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BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 030851-TP

In the Matter of

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



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VOLUME 15

Pages 2001 through 2176

PROCEEDINGS: HEARING

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

DATE: Wednesday, February 25, 2003

TIME: Commenced at 9:00 a.m.  
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PLACE: Betty Easley Conference Center  
4075 Esplanade Way, Room 148  
Tallahassee, Florida

REPORTED BY: MARY ALLEN NEEL  
Registered Professional Reporter

APPEARANCES: (As heretofore noted.)

## I N D E X

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2	NAME	PAGE NO.
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4	JULIE CANNY, MARYELLEN LANGSTINE,	
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## P R O C E E D I N G S

(Transcript follows in sequence from Volume 14.)

Thereupon,

JAMES L. MCLAUGHLIN

THOMAS MAGUIRE

JULIE CANNY

MARYELLEN LANGSTINE

JOHN WHITE and

LARRY G. RICHTER

continue their testimony under oath from Volume 14 as follows:

## CONTINUED CROSS-EXAMINATION

BY MS. AZORSKY:

Q So now, until there is this ability to push the information from WPTS, a CLEC that wants to access the information in WPTS on the day of the cut, for example, would have to check repeatedly to find out whether this has been done.

A (By Mr. Maguire) No. Can you be a little bit more specific as to which process we're talking about?

Q Okay. We're talking about the batch process that you proposed in this proceeding.

A Okay.

Q And in that batch process that you proposed in this proceeding, as I understand it, the CLEC will get a

1 notice six days before of the day on which the cut will  
2 occur; correct?

3 A That's correct, yes.

4 Q The CLEC does not know what time of day the cut  
5 will occur; correct?

6 A Yes.

7 Q And so if the CLEC wants to know, for whatever  
8 reason, what time of day the cut occurs, at this point,  
9 the only way to do that is to go back and check the  
10 system?

11 A Yes.

12 Q One of the things that you said is that -- in  
13 the testimony, the panel testimony, was that for the  
14 batch process that you present in this proceeding,  
15 Verizon would allow CLECs to acquire customers using the  
16 unbundled network element platform, and that you would  
17 hold those customers for somewhere between six and 26  
18 business days, and that Verizon would do the cut to  
19 UNE-Is at the appropriate time, whenever you had a -- I  
20 think you used the word "critical mass," in order to do  
21 the cut; is that correct?

22 A That's correct.

23 Q Now, if a CLEC decides that they want more  
24 control over the process like they can get with the  
25 project process, will Verizon allow acquisition of

1 customers on a UNE-P basis at UNE-P rates until the cut  
2 is done?

3 A No.

4 Q If a CLEC includes a customer order in the  
5 batch process, once that order is submitted, the CLEC  
6 can't change customer features until after the cut is  
7 completed; is that correct?

8 A To be more specific, once an order is in the  
9 system on a line, or an account, if you will, there  
10 cannot be any competing order in the system. That's a  
11 safeguard that's built into the system. So the scenario  
12 you described, for example, if there's a pending order  
13 to hot cut a line, for any sort of hot cut process, and  
14 somebody, anybody comes along and tries to change  
15 something, the second order will bounce out because  
16 there is a pending order in the system. You can't have  
17 competing orders in the system.

18 Q So let's say a CLEC had a customer who decided  
19 to change to a CLEC, that order was submitted as part of  
20 a batch, and it's out there waiting to be moved, and  
21 that CLEC a few days later calls and decides that they  
22 really want to have call forwarding. Then would the  
23 order have to be removed from the batch?

24 A The batch order would have to be canceled and  
25 another order change in the account would need to be

1 entered. It has been my experience, though, that that's  
2 a rare occasion where somebody decides that they want to  
3 make a change to something after they've initially had a  
4 sales negotiation or an experience with an end user,  
5 that they're going to come back in, unless it's the  
6 result of an error where something is omitted from an  
7 LSR, for example. I mean, typically we don't do that.

8           However, in an attempt to try to accommodate  
9 any request, we will take -- if they call us up and let  
10 us know, we need to make some sort of change, because we  
11 really need call waiting, or call forwarding, or  
12 whatever vertical feature you need, then -- and even if  
13 it was an error, because things sometimes do happen,  
14 then we'll try to accommodate them. We'll cancel the  
15 order, process the feature change, and then institute  
16 the batch order right again, immediately thereafter in  
17 the hopes of falling into the next batch that takes  
18 place.

19           Q     And if that happened, the CLEC would have to  
20 pay for being removed from the batch and for a new batch  
21 order; is that correct?

22           A     Yes, but that could be of their own doing.

23           Q     Now, the time frame for the basic hot cut is  
24 how long?

25           A     There's a scheduling system in the South, and



1 it goes by that. Typically, I would -- typically  
2 anywhere -- five, six days, somewhere in that  
3 neighborhood.

4 Q So the basic hot cut is five to six days. And  
5 what's the interval for the project hot cut?

6 A Negotiated.

7 Q Okay. And could it be negotiated for as short  
8 a time as five or six days?

9 A Typically, no. Typically there's -- a project,  
10 because it involves a large number of lines, you want to  
11 make sure that everybody has the force available,  
12 because the porting will still need to take place at the  
13 hand of the CLEC. The frame, we'll have to do the  
14 pre-wire work that you mentioned earlier, plus make sure  
15 they have the available ports to go through however many  
16 cuts are scheduled on that particular night.

17 So it's typically -- my guess is 10 business  
18 days lead time up until the first night of the project.  
19 And projects in my experience typically last a number of  
20 nights. So it's not, "Hey, I want to cut a hundred  
21 lines." It's typically, "I want to cut a couple of  
22 hundred lines." And then so what we'll do is, we'll  
23 schedule a project to run from the 10th through the 13th  
24 or something like that.

25 Q So it's about 10 days. You could probably get

1 about 10 days for a project?

2 A Roughly, yes.

3 Q And the batch hot cut could be as long as 26  
4 days; correct?

5 A This is correct. And the reason for this is  
6 because, as I mentioned earlier, it occurred to me --  
7 you've asked a couple of questions. I guess the sense  
8 is how come the basic or the project has this and the  
9 batch doesn't, or why does the project have this and the  
10 batch doesn't. And it occurred to me that we needed to  
11 come up with something that was different from what we  
12 already had. And again, in an attempt to come up with  
13 the lowest cost alternative, we're looking to take  
14 advantage of the technician making a scheduled visit or  
15 a maintenance visit to a particular central office,  
16 especially in remote locations.

17 This is not the situation in Florida where  
18 every single one of our offices that have collocation  
19 are staffed, so I don't envision running into the 26-day  
20 situation here. But we calculated that each one of our  
21 central offices are visited at least once every 26 days  
22 for either preventive maintenance work or something  
23 else, so therefore, we figured if we could take  
24 advantage of that trip as opposed to requiring a special  
25 trip, that's one way that we could reduce costs.

1           Q     I'll come back to that in a moment,  
2     Mr. Maguire, because I do want to talk about that, but  
3     first, I would like to talk about multiline customers.  
4     Okay? There are in the mass market certain -- it  
5     includes customers that have more than one line;  
6     correct?

7           A     Potentially.

8           Q     And some of those customers may have a feature  
9     known as hunting, which allows -- the phone, it rings  
10    into one line, and if that line is busy, the call will  
11    roll over to another line.

12          A     Jumping. It jumps from one to one to one to  
13    one.

14          Q     Yes. You agree with that, though, I take it,  
15    since you can describe it maybe better than I can.

16          A     This is what I do.

17          Q     If a hot cut is done and the second and third  
18    line are cut before the first line, that hunting feature  
19    won't work; right?

20          A     I've read about this in some of the testimony,  
21    and this whole thing kind of perplexes me. Orders are  
22    done -- batches, projects, even basics are done on an  
23    order-by-order basis. So the hunting would be reflected  
24    on the order. So when the technician goes in to work a  
25    batch -- let's talk a batch, for example. They're going

1 to look at their orders and lay them out such that  
2 they're going to do the first order and kind of go all  
3 the way through.

4 Now, you mentioned that these customers  
5 typically have a bunch of lines, and the way the cables  
6 terminate inside the building, those lines usually  
7 terminate in a fairly tight configuration on the frame.  
8 As a matter of fact, I just read a little while ago in  
9 one of the CLECs' testimony, they said just the same  
10 thing. So the likelihood that this frame technician is  
11 going to take an order, do one or two lines on that  
12 order, then go do something else and then come back and  
13 disrupt the hunting pattern is highly unlikely.

14 The way I envision it -- and Mr. McLaughlin  
15 could back me up on this; he is the CO person -- is that  
16 the frame technician will get the order, they'll see the  
17 sequence of lines on the order, they will work that  
18 order, including the sequence of the lines, and in a  
19 batch, send a message to activate the port immediately.  
20 So it should be transparent to the end user. Again,  
21 going back to one of the cardinal rules of hot cuts,  
22 they do the A&I check or the dial tone check immediately  
23 before they do the lift and lay, so we're not going to  
24 be disrupting a phone call. It's just going to be a  
25 quick cut in and cut out.

1           In addition, in some offices, probably in the  
2 more densely populated offices, we might be doing these  
3 things out of normal business hours, so people wouldn't  
4 experience any problems whatsoever with hunting. So I'm  
5 -- to me, hunting is not something that we need to be  
6 concerned about.

7           Q     Well, I understand that's your view,  
8 Mr. Maguire, but I recall, for example, as probably some  
9 of the staff who went to the hot cut demonstration that  
10 you had in Tampa, that when the technician went to cut  
11 -- it was a multiline cut, and when the technician went  
12 to cut, one of the wires had someone who was talking on  
13 the phone, so the technician couldn't cut that wire.  
14 Did you see that? Were you in the room with us then?

15          A     No. I was out talking to somebody else.

16          Q     Will you accept from me that that's what  
17 happened?

18          A     I have no doubt.

19          Q     Okay. And so the technician actually chatted  
20 with us, which, you know, obviously wouldn't usually  
21 happen, because you probably wouldn't usually have a  
22 crowd of 10 people standing around the central office,  
23 and went back several times to -- before the technician  
24 had the ability to cut that wire.

25          A     Uh-huh.

1           Q     And in that instance, something else could have  
2     come up, some emergency could have come up that would  
3     have called the technician away. I mean, are you  
4     telling me that that never happens, that there's never  
5     an interruption where someone might be called away in  
6     the middle of a cut and not be able to do several lines?

7           A     Anything is possible. The likelihood of it  
8     happening is not all that great.

9           Q     So it doesn't worry you, even if it does worry  
10    some of the CLECs?

11          A     No.

12          Q     The other thing, you've talked about this tight  
13    configuration. If the multiline customer were moving to  
14    a CLEC and also acquiring a separate line, it's  
15    possible, isn't it, that one of those lines might be in  
16    a separate location. It might not be in that tight  
17    configuration. That was something else that we saw when  
18    we were at the central office in Tampa.

19          A     Typically, they're fairly closely configured,  
20    because the cable that terminates out there is not going  
21    to be appearing, you know, miles apart. That was a  
22    decent size frame that you saw in Sweetwater. I believe  
23    that the reference that some people were making in their  
24    testimony referred to frames that are significantly  
25    bigger. And the likelihood of have multiple -- having

1 cables appear so far apart that it's going to require  
2 the technician to, you know, hop in the car and drive to  
3 the other side of the central office I don't think is a  
4 big issue.

5           Again, if there is a concern and you feel that  
6 the customer needs to be -- there needs to be some  
7 tighter control, the option is always to use the basic.

8           Q     Okay. In the batch process, as we talked about  
9 -- and you agree with me that there are two different  
10 types of loss of functionality when do you a hot cut.  
11 There's the complete loss of service when you disconnect  
12 the wire from the switch and connect it to another  
13 switch, and there's the inability to receive incoming  
14 calls that doesn't exist until after the wire has been  
15 lifted, NPAC was contacted, and the number was ported;  
16 correct?

17           A     You have the momentary loss of dial tone,  
18 which inhibits the ability to make outgoing calls, and  
19 then you do have the porting. I won't get into the  
20 specifics of, you know, receiving calls from the donor  
21 switch or the new switch or any of that, but generally  
22 speaking, you're okay.

23           Q     Let's just keep it at the general level here.

24           A     Okay.

25           Q     Let's just talk about the ability to get

1 incoming calls and make outgoing calls.

2 So until NPAC is notified, these customers  
3 can't get incoming calls; right?

4 A Yes.

5 Q Now, with the batch hot cut process, the CLEC  
6 turns over to Verizon the ability to do the contact with  
7 NPAC; correct?

8 A That's our proposal, yes.

9 Q And also turns over the ability to control the  
10 exact time of day that that loss of functionality would  
11 occur; right?

12 A That's true.

13 Q Now, you can understand, can't you,  
14 Mr. Maguire, that Joe's Pizza might want to make sure  
15 that its hot cut didn't happen at lunchtime, for  
16 example, whereas a residential customer with two kids in  
17 school and two parents who work outside the home might  
18 think that lunchtime would be a great time to have their  
19 hot cut occur? You would agree with that, wouldn't you?

20 A Notwithstanding any comments to Joe's Pizza, if  
21 there was a need to -- if there was a real need to do  
22 Joe's at a certain time of the day, the basic process is  
23 always available. But it's our aim to do this thing so  
24 quickly, and since we're activating the port immediately  
25 after the lift and lay, we're not even waiting for the



1 additional time it takes for the CLEC to look at WPTS  
2 and to do whatever they do on their side of the world.  
3 We're looking to do all this stuff simultaneously, so  
4 we're hoping to do Joe's couple of lines transparently  
5 or seamlessly on an immediate basis.

6 Q You know, a couple of times we've been talking,  
7 you've referenced the fact that it occurred to you that  
8 in trying to come up with a process that would reduce  
9 costs, that if the CLECs gave up some of this control  
10 and if you did this on some kind of scheduled basis  
11 among central offices, that it might make it less  
12 expensive. And that's what your goal was here; right?

13 A Yes.

14 Q Now, you provided this Commission with a cost  
15 study in this proceeding; correct?

16 A (By Mr. Richter) Yes, we did.

17 Q Excuse me. I missed your name.

18 A I'm Larry Richter.

19 Q Okay, Mr. Richter. And you amended that on  
20 February 17th; correct?

21 A Yes, we did.

22 Q All right. Now, just so the Commission  
23 understands, the basic hot cut in that cost study is --  
24 and this comes from the summary table, so I don't  
25 believe it's confidential. Stop me if I'm --

1 A The summary table is not confidential.

2 Q Thank you. The basic hot cut is in there at a  
3 cost of \$72.63, correct, initial line, basic hot cut?

4 A You're looking at the amended study?

5 Q I am.

6 A Are you looking at --

7 Q I wrote down -- excuse me. Let me back up.

8 A Thank you.

9 Q I think I didn't write down the right thing.  
10 Actually, let me just hand this out, since I've  
11 confirmed this is not confidential.

12 MS. AZORSKY: Mr. Chairman, I would ask that  
13 this be marked as the next exhibit number. And for the  
14 record, Mr. Richter, I'm not providing the whole  
15 document, just the nonproprietary pages, the cover page  
16 and the summary page.

17 CHAIRMAN BAEZ: We'll call it "Excerpt from  
18 Verizon Cost Study," and we'll mark it Exhibit 90.

19 (Exhibit 90 was marked for identification.)

20 BY MS. AZORSKY:

21 Q All right. Mr. Richter, looking at Exhibit 90,  
22 you have two columns, a manual column and a  
23 semi-mechanized column; right?

24 A (By Mr. Richter) That's correct.

25 Q Why don't we work on the manual column. Okay?

1 A Okay.

2 Q Recognizing that that wouldn't necessarily  
3 apply to all of these hot cuts, but the manual ordering  
4 does apply to your project process, does it not?

5 A Yes. The manual portion is based on how the  
6 CLEC provides the LSR to Verizon, manual being that it's  
7 faxed in or letter carrier. Semi-mechanized means that  
8 it comes in electronically through an interface.

9 Q And then falls out of the systems for manual  
10 processing; is that correct?

11 A (By Mr. Maguire) Could reask the question,  
12 please?

13 Q I'm just trying to understand what's the  
14 difference between manual and semi-mechanized.

15 A Oh, okay. I thought --

16 A (By Mr. Richter) The manual is just as it  
17 says. It's manual. The LSR is either faxed in or comes  
18 in through the mail. The semi-mechanized comes to us  
19 electronically through some type of interface from the  
20 CLEC system into our system.

21 Q Okay. And can the project hot cuts come in  
22 electronically?

23 A (By Ms. Langstine) Yes. Yes they can.

24 Q All right. And if you make this LSR change,  
25 the batch hot cuts could come in electronically as well;

1 correct?

2 A Yes. We have -- all scenarios can come into  
3 our system, and hopefully -- we encourage CLECs to send  
4 them in electronically as opposed to manually.

5 Q Then let me change my approach here. Let's  
6 look at the semi-mechanized column.

7 A (By Mr. Richter) Okay.

8 A (By Ms. Langstine) I just want to clarify  
9 something. The fact that, as Mr. Richter said, manual  
10 does not -- manual, if it comes in manual, it's created  
11 manually, semi-mechanized.

12 Q Understood. That's why I'm changing my  
13 approach here --

14 A Okay. Thank you.

15 Q -- and going with the semi-mechanized column.  
16 Looking at that semi-mechanized column, the  
17 cost for a two-wire hot cut initial basic is \$73.18;  
18 correct?

19 A (By Mr. Richter) Correct.

20 Q And the cost for a large job project hot cut  
21 initial is \$72.38; correct?

22 A Yes, ma'am.

23 Q And if the CLEC gives up this control and goes  
24 with the batch hot cut, the initial hot cut is \$57.28;  
25 correct?

1 A Yes, ma'am.

2 Q And that is the entire cost savings from giving  
3 up the pre-wiring, the dial tone check, the shorter  
4 interval, and the coordination; is that correct?

5 A Yes, but that's for the initial. That's the  
6 order and the initial.

7 Q Now, you're familiar with the TRO; correct?

8 A (By Mr. Maguire) Yes.

9 Q And would you agree with me that Rule  
10 51.319(d)(2)(ii) defines a batch cut process?

11 A I believe it does. I would like to look it up.

12 MS. KESTENBAUM: Your Honor, I would just like  
13 to interject here that, of course, none of the members  
14 of our panel are lawyers, and to the extent that there's  
15 any request for legal interpretation, it is improper.

16 CHAIRMAN BAEZ: I'm sure that has preempted  
17 whatever questions Ms. Azorsky had in mind, but I don't  
18 think that's the question before them right now, so you  
19 can go ahead with your questions.

20 MS. AZORSKY: Thank you.

21 CHAIRMAN BAEZ: But please don't ask for a  
22 legal opinion.

23 MS. AZORSKY: I will not ask for a legal  
24 conclusion.

25 CHAIRMAN BAEZ: Great.

1 BY MS. AZORSKY:

2 Q Would you agree with me that that rule reads,  
3 "A batch cut process is defined as a process by which  
4 the incumbent LEC simultaneously migrates two or more  
5 loops from one carrier's local circuit switch to another  
6 carrier's local circuit switch giving rise to  
7 operational and economic efficiencies not available when  
8 migrating loops from one carrier's local circuit switch  
9 to another carriers's local circuit switch on a  
10 line-by-line basis"?

11 A (By Mr. Maguire) Yes.

12 Q Now, is it your position that this batch  
13 process satisfies the requirement to provide operational  
14 and economic efficiencies?

15 A Yes.

16 Q And is it your view that this process with less  
17 coordination, without the pre-wiring, is seamless?

18 A Yes.

19 Q And it's seamless, in your view, because the  
20 CLEC cedes all of its control to Verizon; correct?

21 A No. My interpretation of seamless is to the  
22 end user. So -- I mean, we're trying to make this as  
23 seamless as possible to the end user's service. So if  
24 we're going out there -- and you're talking about, you  
25 know, the coordination. The coordination that's

1 eliminated here is the need for us to get back to the  
2 CLEC and the CLEC to activate the port, and also to tell  
3 them that we're -- to get the go-ahead for a cut. So  
4 we're going to work exceptions in the batch process,  
5 assume that everything is going to be cut unless told  
6 otherwise by the CLECs. And since we're activating the  
7 port, which, as we've discussed in the last couple of  
8 days, is one of the critical elements, the second piece  
9 of the service disruption that you spoke about. Since  
10 we propose to do that on behalf of the CLEC immediately  
11 upon completion of the wire, I would imagine that it's  
12 as seamless as you could potentially get in terms of the  
13 end user's local phone service.

14 Q Then you would agree with me that the batch  
15 process has -- and I think you said this earlier. You  
16 don't know the time of day -- the CLEC does not know the  
17 time of day the cut is going to occur?

18 A No. But since -- again, let's put Joe's Pizza  
19 aside, where you came up with an example where you have  
20 a customer that apparently is a special customer and  
21 could be handled via the basic process, which we've been  
22 doing for some time. If you get to a run-of-the-mill  
23 customer where we're talking onesie, twosie orders that  
24 could be cut on a -- or lines, rather, that could be cut  
25 on a plain vanilla basis, and if we're the ones who are

1 activating the port, the criticality of the timing is  
2 not all that essential, at least not in my experience.

3 Q In that instance where a customer is put into  
4 the batch process, the CLEC gets the notice that the cut  
5 cannot occur, or that the cut will occur on a certain  
6 day, and say that CLEC finds out from its customer that  
7 -- bad day, can't have my phone out of order at all,  
8 even for a few minutes that day. The CLEC would have to  
9 cancel that batch order; correct?

10 A Yes.

11 Q And incur the cost of reinstating a batch  
12 order; correct?

13 A It would be any hot cut. If a CLEC decides to  
14 stop any hot cut for whatever or any reason, or any  
15 service migration, for that matter, and they decide that  
16 they don't want to do it, and then they want to do it  
17 again, they're going to have to incur whatever charges  
18 are appropriate.

19 Q Except that with either a basic hot cut or a  
20 project hot cut, the CLEC could arrange for its customer  
21 a specific time of day for the cut to occur; correct?

22 A The scenario you just described said that they  
23 were going to get notice that this day was no good. So  
24 why would -- if that was a basic day or a project day,  
25 why would your scenario be any different? That's my



1 only thought. I mean, again, we're looking at --

2 Q How -- go ahead. I did not mean to interrupt  
3 you.

4 A No, that's okay. We're looking to do this in  
5 the most efficient fashion possible, considering that  
6 we're moving wires on a frame. So given the fact that  
7 we're -- the reason the batch was developed, or the way  
8 the batch was developed was to take all the different  
9 piece parts of our other processes, the project  
10 handling, the use of WPTS, and to try to optimize what's  
11 going on with respect to the industry. We've been doing  
12 this for a number of years now, and the ability to get  
13 dial tone where it needs to be on a collocation facility  
14 assignment is vastly improved. The ability to just know  
15 what's going on with each other's systems is also vastly  
16 improved with respect to the WPTS. So the batch was  
17 developed, built out of those learnings.

18 Q If, for example, a CLEC customer had call  
19 forwarding, and they were part of the batch process, and  
20 they had forwarded their calls for -- they were on  
21 vacation or had to be somewhere else for most of the day  
22 that day and had forwarded their calls for some period  
23 of time, when that line was switched to the new switch,  
24 the customer would lose that call forwarding  
25 functionality until it was reprogrammed; correct?

1 A Yes.

2 Q And that's just one of the reasons a customer  
3 might want to know things like the exact time of day  
4 that their service is going to be switched, isn't it?

5 A Then they could use the basic process.

6 Q And that would be their only option, is to go  
7 back and use the basic process or be part of a project  
8 process?

9 A Well, a project, you don't know the time that  
10 the cut is going to take place either, and no one has  
11 ever raised that to be an issue.

12 Q You don't have time-specific cuts with  
13 coordination for your project process?

14 A Let's say there's 150 lines to be cut, that we  
15 know the day it's going to be cut and the time it's  
16 going to start. You don't know the exact time that it's  
17 going to come down.

18 Q Okay. But the CLEC can schedule with you on  
19 their customer's behalf a time for the project to start  
20 during that day?

21 A The CLEC schedules a day with us, and that day  
22 will have a time that the project will start, not a  
23 specific service order.

24 Q So it doesn't even have a time that it will  
25 finish?

1           A     We start at number one, and we go through  
2 whenever it's done. That's the way the process works.

3           Q     So realistically, neither the batch process nor  
4 the project process has time-specific cuts?

5           A     No.

6           Q     It's only with the basic process that you can  
7 really get an exact time that you want to have the wire  
8 cut over?

9           A     Yes. And the CLECs seem to love the project  
10 process.

11           MS. AZORSKY: Thank you. I have no further  
12 questions.

13           CHAIRMAN BAEZ: Thank you, Ms. Azorsky.

14           Mr. Susac.

15           MR. SUSAC: I just have two quick questions,  
16 Commissioner.

17                                   CROSS-EXAMINATION

18           BY MR. SUSAC:

19           Q     To the panel, would you agree that your  
20 individual loop migration process should be used if a  
21 CLEC needs a UNE-P to UNE-L conversion in a short time  
22 frame?

23           A     (By Mr. Maguire) I would suggest -- I don't  
24 know that I would limit it for UNE-P to UNE-L, because  
25 all our hot cut processes are designed to move anything

1 to UNE-L. So to answer your question specifically for  
2 UNE-P, yes. To answer it generically for hot cuts, if  
3 they wanted to do something very quickly, they could  
4 avail themselves of the basic process.

5 Q So if a CLEC needs migration done quickly, they  
6 should use the individual process, because it would be  
7 provisioned in a quicker time?

8 A Yes. Can I make one qualifying statement?

9 Q Yes, please.

10 A What is quick? Or I'll ask a clarifying  
11 question, rather. What's quick?

12 Q How about quicker?

13 A The reason I thought about that is, originally  
14 I was thinking about the proposed batch interval, but  
15 then it occurred to me that yesterday when I was  
16 discussing the Florida COs that all these are staffed,  
17 so these things could be -- these things could happen  
18 rather quickly. I imagine they could probably happen  
19 more towards the seven-day, six-day interval than a  
20 20-day interval, for example. But then quicker -- I'll  
21 say yes.

22 Q Okay. Thank you. My final question is, if it  
23 takes longer to provision a batch request, how can you  
24 say that your process meets the intent of the TRO, which  
25 specifically requires your batch process to be more

1 efficient than when migrating line by line?

2 A Again, the efficiency part, as it occurs to me,  
3 or the timeliness, gets to -- at least my reading of the  
4 order -- and again, I'm not a lawyer, but I'm looking at  
5 it from the customer's perspective. How can we create a  
6 process such that the end user doesn't even realize that  
7 they've moved from one service provider to another one?  
8 If we wanted to do these things all in a basic  
9 interval, that could be done. But if we're looking to  
10 see if we can streamline the process, take advantage of  
11 the things that we've learned as an industry for the  
12 last couple of years, that's how we came up with this  
13 batch approach.

14 The batch approach was born out of things that  
15 people have been telling me now for a number years in  
16 the collaboratives: How can we take the project and  
17 open it up to multiple CLECs? How can we use WPTS more?  
18 And I think you'll see some of these things in a number  
19 of the filings. And so what I did is, I took all the  
20 different piece parts that we've been discussing for  
21 years and compiled them into something that I thought  
22 could serve the mass market, something that could handle  
23 the plain vanilla customer that we're talking about,  
24 which is the customer that uses UNE-P today typically.

25 MR. SUSAC: Thank you. That is all the

1 questions staff has.

2 CHAIRMAN BAEZ: Commissioners, any questions?

3 COMMISSIONER DAVIDSON: Just two short  
4 questions.

5 CHAIRMAN BAEZ: Commissioner Davidson.

6 COMMISSIONER DAVIDSON: For the panel, for the  
7 appropriate witness, were you in the room yesterday when  
8 Florida Digital Network presented and/or testified  
9 through Mr. Gallagher that BellSouth's batch cut process  
10 was not available for migration from ILEC retail to CLEC  
11 UNE-L?

12 WITNESS MAGUIRE: Yes.

13 COMMISSIONER DAVIDSON: Is Verizon's batch cut  
14 process available for migration from ILEC retail to CLEC  
15 UNE-L?

16 WITNESS MAGUIRE: Yes.

17 COMMISSIONER DAVIDSON: So you heard the  
18 concerns that FDN expressed. Has Verizon, in Verizon's  
19 opinion, addressed those concerns?

20 WITNESS MAGUIRE: I believe so.

21 COMMISSIONER DAVIDSON: All right. Thank you.

22 CHAIRMAN BAEZ: Commissioners, any more  
23 questions?

24 I want to thank the panel. You're by far the  
25 largest number of people we've ever entertained at one

1 time.

2 We are down to --

3 COMMISSIONER DEASON: That was a batch process.

4 CHAIRMAN BAEZ: That was a batch panel. You're  
5 correct.

6 We have witness Fulp up now.

7 MR. CHAPKIS: Ms. Hyer will be defending  
8 Mr. Fulp.

9 CHAIRMAN BAEZ: Good afternoon, Ms. Hyer.

10 MS. KAUFMAN: Mr. Chairman, if we could just  
11 have a moment. We have quite a few things we need to  
12 bring in, if we could ask your indulgence.

13 CHAIRMAN BAEZ: Yes. Why don't we take five  
14 minutes --

15 MS. KAUFMAN: Thank you.

16 CHAIRMAN BAEZ: -- to set up. Thank you.

17 (Short recess.)

18 CHAIRMAN BAEZ: We'll go back on the record.  
19 We have witness Fulp on the stand, and Mr. Magness, are  
20 you crossing?

21 MR. MAGNESS: Yes, Mr. Chairman.

22 CHAIRMAN BAEZ: Okay.

23 MR. MAGNESS: Good afternoon, Mr. Fulp.

24 CHAIRMAN BAEZ: Can you hold on a second? I'm  
25 sorry, Mr. Magness. We needed one housekeeping matter

1 that --

2 MR. CHAPKIS: We just have one preliminary  
3 matter. It has come to my attention in talking to  
4 Charlie Beck that OPC and AARP are not going to have any  
5 cross for our hot cut panel, and we would like to have  
6 them excused if possible.

7 CHAIRMAN BAEZ: They were so good before,  
8 though.

9 Mr. Beck, you can speak for Mr. Twomey as  
10 well?

11 MR. BECK: Yes, I can. I've talked to him.

12 CHAIRMAN BAEZ: Very well. Then we can excuse  
13 the panel witnesses. That's it.

14 (Witnesses excused.)

15 CHAIRMAN BAEZ: I'm sorry, Mr. Magness. I  
16 interrupted. Go on ahead.

17 MR. MAGNESS: Thank you, Mr. Chairman and  
18 Commissioners.

19 Thereupon,

20 ORVILLE D. FULP  
21 was called as a witness on behalf of Verizon Florida,  
22 Inc., and having been duly sworn, testified as follows:

23 CROSS-EXAMINATION

24 BY MR. MAGNESS:

25 Q Good afternoon, Mr. Fulp.



1           A     Good afternoon.

2           Q     I want to first ask you a couple of questions  
3 about your cutover analysis. Do you know what I'm  
4 talking about?

5           A     Are you referring to the --

6           COMMISSIONER BRADLEY: Mr. Chairman, I need for  
7 the questioner to get a little closer to the mike,  
8 please.

9           CHAIRMAN BAEZ: Commissioner Bradley, I think  
10 that's the suggestion that was being made right now.  
11 You read our mind. Let's see how this works.

12          THE WITNESS: You're referring to the  
13 crossover analysis?

14          BY MR. MAGNESS:

15          Q     Yes. We'll call it the crossover analysis.  
16 And when I say that, I mean the FCC rule. I was  
17 discussing it with Mr. Ruscilli yesterday on the DS0  
18 multiline crossover. Are we talking about the same  
19 thing?

20          A     I think so, yes.

21          Q     Okay. And I believe that your analysis was --  
22 and I'll sum it up the same way I think you did in the  
23 presentation yesterday. Basically, DS0 equals mass  
24 market, and DS1 equals enterprise. Is that fair?

25          A     DS0 service is considered mass market, and DS1

1 and above is enterprise. Yes, that's fair.

2 Q And you referenced in discussing that yesterday  
3 -- and I just made some notes. I don't have it down  
4 verbatim, but that your notion was that that kind of  
5 cutover is based on the economic realities of what CLECs  
6 are doing in the marketplace and what ILECs are doing in  
7 the marketplace. Is that a fair characterization?

8 A That's fair. I mean, basically, our proposal  
9 looks at what I stated yesterday, what's on the ground,  
10 what's happening between the customer and the CLEC in  
11 the current market, and relies on that to come up with  
12 our proposal.

13 Q And is it your testimony that when the decision  
14 is made whether to go from multiline DS0 up to a DS1  
15 service, that's a decision that's usually driven by  
16 customer needs?

17 A I would think it would be customer needs in  
18 conjunction with the CLEC serving that customer. I  
19 would think it would be mutually agreed upon, I would  
20 assume.

21 Q And this, I'll say fundamental assumption that  
22 underlies the distinction, that is, again, DS0 is mass  
23 market and DS1 is enterprise, that underlies the line  
24 count study that you did for your trigger analysis; is  
25 that correct?

1           A     That's correct. You had to have a definition  
2 for mass market customers, and so that is what we have  
3 as a definition for mass market for our line count  
4 study.

5           Q     Okay. And the data that you gathered -- and  
6 let me summarize it, and I would like you to correct me  
7 if I'm not summarizing it accurately. Okay?

8           A     Okay.

9           Q     You looked at the DS0 level UNE loops served by  
10 CLECs in the Verizon territory in Florida.

11          A     That's correct.

12          Q     You distinguished that in your study from the  
13 DS1 level services that had been provisioned to UNE-L  
14 type CLECs in Florida; correct?

15          A     Yes.

16          Q     Okay. And what you thought counted, if I can  
17 put "counted" in quotes, for purposes of the triggers is  
18 the DS0 level mass market services; is that right?

19          A     That's correct. And I stated in my testimony  
20 the process that we went through. It was a little more  
21 granular than what you said as far as -- I mean, we went  
22 to our billing, so this is what we're billing customers.  
23 We looked at our USOCs. We made sure that what we were  
24 pulling were DS0 analog loops, so we didn't pull any  
25 data loops, we didn't pull any -- well, we didn't pull

1 any data loops. We just made sure that what we had was  
2 DS0 analog lines.

3 Q And again, the underlying assumption of that  
4 methodology is that if it's at a DS1, you want to be  
5 sure and not count it as mass market; right?

6 A That's right. We did not count any DS1s in our  
7 loop count study. As I stated before, it was DS0s.

8 Q And when you said that Verizon was able to draw  
9 this data from your billing records, could you describe  
10 a little bit how you went about creating a database that  
11 segregated DS0 from DS1 that clearly?

12 A As I stated earlier, we went to our billing  
13 records.

14 Q And when you say billing records -- I'm sorry  
15 to granularize it further, but when you say billing  
16 records, do you mean CABS or CRIS? Do you know which  
17 type of billing system you used?

18 A I believe it was CBSS. I don't believe it was  
19 CABS. I would have to double-check, but --

20 Q I'll take your word for it.

21 A I think it was CBSS. And we looked at -- you  
22 know, we got with our product management organization.  
23 We looked at the USOCs. We went in as far as our  
24 billing data goes and were able to pretty much define  
25 what we wanted to pull out. We looked at the CLLI

1 codes, which gave us wire centers, wire center names.  
2 We looked at the CLEC that's being billed for the loop.  
3 As I stated before, we looked at two-wire, four-wire,  
4 voice grade two-wire EELs. We looked at the total loops  
5 at a service address, so if a single customer had  
6 multiple locations, we considered those separately. And  
7 so we went through a process. And like I said, based  
8 upon the work that was done up front for screening, we  
9 made sure that we didn't pull any data lines. We didn't  
10 pull any what I'll call data LECs, a Covad, for example,  
11 that we were providing lines to. And so we ensured the  
12 best we could that what we had was voice grade loops,  
13 analog voice grade loops.

14 Q And was this study something that was -- was it  
15 very difficult for the people at Verizon to complete it?  
16 Let me put that a different way to be more specific.  
17 Were they having to create, or were they having to  
18 reinvent whole new wheels, or did this data basically  
19 exist in the billing system and it just needed to be  
20 drawn out?

21 A I think for the most part, it needed to be  
22 drawn out. You know, I don't believe we had to reinvent  
23 the wheel. It's billing data, so we just had to go pull  
24 it out.

25 Q Okay. And if you had asked the folks at

1 Verizon to give you data on a -- instead of DS1 versus  
2 DS0 basis or an enterprise versus mass market basis, if  
3 you had instead asked them for voice grade equivalents,  
4 do you think it would have shown you as clearly the mass  
5 market versus enterprise?

6 A I don't know. I don't know -- I wouldn't have  
7 asked for that, because we knew specifically what we  
8 wanted, so we didn't count voice grade equivalents.

9 I guess to answer your question, I don't know.  
10 I wouldn't have asked for that. It's not what we wanted  
11 to do with our study.

12 Q What in your mind is a voice grade equivalent?  
13 I mean, we've pretty clearly defined a DS0 and a DS1.  
14 What is a VGE, to use that acronym?

15 A Well, I guess real simply, if you take a DS1 --  
16 and people have talked about it in the last few days.  
17 You could have 24 channels, and you could say you could  
18 have 24 voice grade equivalents off of a DS1. So that  
19 would be a very high level, simple definition.

20 Q So a DS1 might show a number of -- it doesn't  
21 -- there's no necessary correlation between the access  
22 method that the customer uses, that is, DS1 versus DS0,  
23 a correlation between that and the number of lines  
24 served at that location?

25 A I'm not understanding your question.

1           Q     Okay. Just as a hypothetical, if you're served  
2 by DS1 level service, you might have 24 lines at your  
3 location, and you might have five lines, and you use the  
4 rest for data. You might have one line, and you use the  
5 rest for data. You just wouldn't know from the fact  
6 that a certain number of VGEs was served, necessarily  
7 know -- you couldn't just pick that out and go, "Oh,  
8 okay. That's DS0, and that's DS1."

9           A     When you say you couldn't just pick that out,  
10 who are you referring to? The customer, the CLEC?

11          Q     An analyst such as yourself.

12          A     And I apologize. I'm really trying to  
13 understand what you're asking me. Are you asking me if  
14 I look at a DS1 circuit, do I know what it's being used  
15 for? And the answer is no, I may not. Like you said,  
16 if there's a DS1 that a CLEC has from us, I may not know  
17 what that's being used for.

18          Q     Okay. Well, if someone who is not a skilled  
19 analyst, me, for example, just came up to you and said,  
20 "A customer location is served by 12 lines. Mr. Fulp,  
21 is that customer being served by a DS1 or a DS0?"

22          A     And if you're asking me based upon my billing  
23 records, I could verify if it was a DS0 by going through  
24 the process I just explained, and so that's probably how  
25 I would answer that. I would go and look at my billing

1 and be able to verify that it's 12 DS0s or it's not.

2 Q You would want to take it back down to the DS0  
3 versus DS1 analysis like the analysis you sponsored  
4 here; right?

5 A Well, if I had to answer that question, that's  
6 what I would do.

7 Q Okay. And I think in talking to you about the  
8 methodology that you used in your trigger analysis, I  
9 don't know that my client's quarrels are so much with  
10 your methodology as the conclusions you reached based on  
11 the methodology, and that's what I want to talk to you a  
12 bit about now. And actually, as we complete this, I'm  
13 going to show you a couple of documents, and I would  
14 like to go ahead and pass them out so we can get  
15 started.

16 The first thing I want to do that doesn't  
17 require the document is to pose a hypothetical to you.  
18 And I'm asking you this hypothetical based on your  
19 analysis and your view of how the Triennial Review Order  
20 should be implemented by this and other state  
21 commissions. Okay? Do you understand?

22 A Okay.

23 Q If a CLEC is serving one DS0 line in a  
24 particular market, does it, in your view, or in  
25 Verizon's view, I should say, qualify as a trigger CLEC?



1           A     If a CLEC is providing a DS0 voice grade  
2 service, that would be counted as mass market.

3           Q     So you would check off the box and say that is  
4 one of the three triggers?

5           A     If there were additional CLECs providing voice  
6 grade service, yes, that could be a part of meeting the  
7 triggers.

8           Q     What if there aren't? Would you decide that is  
9 enough for one trigger?

10          A     Well, that wouldn't meet the requirements.

11          Q     Which requirements?

12          A     That you have three CLECs providing mass market  
13 service.

14          Q     Okay.

15          A     One by itself wouldn't meet the requirement of  
16 the triggers.

17          Q     Okay. Well, if you had three CLECs in a market  
18 and they were the only three CLECs in the market, each  
19 one of them have their own switch, and each one of those  
20 switches is serving one DS0 line each, are the trigger  
21 requirements satisfied in that market?

22          A     According to the requirements of the TRO, yes,  
23 they would be satisfied, because, number one, there is  
24 nothing in the requirements that talks about the number  
25 of lines that have to be served on a mass market basis.

1 There's nothing that talks about de minimis.

2 But more importantly, that's not our case.  
3 That was your hypothetical. Our case shows -- doesn't  
4 show anything, three CLECs with one line.

5 But to answer your question, if you looked at  
6 the requirements of the TRO and you had that  
7 hypothetical situation, which we don't, which is not our  
8 case, it would meet the triggers.

9 Q Okay. And what part of the TRO are you  
10 referring to when you say that that's the case?

11 A I'm referring to the definition of mass market,  
12 which includes residential and business customers. I'm  
13 referring to the triggers that state that if you have  
14 three CLECs within a market serving customers, serving  
15 mass market customers with DSOs, you would meet the  
16 trigger. And there's a lot of different cites. I  
17 didn't know if you wanted to do that or not, but  
18 generally that's what I was referring to when I answered  
19 your question.

20 Q Okay. If you could turn to the item that's  
21 entitled "Triennial Review Order: Provisions Relevant  
22 to Switching Trigger Analysis," on page 2 -- this is one  
23 of the two documents I've had passed out to you. Would  
24 you agree with me that the first item that is reprinted  
25 there, Section 51.319(d)(2)(iii)(A)(i), Local Switching

1 Self-Provisioning Trigger, is the FCC rule on the local  
2 switching self-provisioning trigger?

3 A It looks like it, yes.

4 Q And you think that that rule is relevant to the  
5 analysis of whether CLECs meet the trigger in a market;  
6 right?

7 A Yes. I mean, that's the trigger requirement.

8 Q Okay. The next thing that's reprinted is  
9 paragraph 830 of the TRO, which is entitled "The  
10 Ordering Clauses," and I've highlighted certain language  
11 there. And what I've highlighted is language that notes  
12 that the order issued by the FCC was adopted and that  
13 they also adopted amended rules. Do you see that?

14 A Yes. And if you don't mind, I would like to  
15 go to my own TRO just to --

16 Q I would be happy for you to.

17 A I would assume there's something before and  
18 after this.

19 Q I think paragraph 829 is probably before it.  
20 I'm sorry. Just kidding.

21 A I was hoping I could figure that out.

22 Q Yes, I'm happy for you to look at it if it's  
23 out of context.

24 A Okay. Thank you.

25 Q Sure. Having turned to the page in the TRO, is

1 there anything you want to add?

2 A Well, no. I haven't had a chance to read it.  
3 I just wanted to make sure we were on the same page of  
4 the TRO so I could see what was around it.

5 Q Okay. And really, I think the only point I'm  
6 trying to make is, and I'll say it and just see if you  
7 agree or disagree with me, that when the FCC adopted the  
8 TRO, it was adopting both a binding order and a binding  
9 set of rules. Would you agree or disagree with that?

10 A I guess in general I would agree with that,  
11 yes.

12 Q Okay. Now, I'm going to ask you to actually  
13 turn several pages in, because I really just want to  
14 talk to you about a few of these paragraphs. Let me ask  
15 you to turn to page 13 of this document we passed out.  
16 And I direct your attention to the reprinted TRO  
17 paragraph 447, footnote 1365. And here again, if you  
18 would rather look at your own copy, I have no quarrel  
19 with that. Let me know when you're there and have had a  
20 chance to read the footnote.

21 A And what you have here is part of the footnote?

22 Q Yes. I have an excerpt of the footnote. And  
23 this is one of those --

24 A Okay. I'm just trying to find it here.

25 Q Okay. This is one of those famous footnotes

1 that I think takes up an entire page and more as the  
2 majority and dissent work out their differences. I  
3 think you'll find this -- let's see.

4 A This one seems to take up two pages.

5 Q Yes. I think if you look on page 277 of the  
6 TRO, about the middle of that paragraph begins the  
7 language that's reprinted here. "We found significantly  
8 more probative the evidence that in areas where  
9 competitors have their own switches for other purposes  
10 (e.g., enterprise switches), they are not converting  
11 them to serve mass market customers and are instead  
12 relying on unbundled loops combined with unbundled local  
13 circuit switching." That's the part I have highlighted.  
14 Do you see where I am?

15 A I'm sorry. I haven't found it in this. It's  
16 page 277?

17 Q 277. Go down from the top. It begins in the  
18 middle of a sentence, "Competitive LEC-owned." Do you  
19 see that?

20 A I think I have it.

21 Q Okay.

22 A Okay.

23 Q Okay. And what I would like to ask you here  
24 is, doesn't it seem that the FCC here recognized that  
25 some switches are being used by CLECs and by ILECs out

1 in the realities of the marketplace to serve the  
2 different market segments of enterprise and mass market?

3 A Well, the -- to answer your question, yes. And  
4 they speak about that in numerous places, and this was  
5 one two-page footnote where they talk about switches.  
6 So what -- I want to make sure. What's your question?

7 Q Well, I guess my real question as to this  
8 footnote is, doesn't the FCC in their own analysis and  
9 in passing on the need for more analysis to the states  
10 not just look at simple counting, but look at what is  
11 actually going on in the marketplace with these switches  
12 that we're counting? Don't they recognize that you need  
13 to look at what's really happening with these switches  
14 as you exercise discretion?

15 A Well, as I said before, there's discussion on  
16 enterprise switches. There's discussion around  
17 enterprise switches concerning a potential deployment  
18 case. There's discussion around enterprise switches and  
19 what you would have to do if you put in a new enterprise  
20 switch to serve mass market customers. It doesn't say,  
21 that I have found, that there is any restriction on  
22 providing mass market service out of an existing  
23 enterprise switch. And so it's a broad topic, I guess  
24 in answering your question, so I don't know specifically  
25 what area you want to talk about in conjunction with the

1 enterprise switches.

2 Q Well, at the moment, I think I'm just most  
3 interested in whether you're recommending that state  
4 commissions ignore evidence concerning how switches are  
5 actually being used in the marketplace that the FCC  
6 found probative, as they put it, and that evidence being  
7 on their record that most CLECs who were using switches  
8 weren't converting them to serve the mass market, but  
9 were focusing them on the enterprise market. Should  
10 that kind of analysis not be undertaken by state  
11 commissions?

12 A Well, I mean, the state commissions can do the  
13 analysis that they think is necessary. But I think if  
14 you -- if you look at the order, there is enough  
15 guidance for them as far as the triggers tests go where  
16 they can make a determination.

17 And as I stated before, if where you're going  
18 is part of the -- some of the CLECs' proposals that  
19 somehow an enterprise switch that's currently existing  
20 can't serve mass market customers, there's nothing in  
21 the order that says that. There's no requirement in the  
22 order that says that. There is a lot of discussion  
23 about -- and I believe it's paragraph 508 that talks  
24 about an enterprise switch used solely for enterprise  
25 and not what's currently available.

1           So our proposal, and as we read the triggers  
2 analysis, would allow customers, mass market customers  
3 to be served by an enterprise switch, whereas I believe  
4 some of the CLECs' proposals is counter to that, if  
5 that's what we're discussing here.

6           Q     Well, we weren't quite there yet, but I'm happy  
7 to go there if that's what you would like to talk about.

8           Let me be sure I understand. And let me talk  
9 about your proposal for a moment as opposed to the CLEC  
10 proposals. In your view, if a switch can be  
11 demonstrated to be serving one DS0 loop, and that is a  
12 CLEC switch, but otherwise -- let's say it's near  
13 capacity serving DS1s or DS3s to the enterprise market,  
14 but, you know, the CEO wants his POTS line to come from  
15 his own company, so they provision him a DS0, that would  
16 count as number one in the trigger count; right?

17          A     Number one, I can't -- I don't know of that  
18 happening in the real world, the scenario that you just  
19 gave, and so, you know, I'm not going to agree with the  
20 hypothetical. But if -- what I'm saying is, if there  
21 are mass market customers being served or a DS0 being  
22 served out of an enterprise switch currently, it would  
23 be counted as mass market service.

24          Q     Okay. So in your view, for a switch to be a  
25 mass market switch, it has to serve one mass market



1 customer. Is it also your view that a switch that  
2 serves one enterprise customer is therefore an  
3 enterprise switch?

4 A I don't think I'm making the distinction of  
5 calling it a mass market switch or an enterprise  
6 switch. All I'm saying is, for the triggers analysis,  
7 if an enterprise switch is currently providing mass  
8 market services to customers, that service would be  
9 counted as mass market under our proposal.

10 Q Doesn't this Commission need some way to figure  
11 that out, or should they just pretend that the issue of  
12 enterprise versus mass market doesn't exist?

13 A Well, they have some way to figure that out.  
14 They have, for one, Verizon's proposal, which would tell  
15 them if it's a DS0, it doesn't matter what switch it's  
16 coming out of, it would count as mass market. And so  
17 that would give them one option.

18 Q So that would be the "It's 99% enterprise, 1%  
19 mass market makes it mass market" approach; right?

20 A No, I wouldn't characterize it like that at  
21 all. That was based upon your hypotheticals and what  
22 you just said, making an example that says there's one  
23 line being served out of a switch that you call  
24 enterprise. So I'm not saying that.

25 Q Okay. Well, let's see about the FCC. You

1 mentioned paragraph 508, and that's reprinted on page 15  
2 of this document. And again, of course, I'm happy for  
3 you to look at it in your copy of the TRO. Paragraph  
4 508 you'll find at page 322, carrying over to page 323.  
5 And this one also is an excerpt, as I note up above.  
6 The excerpt begins with the beginning of paragraph 508,  
7 but it doesn't reprint everything. Okay?

8 A Okay.

9 Q And it begins by saying, "States should first  
10 examine whether competitors are already using their own  
11 switches to serve voice customers in the relevant  
12 market." And you're right. This is under a heading  
13 called "Evidence of Actual Competitive Deployment of  
14 Local Circuit Switches," where they're discussing  
15 potential deployment. But I call your attention to the  
16 other thing that's highlighted, where the FCC says,  
17 "Although switches serving the enterprise market do not  
18 qualify for the triggers described above, we believe  
19 that, after implementation of a batch hot cut process,  
20 switches serving the enterprise market are likely to be  
21 employed to serve the mass market as well," et cetera.

22 And I don't ask you that for potential  
23 deployment purposes, because I understand you're not  
24 putting on that kind of case. But what I'm asking you  
25 is, when the FCC says, "Although switches serving the

1 enterprise market do not qualify for the triggers  
2 described above," why don't you take that as some  
3 guidance or direction from the FCC not to count  
4 enterprise switches in the trigger analysis?

5 A I'm just looking at what you have here, which  
6 is --

7 Q If there's anything that's not accurate in it,  
8 please let me know, because it's not my intention to do  
9 any sleight of hand here.

10 A No, what you have is accurate, but then the  
11 rest of what's in 508 -- I believe you stop at "should  
12 investigate the feasibility of this."

13 Q Uh-huh.

14 A And then it goes on to state, "The evidence in  
15 the record shows that the cost of providing mass market  
16 service is significantly reduced if the necessary  
17 facilities are already in place and used to provide  
18 other higher revenue services, and a more efficient  
19 cutover process is in place." And then they go on to  
20 describe, "We choose three self-provisioners and two  
21 competitive wholesale providers," to meet this."

22 The point that I was making before in  
23 conjunction with this paragraph -- and I was looking for  
24 the language that talked about the additional cost that  
25 you would have to incur if you wanted to put a new --

1 take an enterprise switch that's not currently out there  
2 and convert that to serve mass market, and there's  
3 language that talks about that. And my view is, and in  
4 reading the order, that that is different than a current  
5 switch that's in place today that's providing service to  
6 enterprise customers and/or mass market customers. So  
7 there's a distinction in what has to be done to take an  
8 enterprise switch that is totally dedicated to  
9 enterprise today and retrofit it to provide mass market  
10 service.

11 What I'm saying is, if you have an existing  
12 switch today that is currently providing enterprise  
13 service and it's providing DS0 service or mass market  
14 service, that that would count as mass market.

15 Q And where's the reference in the TRO for that?

16 A What I was looking for is the reference to the  
17 costs associated with taking an enterprise switch and  
18 utilizing it for providing mass market.

19 Q Perhaps we could look -- I don't want to stop  
20 you if you think you're onto it, but maybe we could look  
21 --

22 A No, I know it's in here. And if you don't want  
23 to take the time, but again, I think there's --

24 Q No, I'm happy to, sir. I didn't mean to stop  
25 you.

1           A     No, that's fine. I think there's a distinction  
2 on talking about a switch that today is 100% enterprise  
3 and costs -- and what has to be done for that switch to  
4 serve mass market versus a switch that's currently up  
5 and running serving mass market. And the triggers  
6 analysis and what I'm describing is a switch that's  
7 currently on the ground working, and if it's serving  
8 enterprise, and if it's serving mass market, it would  
9 count as mass market if it has DS -- if it provides  
10 DS0s.

11           Q     Were you still looking?

12           A     No, I've stopped looking.

13           Q     Would you like to? I mean, I really didn't  
14 mean to interrupt your search.

15           A     No.

16           Q     We can go on?

17           A     Yes.

18           Q     Okay. I would ask you to turn to paragraph  
19 441, which is the next thing that's reprinted on the  
20 sheet here at page 15. And again, I know it might take  
21 you a few pages to turn. It's on page 274 of the TRO.  
22 And I believe this one I have reprinted in its entirety  
23 with the accompanying footnote.

24                   MS. HYER: I'm sorry. I'm having a little  
25 trouble hearing you. Can you speak up a bit?

1 MR. MAGNESS: I'm sorry. Sure.

2 MS. HYER: Thanks.

3 BY MR. MAGNESS:

4 Q Just to be sure it was heard by everybody, I've  
5 asked you to turn to paragraph 441. You can look at it  
6 on page 15 of the document I've handed out, 15 carrying  
7 over to 16, or it's on page 247 (sic) of the TRO. And I  
8 was just noting that this one is reprinted in its  
9 entirety with the accompanying footnote, footnotes. And  
10 those footnotes are 1353 and 1354. And, Mr. Fulp, if  
11 you could let me know when you've had a chance to review  
12 the paragraph, I have some questions about it.

13 A Okay.

14 Q Okay. Here -- and this may get to some of what  
15 you were just discussing before.

16 A I was just going to say thank you. This is  
17 what I was referring to.

18 Q Great. Okay. "Additionally, the BOCs'  
19 suggestion that our analysis should treat switches  
20 deployed to serve large enterprise customers exactly the  
21 same as those deployed to serve mass market customers  
22 ignores the substantial modifications, and attendant  
23 costs, necessary to serve mass market customers with an  
24 enterprise switch." Is that what you were looking for?

25 A Yes.

1           Q     Okay.  So it appears to me, and correct me if  
2     you think I have an incorrect reading, that the FCC was  
3     rejecting the notion that a switch deployed to serve  
4     mass market should be treated for trigger purposes  
5     exactly like a switch that's deployed in the enterprise  
6     market.

7           A     Right.  And I apologize.  What I was really  
8     looking for was the next sentence, which says, "For  
9     example, in order to enable a switch serving large  
10    enterprise customers to serve mass market, competitive  
11    LECs may need to purchase additional analog equipment,  
12    acquire additional collocation space, and purchase  
13    additional cabling and power."

14          Q     So that --

15          A     What I was --

16          Q     I'm sorry.

17          A     What I was referring to before, as I read this,  
18    this is not talking about a switch that's currently  
19    serving mass market customers.  This is talking about a  
20    switch that may not be currently serving mass market,  
21    and this is the discussion they're having about the  
22    costs associated with having to do that.

23          Q     Okay.  Well, they continue by saying, "Thus,  
24    while we agree that deployment of an enterprise is one  
25    piece of evidence relevant to the possibility of serving

1 mass market customers -- and, indeed, our impairment  
2 analysis takes such deployment into account, as  
3 discussed below -- the fact remains that competitors  
4 using their own switches are currently serving extremely  
5 few mass market customers, through enterprise switches  
6 or otherwise."

7           And the footnote begins, "The dissents'  
8 assertion that enterprise switches should be considered  
9 in our mass market triggers ignores these substantial  
10 differences between the switches serving the different  
11 markets."

12           Again, don't you take this as some guidance  
13 from the FCC that we should not count enterprise  
14 switches when we are counting mass markets triggers?

15           A     No. And I thought I had clarified that  
16 earlier. And the reason I don't is, I am making a  
17 distinction between an enterprise switch that is  
18 currently in place and providing service today to mass  
19 market customers. If it's doing that, that service  
20 should be considered mass market.

21           Q     Is there anywhere in the TRO where the FCC  
22 tells the states that what they mean by enterprise  
23 switch is a switch that serves exclusively enterprise  
24 customers, that is, DS1 or above?

25           A     I don't know if the term "exclusively" is in



1 the TRO.

2 Q Would you agree that that's one of the things  
3 that the FCC leaves it to the states to figure out?

4 A You would need to refer me to where in the TRO  
5 that you're referring to.

6 Q Okay. I just have probably two more  
7 questions. And I'm not sure if you said this yesterday  
8 or your counsel said it, but there were some questions  
9 you said that maybe need to be referred to Dr. Taylor,  
10 and he was made available. I'm going to ask you a  
11 couple of questions, and I don't know whether you're the  
12 right witness or he is. I'm more than happy to talk to  
13 you about it, but anyway --

14 A He is available, and let's see how it goes.

15 Q Okay. That's fine. There was a reference  
16 yesterday to New York being a -- I think a mature market  
17 for local competition. Do you recall that?

18 A No. And I was here the whole time, but there  
19 has been a lot said, and so --

20 Q Okay.

21 A My first reaction was to say yes, because I sat  
22 here for two days, but, no, I don't remember it.

23 Q Almost anything could have been said yesterday;  
24 right?

25 A Yes. Thank you. Thank you.

1 Q Well, the reason I thought you might remember  
2 is that you were sitting right where you are. It was  
3 during the Verizon presentation, and I think there was  
4 discussion of New York being a mature market, and some  
5 assumptions being made about where Florida might be in  
6 the future using New York as a model. Does that ring a  
7 bell?

8 A Was it Dr. Taylor that said that?

9 Q I just -- frankly, I don't recall. And if I  
10 should be addressing this to him, I'm happy to.

11 A Why don't we, just to be safe and expedient --  
12 if that's all right, Dr. Taylor is here.

13 MS. HYER: And Verizon can confirm that it was  
14 Dr. Taylor that made the statement and --

15 CHAIRMAN BAEZ: Was it Dr. Taylor?

16 MS. HYER: -- not Mr. Fulp.

17 Thereupon,

18 WILLIAM E. TAYLOR

19 was called as a witness on behalf of Verizon Florida,  
20 Inc., and having been duly sworn, testified as follows:

21 MR. MAGNESS: Mr. Chairman, it's very quick.

22 CHAIRMAN BAEZ: Sure. It's irregular, but,  
23 Dr. Taylor, you can go ahead and answer the question.

24 WITNESS TAYLOR: Thank you, Mr. Chairman. Yes,  
25 it was me, and it was in the context of hot cut volume

1 measurements.

2 MR. MAGNESS: Oh, okay. Well, let me just --  
3 it's just two questions on it. One is --

4 COMMISSIONER JABER: Mr. Chairman, I didn't  
5 hear that.

6 MR. MAGNESS: -- do you know --

7 COMMISSIONER JABER: Mr. Chairman?

8 CHAIRMAN BAEZ: Yes?

9 COMMISSIONER JABER: I'm sorry. I didn't hear  
10 Dr. Taylor's answer.

11 WITNESS TAYLOR: The answer was yes, it was me,  
12 and the remark was in the context of measuring --  
13 forecasting hot cut volumes in the future.

14 COMMISSIONER JABER: Thank you.

15 BY MR. MAGNESS:

16 Q And do you know, based on your experience or  
17 expertise, approximately what the penetration of  
18 competitive local services, that is, UNE-P and UNE-L, in  
19 New York is today?

20 A (By Dr. Taylor) Yes, I think I know the  
21 publicly available numbers from the FCC, which from  
22 memory are on the order of 25%, which, for the reasons  
23 we talked about earlier, are an underestimate. The  
24 numbers that I used to say it was a mature market was  
25 looking at the ratio of UNE-P migrations to total lines

1 and showing that that ratio had come to a constant over  
2 a relatively long period of time.

3 Q Okay. I would ask you to look at the document  
4 I've handed out, which is -- for identification, it's a  
5 Verizon Telecom -- it looks like a PowerPoint, Lawrence  
6 T. Babbio, Jr., January 29, 2004. And if you turn to  
7 the second page entitled "Growth Initiatives, Long  
8 Distance," this shows a number of consumer LD line  
9 penetration of VZ, that is, Verizon, switched access  
10 lines. Do you see that?

11 A Yes, I do.

12 Q Okay. And it reports, I believe, a 69% market  
13 share for Verizon in the long distance -- I'm sorry, 61%  
14 market share for Verizon in the New York long distance  
15 market. Do you see that?

16 A Yes. That's what the top graph says for New  
17 York, yes.

18 Q And I guess at the bottom it says "and  
19 growing," but 61% in New York.

20 Do you recall what AT&T's long distance market  
21 share was when it was declared nondominant?

22 A If memory serves, on the order of 65%,  
23 something like that.

24 Q And is a market that has 61% ILEC penetration  
25 in long distance and an approximately 25% local

1 penetration where you think a mature market should fall  
2 out?

3 A Well, my remark of "mature" spoke to local  
4 exchange markets. And in fact, by mature I meant that  
5 the S-shaped curve of CLEC migrations had reached  
6 essentially a constant level. And at that constant  
7 level, of course, CLEC market share is increasing,  
8 because these are all migrations. These are all  
9 customers coming to CLECs away from, in this case, New  
10 York Tel. But the rate was roughly constant, and that's  
11 what I meant by mature.

12 Now, for this -- maybe I haven't answered your  
13 question. For this, I would say 61% seems to be a  
14 fairly large number, but I don't know -- in New York, I  
15 would have to look at what has happened to either market  
16 share or some measure of relative success to see where  
17 we are on an S-shaped curve. Is it 61, and is that the  
18 steep growing part, and is it going to grow higher? I  
19 don't know. I haven't looked at that for this case.

20 Q Okay. Do you have any sense, of that 25%  
21 number you referenced, what proportion of that is due to  
22 UNE-P service versus UNE-L service in New York?

23 A Well, it's New York. I don't remember the  
24 numbers. We can get them out of the FCC report.

25 MR. MAGNESS: We don't need to. Thank you.

1 That's all I have. Thank you.

2 WITNESS TAYLOR: Thank you.

3 CHAIRMAN BAEZ: Thank you Dr. Taylor and  
4 Mr. Fulp.

5 MR. MAGNESS: Mr. Chairman, I would certainly  
6 like to mark --

7 CHAIRMAN BAEZ: Which ones? You gave me two  
8 here.

9 MR. MAGNESS: Yes, sir. The Verizon exhibit.  
10 I kind of leave it to the Commission's pleasure about  
11 the other. The other is just reprints of Triennial  
12 Review Order provisions. I'm happy to mark it, since we  
13 used it with the witness. I'll probably be using it in  
14 the subsequent cross-examination.

15 CHAIRMAN BAEZ: We can mark the excerpts of the  
16 Triennial Review. The next number I have is Exhibit  
17 91. That will be excerpts of the TRO.

18 (Exhibit 91 was marked for identification.)

19 CHAIRMAN BAEZ: I think it's me feeding back.

20 MS. HYER: Mr. Chairman, I would just like to  
21 make a note for the record that the Triennial Review  
22 Order excerpts -- and I apologize. I'm not sure which  
23 exhibit number they were marked as.

24 CHAIRMAN BAEZ: Ninety-one.

25 MS. HYER: Ninety-one? Thank you. I would

1 like to note for the record that these are only excerpts  
2 of the Triennial Review Order and that the witness did  
3 have to refer to the full order.

4 CHAIRMAN BAEZ: Hence the title, ma'am. I got  
5 it. Let it be noted for the record.

6 And the Verizon -- I guess Verizon Growth  
7 Initiatives, Babbio, will be marked as Exhibit 92.

8 (Exhibit 92 was marked for identification.)

9 MR. MAGNESS: Thank you, Mr. Chairman. And I  
10 think Ms. Patton had a few questions.

11 CHAIRMAN BAEZ: I think it's me that's feeding  
12 back.

13 (Off the record briefly.)

14 MS. PATTON: Mr. Chairman and Commissioner, my  
15 name is Lorri Patton. I am here to represent AT&T. I  
16 just have a couple of questions for Mr. Fulp.

17 CHAIRMAN BAEZ: Good afternoon.

18 CROSS-EXAMINATION

19 BY MS. PATTON:

20 Q Mr. Fulp, Mr. Magness posed a couple of  
21 hypotheticals to you earlier. Specifically, if you'll  
22 recall, he asked you what you would consider a CLEC who  
23 had provisioned one DS0 to be and whether or not that  
24 CLEC with one DS0 would in fact be considered a trigger  
25 candidate. Do you remember that hypo?

1           A       (By Mr. Fulp)   Yes.

2           Q       And you stated that while that -- I don't  
3 remember your exact words, but I think it may have been  
4 that it was sort of a nonsensical hypo and that that was  
5 not a scenario that Verizon actually faces today; is  
6 that correct?

7           A       In our case in Florida, that's right.

8           Q       However, you did name a company, a competitive  
9 company called Xspedius as a trigger; is that correct?

10          A       Yes.

11          Q       And you have, I am sure, had an opportunity to  
12 review Mr. Gillan's testimony, his rebuttal testimony  
13 here in Florida, haven't you? And I can give you a  
14 minute if you need to pull it up.

15          A       Pull up what?

16          Q       Mr. Gillan's rebuttal testimony here in  
17 Florida. Have you had an opportunity to review this  
18 testimony?

19          A       Yes. I don't have it with me.

20          Q       Okay. We can get you a copy of that if you  
21 would like. I can actually show you mine, and it's  
22 highlighted, so it will make it that much easier.

23          A       Okay.

24          Q       Are you ready? Mr. Gillan discussed several of  
25 the trigger candidates that were named by BellSouth and



1 Verizon in his rebuttal. Do you recall that?

2 A Yes.

3 Q On the page in front of you, I believe he  
4 specifically discussed the company Xspedius. Do you see  
5 that page?

6 A That's correct. Yes, I do.

7 Q Xspedius was named as a trigger in the Verizon  
8 market in Tampa; is that correct?

9 A It was named as one of the eight trigger  
10 companies that we had in Tampa.

11 Q And Xspedius has how many DS0s in the Tampa  
12 market?

13 A I just want to double-check my -- based upon  
14 our information, they had five, but we -- we don't know  
15 what -- I don't have any information from Xspedius to  
16 confirm or deny that, but Xspedius, from our billing  
17 records, has five.

18 Q So while Verizon did not have a trigger  
19 candidate with only one DS0, there is at least one  
20 candidate with only five DS0s that you still felt  
21 necessitated being declared a trigger candidate; is that  
22 correct?

23 A Well, as I stated, it was one of the trigger  
24 candidates. We have eight CLECs that we have data for.  
25 Xspedius is one we pulled the information for and we

1 provided in our study. So it's one of eight. We only  
2 need three to meet the triggers analysis. So it's one  
3 of those companies, but it's one of eight. And what I  
4 was referring to with the question before is that -- I  
5 think what I said was that that wasn't our case where we  
6 have one CLEC with one line or two CLECs that each have  
7 one line. I've got eight CLECs. I have more than one  
8 line. And Xspedius is one of those, and it has five.

9 Q Now, are you familiar with the term that many  
10 CLECs, as Mr. Gillan discusses it, many CLECs refer to  
11 as incidental DS0s. Are you familiar with that term?  
12 Have you heard that term prior to this proceeding?

13 A Yes, but why don't you give me your definition  
14 if you're going to ask me about it.

15 Q Without seeing it in front of me, as Xspedius  
16 described it, an incidental DS0 is sometimes associated  
17 with a DS1 or that large enterprise pipe that goes out  
18 to large and medium size businesses. An incidental DS0  
19 to that DS1 is sometimes provisioned by competitors,  
20 incidental meaning a company needs one or two extra  
21 lines, and it doesn't make sense to have another big  
22 pipe or DS1, but they only need a couple of incidental  
23 lines. Are you familiar with this scenario?

24 A Yes, I guess.

25 Q And again, sometimes these competitors

1 provision these incidental lines for fax lines or  
2 redundancy. Do you understand what I mean when I use  
3 the term "redundancy"?

4 A Yes.

5 Q So you --

6 A And fax lines are voice grade lines. I know --  
7 and I would just like to say that, you know, that there  
8 has been discussion on fax lines. A fax line is a voice  
9 grade line. I mean, you don't sell fax lines. But go  
10 ahead.

11 Q And as Mr. Gillan discussed in his testimony  
12 with regard to Xspedius, Xspedius declared that they had  
13 five incidental DS0s in the Verizon region. And if you  
14 need to look at Mr. Gillan's testimony, please feel  
15 free.

16 A I'm sorry. I thought you were through with  
17 that.

18 Q That's all right. I believe it's page 49, if  
19 memory serves.

20 A I've got it.

21 Q Do you see the place where Xspedius declared  
22 that the DS0s in the Verizon market, all five of them  
23 were incidental?

24 A Is that on page 49?

25 Q It may be on page 50.

1 A I see the highlighted --

2 Q It may be on page 50.

3 A I've got it. It's on page 50.

4 Q So my question, Mr. Fulp, is, did Verizon have  
5 any sort of filter for the trigger candidates to  
6 determine when a trigger candidate had only incidental  
7 DSOs so that this Commission would truly be considering  
8 trigger candidates who truly serve mass market  
9 customers?

10 A Yes. And the filter is only as good as the  
11 data that we received from the CLECs through staff's  
12 data request. But to answer your question, yes, there  
13 is a filter. I think as I stated yesterday, we relied  
14 upon the Commission staff's data request that they sent  
15 out. As I stated in testimony, we didn't have all the  
16 data. Xspedius is one of those that we don't have the  
17 data for that confirms that. To the extent that we have  
18 that type of data and the Commission is now going to  
19 have that as a part of record, yes, there is a screen  
20 that, you know, can be looked at in conjunction with an  
21 Xspedius.

22 But like I said, what we did with our line  
23 count study is, we went into our billing records. We  
24 know what we're billing, and we identified five lines  
25 that we are currently billing Xspedius for. We don't

1 have any confirmation at this point in time from  
2 Xspedius, or I haven't seen the data that would confirm  
3 whether they say five lines -- what they are. I don't  
4 have that information.

5 Q Did you make any attempts after the filing of  
6 the rebuttal testimony where Xspedius is discussed, as  
7 well as the other trigger candidates, to determine what  
8 those five lines were, in effect, doing?

9 A We are in the process of -- the Commission  
10 staff sent additional discovery to the CLECs, and we are  
11 in the process of trying to get the additional responses  
12 and don't have all of those at this point. And our  
13 attorneys are working with the Commission, I guess, to  
14 get that information.

15 Q So you would agree that information like that  
16 would be crucial for this Commission to consider before  
17 they accept the listed trigger candidates as truly being  
18 mass market service providers? Would you agree with me  
19 on that?

20 A I don't know if I would. I mean, again, if you  
21 look back at the proposal that we have before you, we  
22 know what we're billing. Our proposal is, if it's a DS0  
23 service, it's going to be considered mass market. We  
24 know what we're billing. And unless we have information  
25 that comes back that says, no, this is not DS0, it's not

1 service -- I mean, we have to verify that. And if we  
2 had that information, we would change our line count  
3 study to reflect that.

4 Q So let me make sure that I'm characterizing  
5 your answer correctly. If in fact, based upon the data,  
6 you determine that any of the trigger companies, for  
7 example, Xspedius, had this incidental type DS0 service,  
8 you would consider going back and further analyzing  
9 whether they truly were trigger companies or not?

10 A I don't know that I would do that in  
11 conjunction with incidental lines or not, and we would  
12 have to look at that.

13 I mean, one thing that we have to keep in mind  
14 is, you know, what we're doing here in this proceeding,  
15 and we're looking for impairment. And if a switch is  
16 able to serve DS0 today, it's not impaired. Now,  
17 whether that service is being provided or what it's  
18 being used for is another issue, but are you impaired  
19 today to provide mass market service? And what we're  
20 saying is if a switch is there and it's capable and it's  
21 providing mass market service, then there's not  
22 impairment, and that's what we're looking at.

23 On the other hand, if we did get information  
24 that came back, and for whatever reason it's not a DS0  
25 or we made a mistake, we would correct that. But I'm

1 not going to say just because it was incidental that  
2 from our perspective we would say it shouldn't count.

3 MS. PATTON: Thank you, Mr. Chairman. No other  
4 questions.

5 CHAIRMAN BAEZ: Thank you, Ms. Patton. Staff?

6 MR. SUSAC: Staff has about 10 minutes of  
7 questions.

8 CHAIRMAN BAEZ: Go ahead and take your 10  
9 minutes.

10 CROSS-EXAMINATION

11 BY MR. SUSAC:

12 Q Good evening, Mr. Fulp and Dr. Taylor. I'm  
13 going to switch gears on you a little bit and talk about  
14 the market definition.

15 Mr. Fulp, during your deposition on February  
16 12th, you stated that you did not really have an opinion  
17 on whether a CEA is superior to an MSA. Is that still  
18 your opinion?

19 A (By Mr. Fulp) I'm sorry. I didn't hear the  
20 last part of that. Could you restate that?

21 Q Certainly. During your deposition on February  
22 12th, you stated that you did not really have an opinion  
23 on whether a CEA is superior to an MSA; is that correct?

24 A I did state that, and I think I also stated  
25 that for our purposes, you know, the MSA in Florida

1 coincides with the CEA. So, you know, I didn't have an  
2 opinion on the two, but they coincide with each other in  
3 our service territory.

4 Q Thank you. Is it also your belief that if the  
5 Commission wanted a more narrow view, that a combination  
6 of UNE Zones 1 and 2 with an MSA would be an acceptable  
7 second choice?

8 A That's right. And that's our proposal. We had  
9 the MSAs, the appropriate definition, as Dr. Taylor will  
10 affirm too. But if the Commission chose to look at a  
11 more narrow view, we have the Density Zone 1 and 2 as a  
12 part of the MSA as our proposal for you to be able to  
13 utilize that as an option.

14 Q So would an aggregation of wire centers within  
15 UNE Zones 1 and 2 be of sufficient size to obtain scale  
16 and scope economies?

17 A In our Density Zone 1 and 2?

18 Q In your Density Zone 1 and 2.

19 A Yes, I believe so. Excuse me. I don't believe  
20 so. Yes, it would.

21 Q Let me repeat that question so we can get it,  
22 because I'm a little confused. And, Dr. Taylor, if you  
23 want to elaborate, go ahead.

24 A (By Dr. Taylor) Sure.

25 Q Would an aggregation of wire centers within UNE



1 Zones 1 and 2 be of sufficient size to obtain scale and  
2 scope?

3 A And my answer I think would be probably yes,  
4 and the evidence I think we can see is, by the service  
5 that we actually see, the UNE-L-based service in the  
6 MSA, that is, it's almost exhaustively in Density Zones  
7 1 and 2. So it may well be that CLECs will spread over  
8 the years to serve Density Zone 3, but they seem to be  
9 doing adequately in 1 and 2. And there are probably  
10 enough customers there to fill a switch.

11 A (By Mr. Fulp) And I would like to go back to  
12 what I said. I thought I was -- when I said yes that  
13 you were talking our proposal, Density Zone 1 and 2.  
14 And if you were talking a subset of that, I didn't  
15 realize that.

16 Q I apologize. That's probably my fault.

17 Let me tweak the question a little bit. If  
18 wire centers were added to UNE Zones 1 and 2, but short  
19 of an MSA, would this be an acceptable market?

20 A (By Dr. Taylor) Well, since we think, I think,  
21 at least, the MSA is the proper market, anything which  
22 moves in the direction towards that is a good thing. If  
23 I were looking from your perspective, I would have to  
24 ask on what grounds were you adding wire centers. If  
25 these were wire centers where we actually see

1 facilities-based competition today, then probably yes.  
2 The FCC tells us that's great, the best possible  
3 evidence of nonimpairment. So if that's what leads you  
4 to add wire centers, I would probably say yes.

5 If there were also perhaps a dense wire center  
6 somewhere that for some reason hadn't been served yet,  
7 it's not contiguous perhaps to Density Zone 1 or 2, that  
8 also would be on my list. That would not be a bad thing  
9 to add.

10 Q Could either of you, if not both, open the TRO  
11 to page 277?

12 MS. HYER: Could you direct us to a particular  
13 paragraph number, please?

14 MR. SUSAC: Yes. Well, actually, it's a  
15 footnote, and they discussed it earlier. However, I  
16 will say it is the second full paragraph, beginning the  
17 word "Moreover."

18 MS. HYER: I apologize, Mr. Chairman. I have a  
19 different pagination, so --

20 CHAIRMAN BAEZ: Ms. Susac, can you identify the  
21 footnote?

22 MR. SUSAC: Okay. The footnote is 1365.

23 MS. HYER: Thank you.

24 BY MR. SUSAC:

25 Q Have you got it?

1 I apologize. Give me one second.

2 All right. Thank you for that. I'm going to  
3 read the last sentence out loud briefly. "And because  
4 we count competitive deployment of packet switches - and  
5 other intermodal facilities -- in our circuit switching  
6 triggers, such deployment can lead to the elimination of  
7 unbundling requirements on circuit switches."

8 My question is, should intermodal carriers be  
9 counted as a trigger?

10 A Well, my answer is absolutely yes. That is,  
11 the TRO, first, from its perspective, it tells us to  
12 count intermodal so long as the service that's provided  
13 is equal in quality to ordinary telephone service. And  
14 so with that proviso, the answer is yes, they should  
15 count. From an economic perspective, they should count  
16 because they are substitutes for ordinary telephone  
17 service. People don't care whether it's coming over  
18 cable. They might care about wireless, because at least  
19 the FCC said the service quality might be different. We  
20 could argue that, but we won't at this hour. But surely  
21 for cable-provided Internet protocol service, I don't  
22 think there's a question that the service quality is the  
23 same, and customers will decide in the end.

24 Mr. Fulp can add to that if he wishes.

25 A (By Mr. Fulp) I agree.

1 Q Okay.

2 A And it's also in the TRO. I mean, it says  
3 intermodal will be considered as part of the triggers.

4 Q All right. Thank you. So by that rationale,  
5 did you include providers of VOIP in your analysis?

6 A No, not in our line count study and not in our  
7 analysis for this case, no.

8 MR. SUSAC: I have no further questions,  
9 Chairman.

10 CHAIRMAN BAEZ: Thank you, Mr. Susac.  
11 Commissioners?

12 COMMISSIONER DAVIDSON: I've just got one  
13 question for counsel, Mr. Magness, please.

14 Thank you. I want to be clear on a direction  
15 of your questioning. And I assume in your cross, you  
16 were representing FCCA?

17 MR. MAGNESS: That's correct.

18 COMMISSIONER DAVIDSON: I've just got one  
19 question, but I want you to assume something when I ask  
20 the question. Assume the existence of a mass market  
21 switch that in fact counts for purposes of a trigger  
22 analysis. Disregard all of the -- whether it's a fax  
23 line, voice, et cetera. Just assume that there is one  
24 that you would say, you would agree counts. And I want  
25 for my own clarification to be clear on FCCA's

1 position.

2 Is it FCCA's position that if that switch that  
3 counts which is today serving mass market customers and  
4 is also today being used to serve enterprise customers,  
5 then that switch should not count for purposes of a  
6 trigger analysis? And I need a yes or no to that so I  
7 can understand you all's position.

8 MR. MAGNESS: I think I followed it through,  
9 and I think the answer would be no, that is not our  
10 position. And to be sure I've answered correctly, let  
11 me just say -- and this is in testimony. I'm assuming I  
12 don't need to be sworn.

13 COMMISSIONER DAVIDSON: No, no. I'm just  
14 asking. I'm trying to understand FCCA's position sort  
15 of based on your line of questioning of the witness.

16 MR. MAGNESS: Yes.

17 CHAIRMAN BAEZ: That might be dangerous.

18 MR. MAGNESS: Our position is not -- if the  
19 switch is a mass market switch, what we are suggesting  
20 is that when you look at a switch and what it serves,  
21 you need to be looking at does it serve enterprise or  
22 does it serve mass market. The FCC didn't say -- they  
23 didn't say it's 51% or 85%, that the Commission has to  
24 decide what's a reasonable estimate.

25 COMMISSIONER DAVIDSON: I understand that, and

1 that's a more granular analysis. You're not suggesting  
2 that if a switch is being used for dual purposes that  
3 the existence of that dual purpose in and of itself  
4 disqualifies the switch?

5 MR. MAGNESS: No, not in and of itself. We are  
6 not taking the mirror image of the Verizon position,  
7 which is that it must serve exclusively enterprise to be  
8 enterprise, and if it serves one mass market customer,  
9 it becomes mass market.

10 COMMISSIONER DAVIDSON: That's fine. That's  
11 all I needed to know.

12 MR. MAGNESS: We're not taking the mirror image  
13 position of that, no.

14 COMMISSIONER DAVIDSON: I just -- that's  
15 perfect. That clarifies it for me. Thank you.

16 COMMISSIONER DEASON: I have a question.

17 CHAIRMAN BAEZ: Commissioner Deason, you have a  
18 question?

19 COMMISSIONER DEASON: Yes, for the panel.

20 Referring again to footnote 1365, in the middle  
21 section of that footnote, there's a statement, and I'll  
22 just read it. It says, "Given the fixed costs already  
23 invested in these switches, competitors have every  
24 incentive to spread the cost over a broader base." And  
25 this is in reference to entities which have deployed

1 enterprise switches and have not utilized those switches  
2 to a great extent to serve the mass market. And there's  
3 a conclusion in the last sentence that this bolsters our  
4 findings that there may be significant barriers to  
5 entering the mass market.

6 I guess my question is, if you accept that the  
7 UNE switching rate is below cost and that there may be  
8 an incentive for entities which have deployed their own  
9 switches to reserve that capacity to serve higher  
10 profit margin enterprise customers, do you agree with  
11 that middle sentence that's in the FCC footnote?

12 WITNESS TAYLOR: Well, I'll start. I agree  
13 with the analysis. I'm not sure it concludes, and I  
14 certainly don't conclude that it rules out the use of  
15 enterprise switching for mass market service.

16 COMMISSIONER BRADLEY: Excuse me. I can't  
17 hear.

18 CHAIRMAN BAEZ: Dr. Taylor, if you can help us  
19 out there.

20 WITNESS TAYLOR: Is that better? Okay. Sorry.

21 COMMISSIONER BRADLEY: Yes, that's better.

22 WITNESS TAYLOR: Thanks. I think the way the  
23 analysis works is that the footnote recognizes that  
24 buying a switch and putting it in place is a large fixed  
25 cost, and the CLEC has, by assumption, already paid that

1 cost, and if they can spread that cost over other  
2 customers, that's gravy. That's a good thing. That  
3 part of the analysis makes sense. They then say they  
4 don't see very much of that in the real world, is what  
5 the footnote says, and perhaps the reason is impairment.

6 And Commissioner Deason brought up perhaps  
7 another reason might be that UNE switching is so cheap  
8 that the opportunity cost for the CLEC is too high. It  
9 can make more money by using its switch capacity to  
10 serve an enterprise customer and use Verizon's or  
11 BellSouth's capacity more cheaply to serve mass market  
12 customers, and that could well be. That's an  
13 explanation, I think, of why we may not see that much  
14 migration or that much -- or the FCC hasn't seen that  
15 much migration or service of mass markets customers out  
16 of enterprise switches.

17 But I think the important and critical thing is  
18 that the fixed cost of the switch and of putting the  
19 switch in place has occurred, and if the price is right  
20 -- and that means both the retail price at which the  
21 CLEC can serve mass market customers and the wholesale  
22 price at which they can buy an alternative service. If  
23 those prices are right, then the CLEC will use, be able  
24 to use, and is not impaired from serving mass market  
25 customers. That's my interpretation of what that means.



1                   COMMISSIONER DEASON: Thank you. Mr. Fulp, do  
2 you have anything to add?

3                   WITNESS FULP: No.

4                   CHAIRMAN BAEZ: Thank you, Commissioner. Any  
5 other questions?

6                   All right. Thank you to the panel, the  
7 impromptu panel, I guess it turned out to be.

8                   All right, that brings us to the elusive  
9 Ms. Tipton.

10                  MR. MAGNESS: Mr. Chairman, there are several  
11 documents we would like to hand out just to make things  
12 --

13                  CHAIRMAN BAEZ: Actually, I think this is a  
14 good time for a 10-minute break, if you don't mind.

15                  MR. MAGNESS: That would be fine, yes.

16                  CHAIRMAN BAEZ: Okay.

17                  MR. MAGNESS: We'll get all that distributed to  
18 everyone.

19                  (Short recess.)

20                  CHAIRMAN BAEZ: We can go back on the record.  
21 Mr. Magness, by my count, you've got about hour and 30.

22                  MR. MAGNESS: I'll try to come in under that.

23                  CHAIRMAN BAEZ: I think you've got to, if I can  
24 understand, but go ahead.

25                  MR. MAGNESS: A preliminary matter. We would

1 like to move into the record the deposition transcript  
2 from the deposition last night, February 24, 2004. I've  
3 asked Ms. White if BellSouth has any objections. I  
4 don't believe they have any. And we may just want to  
5 mark that now.

6 CHAIRMAN BAEZ: We'll mark the deposition  
7 transcript of Pamela Tipton dated February 24, 2004. I  
8 have the next Exhibit as Number 93.

9 Mr. Shore, you don't have an objection?

10 MS. SHORE: We do not.

11 (Exhibit 93 was marked for identification.)

12 CHAIRMAN BAEZ: Go ahead, Mr. Magness.

13 MR. MAGNESS: Thank you, Mr. Chairman.

14 Thereupon,

15 PAMELA A. TIPTON

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

19 CROSS-EXAMINATION

20 BY MR. MAGNESS:

21 Q Ms. Tipton, I provided you during the break a  
22 document that's entitled "Tipton Trigger Data." Do you  
23 have that before you?

24 A Just one moment.

25 Yes, I do.

1           Q     And we've distributed it to the parties and to  
2 the Commissioners as well.

3                     And what I would like to do, just to try to cut  
4 to the wheat and leave a lot of the chaff behind in the  
5 several hundred pages of deposition transcript, is talk  
6 to you about the data that you used in coming to your  
7 trigger conclusions in this case.   Okay?

8           A     Okay.

9           Q     And I'm going to ask you if you agree with me  
10 about the things that are stated in this document.   If  
11 you don't, please tell me, and I'll change them unless I  
12 have a factual disagreement with you.   But I would like  
13 to walk through this and see if we have it straight.

14                     On the first page, "Tipton Data Sources  
15 Include."   Do you see where I am?

16          A     Yes, I do.

17          Q     And I have "BellSouth internal data," and I  
18 have number 1, "Ported numbers/directory listings for  
19 residential data," and I've shorthanded that,  
20 "Ported/DL."   Do you see that?

21          A     I do.

22          Q     And I reference your direct testimony.   You  
23 know what I'm talking about there; right?

24          A     Yes, I do.

25          Q     Okay.   And then the other set of data is from

1 the loop inventory database of LFACS, L-F-A-C-S, all  
2 caps. And that is where the business line data comes  
3 from; right?

4 A That is correct.

5 Q And then if you flip to the second page, I have  
6 -- this is another category again of your data sources.  
7 As opposed to internal data, this would be CLEC  
8 responses to BellSouth discovery. And I'm shorthanding  
9 that here, "CLEC BellSouth discovery." Do you know what  
10 I'm talking about?

11 A Yes, I do.

12 Q Okay. And I have a quote from you here from  
13 your deposition, where, in the interest of time, I won't  
14 read the whole thing, but I think the summation -- and  
15 correct me if I'm wrong -- is that you, BellSouth, used  
16 CLEC data when you had it, and if you did not have CLEC  
17 data, that being CLEC BellSouth discovery, you used the  
18 internal data sources; is that correct?

19 A Yes, that's correct.

20 Q And you testified in your deposition that, down  
21 in the last part of it, "CLEC data actually accounts for  
22 about 85% of the totality of what we used in our trigger  
23 analysis, 85% of the mass market locations. It's  
24 actually more than 85%". And that's a quote from your  
25 deposition. And just to be clear, when you say 85% of

1 the locations, if you could just explain to me, do you  
2 mean 85% of the CLECs named or 85% of the lines served  
3 by those CLECs, or what did you mean by that?

4 A It's 85% of the lines serving the mass market  
5 locations.

6 Q Okay. Was there any particular CLEC who  
7 accounted for, say, 70% or more of that amount?

8 A I don't think 70% or more, no.

9 Q Okay. Was there any CLEC that accounted for a  
10 higher proportion than the others?

11 A Yes.

12 Q Would you say over 50%?

13 A I would say it's approximately 50%.

14 Q Okay. So statewide, approximately 50%, in your  
15 recollection, of the CLEC lines served are being served  
16 by a single CLEC; correct?

17 A That's correct.

18 Q Okay. And I don't want to get into any  
19 confidential data, so I want to leave it there. Okay?  
20 But you know what I'm talking about about the single  
21 CLEC?

22 A Yes, I do.

23 Q Okay. Now, if we go on to page 3, I have, just  
24 to read it, "The 'totality' of the data relied upon by  
25 Tipton for developing PAT-5 trigger CLEC listing

1 includes." And I have the word in quotes, totality,  
2 because that's a word that came up in your deposition,  
3 as I recall; right?

4 A That's correct.

5 Q Okay. And just to be sure all the shorthand is  
6 clear on the record, is PAT-5 the exhibit where you  
7 identify the trigger candidates in Florida?

8 A It's the exhibit that identifies both the  
9 markets where the triggers are met, and it identifies  
10 the CLECs that BellSouth believes are trigger CLECs.

11 Q Okay. And do you have PAT-5 with you?

12 A Yes, I do.

13 Q And you've revised PAT-5 since it was first  
14 filed with the direct testimony; correct?

15 A That's correct.

16 Q Was there one revision or more?

17 A I believe there were actually two revisions.

18 Q Okay. Now, I hope with we can use this  
19 convention going forward, because I think it's safe for  
20 confidentiality purposes. I think we used it in the  
21 depositions. The identities of the CLECs were filed  
22 confidential because you related them to particular  
23 markets; right?

24 A That's correct.

25 Q So if I name the name of a trigger CLEC or you

1 name the name of a trigger CLEC, but we don't relate it  
2 to the particular market, we're not violating any  
3 confidentiality provisions as far as you know?

4 A As far as I know.

5 Q Okay. So if we could just agree to adopt that  
6 for our discussion here tonight, that way we can  
7 actually talk about real names of real CLECs instead of  
8 coming up with a, you know, decoder ring type deal.  
9 Okay?

10 A Okay.

11 Q But, please, I just admonish you, don't relate  
12 it to a particular market. And if you're going to,  
13 please tell us beforehand in case we need to take  
14 appropriate action. Okay?

15 MR. SHORE: Mr. Chairman, I would just --  
16 proceeding in that fashion, I think that's wise, so long  
17 as the witness understands that if it's necessary to do  
18 so to explain her answer, let us know that, because I'm  
19 sure everybody wants her to do that.

20 CHAIRMAN BAEZ: All right. Proceed.

21 MR. MAGNESS: I could agree with Mr. Shore  
22 about that.

23 BY MR. MAGNESS:

24 Q Okay. So the totality of the data that you  
25 relied upon in developing PAT-5 is, number one, the

1 BellSouth internal data. And we identified that as the  
2 ported/DL and the LFACS data; number two, BellSouth  
3 CLEC discovery. So far is that correct?

4 A That's correct.

5 Q Okay. And as we noted above, where BellSouth  
6 CLEC discovery was available, BellSouth relied on that  
7 data and not the BellSouth internal data for its trigger  
8 analysis. Is that a correct statement?

9 A That's correct.

10 Q Okay. And this data, that is, the BellSouth  
11 data that you relied on, is summarized on pages 1986 to  
12 2012 of BellSouth's response to an AT&T subpoena. Do  
13 you know what I'm talking about?

14 A Yes, I know what you're talking about.

15 Q And is it a fair statement, or I should say an  
16 accurate statement, that that does present the summary  
17 of the totality of the data you relied upon?

18 A If you'll permit me to go to that, I would like  
19 to look at it.

20 Q Just so you'll know, I have handed out in one  
21 of these red folders those 27 pages, and unfortunately,  
22 I don't think I labeled them all. For reference, the  
23 document -- and I'm not going to reveal it. It is a  
24 proprietary document. It begins with Bates stamp --  
25 AT&T/MCI subpoena, Bates page number 001986. Just for



1 reference, the headings across the top, which are not  
2 confidential, are Market, CLLI, or C-L-L-I, CLEC, Line  
3 Size, and Locations. Okay. Do you have that before  
4 you?

5 A Yes, I do.

6 Q And so if we call this the Tipton summary for  
7 purposes of our discussion tonight, do you have any  
8 problem with that?

9 A No, I don't.

10 Q And this summary includes both the data sources  
11 we reference here on page 3, the BellSouth internal data  
12 as well as the CLEC discovery; correct?

13 A That is correct.

14 Q Okay. Moving on to the next line, I have a  
15 quote here from your deposition, and let me just read  
16 that, the answer to a previous question. "Yes, I did.  
17 To the best of my knowledge, I used all of the data that  
18 was available to me in conducting our trigger  
19 analysis." And then I asked you the question, "And just  
20 to summarize" -- and let me be clear for the record,  
21 since there's two depositions, this was in the first  
22 deposition. You recall that; right?

23 A Yes, I recall that.

24 Q I'm sorry. Okay. The question again is, "And  
25 just to summarize, the totality of the data would

1 include the responses to the subpoena, number 1 and 2,  
2 which are reflected in the 3,079 pages we've been  
3 talking about this afternoon, and number two, the  
4 CLEC-provided information you got in discovery served by  
5 BellSouth." And your answer was, "That's correct?"

6 A (Nodding head affirmatively.)

7 Q Is that still your testimony?

8 A Yes, it is.

9 Q And aren't you glad we're not looking at 3,079  
10 pages this evening?

11 A I am very glad.

12 Q Okay. Now, the next page, page 4, I have it  
13 entitled "The data relied upon by Tipton does not  
14 include." Okay? And again, as I go through these,  
15 please let me know if anything that's stated here is  
16 incorrect. Number 1, BellSouth internal data showing  
17 DS0/DS1 "unbundled loops by type" material provided in  
18 response to AT&T subpoena and AT&T interrogatory 125.  
19 And I call that for shorthand UNE loop data. Is that  
20 accurate?

21 A It is accurate it is not included as a part of  
22 our trigger analysis. However, when BellSouth extracted  
23 its loop data, it extracted all loops, including DS1 and  
24 above, and then we filtered out any end-user locations  
25 that had a DS1 or above level service terminated to that

1 location. That's the reason why no DS1 and above loops  
2 were actually included in our trigger analysis.

3 Q And why was it that you didn't include -- let  
4 me strike that. You did not, or BellSouth did not  
5 conduct the kind of analysis that Mr. Fulp just  
6 discussed, did you, where he -- I'm not sure if you were  
7 in the room. Did you hear that testimony?

8 A Yes, I did.

9 Q Okay. And they through their billing database  
10 were able to segregate out DS0s in the mass market, DS1s  
11 in the enterprise market, and conduct the analysis from  
12 that basis. BellSouth did not conduct that analysis,  
13 did you?

14 A I think that's what I just described. We took  
15 the totality of data and looked to see which locations  
16 had DS1s. I mean, it's in the database, and we just  
17 parsed those out and did not include any locations that  
18 had DS1 and above level services. So that to us was  
19 considered an enterprise location and therefore was not  
20 appropriate to include in our trigger analysis.

21 Q And were there any other lines that you  
22 excluded?

23 A Yes. We -- for our trigger analysis, we  
24 narrowed our consideration for unbundled loops to only  
25 include analog voice type loops, which we call SL1 and

1 SL2 loops. And you'll see that reference to those loop  
2 types in both some of the materials here and in my  
3 deposition.

4 Q Now, when you answered AT&T's interrogatory  
5 that looked for DS0 and DS1 loops by type, is the data  
6 that you gave them data that adequately accounted for  
7 those SL1 and SL2 type loops?

8 A Yes, it was. However, there's a difference in  
9 the format in which the data can be provided. The  
10 specific question that AT&T asked us was to provide over  
11 the last -- I believe it was 24 months; I'm not exactly  
12 certain -- by month the DS0, DS1, unbundled loops,  
13 special access loops, DS1 EELs -- I believe I captured  
14 all the types -- identified by wire center by CLEC over  
15 those several months time.

16 And our nondesigned loops are billed through  
17 the CABS billing -- excuse me, the CRIS billing system.  
18 The CRIS billing system is unable to provide the data in  
19 a month over month over month format, also sorted by a  
20 wire -- at the wire center level and the CLEC level. It  
21 can provide wire center level data, or it can provide  
22 CLEC level data at the state.

23 So based on AT&T's request, we assumed they  
24 were trying to identify how many DS0 level unbundled  
25 loops could be attributed to a particular wire center or

1 market. So therefore, we provided the wire center data  
2 instead of the CLEC data at the state level. And that  
3 was just for the SL1, which is a nondesigned loop.

4 Q And was there ever any discovery response or  
5 any testimony filing that you made in which you very  
6 clearly stated here is the DS1s versus here's the DS0s?

7 A No. I don't believe it was necessary to  
8 identify the DS1 level loops because they're not part of  
9 the trigger analysis. The trigger analysis was to  
10 consider DS0 loops.

11 Q Okay. We'll probably revisit that in a minute,  
12 but let's work on through the other data. The other  
13 data not relied upon, as I understand it, is, number 2,  
14 is CLEC data provided in response to the FPSC staff  
15 discovery request; is that correct?

16 A That's correct. We did not rely upon the data.  
17 We did review it, however, and compare it to our data.

18 Q Okay. And number 3 is the CLEC sworn  
19 affidavits submitted by FCCA through Mr. Gillan's  
20 deposition for ITC^DeltaCom, KMC, Network Telephone,  
21 NuVox, US LEC, and Xspedius.

22 A That's correct. I received copies of those  
23 affidavits the day of my deposition.

24 Q And have you reviewed those since your  
25 deposition, your first deposition?

1 A I believe I reviewed them at the deposition.

2 Q Okay. Have you taken a look at them since  
3 then?

4 A No, I have not.

5 Q Okay. So we don't have any disagreements about  
6 page 4; correct?

7 A Except for what I stated about the fact that we  
8 did in fact look at the DS1 loop information. We just  
9 did not include it in our trigger analysis, so that's  
10 correct.

11 Q Okay. On page 5, "The data produced on  
12 February 23, 2004, in response to the Staff Fourth  
13 Request for Production provides new information." Do  
14 you disagree with that?

15 A No, I do not disagree.

16 MR. MAGNESS: Number 1, 117 pages -- and while  
17 we're here, why don't we get it out. For those of  
18 you examining documents while we're doing this, it's  
19 the thickest of the folders, the red folders.

20 Again, I admonish everyone that a claim of  
21 proprietary attaches to this document.

22 BY MR. MAGNESS:

23 Q Okay. With that, let me read number 1. These  
24 117 pages which are Bates numbered BST 00296 to 00412  
25 compiled from BellSouth's, and I put in quotes, trigger

1 database, unquote, that includes Ported Number/DL and  
2 LFACS internal BellSouth data.

3 A Mr. Magness?

4 Q Yes.

5 A Excuse me. I don't appear to have that  
6 particular one. I think I have all the others, but --

7 Q You don't have that one?

8 A Oh, I'm sorry. Yes, yes.

9 Q Okay. So you do have the 117-page document in  
10 front of you?

11 A Yes, I do.

12 Q Now, I have a couple of footnotes. This thing  
13 started to look like the TRO. I apologize for that, but  
14 I wanted to be sure we referenced everything carefully.  
15 Where I say trigger database, what I mean is -- I'm  
16 referring in footnote 7 to your deposition last night,  
17 where your answer was, "We took that data, the data that  
18 we had applied the filters to." And when we were  
19 talking about the filters, just for context, would you  
20 agree with me that we were talking about the mass market  
21 filter, or maybe perhaps the DS1 filter you're  
22 mentioning this evening?

23 A That's correct. It was applying both filters.

24 Q Okay. "We had already pulled only the UNE  
25 business class loops. We also pulled only the

1 residential ported numbers. We also used the CLEC data  
2 where CLECs had provided usable data. All of that is in  
3 one source. Well, so to speak. It's not really a  
4 source. It's in one place so that we can execute a  
5 query against the data to produce the triggers."

6 And my question was, "And what's that database  
7 called?"

8 Your answer, "We didn't name it."

9 Question, "Where does it live?"

10 Answer, "On a computer. It's just a big  
11 spreadsheet."

12 Question, "Is it just about Florida?"

13 And the answer is, "No. It's all the data we  
14 receive. We just put it all in one place."

15 Is that an accurate reading?

16 A Based on my recollection, yes, it is.

17 Q And this giant spreadsheet that summarizes all  
18 the data you have on triggers, was it ever provided to  
19 the Florida staff?

20 A We produced our underlying work papers. I  
21 don't believe we produced the database, as it is.

22 Q Okay. Are you aware of any of the parties  
23 ever getting access to that database itself during the  
24 course of this proceeding?

25 A No.



1 Q Okay. So that's the trigger database that I  
2 call it in quotes there. Okay?

3 A Okay.

4 Q And then I said that it included ported  
5 number/DL and LFACS internal BellSouth data, that is,  
6 the trigger database includes all those things. And  
7 then, again, there's a quote here from your deposition  
8 where -- let me just read it. It's probably quicker.

9 In footnote 8, question, "And the source of the  
10 data is the LFACS database?"

11 Answer, "That data there is a combination of  
12 the ported number data and the loop data. It is the  
13 actual data we relied upon in producing PAT-5 for those  
14 CLECs for whom BellSouth used its own data."

15 So let me move to number 2. And do you have  
16 any disagreement with number 1? I'm sorry if I already  
17 asked you that. And let me --

18 A No, I do not have any disagreement. Yes, we  
19 can move on.

20 Q All right. Okay. Number 2, "The CLECs  
21 designated in the 117 pages of data filed February 23,  
22 2004, are CLECs about whom BellSouth relied exclusively  
23 on BellSouth internal data for its trigger analysis.  
24 The Tipton summary, that is, pages 1986 to 2012,  
25 includes more, i.e., both BellSouth internal data and

1 BellSouth CLEC discovery, for the CLECs named there."

2 Do you agree with what's in statement 2?

3 A Yes, I do. And to provide context to the  
4 Commissioners, the specific request that BellSouth was  
5 answering was the staff's -- I believe it was POD 30,  
6 which specifically referenced a section in my testimony  
7 talking about BellSouth's internal analysis. And so we  
8 supplied the data that was used in the production of  
9 PAT-5 that was based upon our internal data.

10 Q Okay. So just to maybe shorthand this again,  
11 you received the request for documents, you entered a  
12 query into the BellSouth trigger database, and it was  
13 able to produce what we now have as 117 pages; correct?

14 A That is correct.

15 Q Okay. And do you know when the analysis was  
16 complete on the 117 pages?

17 A The analysis was -- the analysis has actually  
18 continued to be ongoing, but for purposes of this  
19 proceeding, it was when we produced the revised PAT-5.

20 Q Okay. I guess I'll just ask it more directly.  
21 As I recall, last night -- and I can look it up in the  
22 deposition if you like -- it's your understanding that  
23 this response was prepared and ready approximately a  
24 week ago?

25 A Oh, actually, I said I reviewed it last week,

1 but I believe I reviewed it Wednesday or Thursday of  
2 last week.

3 Q And it was filed this week?

4 A It was filed on Monday of this week.

5 Q Okay. So I think we've covered page 5. Let's  
6 go to page 6. And I'm continuing on the same discussion  
7 of what's in the 117 pages. Number 3, "The Tipton  
8 summary data cannot be used to identify which CLEC  
9 triggers were based on BellSouth data and which on CLEC  
10 data. That can be determined from the February 23rd  
11 data." Is that correct?

12 A It can partially be determined by the February  
13 23rd data. If you utilize, of course, PAT-5 and compare  
14 the CLECs in total on PAT-5 and the CLECs referred to in  
15 what we produced in POD 30, then we can determine that.  
16 I'm not sure what importance that is, because the source  
17 of the data, I'm not sure why that's important, whether  
18 it's BellSouth's or CLECs' data that we relied upon.

19 Q Okay. But you don't disagree with the  
20 statement that's number 3?

21 A No.

22 Q Okay. And I'm just asking you about the first  
23 paragraph.

24 A Okay.

25 Q Okay. And if we could take a quick look at the

1 117 pages that starts at BellSouth 297, just again to  
2 put it in context, here there are CLEC numbers listed;  
3 correct?

4 A Correct.

5 Q Okay. And does that -- well, why don't you  
6 just tell us what that number is?

7 A The CLEC number is the number that was used to  
8 reference the actual CLEC name on the proprietary  
9 version of CLEC -- excuse me, of PAT-5, so that when we  
10 provided a public version, a reader could identify how  
11 many CLECs we actually had identified in a particular  
12 market. So by reference here, it has no particular  
13 meaning. It's just that in that particular market,  
14 that's how we happened to list them. So it was the CLEC  
15 that appeared as the first line associated with the  
16 Daytona Beach Zone 2 market.

17 Q Okay. And just to be clear, take Xspedius. We  
18 talked about Xspedius with Mr. Fulp. If Xspedius was  
19 identified as CLEC 1 in one particular market, and I  
20 won't say which one, are they also going to be number 1  
21 in the other market where they might be named?

22 A No, they were not. I mean, they would not be.

23 Q So the only way to read this is to take PAT-5  
24 next to this and work it through; correct?

25 A That's correct.

1 Q Okay. Now, the next sentence, "The data  
2 produced on February 23 allows analysis of which trigger  
3 CLECs designated by Tipton in PAT-5 are designated based  
4 on BellSouth internal data only." And do you have any  
5 disagreement with that?

6 A No.

7 Q Okay. And, "Based on a review of the February  
8 23 data, those CLECs are," and with omitting the market  
9 designations, "KMC, AT&T, SBC Telecom, XO, Xspedius,  
10 Supra, NuVox, Sprint, Orlando Tel, and Network Tel."  
11 Now, can you confirm, as the person who prepared this,  
12 that that's accurate?

13 A Yes, I can, if you'll give me a minute.

14 Q Okay. And could you tell us what you need to  
15 look at to confirm it?

16 A I'm just looking at a different -- at a  
17 printout summary that just -- it's my -- I produced it,  
18 instead of yours. I can't do it from memory.

19 Q Okay. So is there a further summary of --

20 A No. I just printed out a list, and it's my  
21 trigger data list. It's just something I use. It's not  
22 a summary of data. It's just a --

23 Q Okay. So it's just a summary of the names of  
24 the trigger companies?

25 A It's just a list of companies, uh-huh.

1 Q Okay.

2 A (Examining document.) That is correct.

3 Q Okay. So this listing is correct. So I don't  
4 think we have any quarrels on page 6. Let's go to page  
5 7 then, the "Alleged Trigger Companies, BellSouth Relies  
6 on Internal BellSouth and BellSouth CLEC Discovery  
7 Data." And this would include FDN, PaeTec -- that's  
8 P-a-e-T-e-c, Comcast, Allegiance, MCI, Alltel,  
9 ITC^DeltaCom, and Florida Multi Media. Again, would you  
10 like a moment to check that?

11 A Yes, I would. Thank you.

12 MR. MAGNESS: Mr. Chairman, while Ms. Tipton is  
13 doing that, I think it may assist in the record, since  
14 we've got several documents running at the same time, to  
15 maybe mark a few of these things so we can refer to them  
16 later. So I would ask that we mark the document  
17 entitled "Tipton Trigger Data" that Ms. Tipton and I  
18 have just walked through.

19 CHAIRMAN BAEZ: Show that marked as Exhibit  
20 94.

21 (Exhibit 94 was marked for identification.)

22 MR. MAGNESS: And then the 27 pages which I've  
23 referred to in shorthand as the Tipton summary is the  
24 next document we would like to mark. Of course, this  
25 one is in a red folder and confidential.

1 CHAIRMAN BAEZ: And that will be marked  
2 Confidential Exhibit 95.

3 (Confidential Exhibit 95 was marked for  
4 identification.)

5 MR. MAGNESS: And then if we could mark the 117  
6 pages that are Attachment to Interrogatory 30, Item  
7 Number 30, Proprietary.

8 CHAIRMAN BAEZ: Show Attachment to  
9 Interrogatory, Item Number 30, Confidential Exhibit 96.

10 (Confidential Exhibit 96 was marked for  
11 identification.)

12 MR. MAGNESS: And I think that's all I have for  
13 now. We may have some later.

14 CHAIRMAN BAEZ: That's all for now.

15 MR. MAGNESS: Thank you.

16 BY MR. MAGNESS:

17 Q Ms. Tipton, are you still working?

18 A Yes, I am. Let me ask, is there some  
19 importance given to the word "and," as in "BellSouth  
20 relies on internal and BellSouth CLEC discovery data"?

21 Q Where are you, ma'am?

22 A I'm on the page you asked me to review, page 7.

23 Q Page 7?

24 A I understand that and interpret it to mean this  
25 would include the totality of CLECs within our trigger

1 analysis as reflected in PAT-5, because there are no  
2 CLECs that we relied upon both BellSouth data and  
3 internal data. We relied on one or the other.

4 Q Okay. Well, let me ask it this way, just to be  
5 sure it's crystal clear. What we've now marked as  
6 Exhibit 95, which is the Tipton summary, it includes  
7 data that is both -- I'm sorry. Let me strike that. It  
8 includes CLEC's that are designated both based on  
9 internal data and CLEC discovery; is that correct?

10 A That's correct.

11 Q Okay. So maybe we need to correct what's on  
12 page 7. Is it your testimony that for these companies  
13 that we listed, BellSouth relied on BellSouth CLEC  
14 discovery data exclusively?

15 A No, because I think we just established on the  
16 other page that I relied upon internal data for some of  
17 these.

18 Q Okay. I may be getting a little bit confused,  
19 so let me try and see if I can straighten it out.

20 On page 6, the companies that --

21 A I'm sorry. We did not. I'm sorry.

22 Q Okay. Let me, just to be sure it's clear in  
23 the record, try it again. On page 6, the intention was  
24 to identify a list of trigger companies for which  
25 BellSouth based its analysis totally on BellSouth



1 internal data, and is that listing a correct listing of  
2 such CLECs?

3 A Yes, for our trigger analysis; that's correct.

4 Q Okay.

5 A I mean, for the markets that met the trigger,  
6 those are the CLECs. There is one CLEC to add for the  
7 actual deployment.

8 Q You make a good point. Let me be sure that's  
9 clear too. I'm just talking to you about the places  
10 where you testified that the self-provisioning switching  
11 trigger was met. I'm not talking to you or referencing  
12 any potential deployment.

13 A Okay.

14 Q Okay? So you would agree based on that  
15 clarification?

16 A Yes, I would.

17 Q Okay. Now, if we flip to page 7, what I'm  
18 trying to communicate with the "and," and I may have  
19 communicated incorrectly, is -- let me just put it  
20 simply. There is a set of CLECs where you got to naming  
21 them a trigger by looking only at the BellSouth internal  
22 data. We've identified those on page 6 of this  
23 document, Exhibit Number 94. Then there's a set of  
24 CLECs who you relied on other data. And what I  
25 understood you to be saying is that you relied on only

1 the BellSouth CLEC discovery for these CLECs. Is that  
2 correct, or did you rely on both BellSouth CLEC  
3 discovery and BellSouth internal?

4 A I'm checking against my list, but what I'm  
5 seeing so far is, for these CLECs, we relied solely upon  
6 the data that CLECs had provided to BellSouth in  
7 response to our discovery.

8 Q Okay. And let me know when you're done  
9 checking that.

10 A Okay. Yes, this includes all of them.

11 Q Okay. Now, if we look back at what is marked  
12 as Exhibit 95 -- and this isn't on the document I've  
13 given you. I'm just seeing if we can make something  
14 simple in this case?

15 A I'm sorry. The Tipton summary is Exhibit 95?

16 Q Exhibit 95, the 27 pages marked Bates 1986  
17 through 2012.

18 A Okay.

19 Q Are these 27 pages a full summary of what you  
20 relied on in naming CLECs, or if we wanted to see all  
21 the background -- well, I shouldn't say that. Is this a  
22 summary that incorporates both the ones you relied on  
23 with BellSouth internal only and the ones you relied on  
24 BellSouth discovery? Does it incorporate both of those?

25 A Yes, it does. And I would also like to explain

1 that I do not recall the date upon which this summary  
2 was actually produced and filed. It was in response to  
3 AT&T discovery and a subsequent subpoena. So it was a  
4 summary of the data that we had at that point in time.

5 Q Okay. And is it still safe to use as a  
6 summary?

7 A I believe it is.

8 Q It was never supplemented in a way that would  
9 cause you believe it's inaccurate; right?

10 A That is correct.

11 Q Okay. Good. Thank you.

12 Now, I want to, having gone through kind of  
13 what data we have in front of us now -- and we've agreed  
14 on all those things. I want to talk to you about a few  
15 examples. And what I would ask you to do is, using that  
16 summary that includes everything, that is, Exhibit 95,  
17 the 27-page summary, could you just -- I used Xspedius  
18 before, and I'll use Xspedius again. I don't mean to  
19 pick on them. But could you show us on the 27-page  
20 document how you got there? Could you just re-create  
21 for us how you decided to name Xspedius in the markets  
22 that did you?

23 A Xspedius specifically?

24 Q Yes, just as an example. And this document, as  
25 you're looking through it, let me just say -- and

1 correct me if I'm wrong -- includes a CLEC column where  
2 actual CLECs are named; correct?

3 A Uh-huh.

4 Q Okay.

5 A It would be a little bit simpler for me just to  
6 speak generically, so I'll do that.

7 In collecting our data, as we've just talked  
8 through, so I'll try to make it brief, we gathered  
9 information regarding our loops from our loop inventory  
10 database, and we applied a filter to that to eliminate  
11 any locations that had DS1 or above, and we then also  
12 applied a filter that eliminated any locations that had  
13 four lines or more.

14 Separately, we did an extract on our number  
15 portability database to extract all of the numbers. We  
16 then compared those to our directory listings database  
17 to be able to narrow down to only the residential class  
18 of service. And we had to do that because the number  
19 portability database itself is for routing traffic, and  
20 it doesn't retain a class of service indicator. We  
21 could match on telephone number and therefore gain a  
22 class of service. It also allowed us to obtain an  
23 actual service address. So we narrowed our data for our  
24 internal data, and all of that data was then, to use a  
25 very technical term, dumped into a database.

1           As we collected CLEC responses to our  
2           discovery, for the CLECs that provided responses to our  
3           discovery that we have categorized as usable, meaning  
4           that they provided us the wire centers from which their  
5           end users are served, and they provided us the number of  
6           locations they serve organized by line count, meaning  
7           they told us out of the, you know, Jacksonville Clay  
8           Street central office, they served 10 locations that had  
9           one line and 25 locations that had two lines and 50  
10          locations that had three lines. We used that -- we  
11          screened out everything else, and we utilized that data  
12          along with the residential and business data from our  
13          own databases.

14                 So for the CLECs that provided us with usable  
15          data, we used their data; and for all others, we used  
16          our internal data.

17                 Let me also qualify that we compared the  
18          residential ported number database to our loop database,  
19          compared those addresses and made sure that we didn't  
20          double-count, didn't include locations as a result of  
21          both residential numbers and business numbers that had  
22          four or more lines, so that we narrowed our criteria  
23          even further.

24                 All of that data enabled to us count at a wire  
25          center level how many locations by line count each CLEC

1 has. So what you see represented here is a summary of  
2 that data. I'm not going to mention the carrier name,  
3 but the first line of data indicates the wire center of  
4 DELDFLMA and the CLEC name. And you'll see that same  
5 CLECs's name is repeated three times. That's because if  
6 you look at the line size, it goes 1, 2, 3. And then  
7 the locations indicate that they have got 14 locations  
8 with one line, 10 locations with two lines, and two  
9 locations with three lines served out of that particular  
10 wire center.

11 So identifying which carriers were trigger  
12 CLECs in a particular market was based on the  
13 association of their actual deployment in a given  
14 BellSouth wire center, and that wire center then having  
15 been assigned to a particular geographic market using  
16 BellSouth's UNE zones cut by CEA.

17 To arrive at the totality of a carrier's number  
18 of locations, you simply go down the list -- and in  
19 paper format, of course, unfortunately, you would have  
20 to use a calculator, but you just add up the totals, add  
21 up the numbers. And if you want to add up the  
22 locations, you, of course, would have to do some simple  
23 math. For example, for a line size of two, if you want  
24 to know -- if you want to know the total number of  
25 locations, excuse me, you would just add what's in the

1 location column. If you want to know the total number  
2 of lines, then you do some simple multiplication and  
3 total that number.

4 Q Okay. Could you work through the example of  
5 Xspedius? And I'll give you all the time you need to  
6 look through Exhibit 95.

7 A Have you found Xspedius? You know, it will  
8 save some time if you can take me to a page number.

9 Q Well, I haven't. I've flipped through it  
10 several times, and I haven't. I mean, it's not my data,  
11 though. I would ask you if they're here.

12 A Oh, Xspedius is identified in this data set by  
13 American Communications Services, because as we've  
14 previously established, we relied upon BellSouth's  
15 internal data. Xspedius was previously operating at  
16 American Communications Services, so on this particular  
17 report, they would be identified as American  
18 Communications Services. So their first appearance  
19 would be in the Fort Lauderdale --

20 Q Excuse me. Don't do that.

21 A I caught myself, just as you did.

22 Q Yes, you did.

23 Okay. So they would be under -- now, I believe  
24 there's another company maybe in a similar situation  
25 called Teleport Communications Group, and there you

1 identified AT&T as the trigger company; right?

2 A That's correct.

3 Q Okay. Now, how would I know from American  
4 Commun., C-o-m-m-u-n. SVCS, that that's supposed to be  
5 Xspedius?

6 A You wouldn't. What we did is simply provided  
7 the data as it exists in our database in the summary  
8 report, so there's -- you couldn't do that. We were  
9 just asked to supply a summary of our own data, and  
10 that's what we did.

11 Q Okay. If I wanted to find Xspedius in the  
12 Exhibit 96, how would I go about it? Could you just  
13 give us, again, working through that example using  
14 Xspedius, how you identified their mass market lines?

15 A And because I was working through checking out  
16 the CLEC names, can you please identify for me which one  
17 is Exhibit 96?

18 Q I'm sorry. It's the 117-page document that was  
19 produced day before yesterday.

20 A Supplemental Response, Attachment 30-2?

21 Q Yes, that's correct. Wait. I'm sorry. I'm  
22 sorry. I'm not sure. Supplemental Response, Attachment  
23 to Interrogatory Item Number 30?

24 A Yes. Attachment Number 30-2?

25 Q Yes. To be specific, that's what we've marked



1 as Exhibit 96.

2 A Okay. To identify Xspedius, you would need to  
3 reference PAT-5, the confidential version, and find a  
4 market where they are located.

5 Q All right. And could you do that just by Bates  
6 number? Just show me -- I don't need you to identify  
7 the market, since it's potentially confidential, but  
8 just show me how I would get there working through this  
9 data.

10 A That would be on Bates number 2322.

11 Q Okay. So can you tell me -- I don't want you  
12 to name the market.

13 A It will be very difficult for me to  
14 specifically identify it for you, because I would have  
15 to name the market because of the numbers.

16 Q Okay. Can you name the CLLI without revealing  
17 --

18 A That tells you the market.

19 Q Okay.

20 A If you want to pick another carrier, it might  
21 be a little bit easier. It's just that the numbers run  
22 together to another market.

23 Q Can you tell me what CLEC number?

24 A No, I can't, because the number for the  
25 particular market I was referring to, which is the first

1 market identified on that page, they are a certain CLEC  
2 number in that market, and then in the next market,  
3 they're not the same CLEC number, but those two numbers  
4 abut each other, if you can notice that the CLEC number  
5 changes.

6 Q Okay. Well, let's do this just to keep it  
7 moving. There are street addresses listed here;  
8 correct?

9 A Correct.

10 Q Okay. Just so I can get a line number, if I  
11 was trying to calculate the number of lines that you're  
12 identifying for Xspedius to make them a trigger --

13 A Okay.

14 Q Don't tell me the street name. Just tell me  
15 the number, and we can just follow on.

16 A Okay. 1750.

17 Q 1750. Okay. And the number of lines would be?

18 A At that location?

19 Q I'm sorry. What?

20 A At that location?

21 Q Yes.

22 A At that location, that would be one line.

23 Q Okay. Then how do I find the next Xspedius?

24 A The entry right below it.

25 Q The entry right below it. Okay. And that's

1 another one. Okay. So all the ones that are that same  
2 number for that particular zone and that particular  
3 market; right?

4 A That's correct.

5 Q So we're totaling up somewhere a little over  
6 five. Okay. Then how do I find the next Xspedius?

7 A It is Xspedius until the market changes.

8 Q Okay. And then what do I do next if I want to  
9 find the next entry so I can total up the DS0 lines?  
10 I'm sorry. Are these DS0 lines?

11 A Yes.

12 Q Okay.

13 A And for that particular market, that is the  
14 totality of data, or all of the data for that CLEC, for  
15 Xspedius?

16 Q Okay. So if I added up all the line numbers  
17 that are under that number that we're not going to say,  
18 but the addresses start with 1750 and end with 1601, I  
19 would get the total for that market; right?

20 A Correct.

21 Q Okay. And then how to I find it for another  
22 market. I have to go back to PAT-5?

23 A Correct.

24 Q And I have to reference the other number that  
25 they're listed by in the other market?

1 A Correct.

2 Q Okay. Could you do that for me?

3 A Well, I just picked another market. I'm on  
4 page 337, and if you go to the entry, the street -- the  
5 number for the street is 2445.

6 Q Okay. Then that CLEC number, those one, two,  
7 three, four, five, six entries would be the ones we're  
8 looking for? I'm sorry. I think there's more than  
9 that.

10 A I get 10.

11 Q One, two, three, four, five, six, seven, eight,  
12 nine, 10. The last one is at the address that begins  
13 240?

14 A Correct.

15 Q Okay. So then I could add up those line  
16 numbers. And if I added up those line numbers, would I  
17 have the total number of lines you're claiming for that  
18 company in this market and zone?

19 A Correct.

20 Q Okay. I'm not going to ask you to do any more  
21 of that.

22 Now, where in the Tipton summary, Exhibit  
23 Number 95, is in a place where I can find that kind of  
24 exercise we just through summarized so I can kind of put  
25 it all together without having to do what we just did?

1           A     In each market, the way that the Tipton summary  
2 was provided, the market -- it's organized by market,  
3 then by CLLI, and then by CLEC. So you can see where  
4 the market changes, and you can identify -- you just --  
5 the CLEC name is listed, so you can --

6           Q     And for Xspedius, it's listed as American --

7           A     Communication Services; right.

8           Q     Okay. So I could -- should the line size and  
9 location information somehow that's in Exhibit 95, the  
10 27-page summary, somehow could I check all that by  
11 looking at what's in the 117 pages of Exhibit 96?

12          A     You should be able to, yes.

13          Q     Okay. So they should match?

14          A     Yes, they should.

15          Q     If everything is working properly; right?

16          A     Yes. But as I'll reference, these were  
17 produced at two different times. And as you did point  
18 out, we did not supplement the AT&T subpoena. I don't  
19 recall whether there was a need to or not. And if there  
20 was, then it was my oversight.

21          Q     Well, you didn't produce the document that you  
22 all filed at 4:55 on the night before the hearing in  
23 response to the AT&T subpoena, did you?

24          A     No, we did not.

25          Q     Okay. Let me ask you to look at something

1 else. There's a red folder here, one of the skinny ones  
2 that has an affidavit inside it, affidavit -- it begins  
3 with paragraph 1, "My name is Mike Duke." And I'm  
4 sorry. Again, I don't have these labeled, but --

5 A Are we finished with these? I'm going to set  
6 them aside.

7 Q Yes. Let's set aside Exhibits Number 95 and 96  
8 for the moment, and perhaps for the evening. We've  
9 spent a fair amount of time with them recently.

10 Okay. Do you have that one?

11 A I do.

12 Q Okay. Now, do you recognize this as one of the  
13 affidavits that were submitted by FCCA?

14 A It looks familiar. I don't recall specifically  
15 all the carriers that -- for the affidavits that I  
16 reviewed, I mean, all the affidavits, but it looks  
17 familiar.

18 Q Okay. Have you read each of these affidavits  
19 at least once?

20 A Yes, I read them all at least once.

21 Q Okay. Let me direct your attention to  
22 paragraph 9.

23 Actually, first, let me direct your attention  
24 to paragraph 7, which is not confidential. The  
25 confidential portions of this affidavit are marked in

1 yellow. Do you see that?

2 A I do.

3 Q Now, in paragraph 7, if I can just read it, to  
4 keep the record clear, it says, "KMC does not actively  
5 market services to customers who desire to be served  
6 over analog DS0 loops. KMC actively markets only to  
7 customers who plan to purchase digital service at  
8 capacities that justify the use of DS1 level loops. The  
9 number of voice lines needed by this type of customer  
10 often varies, but the customer's service needs are such  
11 that it wants to ensure sufficient capacity by  
12 purchasing service at a DS1 level." Is that a correct  
13 reading?

14 A Yes, it is.

15 Q Now, I'm going to ask you, does KMC's  
16 representation -- and just for the record, Mr. Duke is  
17 an affiant for KMC. He states in paragraph 1 he's  
18 employed as Director of Government Affairs by KMC  
19 Telecom, Inc. Does Mr. Duke's representation that they  
20 do not actively market services to DS0 customers affect  
21 at all your conclusions about KMC as a trigger?

22 A No. Let me explain. The reason is that the  
23 FCC's trigger analysis calls for us to identify carriers  
24 that are providing mass markets service using their own  
25 switch. And in BellSouth's analysis, providing service

1 meant that they had active, today, DS0 analog loops or  
2 analog service -- excuse me, just DS0 voice service to  
3 mass market customers. KMC in fact has DS0 service  
4 serving mass market customers, so they are, by the FCC's  
5 definition, providing mass market service in the markets  
6 that we identified.

7 Q And does Mr. Duke's representation about what  
8 they're actively doing have any impact on your belief  
9 about whether they are actively providing mass market  
10 service?

11 A It doesn't have any impact on whether -- I  
12 mean, to me -- excuse me. Their statement says they're  
13 not actively marketing. The FCC's criteria specifically  
14 say are CLECs providing.

15 Q Okay. So if you had used the work "providing"  
16 instead of "market," would that have changed your  
17 opinion?

18 A No, because, again, the FCC's criteria  
19 specifically state three or more CLECs are providing  
20 service, and KMC is providing service to mass market  
21 customers.

22 Q Okay. As you mentioned yesterday, you're not  
23 an attorney; right?

24 A No.

25 Q Okay. I would like you to read paragraph 9



1       silently, because it is confidential, but let me know  
2       when you've had a chance to review it.

3           A     Okay.

4           Q     Okay. Does what Mr. Duke says in this  
5       paragraph have any impact on your consideration of KMC  
6       as a trigger?

7           A     No, they do not, again, because they are  
8       providing service today.

9           Q     So you're not -- when you say it doesn't have  
10      an impact, you're not questioning Mr. Duke's  
11      truthfulness or his representations, are you?

12          A     No, I'm not.

13          Q     Okay. So fundamentally, it comes down to a  
14      disagreement about what the TRO means; right?

15          A     If you can characterize it that way. I think  
16      the FCC's criteria is pretty straightforward. It just  
17      says are they providing service, and they are.

18          Q     Okay. So you could probably read the same  
19      affidavit as Mr. Gillan and come up with different  
20      conclusions; right?

21          A     I'm quite certain that we would have different  
22      positions.

23          Q     Okay. And it's not because the CLEC data is  
24      not reliable; right?

25          A     It's not because it's not reliable. I just --

1 you know, I believe that KMC is providing service to  
2 mass market customers in the markets we've identified  
3 them.

4 Q And once you know that, the inquiry is over?

5 A Yes.

6 Q Okay. Now, let's look at another one. There's  
7 one for Florida Multi Media in here, and it's entitled  
8 "Affidavit for Florida Multi Media." It begins, "I,  
9 Chuck Weaver, being first duly sworn, depose and state  
10 as follows." It is signed by Mr. Chuck Weaver, signed  
11 and notarized, and he identifies himself as general  
12 manager of Florida Multi Media Communications. Do you  
13 have that one before you?

14 A I do.

15 Q Okay. And I would ask you to review  
16 paragraphs 8 and 9, and let me know when you've had a  
17 chance. I'm sorry they're rather long, but I know you  
18 -- I'll just leave it at that. I'll give you as much  
19 time as you need.

20 I meant to ask you to read paragraph 10 too.  
21 It's just two lines, if you wouldn't mind.

22 A Okay.

23 Q Okay. Does Mr. Weaver's affidavit and what he  
24 says herein have any impact on your view of whether  
25 Florida Multi Media is a trigger?

1           A     No, it does not, and let me explain why.  
2 Florida Multi Media responded to BellSouth's discovery  
3 request that we issued to CLEC's. And I honestly don't  
4 recall whether it was discovery or subpoena, so I'll  
5 generally refer to discovery as any set of questions  
6 that we issued to CLECs and asked them to respond.

7                     Specifically, in response to question number 4,  
8 where we asked them to state whether each switch  
9 identified in response to question 1, which said please  
10 identify the switches, serves residential customers,  
11 Mr. Weaver, I believe, is the one that responded to our  
12 discovery, and his response was, "Residential only."

13                    Then when question number 5 asked, "Does the  
14 switch serve customer locations with," and it has A  
15 through J, beginning with one line only, two lines or  
16 fewer, three lines or -- excuse me, two or fewer lines,  
17 three or fewer lines, et cetera. The response to  
18 question A or subpart A, one line only, he said yes.  
19 Under subpart B, two or fewer lines, he said no, and he  
20 responded no to at all remaining subparts.

21                    Then in response to question 6, "For each  
22 grouping of customer locations identified in question  
23 5," which was preceding, "please provide," and it has  
24 some information they're supposed to provide. And he  
25 simply skipped past that and said, "All have one line."

1 So what that indicated to BellSouth is every location  
2 that Florida Multi Media identified as providing, which  
3 they attested to 792 locations, each of those only had  
4 one line. To me, that is -- clearly, they are providing  
5 service to mass market customers.

6 Q Okay. And these -- let me ask you to look at  
7 the red folder. And I'm not done with Florida Multi  
8 Media, but let's also look at the red folder that's got  
9 in it two items from US LEC, and one of them has just a  
10 cover sheet that says US LEC of Florida, Inc. That's  
11 what I'm interested in. I actually didn't even mean to  
12 pass out the affidavit. Okay? So don't worry about the  
13 affidavit. Let's look at that US LEC of Florida.

14 Now, what this is is a document that appears to  
15 be filed before this Commission. There's a legend at  
16 the top right that says BellSouth Telecommunications,  
17 Inc., FPSC Docket, this docket number, BellSouth  
18 Response to Staff's Request for Copies. This is Bates  
19 stamped BST 000325 and continues through 336. Do you  
20 have it there?

21 A Yes, I do.

22 Q Okay. And this says, "US LEC of Florida,  
23 Inc.'s Objections to BellSouth Telecommunications,  
24 Inc.'s First Set of Interrogatories."

25 Now, the whole reason I have this in front of

1 us is, you've been talking about some of these  
2 interrogatories, and I think this is the same set that  
3 you referenced when you were talking about Florida Multi  
4 Media. And you asked them, US LEC here, and tell me if  
5 I'm wrong, if it's the same stuff you asked Florida  
6 Multi Media, interrogatory number 3, which appears at  
7 Bates 328, "For every switch identified in response to  
8 question 1, provide the number of DS0/voice grade  
9 equivalent access lines current in use and state the  
10 date for which such information is provided." Is that a  
11 correct reading?

12 A That's a correct reading.

13 Q Okay. So doesn't interrogatory number 3 give a  
14 company the alternative to answer with DS0s or answer  
15 with voice grade equivalents, either way?

16 A It does.

17 Q Okay. So it doesn't necessarily elicit whether  
18 they are using DS0s to serve the customers they are  
19 serving; right?

20 A Correct.

21 Q Okay. And then interrogatory number 4, "State  
22 whether each switch identified in response to question 1  
23 serves residential customers." And you read me the  
24 response from Florida Multi Media. They don't use any  
25 DS0s as a customer of BellSouth, but ultimately, they

1 have all these -- they serve these residential  
2 buildings. It wouldn't be a dishonest answer if they  
3 thought what you meant was are there end users out  
4 there; right?

5 A As I read, Florida Multi Media identified that  
6 each location that they serve is served by one line.  
7 And by the definition we're using to define mass market  
8 customers, that is a mass market customer. The FCC's  
9 criteria simply call for a counting of CLECs that are  
10 serving mass markets customers. So logically, Florida  
11 Multi Media, having asserted itself as providing service  
12 to residential customers, and all of the customers that  
13 they serve, they serve via one line, it seems to me  
14 they're a mass market customer.

15 Q Okay. Interrogatory number 5 is, "Does this  
16 switch serve customer locations with" -- and I'm not  
17 going to read the whole thing. It has subparts A  
18 through J. It starts with one line only. B is two or  
19 fewer lines, and then it continues to 10 or fewer lines;  
20 is that correct?

21 A That's correct.

22 Q Okay. So if Florida Multi Media answers,  
23 "Well, yeah, in each individual apartment unit there's  
24 one line, but we buy a DS1, and we only serve at a DS1  
25 level," their answering this question using the one line

1 isn't going to tell you about the access method; right?  
2 It's not going to tell you whether they're using a DS1  
3 to do it or a DS0 to do it; right?

4 A The question asked at the customer location,  
5 and I believe that what the FCC is trying to identify is  
6 customer location. You know, just common knowledge  
7 about how telecommunications works, I don't know that  
8 100% of the residents that BellSouth serves are served  
9 from a DS0 all the way from the central office to the  
10 actual demarc at the residence. And what Florida Multi  
11 Media identified in its response to our discovery is  
12 that the individual apartments, which, the last time I  
13 checked, those are residences, they indicated they serve  
14 each individual apartment or residence with one line.

15 Q Okay. And this is a BellSouth discovery  
16 request. This is not an FCC discovery request; right?

17 A That's correct.

18 Q And that customer location, that's a term that  
19 BellSouth decided to use in its interrogatory; right?

20 A That's correct.

21 Q Okay. To answer this question, you would not  
22 necessarily tell BellSouth whether you were serving by a  
23 DS0 or a DS1; right?

24 A I'm sorry. Could you restate the question?

25 Q Does the question elicit an answer that tells

1 BellSouth whether this is DS0 mass market service or DS1  
2 enterprise service?

3 A Considering interrogatory number 3, yes. It  
4 indicates DS0/voice grade equivalent access lines.

5 Q But what if I decided that, "well, I get this  
6 data by voice grade equivalent, so that's easier for  
7 me. I've got too much discovery in these stupid cases  
8 anyway. I'll just give them my voice grade equivalent  
9 lines." That would be an accurate answer to the  
10 question, right, because you give them the alternative  
11 to not use DS0s?

12 A I think that the common understanding about one  
13 line is a telephone line. And when they indicate that  
14 they serve residential only and its one line only, it's  
15 a logical conclusion to draw that that's one DS0 line.

16 Q Okay. Well, now that you have more information  
17 besides the BellSouth discovery response from Florida  
18 Multi Media, and perhaps have a more nuanced  
19 understanding of their service delivery mechanism, does  
20 it change your opinion about their being a trigger in  
21 Florida?

22 A No, it doesn't, because what they represent in  
23 this affidavit does not tell me that they do not deliver  
24 DS0 to the ultimate residential customer. They talk  
25 about bulk billing arrangements to the residential



1 development, but billing arrangements is not what the  
2 trigger is based on. The trigger is based on actual  
3 service provided to mass market locations. They  
4 ultimately deliver service to the residential individual  
5 customers.

6 Q Okay. I'm going to ask you to look at another  
7 of these red folders, and this one is going to have  
8 information about Sprint in it. And I believe you will  
9 find two documents in your red folder. One of them does  
10 not need to be in the red folder.

11 A Mine has one.

12 Q Yours has one? Oh, okay. I'm sorry. I'm told  
13 that they weren't delivered both in the red folder.  
14 What you should find in the red folder is a document  
15 entitled "Sprint's Answers to BellSouth's First Request  
16 for Admissions and First Set of Interrogatories." Have  
17 you got that?

18 A I have that.

19 Q Okay. Now, if you flip to the page I've  
20 attached here, page 14, interrogatory number 12 is set  
21 out as -- I'm sorry. Let me ask you first about what's  
22 on page 22, the next page that we've attached. And this  
23 is listed as interrogatory number 20 from BellSouth to  
24 Sprint. "Please provide a breakdown of Sprint's total  
25 number of end-user customers in Florida located outside

1 Sprint's ILEC territory by class or type of end user  
2 customer, e.g., residential customers, small business  
3 customers, mass market customers, enterprise customers,  
4 or whatever type of classification that you use to  
5 classify your customers."

6 This information would not necessarily elicit  
7 whether DS0 is being used as the access method or DS1 is  
8 being used; right?

9 A This particular question, no. This particular  
10 question would not.

11 Q Okay. And then -- let's just look at this page  
12 22 just to keep it simple. Then Sprint answered, and as  
13 you can tell because of how they're marked, the numbers  
14 are confidential. You see the number of local service  
15 using facilities?

16 A Yes.

17 Q Is it what you would consider substantially  
18 smaller than the number used by UNE -- I'm sorry. Is  
19 that number substantially smaller than the number that  
20 Sprint says are served using UNE-P?

21 A Yes.

22 Q Okay. And does this level of activity for a  
23 company the size of Sprint indicate anything to you  
24 about whether they should be named as a trigger in the  
25 mass market?

1           A       What it indicates to me is that they are  
2 providing service to -- and I can't tell you based upon  
3 the information provided here. What I can tell you is  
4 based upon our analysis, they are providing service  
5 today to mass market customers using a method other than  
6 UNE-P, which I believe is unbundled loops. And the  
7 indication of the proportion of -- whether they're  
8 providing it via loops versus UNE-P, I think we've heard  
9 a lot of testimony about how many CLECs are using UNE-P,  
10 because it's a lower cost alternative in a lot of  
11 cases. So it doesn't cause me to change my use of them  
12 in our trigger analysis, because they are actually  
13 providing service to mass market customers today.

14           Q       Okay. Now, the other document is public. It's  
15 not a red folder document. And it's -- and I believe,  
16 and correct me if I'm wrong, that this document was one  
17 that you reviewed during your first deposition. It's a  
18 reprint of a website for Sprint. It's entitled "Sprint  
19 Small Business" at the very top. Do you remember  
20 looking at this before?

21           A       Yes, I do.

22           Q       And I believe you made some representations in  
23 your deposition, in the first deposition, that this  
24 document provided some support for your consideration of  
25 Sprint as a mass market trigger?

1           A       I don't believe I said this document did. I  
2 would not have reviewed this particular document in  
3 preparing my trigger analysis.

4           Q       Oh, no. I'm not asking you that. I believe  
5 that during the deposition this document was presented  
6 to you.

7           A       Yes, it was.

8           Q       And your interpretation of this document was  
9 such that it would support your trigger analysis.

10          A       Oh, yes, because they reference in this website  
11 that they are providing service to residential  
12 locations.

13          Q       Okay. Now, there's a lot of different sizes of  
14 print on this document, but do you see the print that's  
15 biggest that's says long distance?

16          A       Uh-huh.

17          Q       As you read through this, would it be a fair  
18 assessment that they're talking about their long  
19 distance service and not their local service?

20          A       Quite possibly, but it doesn't indicate whether  
21 this is targeted to locations that are -- you know, if  
22 this is targeted to locations that are in BellSouth's  
23 territory, I would assume those would be residential  
24 customers that they are serving.

25          Q       Residential long distance customers, maybe?

1           A     Well, they talk about the residential lines.

2           Q     Okay. I would ask you, you were here for  
3 Mr. Ruscilli's testimony yesterday?

4           A     I was here for portions of Mr. Ruscilli's  
5 testimony yesterday.

6           Q     Okay. Do you recall the discussion he and I  
7 had about some SBC information?

8           A     Yes, I do.

9           Q     Okay. Did you get a chance to look at that  
10 since his testimony?

11          A     To look at what?

12          Q     The information on SBC that I talked to him  
13 about.

14          A     No, I did not.

15          Q     Okay. Now, do you recall that he said you were  
16 the trigger witness and I probably ought to talk to you  
17 about it?

18          A     I believe the question was was SBC included in  
19 BellSouth's trigger analysis, and he deferred that  
20 question to me. And I can affirm that, yes, they were  
21 included as a trigger CLEC.

22          Q     Okay. Do you remember me talking to him about  
23 SBC investor briefings and a transcript from an investor  
24 conference call? Do you remember that?

25          A     Yes, I do.

1 Q Okay. But he didn't pass these along so you  
2 could take a look at them; right?

3 A No, because I believe that his specific  
4 reference to speaking with me was regarding whether SBC  
5 was a trigger CLEC or not.

6 Q Okay.

7 A It wasn't about SBC in general.

8 Q Okay. If SBC is telling their investors and  
9 analysts and all those folks that what they're doing  
10 with their outreach and networks is serving enterprise  
11 market, would that have any effect on your use of SBC as  
12 a trigger?

13 A No. Again, as I've explained regarding other  
14 carriers, our analysis indicates that they are providing  
15 service to mass market customers today.

16 MR. MAGNESS: I have one more thing to show her  
17 and probably two more questions.

18 CHAIRMAN BAEZ: Fifteen minutes you've got. I  
19 was going to call you.

20 MR. MAGNESS: Yes, sir.

21 CHAIRMAN BAEZ: Okay.

22 BY MR. MAGNESS:

23 Q Okay. The last thing I've handed out, which  
24 probably should be the last piece of paper on the table,  
25 is a reprint -- and I have the original here if you want

1 to see it. This was in today's Florida Times-Union  
2 business section on page -- well, it's noted here, I  
3 believe, page F-6. Would you like to look at the  
4 original?

5 A I believe you.

6 Q Now, the front page story is "Shuffleboard and  
7 buffet costs are rising." That I wanted to read first.  
8 But in any event, this article says, "Alltel Corp.  
9 disconnects local telephone service." Do you see that?

10 A I do.

11 Q Have you had a chance to read this article?

12 A Yes, I did.

13 Q Okay. And Alltel say here, I believe, "Alltel  
14 Corp. said Tuesday it's pulling the plug on local  
15 telephone service in Jacksonville and plans to lay off  
16 its 11 workers in the process."

17 And I'm not going to read all of it, but the  
18 quote from their spokesperson was, "'This was simply a  
19 business consideration based on the costs Alltel incurs  
20 by providing local service in Jacksonville,' she said.  
21 Alltel's local service was used predominantly by  
22 business customers. Babb declined to say what portion  
23 of its customers were residential. 'Providing local  
24 service was a small part of our business,' she said."

25 Does this announcement by Alltel affect your

1 recommendation that we trigger out CLECs based on  
2 Alltel? I'm sorry. I say that very articulately. Does  
3 it affect your recommendation that Alltel be named as a  
4 trigger by this Commission in Florida?

5 A No. I would recommend that we not include  
6 Alltel in Jacksonville, but I would not say that we  
7 don't consider Alltel in other areas. And I didn't  
8 consult with my list, but in Jacksonville as well as a  
9 number of the markets, as I discussed yesterday as well,  
10 we have far more than three CLECs in those individual  
11 markets. And in Jacksonville Zone 1 we have as many as  
12 -- we have six, and in Jacksonville Zone 2 we have eight  
13 CLECs that are providing service to mass market  
14 customers. So the removal of Alltel from the  
15 Jacksonville market as they pull out of it has no impact  
16 on meeting the triggers.

17 Q What markets -- is Alltel named in  
18 Jacksonville?

19 A I can't identify that.

20 Q Is Alltel named in more than one market in  
21 PAT-5?

22 A Yes, they are.

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

24 CHAIRMAN BAEZ: Thank you.

25 Staff, do you have questions?



1 MR. SUSAC: Yes. We have about 15 or 20  
2 minutes. I don't know if --

3 MR. MAGNESS: Mr. Chairman -- I'm sorry to  
4 interrupt, Jeremy.

5 CHAIRMAN BAEZ: Yes, Mr. Magness.

6 MR. MAGNESS: Before I forget, I want to mark  
7 the other exhibits.

8 CHAIRMAN BAEZ: Oh, yes. You're absolutely  
9 right.

10 MR. MAGNESS: I'm sorry, Jeremy.

11 MR. SUSAC: No, that's okay.

12 CHAIRMAN BAEZ: Just give me a second to  
13 straighten this out. Did we -- Mr. Susac, while he's  
14 getting organized here, did we get an estimate on AARP  
15 and OPC?

16 MR. SUSAC: Yes, Chairman, and that brings me  
17 to a point I wanted to bring out. They have shortened  
18 their list that they originally had given us to just  
19 Ruscilli and Fulp. I didn't know if you wanted me to  
20 reserve my questions and go after OPC and AARP or if you  
21 would like to get mine out the way first.

22 CHAIRMAN BAEZ: Hold on a second. Let's get  
23 these exhibit marked, and we can probably -- let's  
24 finish up with Ms. Tipton.

25 MR. SUSAC: Okay.

1 MR. MAGNESS: Okay. Mr. Chairman, for the  
2 record -- excuse me. There are some of these items that  
3 are already in the record, so we don't need to mark  
4 them.

5 CHAIRMAN BAEZ: That would be Sprint's  
6 responses?

7 MR. MAGNESS: The Sprint responses. The Sprint  
8 long distance item is already a deposition exhibit to  
9 Ms. Tipton's first deposition. The Florida Multi Media  
10 affidavit is already in, and the KMC affidavit is  
11 already in. So I believe that leaves us with --

12 CHAIRMAN BAEZ: US LEC?

13 MR. MAGNESS: The US LEC objections, which --  
14 they are in the red folder, but I think that was a  
15 little bit too much caution. These are not confidential  
16 objections, so I don't think we need to keep them  
17 confidential.

18 CHAIRMAN BAEZ: We can mark US LEC Objections  
19 to BellSouth's First Set of Interrogatories, and we can  
20 mark that as Exhibit 97.

21 (Exhibit 97 was marked for identification.)

22 MR. MAGNESS: And then that would leave the  
23 Florida Times-Union article.

24 CHAIRMAN BAEZ: Well, I'm still holding an  
25 affidavit.

1 MR. MAGNESS: Oh, I'm sorry, sir. Which  
2 affidavit?

3 CHAIRMAN BAEZ: US LEC.

4 MR. MAGNESS: The US LEC affidavit -- all the  
5 other affidavits are already in the record.

6 CHAIRMAN BAEZ: And I think this one is -- this  
7 one is as well?

8 MR. MAGNESS: Yes, sir, it is, so we don't  
9 need to worry about it. The KMC affidavit is the  
10 record. So I think that just leaves the Florida  
11 Times-Union article, which I would rather have you mark  
12 as "Alltel Corp. disconnects local telephone service"  
13 rather than mark as "The Passion," two and a half stars,  
14 if you don't mind. And --

15 CHAIRMAN BAEZ: As with Mr. Gibson, I guess;  
16 right?

17 We'll call it the Times-Union article and leave  
18 all the innocence out. And that is dated February 25,  
19 2004.

20 MR. MAGNESS: And that's 98; is that correct?

21 CHAIRMAN BAEZ: That would be 98; correct.

22 MR. MAGNESS: Thank you, sir.

23 (Exhibit 98 was marked for identification.)

24 CHAIRMAN BAEZ: Mr. Susac, you're up.

25 MR. SUSAC: Thank you.

## CROSS-EXAMINATION

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BY MR. SUSAC:

Q I just have a few clarifying questions and then one hypothetical. Ms. Tipton, just for clarification, what is your understanding of the term "actively providing"?

A BellSouth considered actively providing if -- at the time we conducted the analysis, if a carrier was providing service to mass market locations, meaning the service is active and usable.

Q Okay. So is a trigger company required to serve both residential and business customers?

A No.

Q Okay. And in any of the markets that you present as not impaired in your trigger analysis, were any qualified by just the self-provisioning triggers, or self-provisioning CLECs?

A If you'll let me look at my exhibit.

Q Certainly.

A Yes, there were two.

Q And which were those?

A Daytona Beach Zone 2 and Pensacola Zone 2.

Q And of those markets, was an intermodal carrier one of the three?

A No.

1 Q Okay. If a CLEC self-provisions its own  
2 switch, can it access the same customers using UNE-L as  
3 it does using UNE-P?

4 A Absolutely. The reason is that UNE-P utilizes  
5 the UNE loop.

6 Q And I'm sorry I'm jumping around a little bit.  
7 Mr. Magness eliminated a lot of my questions.

8 Are any of the companies that you have  
9 identified as a trigger candidate affiliated with  
10 BellSouth in that market?

11 A No.

12 Q And when I say affiliated, what is your  
13 definition of the word "affiliated"?

14 A I use the term as referenced in the Triennial  
15 Order. I believe it's at footnote 1550. That is the  
16 one reference I did look up as a result of  
17 Mr. Ruscilli's testimony yesterday. And let me  
18 double-check that just to make sure my memory is  
19 correct.

20 Yes, it's footnote 1550.

21 Q Thank you. With respect to Florida, is  
22 BellSouth affiliated in any way with SBC?

23 A No, it is not.

24 Q In your deposition last night, you mentioned  
25 that four wire centers were excluded from your

1 testimony. Was one of those wire centers HMSDFLAF?

2 A If you'll give me one moment and let me get to  
3 my notes.

4 Q Certainly.

5 A Okay. Could you please restate --

6 Q Yes, Ms. Tipton. It was HMSDFLAF.

7 A Yes, that was one.

8 Q And is that the Homestead Florida Air Force  
9 Base?

10 A I believe so.

11 Q Okay. Thank you for clarifying that.

12 Does BellSouth have wire centers serving only  
13 one customer?

14 A Does BellSouth have wire centers serving only  
15 one customer?

16 Q Yes.

17 A Not to my knowledge.

18 Q Okay. Is competitive deployment of packet  
19 switching counted in the circuit switching triggers?

20 A We did not count any packet switching in our  
21 trigger analysis. In fact, we actually didn't count  
22 switches themselves at all. We only counted whether  
23 CLECs were providing service. But I do understand,  
24 based on the reading of the TRO, that we could have  
25 included packet switching.

1           Q     Okay. And the hypothetical that kind of just  
2           came to my mind was, say I'm a landlord, and I own a  
3           tenant building with 50 residents. And I don't know how  
4           realistic this is, and you can comment on this as well  
5           in your answer, but I require my tenants to go through  
6           me for their phone service.

7                     Now, that DS0 line could have 50 people on it,  
8           but it's actually an apartment. Would that count as  
9           mass market or enterprise?

10           A     Well, the way you actually stated the question,  
11           it sounds like there's one DS0 line serving all 50,  
12           which would be a party line, and in that case, it would  
13           count as one. But if each apartment is served by its  
14           own individual DS0, that would be 50 separate  
15           residences. What you referenced was actually a billing  
16           arrangement, where the owner of the building was billed  
17           for all of the services, but the service -- there's 50  
18           individual lines somehow provisioned that to building  
19           and then individually terminated those to 50 apartments.

20                     MR. SUSAC: Okay. Thank you. That concludes  
21           my questions.

22                     CHAIRMAN BAEZ: Commissioners, any questions?  
23           Thank you.

24                     Before I excuse you, Ms. Tipton, I just want to  
25           get this straight. Mr. Beck, are you here? Mr. Susac

1 mentioned that you all cut down your intended cross  
2 list. I'm sorry, Mr. Twomey. I didn't see you there  
3 for some reason. The question is to both of you.  
4 Mr. Susac is telling me that you've cut down your list.

5 MR. TWOMEY: Yes, sir, that's correct, down to  
6 Mr. Ruscilli and Fulp.

7 CHAIRMAN BAEZ: And Ms. Tipton is not on your  
8 list?

9 MR. TWOMEY: That's correct.

10 CHAIRMAN BAEZ: Ms. Tipton, you're excused.  
11 Thank you.

12 THE WITNESS: Thank you.

13 (Witness excused.)

14 CHAIRMAN BAEZ: Now, we've got serious turkey  
15 to talk. I want to get an estimate. You're down to two  
16 witnesses. I want to get a realistic estimate of how  
17 much time out of this block of time you're estimating to  
18 use, because that will -- I'm trying to decide whether  
19 we should press on, if it's a reasonable enough time  
20 that you're expecting to use, or we take you up early in  
21 the morning.

22 MR. TWOMEY: Mr. Chairman, my --

23 CHAIRMAN BAEZ: And I almost hesitate to put  
24 those choices out on the table. But know this: We do  
25 need to get -- you know, time is of the essence.



1 MR. TWOMEY: Yes, sir. I understand.

2 CHAIRMAN BAEZ: I don't have to tell you that.

3 MR. TWOMEY: In the interest of the entire  
4 assembly here, I would recommend your consideration of  
5 the morning thing. I have a fair number of -- I have a  
6 lot of questions for Mr. Ruscilli.

7 CHAIRMAN BAEZ: About how much would you  
8 estimate?

9 MR. TWOMEY: Probably an hour and a half at  
10 least, and I have a lesser --

11 CHAIRMAN BAEZ: Well, that leaves Mr. Beck with  
12 about half an hour. Is that --

13 MR. BECK: No, we realize that. We're dividing  
14 --

15 CHAIRMAN BAEZ: You realize you're in the same  
16 boat as everybody else.

17 MR. BECK: Yes, we do.

18 CHAIRMAN BAEZ: And Mr. Magness got very close  
19 to getting cut off today. And I don't want to do it to  
20 anybody, but I also need you all to understand that the  
21 same rules apply.

22 MR. TWOMEY: Yes, sir. Mr. Beck and I have  
23 coordinated the utilization of the time. So I have  
24 probably an hour and half for Mr. Ruscilli and a lesser  
25 number for Mr. Fulp. And, of course, we only get what's

1 left after you staff -- as I understood the scenario, we  
2 get -- your staff goes first.

3 CHAIRMAN BAEZ: How much time do you have for  
4 witness Fulp?

5 MR. SUSAC: Well, that's what I wanted to  
6 bring to your attention, Chairman. We actually have  
7 covered all our cross throughout this proceeding for  
8 this particular side.

9 CHAIRMAN BAEZ: Okay.

10 MR. SUSAC: So in a sense, we've already used  
11 our 30 or 40 minutes.

12 CHAIRMAN BAEZ: You know, I didn't know there  
13 was going to be a math quiz today, but I guess that puts  
14 me in a situation where we have to -- you know, if  
15 you've vacated your time slot, all of a sudden, it seems  
16 to me we don't have two hours to play with anymore.

17 Or is there anything that the subsequent cross  
18 could raise that you may want to explore further? I can  
19 also offer you that.

20 MR. SUSAC: If the subject of cross is only  
21 Ruscilli and Fulp, then no.

22 CHAIRMAN BAEZ: No? Okay.

23 You say you have about half an hour for Fulp?

24 MR. TWOMEY: Yes, sir. I think the way it was  
25 anticipated in the Prehearing Order was that there would

1 be a two-hour block between Public Counsel -- staff  
2 going first, Public Counsel second, and the remainder to  
3 AARP, so that there was, at least theoretically, two  
4 hours. I anticipate an hour and a half at least for  
5 Mr. Ruscilli.

6 CHAIRMAN BAEZ: Well, then I don't want to  
7 take Mr. Ruscilli up tonight, but if what you're telling  
8 me is out of, all of a sudden, that two-hour block, we  
9 only have a half hour that you can actually use for  
10 witness Fulp, I would just as soon take him up today so  
11 we can get one more witness out of the way.

12 MR. TWOMEY: Okay.

13 CHAIRMAN BAEZ: I mean, I tried to set out as a  
14 goal tonight to get done with the cross-examination, and  
15 on some level I included you in that part of the goal,  
16 whether we -- you know, if we fall a little short, I  
17 understand. I have taken up time of the day to do this  
18 as well, so I'm not holding anybody responsible but  
19 myself. However, I need to get as many witnesses out of  
20 the way as possible. So are you ready to take Mr. Fulp?

21 MR. TWOMEY: Yes, sir. It's your call,  
22 Mr. Chairman.

23 CHAIRMAN BAEZ: Well, I would like you to take  
24 Mr. Fulp up if that's all right?

25 MR. TWOMEY: Let me gather my materials then.

1 MR. BECK: Mr. Chairman, we have Dr. Johnson  
2 waiting, who is going to be our witness when we present  
3 our direct case. And if you don't anticipate us getting  
4 that far, I wonder if I could excuse him until --

5 CHAIRMAN BAEZ: Mr. Fulp is going to be the  
6 last witness today, so you can tell Mr. Johnson to go  
7 back and prepare or whatever, get a good night's sleep.  
8 Just so he knows, we're going to start up at nine  
9 o'clock again tomorrow. Okay?

10 Welcome back, Mr. Fulp.

11 Thereupon,

12 ORVILLE D. FULP  
13 was called as a witness on behalf of Verizon Florida,  
14 Inc., and having been duly sworn, testified as follows:

15 CROSS-EXAMINATION

16 BY MR. TWOMEY:

17 Q Good evening, Mr. Fulp.

18 A Good evening. How are you?

19 Q I'm fine, sir. Thank you. Given the lateness  
20 of the hour, I'll try and make this as short as  
21 possible.

22 Do you recognize -- does Verizon recognize that  
23 there's interest in this Commission -- should this  
24 Commission have an interest in what level of competition  
25 in the mass market results as the outcome of this

1 proceeding? Is that a concern of theirs?

2 A I would think that that's -- I don't know if I  
3 would characterize it as a concern, but that's something  
4 that I would think that they would look at, yes.

5 Q Okay. You say at page 9 of your prefiled  
6 direct testimony that the Commission's 2003 Annual  
7 Report on Competition shows the majority of -- that is,  
8 59% of CLEC lines in the 10 largest exchanges are served  
9 using CLEC switches; is that correct?

10 A That's correct.

11 Q Okay. Now, do you have a copy of that report?  
12 I think that has been introduced, and if not, it's  
13 entered as Exhibit 82.

14 A Yes.

15 Q Okay. Before we go to that, I want to ask you,  
16 in Verizon's service territory, what are the -- are the  
17 majority of customers served by CLECs business or  
18 residential.

19 MS. MAYS: May I interrupt, Mr. Chairman? The  
20 witness actually has my copy of the report, so I was  
21 wondering if counsel had an extra copy for me to look at  
22 while he's questioning the witness.

23 MR. TWOMEY: I don't.

24 CHAIRMAN BAEZ: Do you we have any loaners out?  
25 Mr. Shore should one by now.

1 MS. MAYS: We have one. Thank you.

2 CHAIRMAN BAEZ: Thank you, Ms. White.

3 MS. MAYS: I'm sorry to interrupt.

4 CHAIRMAN BAEZ: Go ahead, Mr. Twomey.

5 A And your question was the split between  
6 business and residential as far as being served by --

7 Q CLECs.

8 A CLECs. UNE-P, UNE-Ls, or just in general?

9 Q Any.

10 A I would say in general, we would have more  
11 business than we do residential.

12 Q And this report would reflect that at some  
13 point, is that correct, or do you know?

14 A I don't recall if it would reflect the  
15 business/residence split, but it may.

16 Q The percentage of -- do you know the split  
17 between the residential customers between UNE-P and  
18 self-provisioned switch CLECs?

19 A I have an idea of the split between UNE-P and  
20 -- excuse me. I don't have a split on the bis/res for  
21 the UNE-Ls. I do have a split for business/residence on  
22 UNE-P.

23 Q Yes, sir. What --

24 A If that's your question.

25 Q Yes, sir. What is it, if you know?

1           A       Just ballpark, it would be, say, 5,000 UNE-P  
2 for business and 3,000 for residence.

3           Q       Do you have a concern -- let me ask this first.  
4 As I understand it, the UNE-P rates last approved by  
5 this Commission are being appealed by Verizon to the  
6 Florida Supreme Court; is that correct?

7           A       That's correct.

8           Q       And that's, if I understand it correctly,  
9 because you think the rates are by and large too low; is  
10 that correct?

11          A       That's correct. They are too low. That's why  
12 we have it on appeal.

13          Q       And would it be correct that you're concerned  
14 that UNE-P rates that were too low would give the CLECs  
15 cheap access, too cheap an access to your facilities,  
16 your switches, and thereby allow them to take an  
17 unnecessarily large number of your customers? Is that  
18 the reasoning?

19          A       No. The main reason is that the setting of the  
20 UNE rates are below cost. And what they do is enable  
21 what I'll characterize as a false competitive  
22 environment. We're having to provide the enablers to  
23 our competitors below our cost of providing service. We  
24 don't think that's a good policy, and it's not a true  
25 competitive market. And I think that's part of why we

1 are here in this proceeding being, is that the FCC has  
2 re-evaluated this.

3 But that's the concern. Competition is not the  
4 issue. It's being able to compete fairly and not having  
5 to compete unfairly with below-cost rates.

6 Q If you've thought about it in these terms, are  
7 you concerned that if the Commission's currently ordered  
8 UNE-P rates for Verizon are affirmed at the Florida  
9 Supreme Court that you will suffer the same type of  
10 UNE-P CLEC experience that BellSouth has experienced  
11 since their last rates were approved?

12 A I don't know to what extent we would have a  
13 change in our UNE-Ps if the rates were reduced. You  
14 would expect that you could have some increase in  
15 demand, especially if you're taking rates below cost,  
16 which would be the end result of doing that. But I  
17 don't know to what extent we would have that impact.

18 Q Now, you testified in the access case; is that  
19 correct?

20 A Yes.

21 Q Now, my recollection is that a witness from  
22 your company, and I think my recollection is that you  
23 were one that conceded that the claim that increased  
24 competition would result from the increase in basic  
25 local rates as a result of the approvals in that case



1 would result in enhanced competition because of the  
2 spread between the -- that is, the margin, the spread  
3 between the new higher rates and the UNE-Ps; is that  
4 correct?

5 A I don't think I would characterize it the same  
6 way that you did. I think in the access case, what we  
7 stated there was moving the support that was currently  
8 in access to basic rates, which would cause an increase  
9 in basic rates, and to the extent that that could enable  
10 competition in markets for competitors to come in.

11 Q Yes, sir. But wasn't it based upon the margin  
12 potential between the UNE-P rate, or whatever was  
13 available to competitors, and the rates that you  
14 expected to achieve and did achieve from this Commission  
15 that were higher?

16 A I'm sorry. As far as the calculation of the  
17 support, yes, we did that based upon the UNE-P rates.  
18 We used that as a surrogate for our costs in that case,  
19 yes.

20 Q And didn't you agree with me in that case that  
21 the greater the margin -- because as I recall, your  
22 UNE-P rates varied by UNE zone or rate zone; correct?

23 A That's correct.

24 Q And my recollection is -- and tell me if I'm  
25 correct in this -- that the greatest spread, I think as

1 a result of density, the greatest margin or profit  
2 potential in your company's service territory occurred  
3 in the high density core city areas; correct?

4 A I believe so. It has been a while since I  
5 testified in the access charge case, but I think in  
6 general you're correct.

7 Q Yes, sir. Now if the Commission finds that  
8 those areas for your company in the most densely  
9 populated areas are not impaired because of one of the  
10 triggers, for whatever the reason, isn't it your  
11 company's intention to stop offering the UNE-Ps, at  
12 least at the regulated rates?

13 A That would be following the requirements of the  
14 order. And so, yes, if we meet the triggers and the  
15 Commission approves that, we no longer have to offer  
16 UNE-P at current levels.

17 Q Just so I'm clear on this, would the FCC --  
18 with the finding of no impairment, would the FCC compel  
19 you not to make available UNE-P rates at the  
20 Commission's last approved rates, or would you allow  
21 to you no longer do that, if you understand my  
22 distinction?

23 A I think I understand it. I wouldn't have to  
24 provide it any longer if I met the triggers.

25 Q And that would be your intention; correct?

1           A     That would be my intention, yes.

2           Q     Would you -- I think I'm a little bit confused  
3     on what some of the various -- what you and BellSouth  
4     were doing, but would it be your intention to continue  
5     offering the UNE-Ps to your CLEC customers, but at a  
6     market-based rate, or would you not offer it at all?

7           A     I think that that is something that could be  
8     explored and possibly negotiated, to offer a  
9     market-based switching platform comparable to a UNE, and  
10    we would be willing to look at doing that with the  
11    CLECs.

12          Q     Would you be -- under the 1996 Act, are you  
13    obliged to provide UNE-Ps at a market-based rate absent  
14    some type of a waiver? Do you know that?

15          A     I don't believe we are here in Florida, no.

16          Q     If in fact you decided in your discretion that  
17    you have not to offer UNE-P services to your CLECs, CLEC  
18    customers, then if I understand it correctly, their  
19    alternatives for providing service in your service  
20    territory would be either through resale of your  
21    services, which would still be available, I think, or  
22    facilities-based service using their switch and perhaps  
23    leasing your loops; is that correct?

24          A     That's correct.

25          Q     Okay. Now, this 2003 report of the Public

1 Service Commission to the Florida Legislature on  
2 competition, it says, sir, does it not, that the vast  
3 majority of CLEC residential growth in particular in the  
4 State of Florida recently is a result of the  
5 availability of not just UNE-P services, but UNE-P  
6 services at low, relatively low TELRIC rates; is that  
7 correct?

8 A I'm not sure. If you want to point me to a  
9 spot in the report --

10 Q Yes, sir, I will. One second.

11 Okay. Briefly, if you would look at page 8 of  
12 the report.

13 COMMISSIONER BRADLEY: Mr. Chairman,  
14 Mr. Twomey is fading on me. Ask him to speak into the  
15 mike, please.

16 MR. TWOMEY: Yes, sir. Is that better,  
17 Commissioner Bradley?

18 COMMISSIONER BRADLEY: Yes.

19 MR. TWOMEY: Okay. Sorry to be fading on you.

20 BY MR. TWOMEY:

21 Q Okay, sir. Table 1 shows that, for example, in  
22 2001, CLECs had in excess of 366,000 residential lines;  
23 correct? Do you see the first column, the first column,  
24 second row?

25 A Page 8? Are you looking at the Table 1?

1 Q Yes, sir.

2 A On page 8.

3 Q Table 1 is titled "Florida Access Line  
4 Comparison." And I want you to look at it and confirm  
5 that for the year 2000, which is the column  
6 "Residential" on the left-hand side, CLECs, second row,  
7 shows there was 366,653 residential connections or  
8 access lines as of the year 2001; correct?

9 A Did you say -- I have that figure under 2001  
10 for residential CLEC.

11 Q Yes, sir. That's what I was trying to say  
12 too. Do you agree that -- I apologize if I said it  
13 incorrectly. There were 366,653 CLEC residential  
14 customers in the year 2001; correct?

15 A That's correct.

16 Q And then following across the same block, in  
17 the year 2002, it had jumped to over 546,000; correct?

18 A That's correct.

19 Q And then in the year 2003, it was in excess of  
20 726,000; correct?

21 A That's correct.

22 Q Okay. Now, that same page says -- in paragraph  
23 3 titled "CLEC Market Penetration by ILEC Service Area,"  
24 it says -- I'm just going to read it. It says, "CLECs  
25 show the heaviest presence in BellSouth's territory,

1 followed by the areas of Verizon and Sprint, then the  
2 rural ILECs"; correct?

3 A (Nodding head.)

4 Q Now, the report goes on, Dr. Fulp, to say  
5 that, as I interpret it, in any event, that the largest  
6 percentage of CLEC residential customer growth occurs in  
7 BellSouth's service territory. Do you recognize that,  
8 or are you familiar enough with this report enough to  
9 know?

10 A I'll accept that.

11 Q And it says, if I may, on page 9, it says near  
12 the top of the text, Figure 3 -- it says, "Data also  
13 shows that CLEC market share in BellSouth's territory is  
14 double that achieved in Verizon's territory and more  
15 than triple that achieved in Sprint's." It goes down  
16 the next text below Figure 3, "Figure 4 shows CLECs'  
17 share of the residence and business markets by ILEC.  
18 The figure highlights that the only substantial  
19 residential competition is taking place in BellSouth's  
20 territory." Do you see that?

21 A Yes.

22 Q Okay. On page 1, Dr. Fulp --

23 A And I'm sorry. I'm not a doctor.

24 Q I'm sorry. I mean, okay, it's fine that you're  
25 not.

1           On page 11, Mr. Fulp, the center text, there is  
2 an explanation, and it says -- and this is the staff  
3 writing for the Commission, which I assume approved this  
4 report before it going to the Legislature. It says,  
5 "One explanation of the greater CLEC presence in these  
6 exchanges is that BellSouth has the lowest UNE-P rates  
7 among all the ILECs." Now, do you recognize -- you see  
8 that, correct, that text?

9           A     I do.

10          Q     And you recognize that that's true, do you not?

11          A     Well, that's what it says, and I know that they  
12 have lower rates. But I don't know that that would be  
13 the only factor in conjunction with the amount of  
14 competition they have in their service territory. That  
15 would be one factor. And as I talked about before, you  
16 know, rates that are below costs, if they're reduced  
17 below cost, is probably going to tend to increase the  
18 amount of UNE-P that you would see in the service  
19 territory.

20          Q     Did this Commission intentionally set your  
21 rates below costs, or did they err in doing it? I mean,  
22 I haven't read that order, so I'm just asking you. Did  
23 they knowingly set your UNE-P rates below your costs?

24          A     I believe so, yes.

25          Q     Okay. And did they do that with the intention

1 of promoting CLEC competition in your service territory?

2 A I don't know the rationale behind the order as  
3 far as why they reduced the rates. I'm not that  
4 familiar were that order or the rationale behind it.

5 Q Yes, sir. But in an economic sense, if you're  
6 correct that the Commission approved UNE-P rates that  
7 are now on appeal that are below your costs, that would  
8 give the CLECs an uneconomic incentive to come in and  
9 compete in your territory; correct?

10 A That's correct. It would give them more of an  
11 uneconomic incentive as the rates were reduced further;  
12 that's correct.

13 Q Are you saying that your current UNE-P rates  
14 are giving an uneconomic signal as well?

15 A I believe they probably are, on average, below  
16 our costs.

17 Q And as a consequence, isn't it true that those  
18 competitors are coming in, where they otherwise wouldn't  
19 absent that uneconomic signal?

20 A I don't know that that would be the only  
21 factor. If you recall from yesterday, the one slide  
22 that I put up in Verizon's service territory showed the  
23 distinction between UNE-L competition and UNE-P. And in  
24 our territory, we had a six-to-one ratio of UNE-Ls  
25 versus UNE-P. And so I don't think you can just make a



1 broad characterization of the service territory in  
2 Florida, especially when you look at the data that we  
3 have in our service territory.

4 Q Yes, sir. But isn't it true that the vast  
5 majority, a large number of those UNE-L customers are  
6 what I would refer to as business, and I guess you all  
7 call them enterprise customers. Isn't that correct?

8 A No. We were looking at the UNE-Ls that were  
9 from our line count study, which were looking at DS0  
10 voice grade mass market lines.

11 Q Residential customers?

12 A Residential and business customers.

13 Q The concern I have from the consumer's  
14 perspective it, to the extent that I represent some for  
15 the AARP, is whether or not you intend, if you're  
16 successful at what you're petitioning the Commission to  
17 do here, that you expect there to be less competition in  
18 your service territory than there is currently. That's  
19 what you intend, isn't it?

20 A I don't know if there would be less. What I  
21 would hope is that we would be able to compete on a more  
22 equal footing. But there's a lot of forms of  
23 competition in the marketplace today. You've got the  
24 intermodal competition, cable, wireless, voice-over-IP  
25 coming. I think that, you know, we should be in a

1 little better position to compete more fairly. But I  
2 don't know that it's going to have a dramatic impact as  
3 far as the competitive marketplace goes for us.

4 Q Yes, sir. But just to try and understand this  
5 a little bit better, I thought I heard you tell me this  
6 evening that the CLECs have, one, an unfair advantage on  
7 costs right now with the rates that you're charging  
8 CLECs, the UNE-P rates, that because the Florida Public  
9 Service Commission lowered those rates even further,  
10 those rates that are on appeal, those CLECs, if they had  
11 those rates, would have an even greater advantage over  
12 you in terms of the uneconomic or the below-cost, and  
13 that that in turn, I thought you agreed, would tend to  
14 draw them in because they were receiving an uneconomic  
15 price signal. Didn't you agree with all that?

16 A I think I said that there could be some impact  
17 as you lower the rates further below cost. But again,  
18 if you look at the competition in our service territory  
19 today, most of it made up from facilities-based  
20 competition, UNE-Ls, not just UNE-Ps. And so I don't  
21 want to make a blanket characterization just looking at  
22 one factor, which would be UNE-P rates, and try to  
23 expand that into a competitive outlook for our service  
24 territory in the future. I just can't do that.

25 Q Okay. But if you're successful here and you

1 receive the necessary approvals to not offer the CLECs  
2 in your service territory UNE-Ps at Commission-regulated  
3 prices, whatever you call that, then those potential  
4 competitors will no longer have the advantage of that  
5 dollar benefit, that unfair benefit -- I assume you  
6 think it's unfair; correct?

7 A Yes.

8 Q They would no longer --

9 A I know it is.

10 Q They would no longer have the benefit of that  
11 unfair price advantage, that uneconomic signal. And my  
12 question to you is, if they no longer have that, where  
13 else can they receive the same kind of economic signal  
14 to come in and compete otherwise?

15 A Well, hopefully, they wouldn't be able to  
16 receive an uneconomic signal to come in any other  
17 place. But we still have resale availability. As I  
18 stated before, there's cable. There's voice-over-IP.  
19 There's intermodal competition. There's many  
20 substitutes that customers are still going to have  
21 available to them.

22 Q But isn't it true that you're not as concerned  
23 with losing as many customers from either resale or from  
24 facilities-based CLECs as you would be or as you  
25 currently are from UNE-P utilization at regulated

1 rates? Isn't that true?

2 A No, I don't believe so, if I understand your  
3 question. I mean, you know, one of the biggest threats  
4 that we have in competition today is from cable. It's  
5 from the intermodal competition, not just UNE-P. And  
6 again, I would like to go back to what I stated about  
7 the current competition in our territory today, which is  
8 facilities-based, and it's not UNE-P versus UNE-L.

9 Q There's a -- I'll ask Mr. Ruscilli this  
10 tomorrow. There's a -- I couldn't find it, even though  
11 I highlighted it. But maybe you're aware of this. I'll  
12 ask you if you're aware of this. There's a section of  
13 this Commission report to the Legislature that says that  
14 a huge number of resale customers in BellSouth's service  
15 territory have transitioned, if that's the correct word,  
16 to UNE-P-based services. Are you familiar with that?

17 A No. But that wouldn't surprise me if they're  
18 having to provide service at below-cost UNE-P rates.  
19 But I don't know about the specific information in this  
20 report.

21 Q Okay. Let me ask you something else, and then  
22 I'll wrap up. There are these trigger tests that are  
23 referred to as being bright line; right?

24 A That's correct.

25 Q If there's -- I guess the one you all rely on

1 the most is the three or more facilities-based CLECs in  
2 your market area; right?

3 A Providing mass market service in our market  
4 area; that's correct. That's the trigger.

5 Q Now, despite the bright line nature of those  
6 tests, you recognize, of course, do you not, that this  
7 Commission was left with substantial discretion by the  
8 Federal Communications Commission in determining where  
9 there was impairment and where there's not impairment;  
10 correct?

11 A No, I wouldn't agree that they have substantial  
12 discretion. You know, the Commission does have  
13 discretion, but the rules are very objective. As you  
14 said, they're bright line. And as far as following  
15 those rules for impairment, there's not a lot of  
16 discretion. If you follow the rules, as we interpret  
17 the Act, there's not a lot of discretion there. You  
18 either meet the triggers or you don't. And if you meet  
19 the triggers, you have a finding of no impairment.

20 Q Well, let's just briefly talk about the  
21 geographic area. Okay? They have some discretion  
22 there, correct, the Commission?

23 A Yes, they do. They have discretion as far as  
24 the geographic area. However, they do have guidance  
25 from the FCC in conjunction with not making the market

1 area too large. I believe the FCC -- you can't have it  
2 as the entire state, and they had guidance on making it  
3 too narrow. But they do have some discretion in  
4 conjunction with the geographic market area.

5 Q Now, I saw where there was clearly a  
6 prohibition against including the entire state as a  
7 market area. I, however, despite the apparent attempts  
8 by at least one other witness to suggest that there is a  
9 minimum stated, I didn't find it.

10 A There's not an absolute minimum. As I said,  
11 there's guidance in the order that talks about not  
12 wanting to have the scope defined too narrowly where you  
13 would exclude the economies of scale and scope  
14 associated with a larger market area, and that's what I  
15 was referring to as far as the guidance goes.

16 Q Yes, sir. And how the Commission interprets  
17 that guidance is dependent in some significant measure,  
18 wouldn't you agree, by how they interpret these various  
19 models and studies and reports on what an efficient  
20 incumbent would do and so forth; isn't that correct?

21 A I'm sorry. I don't understand your question.  
22 Could you repeat your question?

23 Q Probably not, so I'll just drop that one. And  
24 I'm going quit pretty soon, Mr. Chairman. But this  
25 Commission, if it picks wire center markets, as I think

1 has been suggested by MCI; right? Are they the ones?

2 A I don't know if MCI has picked specifically  
3 wire center, but assume wire center, whoever picks them.

4 Q IF the Commission were to pick a wire center  
5 market, that would necessarily encompass less geographic  
6 area and fewer customers, correct, than a LATA or these  
7 MSAs and CEAs and that kind of thing; right?

8 A It would be -- in conjunction with impairment,  
9 it would be too narrowly defined for a market area, and  
10 so -- I mean, a wire center by definition is going to  
11 have less lines in it than an MSA. If the Commission  
12 were to choose a wire center versus an MSA as we're  
13 proposing, I think that that -- and we testified that  
14 that's too small of a market. It's not going to send  
15 the right signals as far as impairment, and it doesn't  
16 follow what the appropriate market should be, as  
17 Dr. Taylor has explained in his testimony.

18 Q Yes, sir, but I want to understand. First of  
19 all, the larger the geographic market area, it  
20 necessarily follows the larger number of customers that  
21 are affected by the impairment/nonimpairment decision;  
22 right?

23 A Holding everything else equal, that would be  
24 correct.

25 Q And isn't it also true that the TRO doesn't

1 require that the market area -- that subsequently there  
2 be customers that can receive competitive services in  
3 all areas of the geographic market described?

4 A I'm sorry. You lost me on that one.

5 Q I'm sorry. That is to say, if the Commission  
6 picked a LATA or one of these MSAs as the geographic  
7 market, there's nothing in the TRO that says that the  
8 customers on the fringes of that larger area ever have  
9 to receive competitive services; isn't that correct?

10 A They never have to --

11 Q Have the availability of competitive services.

12 A I don't think so, if I understand your  
13 question. If the Commission picks a market area and  
14 that market area is used for establishing the triggers,  
15 then that's going to be the result that you have of that  
16 market area. I don't understand what you mean, outside  
17 the market area will not have choices.

18 Q I'm try one more, then I'll quit. The -- one  
19 more series. If you -- you've already testified or  
20 recognized that the majority of the competitive  
21 customers that you have are in your core areas; isn't  
22 that correct?

23 A In our what?

24 Q Your core areas of your service territory, the  
25 most highly dense areas. That's where you experience



1 the most competition; correct?

2 A Yes.

3 Q And let's just say hypothetically that the  
4 three competitive switches that would constitute the  
5 trigger are located in and around the core area of  
6 Tampa. Okay? Hypothetically.

7 A Okay.

8 Q And let's say for the purposes of my  
9 hypothetical that there was actually, as a result of  
10 those three switches there, or more switches, active  
11 competition in that area. Do you follow me?

12 A Okay. I think. Go ahead.

13 Q Okay. Now, if the Commission were to draw a  
14 tightly constrained circle around those three switches  
15 -- can you see that, just encompassing the switches as a  
16 geographic area?

17 A Okay. A small -- are you saying smaller --

18 Q A small diameter --

19 A -- than a LATA, smaller than an MSA?

20 Q Yes, sir, just a small area.

21 A Just a small area.

22 Q Yes.

23 A Okay.

24 Q It might be then that everybody in that smaller  
25 constrained geographic area has actual availability to

1 competitive service providers. Okay?

2 A Well, the --

3 Q Accept that. Okay? Accept that for the  
4 hypothetical.

5 A Well, they have that today. If I'm following  
6 what you're saying, yes, they have that today.

7 Q But isn't it true, Mr. Fulp, that the further  
8 out we go from the core downtown area of Tampa, the more  
9 likely it is that we'll run into somebody that doesn't  
10 have the availability of an actual competitive provider?

11 A Not in our service territory, and not in the  
12 market that we've asked for, the Tampa MSA. Pretty much  
13 the switch coverage and the competition in the Tampa MSA  
14 fills the MSA.

15 Q Yes, sir. But -- were you finished?

16 A Yes.

17 Q Forget the MSA and what you're asking for for  
18 the moment. Isn't it true that absent those, the  
19 further out from the highest density areas of your  
20 service territory, the further out you go to the bounds  
21 of what used to be your regulated service territory, the  
22 more likely it is you'll run into somebody that, even if  
23 they wanted competition, can't find it from anybody?  
24 Isn't that more likely the further out you go?

25 A I don't know if it would be more likely. There

1 may be -- I think -- I don't know. I don't know if it  
2 would be more likely or not. They could be served by  
3 wireless. They could be served by cable. You know, as  
4 you go further out, you know, I don't know.

5 Q Last question. If the Commission has two  
6 choices with respect to your company's -- the size of  
7 its geographic area, or the other companies' as well,  
8 and their choice is to pick a larger area versus a  
9 smaller geographic area, and has demonstrated that  
10 there's a likelihood of fewer people having access to  
11 competitive providers with the larger geographic market,  
12 do you think they should err on the side of protecting  
13 competition and pick the smaller area available to them  
14 or go with the larger?

15 A Well, I think they should, and they hopefully  
16 will, pick the appropriate market definition and not  
17 look at it the way you just did as far as small versus  
18 large versus picking the appropriate geographic market  
19 for the analysis.

20 MR. TWOMEY: Okay. Thanks. That's all,  
21 Mr. Chairman.

22 CHAIRMAN BAEZ: Thank you, Mr. Fulp. We've got  
23 some -- Ms. Kaufman, we've got some confidentials.  
24 We're going to -- Mr. Susac?

25 MR. SUSAC: No.

1           CHAIRMAN BAEZ: Okay. Any last-minute comments  
2 to add, questions? We're going to get started at 9:00  
3 a.m. tomorrow. The goal for the -- we missed by a  
4 witness. That's not too bad, but I'm hoping we can do  
5 better. I'm hoping we can get halfway into the cross  
6 tomorrow. That's the goal.

7           MS. WHITE: And I hesitate to do it, but I just  
8 want to remind you that once Mr. Twomey is finished  
9 crossing Mr. Ruscilli, then we do have 30 minutes  
10 allowed for redirect.

11           CHAIRMAN BAEZ: You're absolutely right. And  
12 let's -- before we go, as a parting shot, let's quiz you  
13 on that. What are you anticipating.

14           MS. WHITE: How long, how much time?

15           CHAIRMAN BAEZ: Yes. Or are you anticipating  
16 redirect?

17           MS. WHITE: We will have some. It will not be  
18 of every witness that was crossed.

19           CHAIRMAN BAEZ: I hope not. I don't think you  
20 can squeeze them all in.

21           MS. WHITE: I hope it's less than 30. But, of  
22 course, we only have 30 minutes, so it will definitely  
23 not be over that.

24           CHAIRMAN BAEZ: That's fine. I wouldn't be  
25 doing right by everyone else if I didn't ask.

1 MR. CHAPKIS: Just so the record is clear,  
2 Verizon probably has five or 10 minutes, pretty quick.

3 CHAIRMAN BAEZ: This is 30 --you guys fight  
4 amongst yourselves. It's 30 minutes for all of you, so  
5 I don't --

6 MR. CHAPKIS: Understood.

7 CHAIRMAN BAEZ: I don't care how you figure it  
8 out.

9 MR. LACKEY: We're friends. It will work.

10 CHAIRMAN BAEZ: You're friends today.

11 MR. LACKEY: We'll get it hammered out. We'll  
12 get it done.

13 CHAIRMAN BAEZ: All right. Thank you all.  
14 Nine o'clock tomorrow.

15 COMMISSIONER DAVIDSON: Chairman, just one  
16 point of clarification. This is probably an ambiguity  
17 on my part. When I prepared the Prehearing Order, it  
18 was my intent that this sort of two hours of cross for  
19 OPC and AARP would be really split equally between the  
20 sides, OPS and AARP on one and staff on the other. And  
21 I understand Mr. Twomey is going to be using the two  
22 hours for cross, which obviously is fine, but there  
23 probably was a bit of ambiguity on my part in preparing  
24 the Prehearing Order. I tried to be specific, but I  
25 probably left out sort of an equal allocation of time

1 for that additional two hours of cross.

2 CHAIRMAN BAEZ: It works. I think we've got to  
3 let it -- in my estimation, we've got to let it work  
4 that way if we've been following the principle that  
5 there were three blocks, and the allocation within those  
6 blocks was up to the people classified within those  
7 blocks. I don't see how we can back out of it now.  
8 Just food for thought on the next one. But I don't see  
9 -- you know, I think Mr. Twomey and Mr. Beck, and --  
10 well, staff is pretty much done with their questions.  
11 They can appreciate the time constraints, I think. If  
12 they want to -- I mean, it's up to everybody to pitch  
13 in. We've only got enough time to build a record here.

14 MS. WHITE: No. I was trying to figure out  
15 what that meant as far as how much time --

16 CHAIRMAN BAEZ: Well, you know, at this point,  
17 Ms. White, I am not about to shorten any particular  
18 allotted time. If Mr. Beck had the opportunity, and it  
19 seems like based on Mr. Twomey's estimates that he has  
20 ceded his time completely to Mr. Twomey, that's the way  
21 it is. That's what it was there for.

22 MS. WHITE: No, that's fine. That's fine. I'm  
23 just --

24 CHAIRMAN BAEZ: I'm looking at 90 minutes,  
25 Mr. Twomey.

1 MS. WHITE: Thank you.

2 CHAIRMAN BAEZ: I'm sorry. Is that what you  
3 were asking?

4 MS. WHITE: That's what I was trying to ask.

5 CHAIRMAN BAEZ: You had half an hour with this  
6 witness. You've got 90 minutes.

7 MR. TWOMEY: Out of fairness, I think I took  
8 35.

9 CHAIRMAN BAEZ: Okay, 85 minutes then. We'll  
10 hold you to your word. I appreciate your honesty.

11 Mr. Ruscilli, get a good night's sleep. You're  
12 on tomorrow first thing.

13 MR. RUSCILLI: Yes, sir.

14 CHAIRMAN BAEZ: Have a good night, everyone.  
15 Thank you.

16 (Proceedings recessed at 8:37 p.m.)

17 (Transcript continues in sequence in Volume 16.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)  
COUNTY OF LEON )

I, MARY ALLEN NEEL, do hereby certify that the foregoing proceedings were taken before me at the time and place therein designated; that my shorthand notes were thereafter transcribed under my supervision; and that the foregoing pages numbered 2001 through 2175 are a true and correct transcription of my stenographic notes.

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

DATED THIS 1st day of March, 2004.

  
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