
17 A. No. As the Commission is aware, BellSouth has recently revised its trigger  
18 claims, substantially reducing the number of switches that it alleges provide mass  
19 market services from 77 switches to 30, and eliminating some trigger candidates.<sup>5</sup>

---

<sup>4</sup> Of course, I disagree with Verizon that, after properly *defining* the scope of the mass market, CLECs should be *denied* access to unbundled local switching to compete within the mass market.

<sup>5</sup> BellSouth Corrected Direct Testimony of Ms. Tipton (correction at page 3) and Corrected Exhibit PAT-5 (filed December 30, 2003).

**Docket No. 030851-TP**  
**Rebuttal Testimony of Joseph Gillan**  
**On behalf of the Florida Competitive Carriers Association**

1 More importantly, the data that I need to fully evaluate various trigger candidates  
2 have only recently been provided to me in paper form.<sup>6</sup> I am currently seeking  
3 access to the data in electronic form so that it may be more readily analyzed, but  
4 as of the date of this testimony, counsel is still negotiating with BellSouth to  
5 receive this data in an electronic format. We will conclude our review as  
6 expeditiously as possible (after we gain access to the underlying data in electronic  
7 form) and will update the testimony accordingly.

8

9 **Q. Before you begin, do you have any preliminary comments?**

10

11 A. Yes. The Florida Commission recently approved the proposals by BellSouth,  
12 Verizon and Sprint to raise the basic rates of mass market customers throughout  
13 the State, with the hope (and indeed based on assertions by the ILECs) that  
14 competition would emerge and, over time, produce lower rates and better choices.  
15 The only realistic strategy for providing mass market services in the near term,  
16 however, is through the use of unbundled local switching. Only unbundled local  
17 switching provides CLECs access to the monopoly loop network of the incumbent  
18 in a manner (i.e., electronically) that supports mass market competition.

---

<sup>6</sup> BellSouth Response to AT&T's Subpoena Duces Tecum, Item No. 125 (Dec. 23, 2003) and Verizon Response to AT&T's Second Request for the Production of Documents, Item Nos. 32, 112, and 113.

**Docket No. 030851-TP**  
**Rebuttal Testimony of Joseph Gillan**  
**On behalf of the Florida Competitive Carriers Association**

1           The most recent local competition statistics for the State of Florida compiled by  
2           the FCC bear this out. The following table summarizes how each of the principal  
3           entry strategies grew/decayed in Florida during the first half of last year.

**Table 1: Local Entry Strategies in Florida<sup>7</sup>**

	December 2002	June 2003	Change
Resale	110,507	72,284	-38,223
UNE-L	162,899	157,996	-4,903
UNE-P	493,891	609,132	115,241
Other Loop <sup>8</sup>	727,835	698,220	-29,615
	1,495,132	1,537,632	

5  
6           As Table 1 demonstrates, the only entry strategy that continues to grow in Florida  
7           is UNE-P. What Table 1 does not show – but what my testimony will reinforce –  
8           is that UNE-P’s importance to mass market competition is even more pronounced.

9  
10       **Q.    Is UNE-P critical to both mass market residential and mass market business**  
11       **customers?**

12  
13       **A.    Yes. Table 2 analyzes the most *recent* competitive activity (the past six months)**  
14       **that relies on UNE-P and UNE-L (in each BellSouth LATA), and analyzes the**

<sup>7</sup>       Source: BellSouth Reports to FCC Form 477 and FCC Local Competition Report, December 2003.

<sup>8</sup>       The reported number of lines reported in the “other” category is for all Florida ILECs combined. The FCC does not report the data in a manner that would enable “other CLEC lines” to be accurately assigned to the specific territories of each ILEC. This category includes self-provisioned lines, as well as lines ordered as special access from the ILEC, and does not differentiate between lines provided to enterprise and mass market customers.

**Docket No. 030851-TP**  
**Rebuttal Testimony of Joseph Gillan**  
**On behalf of the Florida Competitive Carriers Association**

1 importance of UNE-P across the entire mass market, which includes both  
 2 residential and small business customers.

**Table 2: Current Competitive Activity in BellSouth LATAs**  
**(Most Recent Six Months – April to Sept. 2003)<sup>9</sup>**

BellSouth LATA	Share Gain by Method		UNE-P Share by Customer	
	UNE-P	UNE-L	Residential	Business
Daytona Beach	5.9%	0.2%	5.2%	8.9%
Gainesville	4.3%	0.0%	3.9%	6.4%
Jacksonville	4.5%	0.4%	4.6%	4.1%
Orlando	4.5%	0.5%	4.4%	4.7%
Panama City	3.0%	0.0%	2.9%	3.5%
Pensacola	5.6%	0.0%	5.5%	6.3%
Southeast	6.8%	0.6%	6.9%	6.4%
Statewide	5.9%	0.5%	5.9%	5.9%

3  
 4 As Table 2 demonstrates, competitive activity from UNE-P is roughly 12 times  
 5 that of UNE-L statewide, and even more in a number of LATAs. As shown in my  
 6 direct testimony, UNE-P brings competition to more places, the competition that  
 7 it brings is far more extensive, and it is focused on mass market rather than  
 8 enterprise customers. Moreover, UNE-P is just as important to competition for  
 9 the mass market business customer as it is for the mass market residential  
 10 customer.<sup>10</sup>

<sup>9</sup> Source: BellSouth Response to AT&T No. 56 and FCCA No. 3.

<sup>10</sup> I remind the Commission that the mass market is defined by access method – analog or digital – and not the “customer label” used in retail tariffs. Table 2 underscores the fact that UNE-P is a critical entry strategy across the *entire* mass market, including the segment of mass market customers represented by small businesses.

**Docket No. 030851-TP**  
**Rebuttal Testimony of Joseph Gillan**  
**On behalf of the Florida Competitive Carriers Association**

1     **II. Market Definition: Geographic Area and the DS0/1 Cutover**

2

3     **Q.     Have you reviewed the proposed geographic areas suggested by the**  
4           **challenging ILECs for the Commission to use in its review of impairment?**

5

6     A.     Yes. Verizon is recommending that the Commission adopt the Office of  
7           Management and Budget’s Metropolitan Statistical Area (MSA), while BellSouth  
8           is recommending that the Commission rely on the Bureau of Economic Analysis’  
9           “component economic areas” (CEA). Each challenging ILEC recommends  
10          further that the geographic areas be subdivided according to UNE rate zones.

11

12    **Q.     Do you support either of these approaches?**

13

14    A.     No. First, as FCCA noted in my direct testimony, one of the defining  
15          characteristics of the mass market is that mass market customers reside  
16          *throughout* Florida. Artificially limiting an analysis to only those customers  
17          located within the Tampa-St. Petersburg-Clearwater MSA – or, in the case of  
18          BellSouth, redlining and thus excluding customers from having competitive  
19          alternatives according to “component economic areas” having nothing to do with  
20          competitive activity –ignores the primary defining characteristic of the mass  
21          market as a broadly dispersed customer set.

22

**Docket No. 030851-TP**  
**Rebuttal Testimony of Joseph Gillan**  
**On behalf of the Florida Competitive Carriers Association**

1       **Q.     What area should the Commission use to evaluate impairment for Verizon?**

2

3       A.     The Commission should evaluate impairment across the entire Verizon footprint  
4           in Florida. Most of the lines in its territory are going to fall within the MSA  
5           boundary in any event. But there is no reason for the Commission to exclude  
6           customers from its unbundling inquiry merely because they are served by wire  
7           centers *outside* the boundary of a MSA. Moreover, as the Commission is aware,  
8           the TRO prohibits the Commission from adopting any “market” that is so narrow  
9           that “... a competitor serving that market alone would not be able to take  
10          advantage of available scale and scope economies from serving a wider market.”<sup>11</sup>

11

12          Importantly, the unstated consequence of Verizon’s suggestion to use the MSA  
13          boundary in the Tampa-St Petersburg area is the creation of a *residual* market  
14          comprised of Verizon customers located outside the MSA. If the Commission  
15          were to adopt Verizon’s recommendation to consider only the MSA, then it would  
16          also have to determine that the residual market created by that decision did not  
17          violate the FCC’s requirement that the market not be so small that the competitor  
18          could not fully realize the available scale and scope economies. It is unlikely that  
19          the residual market “left over” by Verizon’s preferred MSA analysis would be  
20          large enough to meet the FCC’s standard.

---

<sup>11</sup> TRO ¶ 495.

**Docket No. 030851-TP**  
**Rebuttal Testimony of Joseph Gillan**  
**On behalf of the Florida Competitive Carriers Association**

1       **Q.     Is there evidence that the mass market is appropriately defined as the entire**  
2           **area served by Verizon?**

3  
4       A.     Yes. Exhibit JPG-4 (attached to the Direct Testimony of Joseph Gillan)  
5           demonstrated that carriers were serving mass market customers throughout  
6           Verizon's exchanges (albeit at relatively low levels). The mass market is spread  
7           throughout Verizon's territory, and the mass market entry strategy –UNE-P – is  
8           enabling competition to emerge throughout the area as well.

9  
10      **Q.     Should the Commission adopt “component economic areas” as suggested by**  
11           **BellSouth?**

12  
13      A.     No. As a threshold observation, after more than 20 years of telecommunications  
14           experience dealing with a wide range of competitive issues, I had never come  
15           across any mention of the Bureau of Economic Analysis' (“BEA's”) “component  
16           economic area” until BellSouth's testimony was filed here. Without becoming  
17           too caught up in common sense, just how relevant can the CEA be to market entry  
18           and impairment if it had never surfaced in any industry discussion before now?

19  
20           Second, the BEA's *component* economic areas are exactly that – a “middle step”  
21           in the process of defining economic areas that “serve as centers of economic  
22           activity.” Not only do these areas have nothing to do with telecommunications,  
23           they are not even the final product in the BEA's effort to identify economic areas

**Docket No. 030851-TP**  
**Rebuttal Testimony of Joseph Gillan**  
**On behalf of the Florida Competitive Carriers Association**

1 that include, so far as possible, “the place of work and the place of residence of its  
2 labor force.”<sup>12</sup> Although the BEA begins with “component areas,” these are  
3 intended to be building blocks that aggregate into economic areas that are  
4 “economically large enough to be part of the BEA’s local area economic  
5 projections.”

6  
7 This last observation highlights the final problem with the “CEA approach.” The  
8 BEA itself has decided that CEAs are not sufficiently large even for *its* purpose of  
9 developing projections of economic activity. In effect, BellSouth is claiming that  
10 areas that are too *small* for economic modeling are somehow sufficiently *large*  
11 that an entrant serving that area alone would be able to take advantage of  
12 available scale and scope economies.

13  
14 **Q. Does it make sense for the Commission to use UNE -- which is to say loop --**  
15 **rate zones in evaluating impairments associated with unbundled local**  
16 **switching?**

17  
18 A. Generally, no. As the question indicates, UNE rate zones create different rates for  
19 the loop element. Although there are modest price differences between loops  
20 used individually and loops obtained as part of UNE-P, the effect of deaveraged

---

<sup>12</sup> For completeness, I have attached as Exhibit JPG-5, an article published in the Survey of Current Business that describes the development of “economic areas,” including the intermediate step of the “component economic area.”



**Docket No. 030851-TP**  
**Rebuttal Testimony of Joseph Gillan**  
**On behalf of the Florida Competitive Carriers Association**

1 loop rates should have little effect on the *relative* ability of a CLEC to use (or not  
2 use) its own switching to compete. Whether a CLEC is using UNE-P or UNE-L,  
3 the constant is the need to purchase the unbundled loop. In other words, while  
4 UNE rate zones may affect competition overall, the issue here concerns the  
5 relative operational and other barriers to competition for mass market customers  
6 that are mitigated by access to unbundled local switching. The consideration of  
7 UNE loop rate zones thus has no place in the analysis of impairment as it relates  
8 to the availability of unbundled local switching.

9  
10 **Q. Do you have an overall comment about BellSouth's proposed "markets?"**

11  
12 **A.** Yes. Mass market competition is interdependent – that is, competition in rural  
13 wire centers is possible because of competition in suburban wire centers; and  
14 competition in suburban wire centers is possible because of competition in urban  
15 centers. It is simply misleading to “force” granularity for the sake of granularity.  
16 The fact is that the mass market is not discrete, and it requires – as its very name  
17 suggests – *mass* in order for a competitor to succeed. BellSouth's proposal would  
18 subdivide its territory into 32 discrete areas, as though carriers could individually  
19 enter as few as one and compete for residential and small business customers.  
20 Notably, several CEAs are smaller than many of BellSouth's wire centers, and  
21 BellSouth claims its wire centers are too small to qualify as “markets” under the  
22 TRO. Table 3 shows the number of retail lines located in each of BellSouth's

**Docket No. 030851-TP**  
**Rebuttal Testimony of Joseph Gillan**  
**On behalf of the Florida Competitive Carriers Association**

1 claimed “mass markets” (i.e., each of the 32 discrete areas that it claims should be  
 2 used for impairment analysis).

**Table 3: Access Lines in BellSouth’s Proposed Markets<sup>13</sup>**  
**(Markets Where BellSouth Claims Triggers are Satisfied in Bold)**

Component Economic Area	Zone 1	Zone 2	Zone 3
Daytona Beach	2,161	206,724	36,651
Dothan			9,610
Fort Lauderdale	<b>299,439</b>	<b>523,784</b>	
Fort Pierce - Port St Lucie		92,672	124,225
Gainesville		88,234	85,436
Jacksonville	<b>70,728</b>	<b>347,922</b>	<b>116,580</b>
Melbourne-Titusville-Palm Bay		270,710	
Miami	<b>534,544</b>	<b>550,424</b>	45,600
Ocala			14,363
Orlando	<b>39,468</b>	<b>337,090</b>	9,396
Panama City		53,413	19,355
Pensacola	13,020	<b>139,415</b>	43,639
Tallahassee			8,758
Tampa-St Pete-Clearwater		34,907	37,430
West Palm Beach	<b>123,975</b>	<b>551,939</b>	58,833

3

4 **Q. Do you believe that CLECs would approach the mass market in the highly**  
 5 **discrete manner claimed by BellSouth?**

6

7 A. No. The mass market is located throughout the state and the issue (as it relates to  
 8 the “triggers”) is to determine whether there is sufficient competition *across* that  
 9 market from alternatives to determine that unbundled access to local switching is  
 10 not necessary.<sup>14</sup>

<sup>13</sup> Source: BellSouth Response to AT&T’s 3<sup>rd</sup> Set of Interrogatories, Item No. 122.

<sup>14</sup> I remind the Commission, but do not repeat here, my general caveats concerning BellSouth’s continuing obligations under section 271, and both challenging ILECs’ obligations under state law.

**Docket No. 030851-TP**  
**Rebuttal Testimony of Joseph Gillan**  
**On behalf of the Florida Competitive Carriers Association**

1           Although BellSouth's "market definition" approach is needlessly complex and  
2           gratuitously granular, it is essentially irrelevant as well, because even after  
3           splitting the state into 32 discrete pieces, BellSouth claims that the triggers are  
4           met virtually everywhere anyway. BellSouth combines its preferred market  
5           definition with a flawed interpretation of the FCC's trigger criteria that would  
6           have the effect of ending competition statewide. Indeed, BellSouth claims that  
7           the triggers are met in "markets" containing roughly 75% of its access lines and  
8           over 83% of the UNE-P lines. Adding those "markets" where BellSouth claims  
9           that CLECs are unimpaired based on its "potential deployment" analysis would  
10          foreclose UNE-P based competition in roughly 90% of the state.

11  
12          **Q.     Would BellSouth's recommendation essentially close Florida to local**  
13          **competition for mass market customers?**

14  
15          A.     Yes. As Table 2 shows, UNE-P produces competition at a completely different  
16          level and scope than UNE-L. UNE-P brings competition to the heart of the mass  
17          market (the residential customer), it brings needed competition to the forgotten  
18          mass market customer (the small business), and it brings competition to  
19          essentially every BellSouth wire center in the state. With rates increasing  
20          throughout the state, it is critical that the mass market enjoy competition that is  
21          equally broad. The attached Exhibit JPG-6 contrasts the share gain of UNE-P to  
22          that of UNE-L for each of BellSouth's wire centers during the most recent six  
23          months (June to September, 2003). Exhibit JPG-6 demonstrates that the

**Docket No. 030851-TP**  
**Rebuttal Testimony of Joseph Gillan**  
**On behalf of the Florida Competitive Carriers Association**

1 competitive benefits achieved by UNE-P are both broader and more substantial  
2 than that possible without access to unbundled local switching. In the past six  
3 months, UNE-P lines were added in 96% of the wire centers in Florida, roughly  
4 twice as many wire centers as added UNE-L lines. After having just raised rates  
5 in all those wire centers (claiming that it was doing so to increase competition),  
6 BellSouth is now seeking to eliminate the only promising source of that  
7 competition, UNE-P.

8  
9 **Q. What geographic areas do you recommend?**

10  
11 A. I recommend that the Commission use LATAs to evaluate impairment. As I  
12 noted repeatedly above, the mass market is spread throughout BellSouth's service  
13 territory in Florida and *any* lesser area could potentially camouflage the  
14 importance of this fact. However, the evidence (see Table 2) suggests that each  
15 LATA is sufficiently comparable to the state overall that the Commission's  
16 analysis would not be distorted by using these pre-existing areas in its analysis.  
17 Other advantages are that LATA boundaries conform to wire center boundaries  
18 (which are the fundamental building block of any analysis), the boundaries are  
19 well understood (at least within the industry), and the boundaries were once  
20 drawn to approximate the "local market" (albeit 20 years ago).

21

Docket No. 030851-TP  
Rebuttal Testimony of Joseph Gillan  
On behalf of the Florida Competitive Carriers Association

1 Q. What DS0/DS1 crossover should the Commission use to define the “upper  
2 limit” of the mass market?

3  
4 A. In the Verizon territory, I recommend that the Commission accept Verizon’s  
5 proposal to *not* impose an artificial upper bound to the mass market. Although  
6 Verizon witness Fulp suggests that the CLEC decides what the customer wants,<sup>15</sup>  
7 the reality is that all carriers, CLECs as well as ILECs, offer various products  
8 designed for different customer interfaces (such as analog phone service or a DS-  
9 1 to a PBX) and the customer decides, based on those service offerings, whether it  
10 is to be served as an enterprise customer or part of the mass market.

11  
12 Where the ILEC insists that the Commission establish a regulatory “cap” on the  
13 mass market, the basic principles on how such a cap should be calculated were  
14 included in my direct testimony. My review of the testimony of Sprint’s witness  
15 Kent Dickerson indicates that Sprint’s calculation conforms to those principles  
16 and I would recommend the Commission adopt a crossover of 12 lines for the  
17 territories of Sprint and BellSouth.

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<sup>15</sup> Fulp Direct, page 13.

**Docket No. 030851-TP**  
**Rebuttal Testimony of Joseph Gillan**  
**On behalf of the Florida Competitive Carriers Association**

1       **Q. Do you have any comment on BellSouth’s suggestion that the “default” 3-line**  
 2       **limit should apply?**

3  
 4       A. Yes. To begin, it is important to understand that there is no “default” 3-line cap  
 5       on the mass market. Rather, the FCC gave specific direction that, to the extent a  
 6       cap is adopted, it should be established at the point where “it is economically  
 7       feasible for a competitive carrier to provide voice service with its own switch  
 8       using a DS1 or above loop.”<sup>16</sup> Indeed, the FCC explicitly *did not* (except for an  
 9       interim period during which State Commissions address impairment issues)  
 10       preserve the “three line” (sometimes called the 4-line) rule, which was a point of  
 11       controversy with Commissioner Abernathy:

13           Commissioner Abernathy claims that our decision not to preserve  
 14           the previous Commission’s four-line carve-out represents a  
 15           “potentially massive expansion” of unbundled switching.  
 16           *Commissioner Abernathy Statement* at 8 n.27. This claim makes  
 17           no sense. If a state finds that the appropriate cut-off for  
 18           distinguishing enterprise from mass market customers in density  
 19           zone 1 of the top 50 MSAs is four lines, there will be no more  
 20           unbundled switching available than there was under the previous  
 21           carve-out.<sup>17</sup>  
 22

23           Moreover, the prior limitation applied only in *selected* end-offices (i.e., those  
 24           Zone 1 end offices in the top 50 MSAs),<sup>18</sup> with *no limit* in any other area. Such a

---

<sup>16</sup> TRO ¶421, n.1296.

<sup>17</sup> TRO ¶ 497, n. 1546, emphasis added.

<sup>18</sup> It should be noted that the “Zone 1” offices are those used by the FCC for special access pricing flexibility, and are not the same as the “Zone 1” used for deaveraged UNE rates.

**Docket No. 030851-TP**  
**Rebuttal Testimony of Joseph Gillan**  
**On behalf of the Florida Competitive Carriers Association**

1 structure is incompatible with a crossover point developed based on the evidence  
 2 related to the relative costs of serving customers using analog loops or DS-1 loops  
 3 and the necessary customer premise equipment and other costs associated with  
 4 provisioning the DS-1 (even in a simple calculation).

**III. Evaluating the Alleged Mass Market Switching Trigger Candidates**

7  
 8 **Q. Please provide an overview of your testimony as it relates to the ILEC claims**  
 9 **that the FCC's triggers have been satisfied.**

10  
 11 A. Each of the challenging ILECs makes the same general claim regarding the  
 12 purpose and analytical rigor required by the "trigger analysis" called for by the  
 13 TRO. Each essentially claims that the trigger analysis is so straight-forward, that  
 14 it could be conducted blindfolded, by simply counting to three:

15  
 16 The self-provisioning trigger is deliberately objective. It is  
 17 assessed entirely through the application of data, rather than by the  
 18 consideration of more subjective experiences, theories, estimates,  
 19 opinions, and predictions.<sup>19</sup>

20  
 21 \*\*\*

22  
 23 ... satisfaction of the trigger is just dependent upon counting the  
 24 number of entities self-provisioning switching – if there are three  
 25 or more, the commission must make a finding of no impairment.<sup>20</sup>

---

<sup>19</sup> Fulp Direct, page 6.

<sup>20</sup> Tipton Direct, page 5.

**Docket No. 030851-TP**  
**Rebuttal Testimony of Joseph Gillan**  
**On behalf of the Florida Competitive Carriers Association**

1       **Q.     Do you agree that the trigger analysis is a mere counting exercise?**

2

3       A.     No. It is true that the trigger analysis is different than a potential deployment  
4             analysis in that it requires that the Commission focus on an objective standard  
5             (three self-providers) and objective data regarding deployment of alternative  
6             switching that is actually serving the mass market. That does not mean that the  
7             Commission is not expected to interpret the data to make sure that each proffered  
8             trigger candidate is a “true alternative” that is “...actively providing voice service  
9             to mass market customers in the market.”<sup>21</sup>

10

11            The TRO calls for common sense alongside objectivity and does not compel state  
12            commissions to check their judgment at the door when conducting a trigger  
13            analysis. To the contrary, the TRO offers substantial guidance as to the type of  
14            carriers and services that can legitimately be considered “actual marketplace  
15            evidence” that “...new entrants, as a practical matter, have surmounted barriers to  
16            entry in the relevant market.”<sup>22</sup>

17

18            The reviewing criteria that I recommend are drawn directly from the TRO and  
19            parallel, wherever possible, comparable findings and analysis of the FCC. This is  
20            precisely the type of analysis that the FCC intended, with the states evaluating

---

<sup>21</sup>       TRO ¶ 499.

<sup>22</sup>       TRO ¶ 93, emphasis removed.



**Docket No. 030851-TP**  
**Rebuttal Testimony of Joseph Gillan**  
**On behalf of the Florida Competitive Carriers Association**

1 local conditions and the guidance found in the TRO. Where those conditions  
2 and/or circumstances are comparable to the FCC's national review, the FCC says  
3 that states should reach similar findings. For example, the FCC held:

4  
5 For example, we note that CMRS does not yet equal traditional  
6 incumbent LEC services in its quality, its ability to handle data  
7 traffic, its ubiquity, and its ability to provide broadband services to  
8 the mass market. Thus, just as CMRS deployment does not  
9 persuade us to reject our nationwide finding of impairment, at this  
10 time, we do not expect state commissions to consider CMRS  
11 providers in their application of the triggers.<sup>23</sup>  
12

13 In direct contrast to my criteria and the FCC's direction, the challenging ILECs  
14 would have the Commission ignore the relevant guidance contained in the TRO in  
15 the application of the triggers. There are a number of instances where the  
16 challenging ILECs present data that essentially parallels information that the FCC  
17 used to *reject* ILEC claims of non-impairment. Based on that same data, however,  
18 the ILECs claim that the TRO compels the Florida Commission to *overturn* the  
19 FCC's finding of impairment here. Such a result is absurd – how could the FCC  
20 possibly insist that the states reach opposite conclusions simply by reviewing  
21 local (i.e., more granular) data that *confirms* the same data the FCC used to  
22 determine that CLECs were impaired in serving the mass market without access  
23 to unbundled local switching?

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<sup>23</sup> TRO ¶ 499, n. 1549, footnotes omitted, emphasis added.

1       **Q.     Do you have an example where the challenging ILECs are asking the**  
2           **Commission to reach decisions that are inconsistent with the FCC’s**  
3           **reasoning in the TRO?**

4  
5       **A.     Yes. In the TRO, the FCC concluded that there was not sufficient evidence of**  
6           **non-impairment based on self-deployed switching, in part because such switches**  
7           **served such a small percentage of the market:**

8  
9                   ...the record indicates that competitive LECs have self-deployed  
10                   few local circuit switches to serve the mass market. The BOCs  
11                   claim that, as of year-end 2001, approximately three million  
12                   residential lines were served via competitive LEC switches....  
13                   Even accepting that figure, however, it represents only a small  
14                   percentage of the residential voice market. It amounts to less than  
15                   three percent of the 112 million residential voice lines served by  
16                   reporting incumbent LECs.<sup>24</sup>  
17

18           Verizon’s entire “trigger case” is based on the allegation that CLECs serve 27,044  
19           mass market loops using their own switches. Even if one accepts this figure as  
20           accurate – and there are a number of reasons to challenge the estimate<sup>25</sup> -- this  
21           represents a market share of only 1.2%.<sup>26</sup> Under Verizon’s apparent reading of  
22           the TRO, the FCC would demand (through the mandatory triggers) that the  
23           Florida Commission find *non-impairment* based on a CLEC switch-based market

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<sup>24</sup> TRO ¶ 438, footnotes omitted, emphasis added.

<sup>25</sup> For instance, several of the carriers cited by Verizon do not actively provide service or own facilities that are appropriately classified as enterprise switches and, therefore, should not be counted in a trigger analysis.

<sup>26</sup> Source: ARMIS 2002 Switched Access Lines.

**Docket No. 030851-TP**  
**Rebuttal Testimony of Joseph Gillan**  
**On behalf of the Florida Competitive Carriers Association**

1 share of a mere 1.2%, even though the FCC found *impairment* based on statistics  
 2 that indicated that CLEC switch-based share was more than twice that on a  
 3 national basis.<sup>27</sup>

4

5 **Q. What objective criteria must a trigger candidate satisfy?**

6

7 A. The full criteria are addressed in my direct testimony in this proceeding.<sup>28</sup> The  
 8 analysis here focuses on the “self-provisioning” trigger, since neither of the  
 9 challenging ILECs asserts that the “competitive wholesale facilities” trigger is  
 10 satisfied in any Florida market.<sup>29</sup> In short form, a self-provisioning trigger  
 11 candidate must satisfy each of the following:

12

- 13 1. The self-provisioning trigger candidate’s switches must not  
 14 be “enterprise” switches.
- 15
- 16 2. The self-provisioning trigger candidate must be actively  
 17 providing voice service to mass market customers in the  
 18 designated market, including residential customers, and  
 19 must be likely to continue to do so.
- 20

---

<sup>27</sup> I would expect that the CLEC switch-based share in Verizon territory would be even lower if it was directly comparable to the data considered by the FCC in TRO ¶ 438 quoted above (which focused on switch-based share in the residential market).

<sup>28</sup> For a full discussion, see Direct Testimony of Joseph Gillan, on behalf of the Florida Competitive Carriers Association, filed December 4, 2003, pages 36-52.

<sup>29</sup> Tipton Direct, at 14-15 (BellSouth has not identified two or more carriers satisfying the wholesale facilities trigger); Fulp Direct, at 5 (“Verizon is not attempting at this time to make a showing under the competitive wholesale facilities trigger for switching. ...”)

**Docket No. 030851-TP**  
**Rebuttal Testimony of Joseph Gillan**  
**On behalf of the Florida Competitive Carriers Association**

- 1                   3.     The self-provisioning trigger candidate should be relying  
2                   on ILEC analog loops to connect the customer to its switch.  
3
- 4                   4.     If the self-provisioning trigger candidate provides an  
5                   “intermodal service,” its service must be comparable to the  
6                   ILEC service in cost, quality, and maturity.  
7
- 8                   5.     The self-provisioning trigger candidate may not be  
9                   affiliated with the ILEC or other self-provisioning trigger  
10                  candidates.  
11
- 12                  6.     The existence of the self-provisioning trigger candidate  
13                  should be evidence of sustainable and broad-scale mass  
14                  market competitive alternatives in the designated market.  
15

16                  In addition, my direct testimony emphasized the importance that any alternative  
17                  should exhibit the same “competitive signature” within the market – that is, a  
18                  comparable geographic pattern of entry – as today’s entry based on UNE-P.<sup>30</sup>  
19

20                  **Q.     Does your testimony evaluate each trigger candidate against each of these**  
21                  **criteria?**

22

23                  A.     No, not completely. First, it is important to understand that a potential trigger  
24                  candidate must satisfy each and every criterion in order to be legitimately  
25                  considered as one-of-three providers sufficient to support a finding that

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<sup>30</sup>                  In my testimony filed in subsequent BellSouth states, the “competitive signature” standard is directly incorporated into the criteria list, and the requirement that the CLEC rely on ILEC loops is combined with the other criteria related to potential intermodal competitors (i.e., criterion 3 and 4 are combined). This organizational improvement, however, does not change the substantive points in my testimony.

**Docket No. 030851-TP**  
**Rebuttal Testimony of Joseph Gillan**  
**On behalf of the Florida Competitive Carriers Association**

1 impairment has been overcome in the specific geographic area. Consequently, if  
2 a trigger candidate fails any single criterion, it may not be counted as a trigger and  
3 further analysis is not necessary. In addition, my review is ongoing as additional  
4 discovery is provided. Additional analysis will be provided once that discovery is  
5 obtained and analyzed. Finally, some of the criteria outlined in the TRO – in  
6 particular, the “key consideration” as to “whether the providers are currently  
7 offering and able to provide service, and are likely to continue to do so”<sup>31</sup> – may  
8 require a detailed examination of a particular candidate that would be unnecessary  
9 if the candidate is disqualified for other reasons.

10  
11 **Q. The challenging ILECs maintain that the Commission is precluded from**  
12 **evaluating “any other factors, such as the financial stability or well-being of**  
13 **the competitive switching providers” in conducting a trigger analysis.<sup>32</sup> Do**  
14 **you agree?**

15  
16 A. Obviously I agree that the sentence does appear in the TRO. Where I part  
17 company with the challenging ILECs is with their interpretation that this *single*  
18 sentence wipes away every other statement in the TRO that explains how the  
19 trigger analysis is to be conducted. For example, consider the paragraph that this  
20 sentence introduces in its entirety:

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<sup>31</sup> TRO ¶ 500, emphasis added.

<sup>32</sup> Tipton Direct, page 5, and Fulp Direct, page 6, citing TRO ¶ 500.

**Docket No. 030851-TP**  
**Rebuttal Testimony of Joseph Gillan**  
**On behalf of the Florida Competitive Carriers Association**

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For the purposes of these triggers, we find that states shall not evaluate any other factors, such as the financial stability or well-being of the competitive switching providers. Competing carriers in Chapter 11 bankruptcy protection are often still providing service. Regardless of their financial status, the physical assets remain viable and may be bought by someone else and remain in service. We note that requiring states to determine the financial ability of competitive wholesale providers to provide service in the future could hamper economic recovery efforts of companies in financial distress. The key consideration to be examined by state commissions is whether the providers are currently offering and able to provide service, and are likely to continue to do so.<sup>33</sup>

Thus, within the very same paragraph that the ILECs cite favorably, the FCC directs the states that “the key consideration” in a trigger review is the ability of the provider to continue to offer service. Notably, the FCC’s directive does *not* exclude all the other factors identified in the TRO. The only way that this paragraph is internally consistent is if it explains that a *past* bankruptcy is not to be considered, but that any factor that would likely affect the *future* ability of the CLEC to provide service must be a critical part of the analysis. Moreover, there is nothing in the passage that suggests that the FCC was directing the states to ignore all the other guidance it provided, including requirements that enterprise switches not be counted, that CLECs relying on their own loops should be

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<sup>33</sup> TRO ¶ 500, footnotes omitted.

**Docket No. 030851-TP  
Rebuttal Testimony of Joseph Gillan  
On behalf of the Florida Competitive Carriers Association**

1           afforded less weight, and other factors and criteria described in my direct  
2           testimony.<sup>34</sup>

3

4           **Q.    Turning to specific trigger candidates, which CLECs do the challenging**  
5           **ILECs claim are self-providers of local switching to provide mass market**  
6           **services?**

7

8           A.    The following table summarizes the trigger candidates identified by BellSouth  
9           and Verizon in their direct testimony. In addition to these candidates, BellSouth  
10          also initially named Time Warner Communications, but it has since withdrawn  
11          that claim.

12

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<sup>34</sup> TRO ¶ 508 (“switches serving the enterprise market do not qualify for the triggers”), and footnote 1560, emphasis added, (“when one or more of the three competitive providers is also self-deploying its own local loops, this evidence may *bear less heavily* on the ability to use a self-deployed switch as a means of accessing the incumbent’s loops.”)

**Docket No. 030851-TP**  
**Rebuttal Testimony of Joseph Gillan**  
**On behalf of the Florida Competitive Carriers Association**

**Table 4: Named Trigger Candidates<sup>35</sup>**

Trigger Candidate	BellSouth Territory	Verizon Territory
KMC Telecom	X	X
PaeTec	X	
ITC^DeltaCom/BTI	X	X
Comcast	X	
TCG (AT&T)	X	X
SBC Telecom	X	X
Allegiance Telecom	X	X
XO Communications	X	
Supra	X	
Nuvox	X	
MCI/WorldCom	X	X
US LEC	X	
AllTel	X	
Xspedius	X	X
Sprint Communications	X	
Florida Multimedia	X	
Orlando Telephone	X	
Network Telephone	X	
FDN/Mpower	X	X

<sup>35</sup> In the Direct Testimony of BellSouth's Pamela A. Tipton, she references Exhibit PAT-5 which she asserts "is a list of the CLECs that are using their own switching to serve mass-market customers in the market areas that I have identified as meeting the trigger." Ms. Tipton's testimony further indicates that "BellSouth requests that Exhibit PAT-5 be treated as confidential because while this Commission needs to know where CLECs have self-provisioned switching serving mass market customers, these locations and the identify of the CLEC customers are proprietary and it is very important to the CLECs that this information not be made available to their competitors." Based on conversations with BellSouth, BellSouth has indicated that it is the specific CLEC and the specific market/location that is deemed confidential information and not the individual CLEC. Therefore, FCCA will maintain the confidentiality of that information in this testimony by avoiding references to the specific market in which BellSouth asserts the particular CLEC meets the trigger.



Docket No. 030851-TP  
Rebuttal Testimony of Joseph Gillan  
On behalf of the Florida Competitive Carriers Association

1       **Q.    On what basis did BellSouth and Verizon conclude that the named CLECs**  
2       **were candidates for this Commission to consider as self-providers of local**  
3       **switching offering mass market services?**

4  
5       A.    It appears that the challenging ILECs based their conclusions primarily on their  
6       own wholesale and provisioning records. As the suppliers of unbundled loops  
7       (UNE-L) in their service territory, these ILECs *should* have records of which  
8       CLECs have purchased unbundled loops in the various markets in Florida.

9  
10       For instance, BellSouth maintains a loop inventory database along with a class of  
11       service indicator with the identity of the CLEC that purchased the UNE-L. On  
12       the basis of this information, BellSouth claims that it “could determine how many  
13       CLECs were providing local services to mass-market customers in each of the  
14       geographic markets.”<sup>36</sup> BellSouth also claims that it relied on information  
15       obtained through discovery from CLECs, where it asked “CLECs to identify the  
16       market areas where they serve mass market customers using their own  
17       switches.”<sup>37</sup>

18

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<sup>36</sup>       Tipton Direct, page 11.

<sup>37</sup>       Tipton Direct, page 9.

Docket No. 030851-TP  
Rebuttal Testimony of Joseph Gillan  
On behalf of the Florida Competitive Carriers Association

1 Q. Did BellSouth correctly request relevant information from the CLECs?

2

3 A. No. In fact, BellSouth admits that it “did not request that CLECs provide the  
4 number of mass market customers served by each CLEC switch. BellSouth has  
5 made an *assumption* that the switches identified by CLECs serve the general  
6 geographic area within which the switch resides.”<sup>38</sup>

7

8 Moreover, the interrogatories served by BellSouth on CLECs did not ask for  
9 information on mass market lines. Rather, BellSouth sought information on  
10 “qualifying services.”<sup>39</sup> The term “qualifying services,” however, is not limited to  
11 mass market services. A qualifying service is a defined term and means:

12

13 A qualifying service is a telecommunications service that competes  
14 with a telecommunications service that has been traditionally the  
15 exclusive or primary domain of incumbent LECs, including, but  
16 not limited to, local exchange service, such as plain old telephone  
17 service, and access services, such as digital subscriber line services  
18 and high-capacity circuits.<sup>40</sup>

19

20 Thus, the data collected by BellSouth did not differentiate between mass market  
21 and enterprise lines and, therefore, is useless for drawing the critical distinction  
22 between an enterprise and mass market switch. For its part, Verizon appears to

<sup>38</sup> BellSouth Response to AT&T Interrogatory No. 126, emphasis added.

<sup>39</sup> See BellSouth’s 1<sup>st</sup> Set of Interrogatories to AT&T, Definition No. 32.

<sup>40</sup> 47 C.F.R. Sec. 51.5, emphasis added.

**Docket No. 030851-TP**  
**Rebuttal Testimony of Joseph Gillan**  
**On behalf of the Florida Competitive Carriers Association**

1 have collected data on both 2-wire and 4-wire loops,<sup>41</sup> and thus also appears to be  
2 confusing enterprise with mass market lines.<sup>42</sup>

3

4 The bottom line is that it does not appear that the challenging ILECs made any  
5 effort to determine whether the named mass market switching candidates are, in  
6 fact, actively providing switch-based services to the mass market in a manner that  
7 would satisfy the criteria outlined in the TRO.

8

9 **Q. Have you evaluated the named mass market switching trigger candidates to**  
10 **determine whether they satisfy the criteria in the TRO?**

11

12 A. Yes. In an effort to determine whether the named trigger candidates satisfy the  
13 criteria to qualify as self-provisioning trigger candidates, I investigated (within  
14 the limits of the time frame available to me) the types of services these carriers  
15 offered to determine whether they were actively offering mass market services  
16 and were likely to continue to do so. This investigation involved, in some  
17 instances, a discussion with representatives of the trigger candidates, an  
18 examination of their marketing and other materials contained on their public  
19 websites and tariffs, a review of the data utilized by the challenging ILECs, and a

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<sup>41</sup> Fulp Direct, page 19.

<sup>42</sup> The FCC has provided considerable guidance concerning the difference between a mass market customer (or line) and an enterprise customer (or line). The key differences are summarized in Exhibit JPG-7, attached.

**Docket No. 030851-TP**  
**Rebuttal Testimony of Joseph Gillan**  
**On behalf of the Florida Competitive Carriers Association**

1 review of the data concerning the types of customers and loops being provisioned  
2 on the CLEC trigger candidate's switch.<sup>43</sup>

3

4 I understand that AT&T/TCG, MCI/WorldCom, Sprint, and Supra will file  
5 testimony that directly rebuts assertions made by the challenging ILECs that those  
6 companies are serving the mass market with their own local switching and meet  
7 the criteria to be considered a "trigger" candidate. Therefore, my testimony will  
8 focus on addressing the remaining trigger candidates.

9

10

**KMC Telecom**

11

12 **Q. Based on your review of information provided by KMC, does KMC qualify**  
13 **as a trigger candidate?**

14

15 **A.** No. Based on the information supplied by KMC, KMC should be considered an  
16 enterprise-oriented carrier and it should not be counted as a trigger candidate. I  
17 base this conclusion on the following:

18

19 \* KMC does not actively market services to customers who desire to be  
20 served over analog DS0-level loops. KMC actively markets only to

---

<sup>43</sup> Given the limited amount of time available to conduct this research, much of the research was conducted informally since the formal discovery process would not provide the needed information in time for the rebuttal filing date, and our review is ongoing.

**Docket No. 030851-TP**  
**Rebuttal Testimony of Joseph Gillan**  
**On behalf of the Florida Competitive Carriers Association**

1 customers who plan to purchase digital service at capacities that justify the  
2 use of DS1-level loops.

3

4 \* There are two specific instances in which KMC may offer DS0 level  
5 service while marketing only to DS1 level enterprise customers. First,  
6 existing enterprise customers who order additional voice services from  
7 KMC may, on occasion, be at capacity on their existing DS1 facility,  
8 necessitating the provisioning of individual DS0 level facilities at an  
9 existing location. The second instance occurs when a prospective or  
10 existing enterprise customer wishes to include other locations into their  
11 service package, but those locations do not have sufficient volume to  
12 justify a full DS1. KMC would also provision individual DS0s to such  
13 locations.

14

15 **Q. Did the FCC recognize that enterprise switches (such as those operated by**  
16 **KMC) would include some analog lines?**

17

18 A. Yes. The FCC understood that enterprise switches would serve some analog  
19 lines, but that did not change its conclusion that enterprise switches should not be  
20 counted in a trigger analysis.<sup>44</sup> For instance, the FCC specifically recognized data  
21 that showed enterprise switches serving analog lines, and cited that data as

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<sup>44</sup> TRO ¶ 508.

1 evidence that simply counting switches did not address the critical distinction  
2 between the enterprise and mass markets:  
3

4 Incumbent LECs claim that the Commission should remove  
5 virtually all unbundling obligations regarding local switching on a  
6 national basis simply because competitive carriers have deployed  
7 1,300 switches and are serving, according to the BOC UNE Fact  
8 Report 2002, over 16 million lines with those switches. This  
9 argument, however, ignores significant differences in the evidence  
10 concerning the enterprise market and mass market. The record is  
11 replete with evidence showing that competitive LECs are  
12 successfully using their own switches to serve large business  
13 customers that require high-capacity loops (which can be  
14 connected to competitive carrier switches with few of the obstacles  
15 that affect voice-grade loops). For example, BiznessOnline.Com  
16 cites data compiled by a coalition of competitive carriers which  
17 examined six representative markets and found that approximately  
18 90 percent of the loops used by competitive carriers in these  
19 markets are DS1 capacity or higher loops.<sup>45</sup>  
20

21 As the above paragraph makes clear, the FCC was under no delusion that carriers  
22 serving the enterprise market did so to the exclusion of all others. Rather, it  
23 understood that such carriers would be predominately using DS-1 (or higher)  
24 loops, even though some amount of analog activity might occur. Generally, the  
25 carriers cited by the FCC as evidence that competitive CLECs were using their  
26 switches to compete in the enterprise (but not mass) market relied on digital (DS-  
27 1 and higher) loops for 80% to 90% of their connectivity. The specific study  
28 referenced by the FCC is attached as Exhibit JPG-8 (Table 4).  
29

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<sup>45</sup> TRO ¶ 437, emphasis added.

Docket No. 030851-TP  
Rebuttal Testimony of Joseph Gillan  
On behalf of the Florida Competitive Carriers Association

1 Q. Are KMC’s switches “enterprise switches” or “mass market switches”?

2

3 A. KMC has agreed to provide FCCA with the line-counts on each of the switches  
4 claimed by the challenging ILECs as trigger evidence. As shown below, each of  
5 KMC’s switches should be considered “enterprise switches” based on the analysis  
6 used by the FCC.

Table 5: KMC Switch Data

Switch	VGE Analog	VGE Digital	Percent Enterprise
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

7

8 Moreover, none of the lines served by KMC are residential lines, further  
9 demonstrating that KMC is not a legitimate trigger candidate. Residential lines  
10 constitute roughly 80% of the mass market lines in BellSouth’s Florida territory.<sup>46</sup>  
11 Any carrier that ignores 80% of the mass market cannot be plausibly considered  
12 to be “actively providing” mass market services.

<sup>46</sup> Source: ARMIS 2001.

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PaeTec

**Q. Is PaeTec a legitimate trigger candidate?**

**A.** No. A review of PaeTec’s public website demonstrates that is not actively providing mass market service. The following describes PaeTec’s strategic focus:

The telecommunications industry is arguably the most complex single sector of the world economy. There's good reason for this - the variety and complexity of the markets we serve is virtually unlimited. No company can service every part of this vast structure and hope to do it all well. PAETEC specializes in developing targeted solutions for medium and large businesses, governmental organizations, and affinity groups across North America. Business size, then, is an important factor in assessing strategic fit. But there's more. PAETEC has adopted a "vertical market" approach to marketing and developing our products and services. This means that we invest the time and resources necessary to carefully analyze and thoroughly understand the specific challenges faced by organizations in a wide variety of industries. We then tailor our portfolio to provide precise, highly targeted solutions, industry by industry, business by business.

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Today, PAETEC has achieved a leadership position in a variety of significant vertical markets, including higher education, health care, manufacturing, professional services, hospitality, and finance. Our customer retention rates are phenomenal, and our rapport with industry leaders, customers, and partners is remarkable. There's a simple reason for this -we take the time to understand our customer's businesses as if they were our own. Only then do we offer solutions that are precisely tailored to the problem set. It's an



**Docket No. 030851-TP**  
**Rebuttal Testimony of Joseph Gillan**  
**On behalf of the Florida Competitive Carriers Association**

1 approach that solves short-term problems with long-term  
2 solutions.<sup>47</sup>  
3

4 Consistent with its enterprise market orientation, PaeTec does not list *any* analog-  
5 based services in its product offering,<sup>48</sup> instead showing the “integrated T” (a  
6 shared-use DS-1 product offering designed for the enterprise market) as its basic  
7 voice offering.  
8

**Comcast**

9  
10  
11 **Q. BellSouth has named Comcast as a triggering candidate. Is this**  
12 **appropriate?**

13  
14 A. No. To begin, the TRO makes clear that candidates that are not relying on use of  
15 the ILEC loop should be given less weight in determining whether CLECs in  
16 general are impaired without unbundled local switching.<sup>49</sup> There are a number of  
17 reasons, including the fact that the source of the national finding of impairment  
18 (the hot cut process) is not rebutted by the presence of a CLEC that does not rely  
19 on access to incumbent loops. As the FCC found:  
20

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<sup>47</sup> Source: [http://www.paetec.com/2\\_1/2\\_1\\_3\\_\\_1.html](http://www.paetec.com/2_1/2_1_3__1.html).

<sup>48</sup> Source: [http://www.paetec.com/1\\_1/1\\_1\\_\\_1.html](http://www.paetec.com/1_1/1_1__1.html).

<sup>49</sup> TRO footnotes 1560 and 1572.

**Docket No. 030851-TP**  
**Rebuttal Testimony of Joseph Gillan**  
**On behalf of the Florida Competitive Carriers Association**

1                   ...both cable and CMRS are potential alternatives not simply for  
2 switching, but for the entire incumbent LEC telephony platform,  
3 including the local loop. We are unaware of any evidence that  
4 either technology can be used as a means of accessing the  
5 incumbents' wireline voice-grade local loops. Accordingly,  
6 neither technology provides probative evidence of an entrant's  
7 ability to access the incumbent LEC's wireline voice-grade local  
8 loop and thereby self-deploy local circuit switches. Rather,  
9 competition from cable telephony and CMRS providers only  
10 serves as evidence of entry using *both* a self-provisioned loop *and*  
11 a self-provisioned switch.<sup>50</sup>  
12

13                   Moreover, Comcast does not "self-provide" its own local switching. In November  
14 2002, Comcast acquired the cable properties of AT&T Broadband and the AT&T  
15 Broadband cable franchises and customer base in parts of Ft. Lauderdale, Miami  
16 and Jacksonville. As a result of this transaction, Comcast was able to maintain  
17 the leasing arrangement that AT&T Broadband had obtained from AT&T Local  
18 Services. That arrangement provides for AT&T Local Services to own and  
19 maintain the Local Class 5 circuit switch that previously served the AT&T  
20 Broadband (now Comcast) cable telephony customers and to provide services,  
21 including maintenance, transport from the cable "headend," and switching  
22 through to the public switched telephone network ("PSTN") for those customers.  
23 This unique circumstance is thus best viewed as evidence of AT&T's *withdrawal*  
24 from cable telephony rather than Comcast's *entry* into the POTS market. Indeed,  
25 Comcast has been reporting a decaying telephony base for several quarters,  
26 refuting the notion that it is actively providing POTS services.

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<sup>50</sup> TRO ¶ 446, footnotes omitted.

**Docket No. 030851-TP  
Rebuttal Testimony of Joseph Gillan  
On behalf of the Florida Competitive Carriers Association**

1

2

Beyond the fact that Comcast does not “self-supply” its own mass market

3

switching, there is also the question as to whether it is likely to continue offering

4

POTS services (to the extent that it does so at all) in the future. Around the time

5

of the announcement of Comcast’s planned acquisition of AT&T Broadband it

6

was reported:

7

8

AT&T/Comcast should pass about 11.2 million telephony ready

9

homes by the end of the year [2002]. Comcast, which is currently

10

pushing video-on-demand, had been targeting telephony for 2003.

11

‘They’re not touching circuit switched telephony with a 10-foot

12

pole ... They’ll maintain what AT&T has done because ... the

13

expense has already been incurred’ [quoting Kenneth Goodman of

14

the Yankee Group]. That expense doesn’t include buying switches,

15

which Comcast has repeatedly disdained.<sup>51</sup>

16

17

By year-end 2002, Comcast’s intention to essentially abandon the analog

18

telephony business became even clearer with the report that:

19

20

Comcast will reverse AT&T Broadband’s aggressive telephony

21

acquisition policies and implement its own corporate policy of

22

trailing and then deploying voice over IP services, a senior

23

executive said today. AT&T enlisted more than 1 million

24

telephony customers using conventional constant bit rate [CBR]

25

phone technology. Comcast will maintain these customers, but it

26

won’t go looking for more, John Alchin, Comcast’s executive vice

27

president and treasurer, said during a luncheon presentation at the

28

Warburg Media day in New York City. ‘There is an element of

29

cutback on telephony’, said Alchin, discussing Comcast’s plans to

<sup>51</sup> Jan. 7, 2002, Telephony Online “Comcast Pulls Telephony Turnaround.” To the extent that Comcast offers VOIP based services in the future, such services are unlikely to satisfy the FCC’s requirements concerning quality, cost and maturity for some time. In any event, a debate concerning VOIP-based alternatives is not ripe for this proceeding.

**Docket No. 030851-TP**  
**Rebuttal Testimony of Joseph Gillan**  
**On behalf of the Florida Competitive Carriers Association**

1 spend more than \$2 billion to upgrade AT&T Broadband plant  
2 next year. ‘While we haven’t yet shared with you the details of the  
3 capital plans for 2003, you should not expect us to take the  
4 telephony product into a whole host of new markets. It will be a  
5 case of supporting the product where it is today without  
6 expanding.’<sup>52</sup>  
7

8 Comcast confirmed this view during the 1<sup>st</sup> quarter of 2003, announcing that the  
9 “number of Comcast Cable phone subscribers is expected to remain flat or decline  
10 by up to 150,000 during 2003.”<sup>53</sup> In its Third Quarter 2003 Results, Comcast  
11 further reiterated its retrenchment from the provision of cable telephony utilizing  
12 circuit switched technology. “As a result of the Company’s reduced marketing  
13 efforts and focus on telephone service profitability, Comcast now expects to lose  
14 approximately 175,000 Comcast Cable phone customers this year, a modest  
15 adjustment from the original expectation of up to a 150,000 telephone customer  
16 decline [announced in the February 27, 2003 guidance].”<sup>54</sup>

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<sup>52</sup> “Comcast Curtailing AT&T Telephony Deployments,” Dec. 12, 2002, Telephony Online.

<sup>53</sup> Source: <http://www.cmsk.com/phoenix.zhtml?c=118591&p=irol-newsArticle&t=Regular&id=445839&>.

<sup>54</sup> 3 Q 2003 Earnings Release, October 30, 2003, at <http://www.cmsk.com/phoenix.zhtml?c=118591&p=irol-newsArticle&t=Regular&id=464588&>.

**Docket No. 030851-TP  
Rebuttal Testimony of Joseph Gillan  
On behalf of the Florida Competitive Carriers Association**

**SBC Telecom**

1  
2  
3 **Q. The challenging ILECs each claim that SBC Telecom is actively providing**  
4 **mass market services. Is this correct?**

5  
6 A. No. Based on the information that I have reviewed concerning SBC Telecom, the  
7 Commission should not consider SBC Telecom to be actively providing analog  
8 POTS services to the mass market in Florida. The data provided by Verizon  
9 indicates that SBC Telecom has less than [REDACTED] in its territory, while  
10 BellSouth data indicates even fewer.

11  
12 In addition to this data, it is useful for the Commission to consider the  
13 circumstances that led to SBC Telecom's "entry" into the Florida market. SBC  
14 Telecom is a wholly-owned subsidiary of SBC Communications that was formed  
15 in the fall of 1999 as a condition of SBC's merger agreement with Ameritech. As  
16 a part its merger approval, SBC made specific commitments to provide local  
17 telephone services in 30 markets outside of its 13-state region, including Florida.  
18 Specifically, SBC agreed to do the following in those out-of region markets:

- 19  
20 \* Install a local telephone company exchange switch;  
21  
22 \* Provide facilities-based local exchange service to at least one  
23 unaffiliated business customer or one non-employee residential

**Docket No. 030851-TP**  
**Rebuttal Testimony of Joseph Gillan**  
**On behalf of the Florida Competitive Carriers Association**

1 customer in that market. The term “facilities-based service” means  
2 service provided by SBC utilizing its own switch;

3

4 \* Collocate facilities in at least 10 wire centers that can be used to  
5 provide facilities-based service to customers served by those wire  
6 centers; and

7

8 \* Offer facilities-based local exchange service to all business and  
9 residential customers served by the wire centers in the market  
10 where SBC is collocated.

11

12 Failure to meet the FCC condition requirements could result in a payment of up to  
13 \$40 million for each market.<sup>55</sup> Moreover, SBC’s merger commitments sunset  
14 after three years (in October 2002). Obviously, a company that is (in effect)  
15 bribed to enter a local market under a multimillion dollar penalty structure cannot  
16 reasonably be used as evidence of non-impairment by other providers, particularly  
17 when the company’s “competitive activities” are as trivial as SBC Telecom’s  
18 have been in Florida.

19

20 The available data suggests that in Florida and elsewhere, SBC Telecom never  
21 aggressively challenged local incumbents. Rather, it did the bare minimum

---

<sup>55</sup> SBC 2000 Annual Report, page 12.

**Docket No. 030851-TP  
Rebuttal Testimony of Joseph Gillan  
On behalf of the Florida Competitive Carriers Association**

1           needed to satisfy its governmental merger mandate. According to New Paradigm  
2           Resources Group, SBC Telecom installed 30 Class 5 local (Lucent 5ESS) circuit  
3           switches in 30 cities across the nation, as it committed to do. From these 30  
4           markets/switches, however, SBCT provisioned a total of only 5,400 access lines  
5           in service in 2002 and 6,000 access lines in service in 2003. Thus by 2003, SBCT  
6           had an average of only 200 access lines in service on each of its required 30  
7           switches. Little wonder, considering SBC Telecom’s nationwide sales force  
8           included only 12 people.<sup>56</sup>

9

10       **Q.    Has SBC Telecom publicly “scaled back” even these minimal competitive**  
11       **activities?**

12

13       **A.    Yes. Relatively soon after “entering” its out-of-region markets, SBC Telecom**  
14       **began scaling back its plans:**

15

16                       SBC Telecom, which appeared to be the first serious competitor to  
17                       BellSouth for providing local phone service to consumers, is  
18                       scaling back its operations.<sup>57</sup>

19

20

\*\*\*

21

22                       This week, it’s adios, SBC Telecom. Almost one year to the day  
23                       that SBC Telecom said it would open a call center at Tampa’s  
24                       upscale Hidden River Corporate Park, the Texas phone giant is

---

<sup>56</sup>       18<sup>th</sup> Edition CLEC Report 2004, New Paradigm Resources Group.

<sup>57</sup>       *SBC Scales Back Staff*, Miami Herald, March 7, 2001.

**Docket No. 030851-TP**  
**Rebuttal Testimony of Joseph Gillan**  
**On behalf of the Florida Competitive Carriers Association**

1                   calling it quits and canning 400 very surprised employees who had  
2                   grown very close to their 15 bucks-an-hour paychecks.<sup>58</sup>  
3

4                   SBC has recently announced a “new” national strategy to utilize a digital  
5                   connectivity and Voice over Internet Protocol (VoIP) technology to provide data  
6                   and voice services outside of its region. As SBC explained:

7  
8                   VoIP could be introduced anywhere, just by purchasing special  
9                   access [i.e. a DS1 or T-1] from carriers – ILECs or CLECs. This  
10                  approach is a lot easier than trying to enter another ILEC territory  
11                  with traditional circuit switched service.<sup>59</sup>  
12

13                  Even in the IP-based arena, however, SBC still shows an unwillingness to  
14                  undertake entry plans that (like a CLEC UNE-L business plan) must be executed  
15                  on a central office-by-central office basis. One SBC executive was quoted  
16                  recently as stating that SBC is “not looking to move forward with Centrex IP; we  
17                  have put that on a sales hold,” explaining that IPCentrex services had to be  
18                  deployed on a central office-by-central office basis, “and, there is a fair capex  
19                  associated with that.”<sup>60</sup>  
20

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<sup>58</sup>           *SBC's Call Center Closing a Case of Last In, First Out*, St. Petersburg Times, March 7  
2001.

<sup>59</sup>           *Communications Daily*, December 10, 2003 (quoting SBC Senior Vice-President  
Dorothy Attwood).

<sup>60</sup>           SBC To Take VoIP Nationwide, XCHANGE, January 2004, available online at  
<http://www.xchangemag.com/articles/411buzserv1.html> (quoting Marianne Gedeon, SBC's  
director of voice data convergence).



**Docket No. 030851-TP**  
**Rebuttal Testimony of Joseph Gillan**  
**On behalf of the Florida Competitive Carriers Association**

1           Whether SBC Telecom’s “VoIP strategy” ultimately proves as empty as its  
2           circuit-switched “national local” plan remains to be seen. What is clear, however,  
3           is that its current activities cannot plausibly be deemed “active competition” for  
4           mass market services.

**Allegiance Telecom**

7           **Q. Does Allegiance Telecom qualify as a trigger candidate for mass market**  
8           **services.**

10          A. No. To begin, Allegiance Telecom (prior to its bankruptcy and expected exit  
11          from the end-user business) only tangentially provided services that overlapped  
12          into the mass market. Although some of its customers may have obtained analog-  
13          based services from it, its principal focus was on providing the “small to medium  
14          sized business and government organizations a complete package of telecom  
15          services, including local, long distance, and international calling as well as high-  
16          speed data transmission and internet services.”<sup>61</sup> As Allegiance stated in a July  
17          2002 filing at the FCC, Allegiance’s “business model calls for it to use its own  
18          switching with unbundled high capacity loops, usually DS-1s, to provide  
19          innovative integrated access services to small and medium sized enterprises.”<sup>62</sup>  
20          Moreover, it is my understanding that Allegiance does not offer any residential

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<sup>61</sup> Source: [http://www.algx.com/about/investor\\_faq.jsp](http://www.algx.com/about/investor_faq.jsp).

<sup>62</sup> Corrected Version Reply Comments of Allegiance Telecom, Inc., CC Docket 01-338, CC Docket 96-98, CC Docket 98-147 at p. 39 (July 22, 2002).

**Docket No. 030851-TP**  
**Rebuttal Testimony of Joseph Gillan**  
**On behalf of the Florida Competitive Carriers Association**

1 service, which represents the largest segment of the mass market. Most  
2 importantly, however, recent events indicate that the Commission cannot  
3 conclude that Allegiance is “likely to continue” to offer (even those limited)  
4 services that may be considered mass market today.

5  
6 **Q. Why is it uncertain that Allegiance will continue to offer service in the**  
7 **future?**

8  
9 A. On December 18, 2003, Allegiance announced that as part of its plan to emerge  
10 from bankruptcy court protection, the company was being put up for auction, with  
11 Qwest designated the “stalking horse” bidder for its assets.<sup>63</sup> Significantly,  
12 analysts predict a very different use for Allegiance’s assets if they are acquired by  
13 Qwest. As reported by TR Daily on December 19, 2003:

14  
15 Analysts from 2 Wall Street investment firms said the deal would  
16 give Qwest strategic access and cost advantages, viewing the  
17 proposed purchase more in terms of reducing access costs. “We  
18 view this as purely an access [reduction]-driven move and would  
19 not be surprised if significant portions of Allegiance’s business fall  
20 off over time and Qwest simply utilizes the assets for its own  
21 purposes” Frank Louthan of Raymond James & Associates.  
22

23 Frank Governali, telecom analyst with Goldman Sachs & Co. said  
24 “Qwest’s long-term benefit from the acquisition would come  
25 mainly from lowered access costs, rather than revenue generated  
26 by Allegiance, which has mainly targeted smaller business  
27 accounts. From Qwest’s perspective, Allegiance’s attractiveness is

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<sup>63</sup> The initial bidder with whom the debtor negotiates a purchase agreement is called the “stalking horse” bidder.

**Docket No. 030851-TP**  
**Rebuttal Testimony of Joseph Gillan**  
**On behalf of the Florida Competitive Carriers Association**

1                   on the cost savings side, not the revenue side. We would expect  
2                   Allegiance’s \$550 million of revenues [from the smaller business  
3                   accounts] to deteriorate quickly, as the target markets of the two  
4                   companies do not overlap.” (emphasis supplied)  
5

6                   Given the extraordinary uncertainty surrounding Allegiance’s future, and the  
7                   evidence that its future will unlikely mirror its present, Allegiance cannot be  
8                   found to be a trigger candidate that is “likely to continue” providing mass market  
9                   services (to the extent it even provides such services today in Florida).

10  
11                   NuVox

12  
13                   **Q.    Is NuVox an active provider of mass market services in Florida?**

14  
15                   A.    No. Based on a review of information provided by NuVox, it cannot be  
16                   considered a self-providing trigger candidate in Florida. Specifically:

17  
18                   \*    NuVox was initially founded in 1997 under its former name of State  
19                   Communications, Inc. (“State”). State initially focused on total service  
20                   resale to residential and small business customers. This initial business  
21                   plan was unsuccessful and resulted in a substantial loss of capital and  
22                   other resources.

23  
24                   \*    In 1999 the company changed its direction by revising its business model  
25                   to deploy its own facilities and provide local and long distance

**Docket No. 030851-TP**  
**Rebuttal Testimony of Joseph Gillan**  
**On behalf of the Florida Competitive Carriers Association**

1 telecommunications services as well as high-speed data services, web  
2 hosting and web design to small business customers. That same year the  
3 company changed its name to Trivergent Communications, Inc. While the  
4 company worked to deploy its own switching facilities and complete  
5 collocations, Trivergent entered into negotiations regarding a potential  
6 merger with Gabriel Communications, Inc. (“Gabriel”), a facilities-based  
7 Competitive Local Exchange Provider (“CLEC”) headquartered in  
8 Chesterfield, Missouri. The merger of Gabriel and Trivergent was  
9 completed on November 1, 2000. The combined company adopted  
10 NuVox Communications as its new operating name in February of 2001.  
11 The company focused on continuing to build out its own facilities to  
12 provide broadband products and services to business customers.

13  
14 \* NuVox currently offers bundled local voice and data services, domestic  
15 and international long distance services, dedicated high speed Internet  
16 access including business class calling features and wide area network  
17 management, virtual private networks, website design and hosting and  
18 domain services in thirty markets across thirteen states. One of NuVox’s  
19 standard product offerings, the NuBundle Business Package, includes  
20 unlimited high speed Internet access, web design, hosting and domain  
21 services, and feature-rich local and long distance services.  
22

1 \* NuVox's principal business is to actively market and provide bundled  
2 voice and data services to certain small, medium and large size business  
3 customers within the company's limited marketing and service footprint.  
4 These bundled voice and data services are provided utilizing digital  
5 connectivity via T-1(i.e. DS-1) loops.  
6

7 \* The only residential customers that NuVox serves in Florida today are  
8 "legacy" customers being served via resale, who are holdovers from the  
9 former State marketing and sales efforts in Florida. NuVox is not actively  
10 providing residential analog voice service under its present business plan  
11 and has no plans to do so in the future.  
12

13 **Q. Are NuVox's switches enterprise switches or mass market switches?**  
14

15 A. NuVox is clearly an enterprise-oriented CLEC and its switches are clearly  
16 enterprise switches. The basic method by which NuVox serves business  
17 customers' bundled voice and data needs in Florida is through a T-1 provisioned  
18 to the NuVox switch in Miami or Atlanta (which serves the Jacksonville area).  
19 NuVox may install equipment at the customer's demarcation point and at its  
20 collocation site at the ILEC wire center. As shown in Table 6, NuVox's switches  
21 serve a total of [REDACTED], less than [REDACTED] of its total voice grade equivalent  
22 lines. They are obviously enterprise switches that do not qualify under the trigger  
23 analysis.

Docket No. 030851-TP  
Rebuttal Testimony of Joseph Gillan  
On behalf of the Florida Competitive Carriers Association

1

Table 6: NuVox Switch Data

Switch	VGE Analog	VGE Digital	Percent Enterprise
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

2

3

Xspedius

4

5

**Q. Is Xspedius a legitimate candidate as a self-providing mass market switching trigger?**

6

7

8

A. No. As is the case with NuVox, Xspedius exemplifies the exaggeration the challenging ILECs have relied upon in their effort to demonstrate that triggers have been satisfied in Florida. Verizon listed Xspedius as a self-provider of local switching even though it knew that Xspedius had purchased a total of 5 unbundled analog loops in its territory.<sup>64</sup> Furthermore, based on information provided by Xspedius:

9

10

11

12

13

14

15

\* Xspedius does not serve the small business and residential market utilizing its switches.

16

17

<sup>64</sup> Xspedius has given permission to reveal this information contained in Verizon Exhibit ODF-2.

**Docket No. 030851-TP**  
**Rebuttal Testimony of Joseph Gillan**  
**On behalf of the Florida Competitive Carriers Association**

1 \* Xspedius's switches are enterprise switches and the principal business of  
2 Xspedius is to serve the enterprise and not the mass market in the areas in  
3 Florida where these switches are located. Today, Xspedius actively  
4 markets to medium and large business enterprise customers with a high  
5 demand for a variety of sophisticated data-centric telecommunications  
6 services and solutions.

7  
8 \* Xspedius currently serves [REDACTED] voice grade equivalents (VGEs) in  
9 Florida, of which only [REDACTED] are analog (i.e. [REDACTED]). These DS-0 customers  
10 are an incidental part of Xspedius' business. Serving these DS-0  
11 customers is not currently, and never has been, a significant part of  
12 Xspedius sales and marketing efforts.

13  
14 \* Xspedius' principal product is Complete Xchange,<sup>TM</sup> an integrated T-1  
15 product designed for and marketed to sophisticated small and midsize  
16 companies with complex voice and data telecommunications needs.

17  
18 \* Xspedius utilizes an individualized contract with each customer.

19  
20 As the above demonstrates, Xspedius is not actively providing mass market voice  
21 services in Florida.

22

Docket No. 030851-TP  
Rebuttal Testimony of Joseph Gillan  
On behalf of the Florida Competitive Carriers Association

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Network Telephone

**Q. Does Network Telephone qualify as a self-providing switch trigger?**

A. No. Based on a review of information provided by Network Telephone, it is apparent that Network Telephone should not be considered as a self-provider of local switching to serve the mass market

\* Network Telephone’s principal business is to actively market and provide bundled voice and data services to the small to medium size business customers within its limited marketing footprint. These bundled voice and data services are provided utilizing digital connectivity via unbundled DS1 loops and ADSL-compatible/UDC network elements. In addition, Network Telephone does not actively provide analog POTS services to residential customers from its switch in Pensacola.

\* The only residential customers that Network Telephone serves in Florida today are “legacy” customers being served either via resale or UNE-P and not via Network Telephone’s switch.

\* The basic method by which Network Telephone serves the small and medium business customers’ bundled voice and data needs in Florida are via an unbundled DS1 loop, a 2 wire ADSL-compatible loop, or a UDC



1 loop, each provisioned to the Network Telephone switch in Pensacola.

2 With any of these configurations, Network Telephone is required to install  
3 equipment at the customer's location and to make a connection at its  
4 collocated DSLAM in order to provide the customer with voice service.

5  
6 \* Approximately [REDACTED] of the loops provisioned to Network Telephone's  
7 Pensacola switch are DS1 loops and the remaining [REDACTED] are ADSL-  
8 capable or UDC loops. These loops provide customers with Network  
9 Telephone's bundled voice and data services. While there are  
10 approximately [REDACTED] presently provisioned  
11 to Network Telephone's switch to provide small business customers with  
12 voice services, these analog loops would have been provisioned for a  
13 legacy customer. There would be no instance today where Network  
14 Telephone would provision such a loop to provide a small business  
15 customer with analog POTS service.

16  
17 Consequently, Network Telephone clearly cannot be counted as a self-provider of  
18 mass market services.

19

**Docket No. 030851-TP  
Rebuttal Testimony of Joseph Gillan  
On behalf of the Florida Competitive Carriers Association**

**Florida Multimedia**

1

2

3

**Q. Is Florida Multimedia a self-provider of mass market local switching?**

4

5

**A.** No. A review of information provided by Florida Multimedia shows the following:

6

7

8

\* The principal business of Florida Multimedia is to provide bundled telecommunications services to customers located in developments such as apartment buildings, condominiums, and office complexes. Florida Multimedia does not provide "POTS" service to the "mass market" in the areas where its switches are located in Florida. Rather, it offers a product called "Bulk Billing," which is structured to be sold to a homeowner's association, as opposed to individual homeowners. These services are provisioned via dedicated access lines to such developments, as opposed to individual home owners.

9

10

11

12

13

14

15

16

17

18

\* Florida Multimedia only markets dedicated access to developments with an intense and high demand for a variety of sophisticated data-centric telecommunications services and solutions, including entertainment television and internet bundled with local and long distance service.

19

20

21

22

**Docket No. 030851-TP**  
**Rebuttal Testimony of Joseph Gillan**  
**On behalf of the Florida Competitive Carriers Association**

1 Florida Multimedia is, as with the other claimed trigger candidates, an enterprise-  
2 oriented provider, albeit one where the enterprise may include individual  
3 buildings and/or developments that may house some residential customers.  
4 However, that does not change the nature of the service, which is not mass market  
5 service offered generally to the public.

6

7

**Orlando Telephone**

8

9

**Q. Does Orlando Telephone qualify as a self-providing mass market switch  
trigger?**

10

11

12

**A.** No. I have obtained information about Orlando Telephone from its marketing  
materials and a listing of its target market on its website.

13

14

15

Orlando Telephone Company's website makes clear that the company is affiliated  
with three telephone equipment businesses – Orlando Business Telephone  
Systems, Brevard Business Telephone Systems, and Gulfcoast Business  
Telephone Systems. These telephone equipment businesses sell and install data  
equipment, PBX and key systems and offer professional cabling and management  
services to the business market and not the mass market.<sup>65</sup>

16

17

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21

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<sup>65</sup> Source: <http://www.orlandotelco.com/pages/aboutus.htm>.

**Docket No. 030851-TP**  
**Rebuttal Testimony of Joseph Gillan**  
**On behalf of the Florida Competitive Carriers Association**

1 As described on Orlando Telephone’s website:

2

3 Our business plan encompasses serving the telecommunications  
4 needs for hospitality, large and small businesses, multiple dwelling  
5 units and Greenfield projects in the state of Florida.  
6

7 And, even more specifically:

8

9 Services are for hospitality and business customers with a  
10 minimum of 15 lines.<sup>66</sup>  
11

12 Assuming the Commission adopts the Sprint recommended cutover of 12 lines  
13 (which we endorse), the Orlando Telephone Company is unambiguously a  
14 provider of enterprise services.

15

16 **ITC^DeltaCom**

17

18 **Q. BellSouth and Verizon identify ITC^DeltaCom as a trigger. Is this**  
19 **appropriate?**

20

21

22 **A.** No. Based on a review of information provided by ITC^DeltaCom (“ITCD”), it  
23 cannot be considered a self-providing trigger candidate in Florida. Specifically:  
24

24

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<sup>66</sup> Source: <http://www.orlandotelco.com/pages/otcproducts.htm>.

**Docket No. 030851-TP**  
**Rebuttal Testimony of Joseph Gillan**  
**On behalf of the Florida Competitive Carriers Association**

1           \*       ITCD’s switches in Florida are enterprise switches. The lines served over  
2                   ITCD’s switches in [REDACTED] and [REDACTED] overwhelmingly serve  
3                   digital enterprise customers. Table 7 depicts information on the analog  
4                   versus digital profile of ITCD’s switches serving Florida.

**Table 7: ITC^DeltaCom Switch Data**

Switch	VGE Analog	VGE Digital	Percent Enterprise
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

5  
6           ITCD recently acquired the assets of BTI, a company that also operated a  
7                   switch in the [REDACTED] market. ITCD is in the process of  
8                   decommissioning the BTI [REDACTED] switch, since ITCD already has a  
9                   switch there. BTI formerly provided some DS0 lines off its [REDACTED]  
10                  switch, and there still [REDACTED] on the switch prior to its  
11                  decommissioning. Even if the BTI DS0 lines were added to the ITCD line  
12                  counts in Table 7, the percent enterprise served by the combined switches  
13                  would still exceed [REDACTED].

14  
15           \*       ITCD is not actively providing service to the mass market using self-  
16                   provisioned switches. ITCD did cut over analog customers to its switch in  
17                   the years 1997-2000. Since that time, however, operational and economic  
18                   problems with its UNE-L strategy led it to serve mass market customers  
19                   using UNE-P. ITCD thus has some legacy retail mass market customers  
20                   served on DS0 loops connected to its Florida switches, but ITCD is not

1 actively marketing such services to new customers. The vast majority of  
2 DS0 loops provisioned to ITCD switches were provisioned prior to the  
3 year 2000. DS0 loops provisioned since then were mainly to support  
4 changes to existing legacy customers on the company's UNE-L platform.  
5 ITCD's direction in this regard is clear from examining the number of  
6 DS0 loops it has ordered in recent months. As of March 2003, ITCD had  
7 [REDACTED]; by August 2003, the number  
8 had decreased to [REDACTED]. [REDACTED], ITCD had  
9 [REDACTED] in March, and the analog loops declined by August 2003  
10 to [REDACTED]. The de minimus use of DS0 analog loops by ITCD's switches is  
11 shrinking rather than growing.

12  
13 \* Contrary to Verizon's claims, ITCD is not using the switch formerly  
14 operated by BTI as a mass market switch in Verizon territory. Verizon's  
15 response to discovery requests show that over [REDACTED]% of the loops connected  
16 to the former BTI switch are digital DS1 loops. As with the ITCD  
17 switches discussed above, the [REDACTED] is an  
18 enterprise switch. In addition, ITCD does not plan to continue marketing  
19 DS0 switch-based services to customers in Verizon's Florida territory.

20  
21 \* ITCD is not likely to continue providing the few mass market services it  
22 provides today using its own switches. As noted above, ITCD no longer  
23 markets to DS0 analog customers (except for service via UNE-P), and

**Docket No. 030851-TP**  
**Rebuttal Testimony of Joseph Gillan**  
**On behalf of the Florida Competitive Carriers Association**

1 provides analog service to customers served by the [REDACTED]

2 [REDACTED] only on a “grandfathered” basis.

3  
4 \* ITCD serves business customers almost exclusively. Any use of ITCD’s  
5 switches to serve residential customers would be strictly incidental (such  
6 as company employees or business associates). ITCD markets its  
7 residential services through its Grapevine division, which offers service  
8 exclusively via UNE-P.

9  
10 **Q. Is BellSouth’s description of ITCD’s switch deployment in Florida**  
11 **accurate?**

12  
13 A. No. In Exhibit PAT-1, BellSouth witness Tipton fails to accurately  
14 describe ITCD’s network in Florida. According to information from  
15 ITCD, several pieces of switching equipment in Florida are used by ITCD  
16 strictly to off-load data traffic from Internet Service Providers (“ISPs”).  
17 These switches are neither designed nor used for providing voice service  
18 to mass market or enterprise customers. Nevertheless, BellSouth  
19 identifies this equipment as being available to mass market customers in a  
20 way that would satisfy the self-provisioning triggers.

21  
22 In addition, BellSouth incorrectly identifies ITCD as meeting the trigger  
23 criteria in the [REDACTED] LATA. In that LATA, neither ITCD nor

1 BTI have any DS0 facilities-based voice capability since neither have  
2 collocated any equipment there capable of providing such services. ITCD  
3 could not be providing mass market services (or any voice services) in  
4 [REDACTED], and it is difficult to understand what data BellSouth  
5 reviewed to reach a contrary conclusion.  
6

7 **Q. How does this information affect application of the self-provisioning**  
8 **trigger criteria?**

9  
10 A. The information provided by ITCD makes clear that ITCD is operating  
11 enterprise rather than mass market switches, is not actively providing  
12 POTS services to mass market customers in Florida using self-provisioned  
13 switches, and has no intention of doing so. In addition, much of the  
14 switching equipment identified by BellSouth to claim ITCD as a self-  
15 provisioning trigger is either being decommissioned (the [REDACTED]  
16 [REDACTED]) or is not designed or used for mass market services (the switches  
17 dedicated to ISP data traffic).  
18



US LEC

1

2

3

**Q. BellSouth identified US LEC as a trigger. Is US LEC a legitimate trigger candidate?**

4

5

6

A. No. Information from US LEC shows that all services provided by US LEC in Florida are provided at the digital DS-1 and above level. US LEC's switch therefore is an enterprise switch, and it provides no services to mass market customers. That fact alone disqualifies US LEC as a self-provisioning trigger candidate.

7

8

9

10

11

12

**Q. Are there other factors that lead you to conclude US LEC does not satisfy the self-provisioning trigger criteria?**

13

14

15

A. Yes. Information provided by US LEC shows that US LEC is not a CLEC providing service to the mass market in Florida. The principal business of US LEC is to serve the enterprise and not the mass market in the areas in Florida where its switches are located. Today, US LEC actively markets to medium and large business enterprise customers with an intense and high demand for a variety of sophisticated data-centric telecommunications services and solutions. US LEC serves medium to large size business customers and does not serve residential customers in Florida.

16

17

18

19

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21

22

23

**Docket No. 030851-TP  
Rebuttal Testimony of Joseph Gillan  
On behalf of the Florida Competitive Carriers Association**

1 As discussed in US LEC's marketing materials on its web site, the US LEC  
2 "Advantage T" product offers a bundle of multiple voice and data services on a  
3 single T-1 facility for one rate. The "Advantage T" service features bandwidth  
4 allocation to give customers control over the specific amount of bandwidth  
5 required for each service they choose. Using the service, US LEC states that its  
6 customers can combine any of the following services at a single price: local, long  
7 distance, inbound, outbound, toll-free, digital private line and US LECnet  
8 (dedicated high-speed Internet access). There is no question that this is not a  
9 POTS voice service that would be included in the FCC's concept of the mass  
10 market for switching trigger analysis.

**Other CLECS**

11  
12  
13  
14 **Q. Are there other trigger candidates for whom you have not yet completed**  
15 **your review?**

16  
17 A. Yes. I have only recently received data from BellSouth and have not yet been  
18 able to fully analyze it. In addition, I am continuing to investigate BellSouth's  
19 and Verizon's trigger claims regarding certain CLECs. As a result, I will need to  
20 supplement my analysis for several CLECs (including FDN, AllTel, and XO in  
21 particular), and I may need to refine my analysis of others as information becomes  
22 available as well. (My preliminary review of XO, however, indicates that the

**Docket No. 030851-TP  
Rebuttal Testimony of Joseph Gillan  
On behalf of the Florida Competitive Carriers Association**

1           only portion of its business that is growing is its enterprise voice/data line,<sup>67</sup> and  
2           there is no indication that the company serves residential customers.) Moreover,  
3           as noted above, several CLECs (including AT&T, MCI/WorldCom, Sprint, and  
4           Supra) are presenting their own evidence rebutting the challenging ILECs'  
5           assertions in rebuttal testimony.

6  
7           Even with the need for additional analysis, however, it is clear that the mass-  
8           market local switching triggers are not satisfied in Florida at this time. In  
9           addition, it is equally clear that the analysis conducted by the challenging ILECs  
10          asserting triggers have been met is dramatically insufficient. As discussed herein,  
11          the ILECs' misleadingly simplistic "count to three" approach identifies as triggers  
12          companies that do not come near satisfying the criteria identified in the TRO.  
13          The information provided by the challenging ILECs in their direct testimony,  
14          however, falls far short of providing the Commission the information it would  
15          need to find the self-provisioning trigger satisfied in any Florida market.

**IV. Conclusion**

16  
17  
18  
19          **Q. Please summarize your rebuttal testimony.**

20  
21          A. The challenging ILECs desire their cake and want to eat it as well. At roughly the  
22          same time that these companies asked that the Commission authorize rate

---

<sup>67</sup> Source: XO 3<sup>rd</sup> Q 2003 10Q.

**Docket No. 030851-TP**  
**Rebuttal Testimony of Joseph Gillan**  
**On behalf of the Florida Competitive Carriers Association**

1 increases for the mass market for the purpose of encouraging local competition,  
2 the challenging ILECs were filing testimony asking the Commission to *eliminate*  
3 the principal source of that competition, unbundled local switching and UNE-P.

4  
5 Fortunately, and in direct contrast to what the challenging ILECs claim, the TRO  
6 does not require that the Florida Commission follow its rate increase decision  
7 with an order that dramatically reduces mass market competition around the state.  
8 As I explain above, the alleged “trigger candidates” proffered by the challenging  
9 ILECs do not meet even the most basic criteria required by the TRO. Although  
10 my review is continuing, I have prepared Exhibit JPG-9 to track the various  
11 criteria that disqualify the carriers identified as candidates by the challenging  
12 ILECs. This exhibit (which now includes only the information gathered thus far  
13 and is thus preliminary in nature) is intended to provide a summary scorecard of  
14 the status of the challenging ILECs’ claims that mass market switching triggers  
15 have been met in Florida.

16  
17 **Q. Does this conclude your rebuttal testimony?**

18  
19 **A. Yes.**

**BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION**

**In re: Implementation of Requirements Arising )  
From Federal Communications Commission ) Docket No. 030851-TP  
Triennial UNE Review: Local Circuit Switching For ) Filed: January 22, 2004  
Mass Market Customers )**

**SUPPLEMENTAL REBUTTAL TESTIMONY AND EXHIBITS OF  
JOSEPH GILLAN  
ON BEHALF OF  
THE FLORIDA COMPETITIVE CARRIERS ASSOCIATION**

**PUBLIC VERSION**

1       **Q.     Please state your name and sponsoring party.**

2

3       A.     My name is Joseph Gillan. I previously sponsored direct and rebuttal testimony  
4             on behalf of the Florida Competitive Carriers Association.

5

6       **Q.     What is the purpose of your supplemental rebuttal testimony?**

7

8       A.     Shortly before I filed my rebuttal testimony, we received discovery responses  
9             from BellSouth that were particularly germane to the issues in this proceeding,  
10            but which we were unable to analyze and include in the rebuttal testimony. The  
11            purpose of my supplemental rebuttal testimony is to provide an analysis of the  
12            data provided by BellSouth, as I indicated in my rebuttal testimony.<sup>1</sup>

13

---

<sup>1</sup> See Rebuttal Testimony of Joseph Gillan, page 5.

**Docket No. 030851-TP**  
**Supplemental Rebuttal Testimony of Joseph Gillan**  
**On Behalf of the FCCA**  
**PUBLIC VERSION**

1       **Q.    Which discovery response does your supplemental rebuttal testimony**  
2       **analyze?**

3  
4       A.    The relevant data is from the proprietary attachment to BellSouth’s Response to  
5       Item No.3 in AT&T’s Subpoena Duces Tecum Without Deposition, and Item No.  
6       125 in AT&T 3<sup>rd</sup> Set of Interrogatories that asked:

7           Refer to the Direct Testimony of Pamela A. Tipton at page 11, lines 9-  
8           21, please provide for the last eighteen months, by month, by market, by  
9           wire center within the market, and by CLEC the number of:

- 10           a.     2-Wire UNE loops;
- 11           b.     4-Wire UNE loops;
- 12           c.     DS1 UNE loops;
- 13           d.     DS3 UNE loops;
- 14           e.     DS0 EELs;
- 15           f.     DS1 EELs;
- 16           g.     DS3 EELs;
- 17           h.     T-1 Special Access lines; and
- 18           i.     DS3/T-3 Special Access lines

19           provisioned to the CLECs listed in Exhibit PAT-5.<sup>2</sup>

20  
21  
22  
23       **Q.    Why is the response to this data request significant?**

24  
25       A.    The question asked and the data requested asks BellSouth to identify (among  
26       other items) the number of analog loops that BellSouth provides to each of the  
27       alleged self-provisioning switch trigger candidates in Florida over the last  
28       eighteen months. Consequently, the data can be used to determine whether the  
29       named trigger candidates are purchasing analog loops (a necessary prerequisite to

---

<sup>2</sup> Exhibit PAT-5 lists carriers that BellSouth claims are self-provisioning switch triggers.

**Docket No. 030851-TP**  
**Supplemental Rebuttal Testimony of Joseph Gillan**  
**On Behalf of the FCCA**  
**PUBLIC VERSION**

1 being a self-provider of switching to serve the analog POTS mass market), as well  
 2 as whether the carriers are adding analog loops (which would indicate whether the  
 3 carriers are “actively providing” analog POTS service, another requirement to  
 4 being considered a mass market switching trigger).

5  
 6 **Q. Have you analyzed BellSouth’s response?**

7  
 8 A. Yes. The most relevant information, however, is summarized in proprietary  
 9 Exhibit No. \_\_\_ (JPG-10). As Exhibit No. \_\_\_ (JPG-10) shows, the total number  
 10 of analog UNE loops leased by the alleged self-providers of mass market  
 11 switching represents a market share of 1.4%, less than half the CLEC market  
 12 share that the FCC rejected as insufficient proof that CLECs are not impaired  
 13 without access to UNE switching.<sup>3</sup> As I explained in my rebuttal testimony, a  
 14 state-conducted analysis that *confirms* on a more granular basis the accuracy of  
 15 data that the FCC used to find impairment, cannot rationally be used to justify a  
 16 finding of non-impairment by the Commission. Other relevant facts revealed in  
 17 BellSouth’s data:

18  
 19 \* BellSouth’s data indicates that four alleged self-providers of switching to  
 20 serve the analog POTS market –Begin Confidential \*\* [REDACTED]

21 [REDACTED]

---

<sup>3</sup> TRO ¶ 438.

**Docket No. 030851-TP**  
**Supplemental Rebuttal Testimony of Joseph Gillan**  
**On Behalf of the FCCA**  
**PUBLIC VERSION**

1                   End Confidential \*\* – do not purchase analog loops in the relevant wire  
2                   centers.

3  
4                   \*       Only two of the CLECs named as trigger candidates by BellSouth have  
5                   added analog loops in the past year. Overall, the number of analog loops  
6                   provisioned to the named trigger candidate CLECs declined by more than  
7                   20%. This data is inconsistent with BellSouth’s claims that these  
8                   companies are actively providing analog mass market services.

9  
10                  \*       Only one company begin Confidential \*\* [REDACTED] End Confidential \*\*  
11                  purchased loops in more than a small fraction of BellSouth’s wire centers.

12  
13       **Q.     What conclusions can be drawn from BellSouth’s Response to AT&T’s**  
14       **Interrogatory?**

15  
16       A.     Based on BellSouth’s Response to AT&T’s Interrogatory, five additional  
17       companies can be disqualified as self-provisioning switch trigger candidates  
18       serving the analog POTS mass market because the data indicates that they do not  
19       purchase analog loops from BellSouth –Begin Confidential \*\* [REDACTED]

20       [REDACTED].<sup>4</sup> End Confidential

21       \*\* In addition, the data shows that more than 95% of the UNE loops leased by

---

<sup>4</sup> In addition, Supra Telecom is independently addressing why it should not be considered a self-provisioning switch trigger.



1 Begin Confidential \*\* [REDACTED] End Confidential \*\* (as measured in VGE) are high-  
2 speed digital loops and its switches should properly be considered enterprise  
3 switches (and thus may not be counted as a mass market switch trigger for the  
4 reasons detailed in the TRO and in my direct testimony).

5  
6 In addition, Alltel should be disqualified because it is an affiliate an incumbent  
7 ILEC within the market,<sup>5</sup> and its has deployed a footprint that is too limited to be  
8 considered a provider of mass market services, leasing loops in wire centers  
9 serving less than begin Confidential \*\* [REDACTED] \*\* end confidential of the  
10 Jacksonville LATA/CEA.

11  
12 Attached is a revised Exhibit No. \_\_\_ (JPG-9) that summarizes my on-going  
13 comparison of each claimed switch trigger candidate to the criteria that must be  
14 satisfied in order to be legitimately considered to be “actively providing” of mass  
15 market services. I am continuing my review and, if appropriate, will provide  
16 additional information in my surrebuttal testimony.

17  
18 **Q. Does this conclude your supplemental rebuttal testimony?**

19  
20 **A. Yes.**

---

<sup>5</sup> TRO ¶ 499.

**BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION**

**In re: Implementation of Requirements Arising )  
From Federal Communications Commission ) Docket No. 030851-TP  
Triennial UNE Review: Local Circuit Switching For ) Filed: January 28, 2004  
Mass Market Customers )**

**SURREBUTTAL TESTIMONY AND EXHIBITS OF  
JOSEPH GILLAN  
ON BEHALF OF  
THE FLORIDA COMPETITIVE CARRIERS ASSOCIATION  
(PUBLIC VERSION)**

1       **Q.     Please state your name and the party sponsoring your surrebuttal testimony.**

2

3       **A.     My name is Joseph Gillan. My surrebuttal testimony is being sponsored by the**  
4       Florida Competitive Carriers Association.

5

6       **Q.     What is the purpose of your surrebuttal testimony?**

7

8       **A.     The purpose of my surrebuttal testimony is to address a number of**  
9       arguments raised by BellSouth in its rebuttal testimony, as well as to  
10      respond to FDN's claim that it is a self-provisioning switch trigger in the  
11      mass market.

12

13      **Q.     What issues does BellSouth raise in its rebuttal testimony?**

14

15      **A.     BellSouth's rebuttal testimony generally raises two new issues:**

**Docket No. 030851-TP**  
**Surrebuttal Testimony of Joseph Gillan**  
**On Behalf of the Florida Competitive Carriers Association**

1           \*       Although BellSouth acknowledges that state law requires that it offer  
2                   unbundled local switching in exchange for its profits being deregulated, it  
3                   implies that the FCC would preempt this aspect of Florida law if asked;  
4                   and,

5  
6           \*       While recognizing that it has the obligation to offer unbundled local  
7                   switching under section 271 of the Act in exchange for the opportunity to  
8                   offer interLATA services, BellSouth suggests that it may unilaterally  
9                   impose rates on competitors without regulatory restraint.

10  
11           However, perhaps the most important point made by BellSouth's rebuttal  
12           testimony is what it doesn't say. BellSouth never disagrees that state law  
13           requires that it offer unbundled local switching, nor does BellSouth disagree that  
14           its rates for unbundled switching must be just, reasonable, non-discriminatory and  
15           provide competitors meaningful access in order to comply with section 271 of the  
16           Act. Perhaps most importantly, BellSouth never directly challenges the central  
17           premise of my direct testimony -- that the TRO grants state commissions the  
18           latitude to use judgment in how they apply the trigger analysis. As a result,  
19           BellSouth effectively concedes that the Commission may take the actions my  
20           testimony recommends, even if its recommendation would be that the  
21           Commission not do so.  
22

**Docket No. 030851-TP**  
**Surrebuttal Testimony of Joseph Gillan**  
**On Behalf of the Florida Competitive Carriers Association**

1       **Q.    Before you address BellSouth's rebuttal testimony in more detail, do you**  
2       **have a preliminary comment?**

3  
4       A.    Yes. It is important that the Commission keep this proceeding in perspective.  
5       BellSouth has just been given the approval to raise end user rates by over \$125  
6       million (\$1.75 per line, on average) to encourage competition for the mass market  
7       residential and small business customer.<sup>1</sup> In this proceeding, however, BellSouth  
8       is effectively seeking to raise rates to the CLECs serving that market by (on  
9       average) more than \$9.60 per line.<sup>2</sup> What could possibly be the result except  
10       higher rates for everybody? This docket is the "shoe that did not drop" when the  
11       ILECs requested higher end-user rates, because the Commission's decision in this  
12       proceeding will determine whether those increases become the additional spur to  
13       competition that they were intended to be, or merely permanent increases in ILEC  
14       prices.

15  
16       BellSouth just this past week announced its earnings for the 4<sup>th</sup> quarter of last  
17       year. Even with CLECs having access to unbundled local switching, BellSouth is  
18       solidifying its dominance of the mass market throughout the Southeast. In just  
19       over a year since it gained approval to offer long distance service, it has achieved  
20       a 30% share of the mass market (compared to UNE-P's share, for all CLECs

---

<sup>1</sup> Source: Exhibit SB1, Docket No. 030869-TL.

<sup>2</sup> Calculated as the difference between the TELRIC port rate (\$2.41) and BellSouth's proposed section 271 rate (\$14.00), weighted by the 83% of the state where BellSouth has asked for a finding of non-impairment.

**Docket No. 030851-TP**  
**Surrebuttal Testimony of Joseph Gillan**  
**On Behalf of the Florida Competitive Carriers Association**

1 combined, of 10%). UNE-P is the only viable wholesale offering in the mass  
2 market and BellSouth understands that its ability to raise end-user rates in Florida  
3 would be unchecked if UNE-P were eliminated.

4  
5 While there are number of complex issues being debated, the bottom line is that  
6 BellSouth is asking this Commission to find, on the basis of the rapidly shrinking  
7 analog loop activity of a handful of carriers that in total amounts to less than 1.3%  
8 share of the mass market, that UNE-P is not needed in over 83% of the state – all  
9 in an environment where BellSouth is raising local rates justified by the claim that  
10 it is doing so to encourage competition. If Churchill were alive, one can imagine  
11 him remarking that “never has so much been done to so many, based on the  
12 evidence of so little.”

13  
14 **Q. Does BellSouth’s rebuttal testimony recommend that the Florida**  
15 **Commission ignore the fact that the policy of this state favors unbundled**  
16 **access (and the competition that it brings)?**

17  
18 A. No. BellSouth never quite reaches this recommendation. Rather, BellSouth  
19 points to the fact that the state's actions must not be “inconsistent with” the  
20 federal Act, and then suggests, through selective citation to the TRO, that *any*  
21 unbundling action by a state commission would necessarily be in conflict with the  
22 federal law:

23

**Docket No. 030851-TP**  
**Surrebuttal Testimony of Joseph Gillan**  
**On Behalf of the Florida Competitive Carriers Association**

1 We find nothing in the language of section 251(d)(3) to limit its  
 2 application to state rulemaking actions. Therefore, we find that the  
 3 most reasonable interpretation of Congress' intent in enacting  
 4 sections 251 and 252 to be that state action, whether taken in the  
 5 course of a rulemaking or during the review of an interconnection  
 6 agreement, must be consistent with section 251 and must not  
 7 "substantially prevent" its implementation.... If a decision  
 8 pursuant to state law were to require the unbundling of a network  
 9 element for which the Commission has either found no impairment  
 10 – and thus has found that unbundling that element would conflict  
 11 with the limits in section 251(d)(2) – or otherwise declined to  
 12 require unbundling on a national basis, we believe it unlikely that  
 13 such decision would fail to conflict with and "substantially  
 14 prevent" implementation of the federal regime, in violation of  
 15 section 251(d)(3)(C). Similarly, we recognize that in at least some  
 16 instances existing state requirements will not be consistent with  
 17 our new framework and may frustrate its implementation. It will  
 18 be necessary in those instances for the subject states to amend their  
 19 rules and to alter their decisions to conform to our rules.<sup>3</sup>  
 20

21 **Q. Has BellSouth cited the TRO correctly?**

22  
 23 A. No, not entirely. BellSouth left out the important third sentence in the cited  
 24 passage that reads:

25 Parties that believe that a particular state unbundling obligation is  
 26 inconsistent with the limits of section 251(d)(3)(B) and (C) may  
 27 seek a declaratory ruling from this Commission.<sup>4</sup>  
 28

29 The omitted sentence that BellSouth did not want the Commission to consider is  
 30 the one which establishes the process by which a claim of preemption should be  
 31 tested. Significantly, the process does not direct state commissions generally

<sup>3</sup> Ruscilli Rebuttal Testimony, page 3 (partially citing TRO ¶¶ 194-195).

<sup>4</sup> TRO ¶ 195.

**Docket No. 030851-TP**  
**Surrebuttal Testimony of Joseph Gillan**  
**On Behalf of the Florida Competitive Carriers Association**

1 (much less the Florida Commission specifically) to ignore state law or the policy  
2 choices made by the legislative branch. Rather, it sets forth a defined process  
3 whereby a specific state unbundling obligation may be challenged through a  
4 request for a declaratory ruling. Importantly, BellSouth has never asked that the  
5 unbundling obligations set out in Chapter 364, Florida Statutes, be preempted by  
6 the FCC, although it has certainly shown itself to be familiar with the process.<sup>5</sup>

7  
8 **Q. Do you believe that BellSouth's unbundling obligations under Chapter 364**  
9 **are "inconsistent with" or "would substantially prevent implementation of"**  
10 **the federal regime?**

11  
12 A. No, not at all. Chapter 364 may require *more* of BellSouth than the federal Act;  
13 but that is, in part, because Chapter 364 grants BellSouth *additional* freedoms (the  
14 deregulation of its profits) that are not addressed by the federal Act. The  
15 relationship between the unbundling obligations of Chapter 364 and the federal  
16 Act cannot be evaluated in isolation; these unbundling provisions are part of a  
17 package of reforms that included the reduced regulation of BellSouth. There is  
18 simply no basis to conclude that the FCC would (or could) find that the balance of  
19 unbundling/deregulation in Chapter 364 is inconsistent with the federal Act,

---

<sup>5</sup> See BellSouth Emergency Request for Declaratory Ruling, File No. 03-251, December 9, 2003.

**Docket No. 030851-TP**  
**Surrebuttal Testimony of Joseph Gillan**  
**On Behalf of the Florida Competitive Carriers Association**

1 which may explain why BellSouth would rather suggest a federal preemption than  
2 request one.

3  
4 **Q. Does the federal Act similarly scale unbundling obligations to the grant of**  
5 **additional freedoms?**

6  
7 A. Yes. Even under the federal Act, BellSouth is subject to varying layers of  
8 unbundling obligations, recognizing that where additional benefits (to BellSouth)  
9 or harms (to consumers) are possible, that additional unbundling obligations are  
10 appropriate. For instance, as an incumbent local exchange carrier, BellSouth is  
11 obligated to unbundle wherever an entrant would be “impaired” without access to  
12 a network element (section 251). Moreover, BellSouth is subject to additional  
13 unbundling obligations under section 271 of the Act in recognition of the special  
14 threat that its interLATA entry holds:

15  
16 These additional requirements [the unbundling obligations in the  
17 competitive checklist] reflect Congress’ concern, repeatedly  
18 recognized by the Commission and courts, with balancing the  
19 BOCs’ entry into the long distance market with increased presence  
20 of competitors in the local market.... The protection of the  
21 interexchange market is reflected in the fact that section 271  
22 primarily places in each BOC's hands the ability to determine if  
23 and when it will enter the long distance market. If the BOC is  
24 unwilling to open its local telecommunications markets to  
25 competition or apply for relief, the interexchange market remains  
26 protected because the BOC will not receive section 271  
27 authorization.<sup>6</sup>

---

<sup>6</sup> TRO ¶ 655.



**Docket No. 030851-TP**  
**Surrebuttal Testimony of Joseph Gillan**  
**On Behalf of the Florida Competitive Carriers Association**

1

2

Chapter 364 is structured in much the same way that section 271 is structured – in

3

exchange for additional freedoms, BellSouth must comply with additional

4

obligations. What is remarkable about section 271 and Chapter 364 is that

5

BellSouth has managed to arrange for unbundling to be part of two *quid quo pros*

6

– BellSouth agreed to unbundle its network in exchange for deregulated profits

7

(Chapter 364), and it agreed to unbundling once again in order to offer interLATA

8

long distance service (section 271). Having traded the same obligation twice,

9

BellSouth has the audacity to now suggest that its *quid* should be preempted,

10

while its *quo* should remain intact.

11

12

It is important to be clear that BellSouth must offer local switching under state

13

law, independently of any decision by the Commission here. While BellSouth

14

may *wish* that Chapter 364 would be preempted (if it bothered to ask), the fact

15

that BellSouth has never requested a declaratory ruling both means that Chapter

16

364's unbundling obligations remain intact and speaks volumes about BellSouth's

17

true expectations as to the likelihood a request to preempt a statute that granted it

18

deregulation as the counterbalance to unbundled access would be found

19

inconsistent with the federal Act.

20

21

**Q. Has BellSouth's view of federal preemption recently been addressed by a**

22

**court?**

23

**Docket No. 030851-TP**  
**Surrebuttal Testimony of Joseph Gillan**  
**On Behalf of the Florida Competitive Carriers Association**

1       A.     Yes. BellSouth appealed a decision by the Kentucky Public Service Commission  
2             that (similar to the decision of this Commission) prohibited BellSouth from  
3             refusing to provide DSL service to customers obtaining voice service from a  
4             CLEC. (This is the same issue that BellSouth has asked the FCC to address  
5             through a declaratory ruling). Certainly, the federal district court did not agree  
6             with BellSouth's views on federal preemption:

7

8                     It [the Kentucky Commission's requirement] establishes a  
9                     relatively modest interconnection-related condition for a local  
10                    exchange carrier so as to ameliorate a chilling effect on  
11                    competition for local telecommunications regulated by the  
12                    [Kentucky] Commission. The PSC order does not substantially  
13                    prevent implementation of federal statutory requirements and thus,  
14                    it is the Court's determination that there is no federal preemption.<sup>7</sup>  
15

16       **Q.     Mr. Ruscilli opposed your recommendation that the Commission establish a**  
17             **proceeding to address any section 271 pricing disputes.<sup>8</sup> Do you agree with**  
18             **his analysis?**

19

20       A.     No. BellSouth's is essentially attempting to obtain through state inaction the  
21             equivalent of federal forbearance of its section 271 obligations. As noted earlier,  
22             the TRO recognizes that Congress intended that the requirements of section 271  
23             would provide additional protections needed when an RBOC is able to offer

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<sup>7</sup>       Memorandum Opinion and Order, Civil Action No. 03-23-JMH, BellSouth  
Telecommunications v. Cinergy Communications Company, United States District Court, Eastern  
District of Kentucky, December 29, 2003.

<sup>8</sup>       Ruscilli Rebuttal, page 6.

**Docket No. 030851-TP**  
**Surrebuttal Testimony of Joseph Gillan**  
**On Behalf of the Florida Competitive Carriers Association**

1 interlATA service. These protections would be meaningless if BellSouth could  
2 unilaterally establish prices for section 271 network elements. Yet, this is what  
3 BellSouth seems to be suggesting, by claiming that it has the right to set the rates:

4  
5 As such, it is appropriate for BellSouth to set its rate according to  
6 those market conditions through negotiation with the CLEC.<sup>9</sup>  
7  
8

9 Exactly what negotiations is BellSouth referring to here? Under the federal Act,  
10 CLECs have the right to have disputes arbitrated before state commissions where  
11 negotiations fail. Yet here, BellSouth is opposing the Commission's involvement,  
12 suggesting that BellSouth should "set the rate." The issue has never been whether  
13 BellSouth and the CLECs should try and negotiate (a triumph of hope over  
14 experience); the relevant issue is only how should any dispute be resolved.

15  
16 **Q. Is there any basis to expect the negotiations for section 271 rates to be non-**  
17 **controversial?**

18  
19 **A.** No. Consider the prices that BellSouth is attempting to impose on CLECs even  
20 today in areas where the FCC's legacy "3-line rule" applies:  
21

---

<sup>9</sup> Ruscilli Rebuttal, page 6.

**Docket No. 030851-TP  
Surrebuttal Testimony of Joseph Gillan  
On Behalf of the Florida Competitive Carriers Association**

1

**Table 1: BellSouth's Claimed "Market" Rate**

Rate Element	TELRIC	Proposed 271 Rate <sup>10</sup>	Increase
Recurring Port Rate	\$2.41	\$14.00	481%
NRC	\$0.10	\$41.50	40,586%

2

3

4

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14

If there were actually a competitive wholesale market, then this docket would not have occurred. Given the financial repercussions of losing the revenue from more than 600,000 UNE-P lines if the lines could *actually* move elsewhere, BellSouth would clearly have tried to retain these lines as wholesale services. As I show below, the TELRIC rates paid by CLECs for unbundled local switching (and thus the additional revenues that BellSouth earns from UNE-P in contrast to UNE-L) should make the offering highly desirable if the alternative were more empty switch ports and less revenue.<sup>11</sup> The problem is that BellSouth understands that there *are* no wholesale alternatives and that the result of its efforts to eliminate UNE-P would be for most (if not all) of these lines to return to BellSouth as retail customers.

<sup>10</sup> BellSouth SGAT Attachment A (Price List) filed with Florida PSC on September 11, 2002.

<sup>11</sup> It is important to understand that the issues that surround TELRIC pricing are loop-related, and do not apply to switching. For instance, a heavy reliance on "actual network topology" is already a feature of the TELRIC process for local switching because the number of wire centers (and, therefore, the number and location of switches) is fixed in the TELRIC model. Consequently, the "actual topology of the ILEC network" is already considered in determining TELRIC switching costs and the side-debate about the appropriateness of this aspect of TELRIC plays no role in evaluating whether switching prices are reasonable.

**Docket No. 030851-TP**  
**Surrebuttal Testimony of Joseph Gillan**  
**On Behalf of the Florida Competitive Carriers Association**

1       **Q.    Do you believe that BellSouth’s proposed section 271 rates comply with the**  
2       **pricing standard adopted by the FCC?**

3

4       A.    No. The FCC has determined that the appropriate pricing standard that should be  
5       applied to judge 271 rates should be that the rates be “just and reasonable” and  
6       “provide meaningful access.”<sup>12</sup> Although a different pricing standard may apply  
7       to 271 network elements (than applies to elements unbundled under section 251),  
8       a different process to adjudicate the rate should not. As with its other rate-setting  
9       duties (TELRIC), the most efficient approach is an open proceeding in which  
10      multiple parties may participate. The Commission should have no expectation  
11      that BellSouth will voluntarily offer rates that enable its competitors to win (what  
12      would otherwise be) its retail customers. As such, the wisest course is to open a  
13      proceeding to address the disputed rates.

14

15      **Q.    BellSouth claims that its unbundled local switching rate is subsidized.<sup>13</sup> Is**  
16      **there any evidence that this is the case?**

17

18      A.    None. First, as BellSouth argued as recently as last year, TELRIC-based rates are  
19      above forward-looking incremental cost and, as such, are not subsidized:

20

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<sup>12</sup> TRO ¶ 663.

<sup>13</sup> Ruscilli Rebuttal, page 11.

Docket No. 030851-TP  
 Corrected Surrebuttal Testimony of Joseph Gillan  
 On Behalf of the Florida Competitive Carriers Association

1 Cross-subsidization is measured using forward-looking  
 2 incremental costs, not historical accounting costs.... Even  
 3 reasonable allocations of fixed costs or common overhead costs to  
 4 a service have no role in a subsidy test...<sup>14</sup>  
 5

6 \*\*\*

7 The fact that TELRIC includes an allocation of shared fixed and  
 8 common costs means that the TELRIC-based UNE price would be  
 9 too high for a price floor.<sup>15</sup>  
 10

11 Thus, even BellSouth agrees that TELRIC-based UNE rates for local switching  
 12 are not being subsidized. Moreover, there is ample evidence that BellSouth's  
 13 UNE switching rates are substantially above its embedded costs, as reflected in its  
 14 ARMIS filings:  
 15

**Table 2: BellSouth's Average Embedded Switching Cost**

Cost Category	2002 ARMIS	Per Line
Central Office Switching Expense	\$75,463	\$1.06
Switching Share of Depreciation/Amortization <sup>16</sup>	\$160,708	\$2.25
Average Embedded Cost	\$236,171	\$3.31
Average SGAT Rate (including usage) <sup>17</sup>		<b>\$5.21</b>
Contribution from SGAT Based Price		<b>58%</b>

16  
 14 Rebuttal Testimony of William Taylor on behalf of BellSouth, Docket Nos. 02-0119-TP and 020578-TP, filed November 25, 2002 ("Taylor Rebuttal"), page 18.

15 Taylor Rebuttal, Page 6.

16 ARMIS does not separately assign depreciation cost to switching. However, Telephone Plant in Service (TPIS) is separately reported for central office switching and the ratio of Switching TPIS to Total TPIS was used to estimate that portion of BellSouth's 2002 depreciation that can be allocated to switching.

17 Average TELRIC rate is calculated based on BellSouth's average usage per line (as reported in ARMIS 43-04, Dial Equipment Minutes of Use) of 3,238 minutes per line.

Docket No. 030851-TP  
Corrected Surrebuttal Testimony of Joseph Gillan  
 On Behalf of the Florida Competitive Carriers Association

1 As Table 2 above shows, the TELRIC-based SGAT rates for unbundled local  
 2 switching already cover embedded costs and provide a contribution to BellSouth's  
 3 joint and common costs (and provide a return) of more than 58%.<sup>18</sup> Moreover,  
 4 BellSouth's SGAT rates include a voluntary reduction from its Commission-  
 5 approved UNE-rates (which produce an average revenue of \$6.13 per switch port  
 6 and a contribution of more than 85%). There is no basis for BellSouth's claim  
 7 that it is not being adequately compensated for unbundled local switching in  
 8 Florida – if anything, its rates exceed just and reasonable levels when judged by  
 9 its embedded cost.

10

11 **Q. Has BellSouth revealed how much revenue it gets from the switch-related**  
 12 **charges that it imposes on CLECs in Florida?**

13

14 A. Yes. The Commission should appreciate that when a carrier leases UNE-P, in  
 15 addition to paying for the loop, the CLEC also pays BellSouth for local switching,  
 16 shared transport and the billing records it needs to offer service. According to  
 17 Exhibit No. \_\_\_ JPG-11 (attached),<sup>19</sup> BellSouth collects (on average) Begin  
 18 Confidential \*\*\* \*\*\* End Confidential per month per UNE-P line.<sup>20</sup>

19

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<sup>18</sup> Contribution is calculated as (Revenues-Expenses)/Expenses.

<sup>19</sup> BellSouth Response to FCCA 2<sup>nd</sup> Set of Interrogatories, Item No. 24.

<sup>20</sup> Although Exhibit No. \_\_\_\_\_ JPG-11 asked BellSouth to provide only its switch-related revenues, the magnitude of the answer suggests that it also included loop charges.

**Docket No. 030851-TP  
Surrebuttal Testimony of Joseph Gillan  
On Behalf of the Florida Competitive Carriers Association**

1       **Q.    Should/ the Commission expect a wholesale market for unbundled local**  
2       **switching to serve mass market customers?**

3

4       A.    No, certainly not in the near term. The fundamental predicate to a competitive  
5       wholesale market is the ability for CLEC-switches to access loops in a manner  
6       that is economically equivalent to the manner available to BellSouth. BellSouth's  
7       switching is collocated with loop facilities and generally pre-wired to the outside  
8       plant. As such, customers can be electronically migrated between BellSouth and  
9       the CLEC (and back to BellSouth or to another CLEC) when wholesale switching  
10      is leased from BellSouth. No external switch (that is, a CLEC-owned switch) has  
11      this access to BellSouth's loop facilities. These problems are systemic and, as a  
12      practical matter, can only be corrected through a redesign of the local network  
13      that may not be warranted for analog POTS service in an era where most new  
14      investment is likely to be packet-oriented.<sup>20</sup>

15

16      **Q.    BellSouth also opposes your proposal for a two-year quiet period, arguing**  
17      **that you are attempting to extend UNE-P as long as possible.<sup>21</sup> How do you**  
18      **respond?**

19

---

<sup>20</sup> This would suggest that it may be wiser to *prevent* the same type of discriminatory access arrangements from emerging for packet-based services, than it is to devote resources to *fixing* those problems for analog-based services (which are largely fixed already through access to unbundled local switching). The task of creating an open packet-access network, however, is made more complicated by the FCC's decision to limit unbundling obligations for packet loops.

<sup>21</sup> Ruscilli Rebuttal, page 6.



**Docket No. 030851-TP**  
**Surrebuttal Testimony of Joseph Gillan**  
**On Behalf of the Florida Competitive Carriers Association**

1 A. As my direct, rebuttal and surrebuttal testimony (above) makes clear, BellSouth is  
2 obligated to provide UNE-P under section 271 of the Act indefinitely (or at least  
3 until the FCC decides to forebear from holding BellSouth to its terms), and is  
4 obligated to offer it under state law until Chapter 364 is revised. The rationale for  
5 the recommendation is not so much to extend the availability of UNE-P (which  
6 must be offered in any event, at least for the foreseeable future), as much as it is  
7 to reduce BellSouth's advantage from perpetual litigation. The FCC clearly gave  
8 the states the latitude to establish filing windows to manage their resources – and  
9 the resources of the industry – more effectively, and the Commission should do so  
10 here.

11  
12 **Q. Mr. Ruscilli claims that you are recommending a statewide market.<sup>22</sup> Is this**  
13 **true?**

14  
15 A. No. In fact, as I make clear in my rebuttal testimony, I recommend that the  
16 Commission use the LATAs as the area for its impairment inquiry. What I was  
17 emphasizing in my direct testimony, however, was that the mass market  
18 competition that is possible with UNE-P is statewide, and that what the  
19 Commission is jeopardizing through an incorrect decision is that statewide choice.  
20

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<sup>22</sup> Ruscilli Rebuttal, page 8.

**Docket No. 030851-TP**  
**Surrebuttal Testimony of Joseph Gillan**  
**On Behalf of the Florida Competitive Carriers Association**

1 Mr. Ruscilli goes on to suggest that the Commission need not worry about  
2 removing local switching in some exchanges, because “UNE-P itself will remain  
3 in place in those markets where relief is not granted.” This might be true in a  
4 “regulatory sense,” but it is not likely to be true in a real sense. The statewide  
5 competition that the Commission sees today is the product of statewide UNE-P  
6 availability – in urban areas, in suburban areas and in rural areas. This  
7 competition is linked – that is, the ability of carriers to serve high cost rural areas  
8 is tied to their ability to compete in less costly urban and suburban areas as well.

9  
10 If the Commission makes the mistake of redlining any part of the state, the impact  
11 of that decision is likely to extend beyond the redlined area to other parts of the  
12 state as well. It is a mistake to think that the Commission can punch “holes” in  
13 the mass market and expect it to operate efficiently.

14  
15 **Q. Dr. Aron claims that you are recommending that the Commission “ignore**  
16 **the plain language” of the FCC’s rules in your comments regarding the**  
17 **potential deployment analysis.<sup>23</sup> How do you respond?**

18  
19 **A.** Dr. Aron’s exaggerates my testimony. The point that I was making is that the  
20 Commission should approach with skepticism testimony (such as BellSouth’s  
21 testimony here) that claims that actual investors “got it wrong,” while an

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<sup>23</sup> Aron Rebuttal, page 38.

**Docket No. 030851-TP**  
**Surrebuttal Testimony of Joseph Gillan**  
**On Behalf of the Florida Competitive Carriers Association**

1 incumbent-sponsored model here about CLEC profitability will “get it right.” If  
2 BellSouth used the BACE model to plan its entry out-of-region, then (at least in  
3 *those* states) it may be a useful tool. But there is no reason to think it makes sense  
4 here.

5  
6 I note, moreover, that Dr. Aron has not demonstrated any particular skill at  
7 predicting, in real time, which CLEC models would be most successful. In an  
8 affidavit she filed in the Michigan 271 proceeding, Dr. Aron provided her  
9 prediction of the market:

10  
11 While some business models proved to be flawed and  
12 unsustainable, a surprising variety are demonstrating to investors  
13 their possibility for success, at least as an entry strategy. The  
14 chronicles of the (so-far) successful CLECs prove interesting case  
15 studies about the possibility of a variety of approaches to  
16 competitive entry. Earlier I mentioned that four such CLECs are  
17 McLeodUSA, Time Warner Telecom, Allegiance Telecom, Inc.,  
18 and possibly XO Communications. Remarkably enough, each of  
19 these CLECs exhibits a distinctly different entry strategy. One  
20 firm, McLeodUSA, used and continues to use resale as an initial  
21 entry method. Time Warner Telecom and XO Communications  
22 use substantially their own self-provisioned networks, with Time  
23 Warner focusing on larger business in the US, and XO on smaller  
24 and medium-sized businesses in both domestic and Western  
25 European markets. The success of these firms, which have been  
26 called the “four horsemen” of the CLEC world, demonstrates that  
27 each of the entry paths provided for by TA96 can be used  
28 successfully by efficient firms.<sup>24</sup>  
29

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<sup>24</sup> Reply Affidavit of Dr. Debra Aron, on behalf of Ameritech Michigan, Case No. U-12320, July 30, 2001, page 12.

**Docket No. 030851-TP**  
**Surrebuttal Testimony of Joseph Gillan**  
**On Behalf of the Florida Competitive Carriers Association**

1 The CLECs that Dr. Aron pointed to as the “model CLECs” just a few short years  
2 ago, however, have been far less successful than Dr. Aron expected, with three of  
3 the CLECs – XO, McLeod and Allegiance – all declaring bankruptcy. The only  
4 CLEC to not declare bankruptcy – Time Warner Telecom – does not compete in  
5 the mass market, as even BellSouth agrees.<sup>25</sup>

6

7 **Q. Have you also reviewed FDN’s rebuttal testimony where Mr. Gallagher**  
8 **claims that FDN is a self-provisioning switch trigger in the mass market?**

9

10 A. Yes. To begin, the FCCA has only recently served discovery on FDN to gather  
11 additional information to test Mr. Gallagher’s claims. As I indicated in my  
12 rebuttal testimony, when determining whether a carrier should be considered a  
13 switch trigger, “the key consideration to be examined by state commissions is  
14 whether the providers are currently offering and able to provide service, and are  
15 likely to continue to do so.”<sup>26</sup> I also explained, however, that while this is the  
16 “key consideration,” it should also be the last consideration that the Commission  
17 should examine. After all, looking inside a CLEC to determine whether it is  
18 likely to continue in operation is both time consuming and potentially intrusive,  
19 and should only be done if necessary.

20

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<sup>25</sup> BellSouth withdrew its claim that Time Warner was a self-provisioning mass market switch trigger.

<sup>26</sup> TRO ¶ 500.

**Docket No. 030851-TP**  
**Surrebuttal Testimony of Joseph Gillan**  
**On Behalf of the Florida Competitive Carriers Association**

1       **Q.    Should the Commission investigate FDN to determine whether it is likely to**  
2       **continue to offer mass market services?**

3  
4       A.    No, not at this time. First, it has not yet been determined that FDN is, in fact,  
5       offering mass market services. Mass market services are commonly sold on a  
6       month-to-month basis, and it may be that FDN's services are contract based and  
7       do not qualify.

8  
9       In addition, it takes three self-provisioning switch trigger companies to remove  
10      unbundled switching in a market, and FDN (even if it were found to meet all the  
11      criteria) would not, by itself, cause there to be any change in UNE availability.  
12      Because there would be no effect (at this time) of the Commission rendering a  
13      final judgment on FDN, it is not necessary to fully determine whether it is a self-  
14      provisioning switch trigger.

15  
16      If the time comes where there are two other providers, however, then it will be  
17      necessary for the Commission to determine whether FDN is "likely to continue"  
18      and it can conduct the appropriate investigation then.

19  
20      **Q.    Based on your review thus far, would a Commission review of whether FDN**  
21      **can satisfy the "likely to continue" standard be necessary (if there were two**  
22      **other valid switch triggers and thus FDN's status would be determinative)?**

23

**Docket No. 030851-TP**  
**Surrebuttal Testimony of Joseph Gillan**  
**On Behalf of the Florida Competitive Carriers Association**

1       A.     Yes. As the Commission may recall, FDN had asked the Commission for an  
2             order prohibiting BellSouth from reducing its rates by more than 10%.<sup>27</sup> This  
3             fact, while not probative, does suggest that FDN's financial security is tenuous.  
4             In addition, my review of BellSouth's response to AT&T's Interrogatory 125  
5             (which was the subject of my supplemental rebuttal testimony) indicated that  
6             many CLECs are seeing declining mass market volumes. The effect of this trend  
7             must be considered before the Commission could determine whether FDN should  
8             be certified as a self-provisioning switch trigger.

9

10       **Q.     What do you recommend?**

11

12       A.     At this point, I believe the Commission should reach a "no finding" concerning  
13             FDN's status as a self-provisioning switch trigger. Before the Commission can  
14             certify that FDN qualifies, it must satisfy the "key consideration" that FDN is, in  
15             fact, likely to continue operations. There is no reason to undertake this  
16             examination at this time (and FDN may be disqualified on other grounds thereby  
17             rendering it unnecessary).

18

19       **Q.     Does this conclude your surrebuttal testimony?**

20

21       A.     Yes.

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<sup>27</sup> Docket Nos. 020119-TP, 020578-TP, Gallagher prefiled direct testimony at page 15.

(Transcript continues in sequence with Volume 19.)

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STATE OF FLORIDA     )  
  
                                  :  
  
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CERTIFICATE OF REPORTER

I, JANE FAUROT, RPR, Chief, Office of Hearing Reporter Services, FPSC Division of Commission Clerk and Administrative Services, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

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

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

DATED THIS 1st day of March, 2004.

  
\_\_\_\_\_  
JANE FAUROT, RPR

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