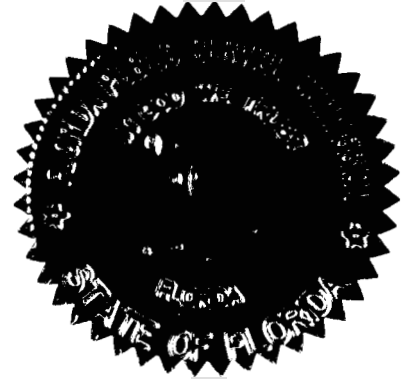


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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 26

Pages 3738 through 3874

PROCEEDINGS: HEARING

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

DATE: Thursday, February 26, 2004

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

REPORTED BY: MARY ALLEN NEEL
Registered Professional Reporter

APPEARANCES: (As heretofore noted.)

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P R O C E E D I N G S

(Transcript follows in sequence from Volume 25.)

CHAIRMAN BAEZ: Okay. Mr. Magness, you have the last piece of your presentation?

MR. MAGNESS: Yes, sir. The next presenter is Ms. Steve Turner, and then we'll have closing remarks, which I'm going to have a few, and then Mr. Gillan.

WITNESS TURNER: Good afternoon.

CHAIRMAN BAEZ: Good afternoon.

WITNESS TURNER: My name is Steve Turner, and I've testified before you, as you may recall. It wasn't too long ago even. But I thought it might be helpful if I could just give you a brief bit of my background that's somewhat relevant to what we're discussing here today with network architecture and the impairment costs.

I have an undergraduate degree in electrical engineering and a master's degree, M.B.A. in finance. I have 17 years of work in the telecommunications industry. And during the last nine years in particular, I've done significant work in the area of developing network costing models of a variety of types, including ones similar to what I've done here in terms of identifying the costs between the incumbent's central office and moving those loops back to a CLEC central

1 office. And fundamentally, that's the task that I was
2 asked to do as part of a team by AT&T.

3 And this diagram that you see here was to
4 evaluate what the differences are between the very
5 simple -- as you saw in the video, the very simple and
6 virtually always electronic cross-connect work that is
7 necessary, or electronic provisioning work that's
8 necessary to ensure service from a local loop into the
9 ILEC's classified switch that you see at the top of that
10 diagram, compared to the very manual and costly and
11 network-intensive work that is necessary -- if you could
12 back up one slide, please. Network-intensive work
13 that's necessary to move that very same loop through a
14 CLEC collocation arrangement and then back through
15 facilities that we'll talk about in a moment to the CLEC
16 switch.

17 It's possible, given the testimony that you've
18 heard and read, that you may think that there's
19 something sinister at play here on the part of BellSouth
20 or Verizon in having this cost occur, but there's
21 nothing sinister at all. In fact, what I will show you
22 is that this is simply systemic, that when you have
23 loops at diverse central offices throughout the State of
24 Florida in many, many different offices, a CLEC has a
25 systemic issue that they have to face of moving those

1 loops from those various central offices back to their
2 switches.

3 And as part of that, they have to establish
4 collocation arrangements. They have to establish
5 facilities of one sort or another, and we'll look at
6 that. They have to put in the proper equipment to be
7 able to pick up those loops. And they have to pay the
8 administrative hot cut costs that are necessary to move
9 that loop from its termination on BellSouth or Verizon's
10 switch over to their own switch.

11 If you'll turn to the next slide, what I have
12 here is just a depiction of again what you saw in the
13 video, which is the collocation equipment that's
14 necessary. And in this particular one, I've shown it
15 being used with ILEC transport.

16 In the model that we developed, the DSO
17 Impairment Analysis Tool, what we tried to do is
18 identify not just one, but in fact three different
19 options that would be necessary for moving a loop from
20 the ILEC switch back to the CLEC switch and doing that
21 in the most efficient way possible, assuming that we
22 were identifying the network that would be necessary and
23 the costs associated for a large, efficient CLEC.

24 So what you have in this diagram is, at the
25 bottom, you have the digital loop carrier equipment that

1 would be connected to the loops that would be manually
2 cross-connected to that CLEC's digital loop carrier
3 equipment. And then you have up above a DSX1 or DSX3 --
4 that's again a cross-connect piece of equipment -- where
5 you would then extend over to leased special access
6 transport from the ILEC.

7 And so what we did here is, in certain
8 situations, either based on distance issues potentially
9 or based on capacity requirements, in certain instances
10 in the model, we identified the use of leased facilities
11 rather than constructed facilities.

12 What you'll find on the next slide is another
13 option that we use. We refer to this as the network
14 architecture that you would find in core offices, which
15 is where, instead of leasing the facilities from
16 BellSouth and Verizon through a special access
17 arrangement, instead, what you would do is, the CLEC
18 would add some additional equipment. That's the
19 DS3/OC48. That's basically Sonet terminal equipment.
20 And then what they would instead do is cross-connect to
21 their own fiber that would be extended from that central
22 office back to a network that will ultimately connect to
23 the CLEC switch. So again, what we modeled was the
24 efficient tradeoff between those two options.

25 And then if you'll turn to the third slide --

1 or the next slide, excuse me, what this is depicting,
2 and again was identified in that video, is that
3 sometimes what you have to do to get from the
4 incumbent's switching location, you actually have to, if
5 you will, think of it as a leapfrog through one network
6 node to another. And so moving from the collo number 1
7 that you see on the far left to collo number 2, which we
8 refer to as the CLEC hub, you would lease transport from
9 BellSouth or Verizon, and then you would at that point
10 pick up constructed facilities from that point back to
11 the CLEC's Class 5 office.

12 And I don't want to bog you down in all the
13 details, but I just want you to understand that there is
14 again a variety of complex network issues that a CLEC
15 has to undertake to provide the conductivity from the
16 CLEC's switch to the ILEC's central office where the
17 loop is at that is quite costly and necessary to be able
18 to extend that loop to their switch.

19 If you'll turn to the next slide, what we were
20 asked to do was to identify the impairment costs that
21 would be associated with that architecture and with the
22 activities that would be necessary to move the loop from
23 the BellSouth or Verizon switch over to the CLEC switch.
24 And we did that for a variety of areas, cost categories.

25 We identified costs associated with preparing

1 the loop for transport to the CLEC switch. And items in
2 that area would include the collocation arrangement, the
3 cross-connect frame that I showed in that diagram, the
4 analog-to-digital conversion equipment -- that's the
5 digital loop carrier equipment -- and testing equipment
6 that would be necessary.

7 Another category that we've identified was
8 backhaul costs, backhaul costs being either those leased
9 facilities or the constructed facilities that would be
10 necessary to move between the incumbent's location and
11 the CLEC's location. In this particular area, what we
12 assumed was that those facilities could be shared with
13 enterprise traffic. In fact, we assumed that the
14 facilities that were put in place would have an 80%
15 utilization. You would never achieve that if you were
16 simply doing this for mass market. But what we did is,
17 we assumed that a CLEC that was in the marketplace would
18 in fact, if they built facilities, would use them for
19 both. So we took a very conservative assumption as to
20 what the cost for the transport would actually be,
21 assuming that again it would be shared with enterprise
22 traffic.

23 And then, of course, we picked up customer
24 conversion costs, what is commonly referred to as hot
25 cuts. And again, these are the nonrecurring costs for

1 the cross-connect at the MDF, again that you saw in the
2 video. It's the service ordering costs that you have to
3 place with BellSouth or Verizon. It's the coordination
4 that has to take place. And, of course, this is
5 affected by churn.

6 And if you'll turn to the next page, what we
7 attempted to do, and in fact, what you find is that the
8 FCC specifically requires that costs be considered, as
9 stated in paragraph 520, that the commissions must
10 consider all factors affecting the costs faced by a
11 competitor providing local exchange service to the mass
12 market.

13 And then they go on in that same paragraph to
14 identify a list of items that would need to be included
15 in that cost evaluation, such as collocations, and
16 transport, hot cuts, equipment necessary to access those
17 loops, and then gave specific instructions as to what to
18 also consider, such as the new entrant's likely market
19 share, any scale economies that would be available in a
20 particular wire center, what the line density of that
21 wire center would be, in other words, how close it might
22 be to neighboring wire centers, the impact of churn, as
23 we just talked about, maintenance and operation and
24 administrative activities, and the capital costs of that
25 competitor.

1 What we've done in this model is, we have taken
2 all of these items and very carefully identified what
3 the cost for those items would be, taking into
4 consideration the specific requirements the FCC laid out
5 for cost evaluation, and have done so at a very detailed
6 level to provide you with the most accurate
7 representation of what the impairment costs would be.

8 And if you'll turn to the next page,
9 ultimately, the FCC indicated that state commissions
10 should pay particular attention to the impact of these
11 migration and backhaul costs on competitors' ability to
12 serve the mass market.

13 What you'll find as we go further in this
14 presentation and in the testimony that I provide is that
15 the bottom line is that UNE-L costs too much and does
16 too little for the mass market.

17 How much does it cost? It depends on which
18 LATA that you look at. We studied seven LATAs in the
19 BellSouth territory, and the range of impairment costs
20 starts at \$11.86 in the Southeastern LATA. I refer to
21 it here as Miami. As you know, it extends quite a
22 distance. But it ranges from \$11.86 up to \$19.74 in
23 Panama City.

24 Now, this was -- you know, Mr. Magness
25 identified this at the beginning, but I think it's very

1 important to understand that these costs represent a
2 monthly cost that a CLEC would have to bear in these
3 markets just to extend the loop from the BellSouth
4 central office to the CLEC central office. This does
5 not include the cost of the loop. It does not include
6 the cost of the switch. It does not include the cost of
7 any administrative work that's behind that switch, any
8 marketing cost. It is simply looking at the network
9 cost and the customer conversion cost necessary to
10 extend that loop, which, by comparison, as I talked
11 about on that first slide, these are the things that
12 today a CLEC is able to place through a UNE-P order and
13 have done electronically in the BellSouth switch.

14 So when a CLEC takes on UNE-L, basically what
15 they're volunteering to do is to start, as Mr. Magness
16 said, in the hole anywhere from \$11.86 per month per
17 line up to \$19.74 per month per line. And again, this
18 is assuming the most efficient configuration that we
19 could identify for providing that backhaul
20 infrastructure and using concurrently ordered rates that
21 the Commission has provided for, for the hot cut work.
22 And even with those efficiencies that we tried to
23 implement, you still experience these types of
24 impairment numbers.

25 To give you some context for that -- I'm

1 sorry. I had one more thought on this. To give you
2 some context as well for these numbers -- and it was
3 mentioned I believe earlier today in the AARP's opening
4 comments. But this Commission recently provided for a
5 rate increase that, I believe, if my numbers are right,
6 are \$3.14 per month in BellSouth territory. And one, if
7 not one of the main reasons for that rate increase was
8 to spur competition.

9 If you take away UNE-P and replace it with
10 UNE-L, what you can see here is you have immediately
11 taken away the \$3.14 and gone anywhere from four times
12 more cost up to six or seven times more cost for that
13 CLEC, which is going to completely obliterate the \$3.14
14 incentive to spur on competition that you just recently
15 enacted here in Florida.

16 If I could go to the next page then. What I
17 did in this last slide -- I think sometimes if you look
18 at one number, you're like, "Okay. What does that
19 mean?" And I'm sorry for the small numbers. Hopefully
20 you have a printout in front of you. But what I wanted
21 to give you some sense of is, how does \$11.86 in Miami
22 break down.

23 And effectively, we classify it into five
24 categories, and the lion's share of this cost is the
25 customer transfer cost. In the case of Miami, it's

1 \$5.98 per month. And again, that's amortized. These
2 are nonrecurring costs. But what we're effectively
3 doing is trying to take into account churn, market share
4 ramp-ups, but then turn that back into, on an ongoing
5 basis, what would a CLEC anticipate experiencing. And
6 they end up experiencing a \$5.98 hit instead of, in a
7 UNE-P environment, a very small nonrecurring charge
8 associated with the electronic provisioning of the
9 switch.

10 In addition to that, there are four other
11 categories that are identified here. And going in order
12 of importance, you have DLC investment. Again, that's
13 the equipment that's necessary to take these analog
14 loops and convert them into a digital format and
15 concentrate them for delivery back to the switch. That
16 represents approximately 17% of the impairment cost in
17 this LATA, or \$2.05 per month.

18 And if you move around, collocation would be
19 your next big area. Of course, you need to have -- as
20 was identified in the video, you have to have space
21 within the central office. You have to have power to
22 provide -- to power the equipment. You have to buy
23 interconnection arrangements. Those are the cabling
24 arrangements, if you will, to the BellSouth MDF.
25 There's the nonrecurring costs associated with

1 collocation as well. When you net that out and you look
2 at on an average basis what a CLEC would anticipate
3 there, their cost being on an amortized basis, it's
4 \$1.99.

5 Backhaul is 13 or 14% of the cost, representing
6 again the fiber facilities or the leased facilities
7 necessary for the loop.

8 And then lastly is termination investment,
9 which is basically the interconnection frames that are
10 necessary to provide that intermediate point of
11 cross-connect, if you will, between the incumbent's
12 frame and the CLEC's frame.

13 The reason I wanted you to see this is, you may
14 be led to believe, well, if I could just fix one area,
15 you know, if I could just do something with hot cuts.
16 And, of course, you've heard a lot of testimony from the
17 CLECs about the importance of hot cuts. Or if I could
18 just do something about -- you fill in the blank. The
19 issue here again -- and I go back to what I said on that
20 very first slide. You fundamentally have a systemic
21 problem in the mass market arena, and that is that
22 you're having to move a loop that's currently able to be
23 connected to a single switch, BellSouth or Verizon's
24 switch, and normally able to be done electronically, and
25 you're having to replace that simple process and simple

1 provisioning effort and replace it with a variety of
2 items. This is not a simple solution, and it is one
3 that again I would just encourage you to understand is
4 one that the CLECs are going to be structurally faced
5 with going forward if in fact they were to lose access
6 to UNE-P.

7 Thank you.

8 MR. MAGNESS: Thank you, Mr. Turner. Come back
9 with that mike, sir.

10 I just wanted to add a few points on the legal
11 side of the case, I think primarily addressing things
12 that have arisen in cross-exhumations or in the other
13 openings.

14 COMMISSIONER JABER: Mr. Chairman, if I could
15 just interrupt for just a second and ask -- I think
16 that's Mr. Magness, if you could speak right into the
17 mike.

18 CHAIRMAN BAEZ: That's Mr. Magness that was
19 speaking, yes.

20 MR. MAGNESS: Yes. Is that better?

21 COMMISSIONER JABER: Thank you.

22 MR. MAGNESS: Okay. One is a point only a
23 lawyer could love. It is in the triennial review
24 trigger provision document I gave you, just one thing I
25 wanted to explain that I didn't earlier. It's on the

1 third page in paragraph 499.

2 One of the reasons I gave you several of these
3 paragraphs is that in paragraph 499, in footnote 1549,
4 you'll see a reference -- this is again, as I was
5 discussing with you before, when the Commission
6 considers whether to include intermodal service. It
7 does say that you should consider carriers that, quote,
8 meet the requirements of these triggers and Part V,
9 Roman V, above. "See supra Part V.B.1.d.(ii)." And
10 so what I've provided you on the following pages is,
11 following after the footnote concludes, starting on page
12 5, is that Part V.B.1.d.(ii), so you can review those
13 provisions. And they go from paragraphs 92 I think
14 through paragraph 104 in that section. And I again just
15 wanted to point out the Commission was saying to look at
16 that as well as the triggers for intermodal.

17 Two other points. And we'll go to the next
18 slide.

19 First, Mr. Gillan discussed in testimony, and
20 there was discussion in the opening argument for the
21 other side about Chapter 364. As you're well aware,
22 Chapter 364, as I discussed earlier, has a longstanding
23 requirement for unbundling in the State of Florida. And
24 I will defer to Ms. Kaufman on the finer points of state
25 law, but I have read the TRO, and I can confidently say

1 that there's nothing in the TRO that says that you no
2 longer report to Governor Bush, but instead to Michael
3 Powell or Kevin Martin or anyone else in Washington,
4 D.C., that this law has not been repealed and it's still
5 binding.

6 And this is another case of, you know, what
7 BellSouth tells you and what BellSouth leaves out. You
8 heard a lot about how you would surely be preempted. If
9 you could go to the next slide, I think what they left
10 out of that discussion in the TRO is the section that
11 says, "Parties that believe that a particular state
12 unbundling obligation is inconsistent with the limits of
13 Section 251(d)(3)(B) and (C) may seek a declaratory
14 ruling from this Commission." That's really not news.

15 And it's also not news that the state
16 commissions have been using their state law authority in
17 pro-competitive ways and methods that have certainly
18 been contrary to what the RBOCs said they could do. In
19 fact, I'm scheduled to be in beautiful Waco, Texas, on
20 March 8th to help defend the Texas Commission's decision
21 in their Docket 24542 from a couple of years ago where
22 they used similar state unbundling standards to, at
23 least according to SBC, go beyond what the UNE Remand
24 Order would have allowed on unbundling. SBC did not
25 take a preemption petition up, and that was never

1 preempted, even though the decision has been sitting out
2 there a while. It was taken the Federal Court on lots
3 of grounds, like most Commission decisions are.

4 The Pennsylvania Commission recently decided
5 that unbundling of DS1 was in the public interest in
6 their state under state law grounds. Verizon hasn't
7 gone out and gotten that preempted.

8 So this whole issue of preemption is something
9 that your General Counsel would have plenty to say about
10 in a brief if we ever come to it, but there's nothing
11 automatic about it in the TRO.

12 Finally -- no, go back. Finally, on the legal
13 issues, I want to mention one I don't have a slide for,
14 but want to talk to you about, which is this issue of
15 BellSouth saying, "You don't need to worry about this
16 case when it all comes down to it, because we're going
17 to keep offering UNE-P anyway. It's just a matter of
18 price. We're going to offer you a market-based rate."
19 Now, I'll let the economists talk to you about what a
20 market-based rate is when there ain't a market, but, you
21 know, that's not my business.

22 But what is the legal business here is what
23 happens with that 271 pricing. And what BellSouth tells
24 you is about how they get to set the rate. What they
25 don't tell you is what it says in paragraph 663 in the

1 TRO. In a discussion of 271 availability of network
2 elements and pricing, the FCC says, "Thus, the pricing
3 of the checklist network elements that do not satisfy
4 the unbundling standards in Section 251(d)(2)" -- and
5 let me pause there. Remember, there's talk about there
6 are 251 network elements, and then there's 271 network
7 elements. Okay?

8 So if it's no longer a 251 network element,
9 then it will be reviewed utilizing the basic just,
10 reasonable, and nondiscriminatory rate standard of
11 Sections 201 and 202 that is fundamental to common
12 carrier regulation, that has historically been applied
13 under most federal and state statutes, including, for
14 interstate services, the Communications Act.

15 Query: Hasn't the FCC under the Communications
16 Act always regulated interstate services? Haven't the
17 state commissions, including their authority to
18 arbitrate interconnection agreements or SGATs, always
19 figured out what the intrastate service rates are under
20 just and reasonable rate standards? I believe they
21 have. Again, we're going to have another discussion
22 about this, probably in front of this and other
23 commissions, about 271 pricing.

24 But the thing that is more fundamental is that
25 document that I showed Mr. Ruscilli when he was

1 testifying. BellSouth is coming to you and saying,
2 "Now, don't worry, because if you give us what we want
3 here, there's still going to be UNE-P for all those
4 600,000 customers. It will, you know, be at a different
5 rate, but it's still going to be available." At the
6 very same time, they've got pleadings pending at the FCC
7 saying, "You guys have got to reconsider that 271
8 thing. We shouldn't have to offer this stuff under 271
9 if it's not available under 251. And even if you're not
10 willing to go that far, you have got to stop any
11 requirement that says we have to combine 251 elements
12 and 271 elements."

13 Well, I don't know if you remember, but
14 combinations is an issue that has been to the Supreme
15 Court once. It's kind of controversial. And BellSouth
16 is coming and promising you, "Oh, sure, yeah, we'll
17 still provide UNE-P. It's not going to be a problem."
18 Is that tune going to change if they get what they're
19 telling the FCC they want? That's what they're not
20 telling you.

21 Again, don't trust a hollow promise, especially
22 one that they're going around to somebody else in
23 another jurisdiction and telling, "We ought to do it a
24 different way."

25 That's all I have on the law. I would like

1 Mr. Gillan to make a few more remarks, and we will be
2 done.

3 WITNESS GILLAN: Before I begin, thank you very
4 much for your patience. It's difficult, I'm sure, for
5 BellSouth to get its employees organized. It's
6 difficult, I'm sure, for them to work with Verizon. But
7 for the entire industry to try to put together a
8 coherent story for you, I hope we rose to the challenge,
9 but I certainly appreciate your giving us the time to
10 try and convey it.

11 Last point. Every great controversy requires
12 at least one great myth. And in the background of this
13 proceeding, there has been absolutely one myth continued
14 to be perpetuated in the statements of BellSouth
15 witnesses, and I believe Verizon as well, concerning
16 this claim that they hope to become true through
17 repetition, because it has certainly tried to do nothing
18 with facts, that somehow the reason people rely on
19 leased switching capacity in the incumbent network has
20 something to do with the price of that capacity that
21 they're making available.

22 The implication is, "Well, we're selling this
23 too cheap. That's why you're using it," completely
24 trying to gloss over the \$11 that Mr. Turner just told
25 you about, completely trying to gloss over the

1 operational problems that the prior panel talked to you
2 about. This is 2004, and what they're trying to do is
3 say, "You guys go out and hand-craft phone service one
4 copper wire at a time and pay a cost disadvantage of \$11
5 a loop and compete with us, and we'll start this process
6 with all the customers. Let's see how long the game
7 lasts."

8 Those are the reasons people lease capacity in
9 unbundled switching. Unbundled switching is an
10 electronic hot cut. It allows you to go everywhere and
11 convert customers with a seamless, reliable process that
12 is directly comparable to what those companies are using
13 each and every day to provide long distance service.
14 Nobody asked BellSouth to go out and build a long
15 distance network to provide long distance service.
16 Nobody asked GTE to do it.

17 In fact, GTE has -- Verizon has one of the most
18 interesting long distance histories in the country,
19 having entered the -- they signed a consent decree --
20 I'm going to go off on a tangent, but it's a useful one
21 for you to recall, because it's lost in the mists of
22 history. That company entered the long distance
23 business and failed and had to exit. And now they're
24 back in the long distance business with a market share
25 in Florida of over 50%. What changed between its

1 failure in the mid-1980s and its unprecedented success
2 in the late 1990s and early 2000 period? One thing and
3 one thing only: They were bundling it with local
4 service. It's the power of the bundle that Mr. Magness
5 referred to.

6 Now, the only way other competitors have an
7 opportunity to approach the local market in the same
8 type of manner for POTS customers that those carriers
9 are enjoying for long distance is to have an electronic
10 service delivery platform, a commodity platform that
11 they can use to provide service. That's what UNE-P is.

12 Their claim is that it's underpriced. Okay.
13 By what standard? Let's think about that for a minute.
14 How many standards can we have to judge a price? We've
15 got forward-looking costs, and we have embedded costs.
16 Importantly, for forward-looking costs, the ILECs have a
17 number of issues with TELRIC. We don't need to go into
18 whether or not their concerns with TELRIC are valid or
19 not, because the important thing is, when it comes to
20 switching, the concerns with TELRIC do not apply.

21 The number one concern that the ILECs represent
22 as to why they feel TELRIC is not a good forward-looking
23 cost methodology, because, quite frankly, as a general
24 matter, they prefer and sponsor and endorse
25 forward-looking cost methodologies in general, but they

1 have a peculiar concern with this one, TELRIC. That
2 concern fundamentally is, they claim that that cost
3 methodology doesn't take into account the peculiarities
4 of their local network. But that complaint has
5 everything to do with how the loop rate is established,
6 and has nothing to do at all with how the local
7 switching rate is established.

8 They complain in the loop context, "Well, you
9 model how I build out my plant. You don't take into
10 account where rivers are. You don't take into account
11 where the beach is. You don't take into account how I
12 really have to go down roads." Okay. We can debate
13 that issue. But you know what? Whether I do UNE-P or
14 UNE-L, I pay the loop rate. That has nothing to do with
15 this.

16 The only difference is what I pay for
17 switching. And in the TELRIC rules for switching, since
18 1996, the FCC's rules had the provision that said you
19 hold constant in the TELRIC cost methodology the wire
20 centers, which means that when it comes to switching,
21 the number of switches and where they are in the model
22 matches their network. They don't have a complaint with
23 TELRIC when it comes to switching. They just want to
24 continue to repeat to you, "It's the price, man. It's
25 the price. It's too low." Do you see any facts here

1 about this anywhere in this record, any discussion from
2 them as to why is it too low? Well, I can tell you now,
3 it isn't TELRIC. Those issues do not apply.

4 Secondly, the second point up here, they're on
5 record, BellSouth in particular, with saying that TELRIC
6 includes an allocation of shared, fixed common costs so
7 that they do not want to be held to TELRIC-based rates
8 for establishing their own prices because TELRIC is too
9 high. That bullet is not my words. That bullet comes
10 from Dr. Taylor on behalf of BellSouth in a proceeding
11 here before you. I think it was early last year.

12 Finally, in an effort to put something in there
13 that compares it to BellSouth's embedded cost -- and,
14 Commissioner Deason, you'll have to hold me honest. As
15 an economist, trying to do an embedded cost study is a
16 little against my instincts. But what I've done is,
17 I've looked at BellSouth's embedded costs, actual costs
18 as they report in ARMIS. They have two basic categories
19 I can look at.

20 One, they have a category labeled "Central
21 office switching expense." It averages per line in
22 Florida \$1.06. To that I needed to add an estimate of
23 what their depreciation and amortization is on switch
24 investment. They don't have a category labeled "Central
25 office switch investment depreciation," but they do have

1 a category of "Switching, total plant in service." And
2 so for a simplifying assumption, I assigned to switching
3 a proportional share of their depreciation and
4 amortization expense based on switching's proportional
5 share of plant in service. What that produces for
6 Florida is an average embedded cost of \$3.31.

7 I compared that to an estimate of what they get
8 today for switching under the Commission-approved, or
9 the Commission -- let me back up for a moment. Under
10 rates that they charge under their SGAT. In Florida,
11 they offer switching rates in their SGAT that are
12 actually below the rates that the Commission approved
13 for TELRIC. Those lower rates that they offer
14 voluntarily produce an average revenue per port of
15 \$5.21, producing a contribution to the company's other
16 costs over and above embedded costs of about 58%.
17 Those are the facts.

18 Now, think about it. Why does BellSouth want
19 to get rid of switching? They tell you it's because the
20 price is too low. But if 600,000 lines actually could
21 go somewhere else, what would they have in return?
22 600,000 lines are gone, \$5 and change a month in revenue
23 per line is gone, an empty switch port sits there dusty
24 and idle, no revenue, no light, no heat, no service, no
25 nothing. And all the traffic from the 600,000 lines

1 which today sits in a central office, where
2 approximately 30 to 40% of the calls terminate inside
3 that central office, get shuffled off to some other
4 point in the network, have to be brought back in, and
5 BellSouth is going to have to haul 40% of that traffic
6 back to where it started on reciprocal comp.

7 It makes no sense. They're made materially
8 worse off in revenue, and they're made materially worse
9 off in network, unless, unless there's no real choice,
10 because if there's no real choice, they neither get the
11 customer back, or they get to produce -- or try and
12 shove a higher price on the CLECs that produces an even
13 higher contribution than the one they're receiving, one
14 that's above TELRIC that they have no issue with with
15 respect to switching, and one which they don't even want
16 their own retail services to be held to because they say
17 the costing standard is too high.

18 Thank you.

19 MR. MAGNESS: Commissioners, all the witnesses
20 are available for any questions from the Commissioners
21 before cross-examination.

22 CHAIRMAN BAEZ: Commissioner Bradley, you had
23 some questions?

24 COMMISSIONER BRADLEY: Yes. I just have one
25 question. And I don't know who on the panel might be --

1 CHAIRMAN BAEZ: Well, we'll leave it to
2 Mr. Magness to identify the proper witness, but you go
3 ahead and ask your question, sir.

4 COMMISSIONER BRADLEY: Okay. And I would like
5 for the person who answers this to preface their
6 statement with a yes or a no. And my question is this:
7 If the impairment goes away in the large markets, then
8 will that encourage UNE-P competitors to compete in the
9 smaller and the more rural markets?

10 WITNESS GILLAN: Commissioner, this is Joe
11 Gillan. I'll take that. That's an excellent question.

12 I don't know that you've had an opportunity to
13 see the visuals that we've had here, but the fact is
14 that UNE-P is bringing competition today into
15 BellSouth's most rural exchanges throughout the state.
16 When we had a chance to look at even the emergence of a
17 little bit of competition in the Verizon territory, it
18 appears that it has the same sort of ability to bring
19 competition from large areas to rural areas.

20 As a practical matter, I think what's important
21 to understand is that if the Commission takes UNE-P away
22 in urban areas or in the major markets in the state, the
23 inevitable consequence of that is going to be the
24 elimination of competition in rural areas as well.

25 One of the reasons that the Association has

1 taken the position that it has with regards to how the
2 Commission should look at the markets is the belief and
3 understanding that these market are essentially linked.
4 You cannot have statewide competition if you have holes
5 punched into your service delivery platform in very
6 major markets that you need to be able to cover your
7 costs. If you don't have competition using UNE-P into
8 Miami, for instance, you can't expect it to extend out
9 into rural areas.

10 So the bottom line is, you're already getting
11 the result you would like to have, I think, which is
12 competition in rural areas. But in large part, that
13 requires access to UNE-P in urban areas as well.

14 COMMISSIONER BRADLEY: Right. And I guess the
15 assumption would be that -- well, this is just a
16 hypothesis. Let's assume then that the FCC decides that
17 competition is up and running in the larger communities
18 that there is competition because the criteria that they
19 put out have been met. So wouldn't that then make your
20 statement somewhat not so much the case, because
21 competition would exist in the larger communities?

22 And my question again is, would that then open
23 up a market for CLECs and ALECs within the smaller --
24 not smaller communities, but some of the intermediate
25 size communities that right now are somewhat less

1 attractive, and within the rural communities also, not
2 just the rural communities? And I heard, and I
3 understand very well what you meant when you said that
4 the three are linked.

5 WITNESS GILLAN: Well, I guess as a threshold
6 point, I don't think -- we would not agree that you have
7 the conditions in the urban areas that the question sort
8 of presupposes, that there really isn't inside urban
9 areas the types of carriers offering mass market
10 services without UNE-P that would demonstrate that
11 impairment problems have been resolved. And because of
12 that, it would be inappropriate for the Commission to
13 remove availability to this network element in those
14 areas under federal law, much less consistent with
15 Chapter 364.

16 COMMISSIONER BRADLEY: Okay. Well, even with
17 the availability of switching and UNE-P, mass market --
18 I mean, there is no competition within the mass market.
19 There's competition within the enterprise area, right,
20 or sector? Now, what, in your opinion, is it going to
21 take in order to create more competition within the mass
22 market area or the residential area?

23 WITNESS GILLAN: Well, I think it's --
24 Commissioner, I think it's going to take two things, one
25 of which you've already done and one of which God will

1 do for us. The first one is, you've taken some steps to
2 rebalance rates, which I think will be overall helpful.

3 But the number one thing is going to be time.
4 Over time, the hope will be that new technologies and
5 new network infrastructure will be built out that will
6 not have the same economic characteristics of the legacy
7 network, BellSouth's inherited network, and that over
8 time, that new network will be more open and in a better
9 position to access customers than what we're trying to
10 do with the legacy network. So I think that's, quite
11 frankly, the number one answer, is time.

12 It has only been eight years since the Act
13 itself was passed. It has only been probably two to
14 three years that UNE-P became commercially available.
15 BellSouth and Verizon have constructed their market
16 position as the cumulative end product of about 90 to
17 100 years, and that cumulative end product was developed
18 over a period of time where they were protected through
19 government action and regulated in a way that encouraged
20 them to build out a network with financial security that
21 the competitive industry will never see.

22 So I think you have to look at the result we're
23 at now, which, quite frankly, is just the beginning of a
24 viable wholesale product that is allowing some entry. I
25 mean, UNE-P is still only at I think around 10% in the

1 BellSouth region. It barely registers on the Richter
2 scale in the Verizon region. It's having to play
3 catch-up against two massively funded companies whose
4 long distance entry is providing them the equivalent of
5 UNE-P in that product market, where they're gaining
6 between 30, in the case of BellSouth, and 50% of the
7 market in the Verizon territory.

8 So all in all, we've had a short period of time
9 with this mode of entry. It itself needs to mature more
10 before conditions are going to stabilize enough for
11 people to differentiate in different dimensions.

12 COMMISSIONER BRADLEY: Okay. And I don't
13 disagree with anything that you said, but one other
14 question. It would appear to me that you feel very
15 strongly that rate rebalancing is going to have a
16 positive impact upon mass market competition. Is that
17 correct, residential competition?

18 WITNESS GILLAN: I think it will have a
19 positive effect. It's relatively small compared to the
20 other problems we're addressing in this room today.
21 But, yes, I think that was the right decision for the
22 Commission to make.

23 COMMISSIONER BRADLEY: Okay. And I know that,
24 as with any policy decision, only time can really reveal
25 what the true outcome is going to be. But my question

1 as it relates to rate rebalancing, since rate
2 rebalancing has occurred, even though it has been
3 challenged in the court and it has not had an
4 opportunity at this point to really become an active
5 part of this scenario, is that going to create a
6 different approach, or is it going to make a difference
7 economically or financially to a CLEC with respect to
8 encouraging them to purchase their own switches?

9 WITNESS GILLAN: No, sir. I don't believe that
10 that's the -- I don't think that is a consequence of the
11 rate rebalancing. I think the rate rebalancing,
12 combined in an environment of UNE-P, for there to be
13 some meaningful mass market competition, we'll see
14 greater choices for consumers.

15 But the issue with switching, quite frankly, is
16 that we're at a point in history where investing in the
17 type of switching that is used to serve mass market
18 customers would be financially unreasonable. However,
19 the type of -- there are new switching capabilities
20 coming into the market that will be very useful to serve
21 enterprise customers, and over a period of time, that
22 new technology will probably bring benefits into the
23 residential and small business market as well.

24 But right now, I think the only way the
25 consumers will benefit from the rate rebalancing that

1 the Commission authorized is if it coexists in an
2 environment with UNE-P.

3 COMMISSIONER BRADLEY: Well, I know that you
4 don't have a crystal ball. And thank you,
5 Mr. Chairman. This is my last question.

6 What do you foresee -- and I know that no one
7 has been down this road, or maybe someone has. In order
8 for there really to be competition and for companies to
9 compete on an equal playing field, in my opinion,
10 everyone must have -- must be facilities-based. And I'm
11 trying to prognosticate or trying to predict when ALECs
12 and CLECs are going to move in that direction in order
13 for to us really have -- in order for us to have
14 competition.

15 You just can't have competition unless everyone
16 -- unless the competitors all have the same equipment,
17 the same intellectual ability, and the same method of
18 financing their concept, to the extent that it's
19 sustainable to the point where it really is -- well,
20 it's sustainable and the market forces will allow it to
21 take hold. And I'm just trying to figure out at what
22 point do we move away from this discussion and on to the
23 next level of this discussion that we're having. And
24 basically what I'm saying is, at what point are ALECs
25 and CLECs going to start to gravitate towards becoming

1 more facilities-based?

2 That was kind of a convoluted question, but --

3 WITNESS GILLAN: No. Actually, I thought it
4 was an excellent question. I think there are two
5 answers to it.

6 First, I think you place -- your question
7 presupposes too much emphasis on the benefits of
8 duplicating facilities in order for there to be
9 competition.

10 For instance, the largest -- no one can say
11 that Verizon in New York, for example, did not become a
12 very substantial competitor in the long distance
13 business in that state when it got its 271 authority.
14 It now is at about the same market share that AT&T had
15 when it first enjoyed non-dominant status, so one could
16 argue that they're rapidly becoming a dominant provider
17 in that market, even though they have no network. The
18 absence of a network, of network ownership offered no
19 competitive impediment to them whatsoever in not only
20 becoming a formidable competitor, but conceivably the
21 dominant competitor in that market segment.

22 Now, I think that characteristic is true
23 because the network we're talking about is primarily a
24 voice product commodity network that they did not have
25 to own in order to provide services over. The exact

1 parallel to that is UNE-P in the local market, which was
2 considered facilities-based in the 271 application
3 process. When the Bell companies wanted long distance
4 authority, they saw this as the equivalent of a
5 facilities-based entry strategy, and it is.

6 That said, time will march on, and all CLECs
7 and all incumbents will need to move beyond simple voice
8 services to remain competitive. It's going to take
9 time, because not all consumers are ready to move from
10 POTS service to more advanced service. Commissioner
11 Davidson evidently is an early adapter. I intend to
12 give up my analog phone with my last dying breath.
13 There is no reason to -- there's no reason to deny me
14 choice, however, merely because people like Commissioner
15 Davidson are going to be migrating to other services for
16 which investment is underway by CLECs, by incumbents, by
17 everyone in this marketplace.

18 CHAIRMAN BAEZ: Thank you, Commissioner
19 Bradley.

20 COMMISSIONER BRADLEY: Thank you.

21 CHAIRMAN BAEZ: I think we can cross --
22 BellSouth, you had some technical setup to do?

23 MR. SHORE: Yes, sir.

24 CHAIRMAN BAEZ: Will 10 minutes do?

25 MR. SHORE: Yes, sir.

1 CHAIRMAN BAEZ: Okay. We're going to break for
2 10 minutes, and then we'll start cross.

3 (Short recess.)

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

5 The first witness for cross that I have is
6 witness Walsh, and that would be you.

7 THE WITNESS: That's me.

8 CHAIRMAN BAEZ: You've been sworn, sir?

9 THE WITNESS: Yes, I have.

10 CHAIRMAN BAEZ: Okay. Great. Ms. Kestenbaum.

11 MS. KESTENBAUM: Yes. Thank you, Mr. Chairman.

12 CHAIRMAN BAEZ: Okay. Go right ahead.

13 Thereupon,

14 RICHARD J. WALSH

15 was called as a witness on behalf of AT&T Communications
16 of the Southern States, LLC, and having been duly sworn,
17 testified as follows:

18 CROSS-EXAMINATION

19 BY MS. KESTENBAUM:

20 Q Good evening, Mr. Walsh.

21 A Good evening.

22 Q I would like to start off by, first of all,
23 just sort of making sure everybody here knows who you
24 are and what your role is in this proceeding, because
25 you were not part of the CLEC direct case. You are

1 AT&T's witness who is -- the AT&T witness in this case
2 who is specifically commenting on the Verizon hot cut
3 processes; is that correct?

4 A That's correct.

5 Q And you have adopted, in fact, some of
6 Mr. Van De Water's testimony that had spoken to the
7 Verizon batch cut process; is that also right?

8 A Yes. There are some sections of his testimony
9 I have adopted.

10 Q Okay. So now you're sort of the AT&T guy on
11 hot cuts?

12 A Correct.

13 Q Okay. Good. One of your -- one of AT&T's
14 allegations is that Verizon's hot cut processes, and in
15 particular, its batch cut process, is not low cost in
16 conformance with the TRO; is that right?

17 A Could you refer to me the section of the
18 testimony?

19 Q Well, let me just ask you, is it your
20 contention that Verizon's process -- that the prices
21 that Verizon has proposed are not TELRIC compliant?

22 A I am not the price person or the cost person in
23 this proceeding for AT&T.

24 Q Okay. But who -- is there a witness for AT&T
25 that has addressed Verizon's proposed rates?

1 A I'm not sure. I'm going to say -- I don't
2 believe so, no.

3 Q Okay. So you're not aware of any witness --
4 you yourself have not addressed Verizon's proposed rates
5 for its batch hot cut process. That's what you're
6 saying; is that right?

7 A Yes. Not in this case, no, I have not.

8 Q Okay. So you have not done, for instance, any
9 cost study concerning Verizon's hot cut processes?

10 A That is correct.

11 Q Okay. And Verizon has submitted a cost study
12 and proposed rates in this case. Are you aware of that?

13 A Yes, I am aware of it.

14 Q Okay. And you have not sought to make any
15 adjustments to that cost study or to those proposed
16 rates?

17 A No, not this case.

18 Q Okay. And you're not aware of any AT&T witness
19 that has?

20 A I'm not aware of anyone.

21 Q Another issue that you have raised is whether
22 Verizon will be capable of scaling up its hot cut
23 process to cut over the number of loops, the full volume
24 of loops should UNE-P be eliminated; is that right? Do
25 you want me to repeat that?

1 A Yes. Go ahead, please.

2 Q Okay. One of the issues you've raised is can
3 Verizon scale up its hot cut process so it can actually
4 cut over the added demand for hot cuts that would arise
5 if UNE-P were removed; is that right?

6 A Yes, that's one of the issues.

7 Q Okay. But I just want to be clear. You have
8 not -- AT&T has not done any analysis itself of what
9 volume of -- or added volume of hot cuts there would be
10 in the Verizon territory were UNE-P eliminated; is that
11 right?

12 A For Verizon, no.

13 Q Okay. And you also -- are you aware that
14 Verizon did make such volume estimates through the
15 testimony of Dr. Taylor?

16 A I'm somewhat familiar, yes.

17 Q Okay. But you didn't seek to make any
18 adjustments to Dr. Taylor's?

19 A No.

20 Q Okay. Mr. Walsh, in your testimony you have
21 recommended a number of changes to Verizon's batch and
22 project hot cut processes; is that right?

23 A That is correct.

24 Q But is it fair to say that it is your position
25 that even if Verizon were to adopt all of these

1 recommendations, the resulting process still would not
2 satisfy the TRO?

3 A Yes, that is correct.

4 Q And that's because of the inherently manual
5 nature of the wiring work at the CO; isn't that right?

6 A That's one of the issues, yes.

7 Q So then is it fair to say that AT&T takes the
8 position that no hot cut process satisfies the TRO, even
9 one designed by AT&T?

10 A Could you repeat that, please?

11 Q Yes. Based on what you've just said, is it
12 fair to say that AT&T takes the position that no hot cut
13 process, even one designed AT&T, satisfies the TRO?

14 A In terms -- I'll answer yes. In terms of
15 scalability -- seamless ease of transferring customers
16 over as simply as we do with UNE-P today, considering
17 the hot cut processes that Verizon has proposed, and
18 considering the manual nature of the hot cut processes
19 that even our recommendations, our enhancements to the
20 hot cut process to enhance at least this manual nature,
21 we still don't have that seamless transfer of a
22 customer, a retail customer or a customer from another
23 CLEC over to us as easily as we do today with UNE-P.

24 Q Okay. And is it AT&T's position that only
25 electronic loop provisioning would satisfy the TRO?

1 A Yes.

2 Q Okay. And in fact, AT&T -- in the triennial
3 review proceeding before the FCC, AT&T advocated the
4 adoption of electronic loop provisioning; is that right?

5 A Yes, I believe they did.

6 Q Okay. But isn't it also the case that the FCC
7 declined to require ELP?

8 A That is correct.

9 Q And wouldn't you agree that it's not possible
10 to adopt, let alone implement, ELP in the course of this
11 nine-month case?

12 A There would be a lot of work that would have to
13 be done in the nine months, yes, designing processes and
14 installing equipment and whatnot. Yes, that would be
15 true.

16 Q Okay. So it's not possible?

17 A I would agree.

18 Q Okay. Got it.

19 Mr. Walsh, have you yourself ever performed a
20 hot cut?

21 A In terms of transferring a customer from one
22 switch to another switch, I've done -- I've been part of
23 a team that have literally transferred thousands of
24 lines. But in terms of a hot cut under Verizon's
25 description of a hot cut, since 1996, I would say the

1 answer is no. But prior to that, I was part of several
2 ESS conversions, switch conversions where we literally
3 transferred 90,000 lines, working customers, in a matter
4 of a couple of minutes.

5 Q But you haven't worked in a CO, been any kind
6 of a technician in a CO since long before -- or since
7 before the enactment of the '96 Act; is that right?

8 A That is correct.

9 Q Have you ever on behalf of AT&T managed the hot
10 cut process?

11 A No, I have not.

12 Q And so you also then wouldn't have managed the
13 process using the wholesale provisioning tracking system
14 or WPTS; is that right?

15 A That is correct.

16 Q Have you ever -- have you been trained on WPTS?

17 A No, I have not.

18 Q And have you ever talked to anyone in the AT&T
19 provisioning center, or Broadview, AT&T's partner
20 Broadview, about how they use WPTS?

21 A I have talked with some people, yes. I've
22 talked with some people in Broadview with regard to the
23 early implementation of WPTS in the New York region.

24 Q Okay. Well, have you talked to them, say, in
25 the last six months?

1 A Yes.

2 Q Have you talked to them about the recent
3 enhancements to WPTS?

4 A Which enhancements are you talking about?

5 Q Well, the rollout of WPTS that occurred last
6 year.

7 A Yes.

8 Q Now, in your testimony you say that you
9 attended in New York three workshops or collaboratives
10 concerning the Verizon batch hot cut process. I think
11 you said you attended two by telephone and one in
12 person; is that right?

13 A That is correct.

14 Q The one you attended in person, was that the
15 March 2003 initial workshop at the New York Commission's
16 offices in New York City?

17 A No. I believe the one I attended was in
18 Albany. And there was one in New York also I attended,
19 yes. There were two of them I attended personally and
20 then another two by phone. So I stand corrected.

21 Q Okay. Was the workshop at the New York -- the
22 Manhattan-based workshop, was that the one where you
23 told Tom Maguire that you would be interested in having
24 Verizon activate the port on AT&T's behalf so long as
25 the price is right?

1 A There was some jousting going back and forth
2 between Tom and myself, and certainly Tom had pitched
3 that, had made a pitch to do some translations work, not
4 specific to number porting, but specifically with switch
5 translations. He said, "Possibly that might be a
6 business we would like to get into." And I said
7 certainly if the price was right, we would be
8 interested, just like any company would be interested if
9 the price was right.

10 Q Mr. Van De Water -- I'm sorry. Mr. Walsh. I'm
11 getting you confused with the other AT&T witness.

12 In your testimony you made a number of
13 criticisms of the Verizon project or batch processes and
14 recommendations for what you would like -- improvements
15 you would like to see to those processes. One of the
16 ones that I believe you criticized is the -- well, at
17 one point you called it the one cage per central office
18 per CLEC capacity constraint. I don't know if you're
19 referring to what has at points been a limit of 150
20 cutovers per day per CLEC at a CO in the project
21 process. Is that right?

22 A That is correct. We saw a limitation with
23 having it be just one collocation cage per night. That
24 saves some time, I understand, for the central office
25 wiring, for the pre-wiring work, but it doesn't save any

1 time on cutover, because cutover doesn't take place on
2 that side of the frame. The cutover actually takes
3 place on the vertical side of the frame. And so
4 therefore, we didn't see why we should have that
5 restriction.

6 Q Okay. But, Mr. Walsh, isn't it true that
7 Verizon does not impose any such limit as part of its
8 batch process?

9 A The batch process that was offered, yes, that
10 would be correct.

11 Q And AT&T said that it would like Verizon to
12 notify the CLEC that the cutover itself has occurred
13 after completing a cutover for a group of 20 loops; is
14 that right?

15 A Yes. In the New York collaborative, that was
16 one of the stipulations that Broadview had worked out
17 with Verizon, to be notified in smaller groups instead
18 of when they perform the batch, performing the cutover
19 for all 100 and then notifying us that the work was
20 done. We wanted some kind of a notification sooner than
21 that, and so we agreed to 20 lines.

22 Q Okay. And isn't it true that Verizon has
23 agreed that in both the project and batch processes --
24 well, I should say in the project process, it will
25 notify the CLEC after it has cut over 20 loops?

1 A Yes, Verizon has said that.

2 Q Okay. And that notification is going to be via
3 WPTS; is that your understanding?

4 A That's my understanding, yes. I would
5 personally like to see that after each cutover, and I
6 would like to see that electronically, the information
7 being pushed from the central office technician right up
8 to the CLEC, right up to us.

9 Q Well, actually, in your testimony you talk a
10 bit about this push capability that you just referred
11 to.

12 A That is correct.

13 Q That you would like an enhancement to WPTS
14 that enables -- by which Verizon would push,
15 electronically push information to the CLEC; is that
16 right?

17 A That is correct.

18 Q And so that would mean that the CLEC wouldn't
19 have to keep checking to see if information had come in
20 from Verizon; is that right?

21 A With the push technology, the CLEC wouldn't
22 have to keep checking. Today they have to keep
23 checking.

24 Q With the push, that would be eliminated; is
25 that right?

1 A That is correct.

2 Q Okay. Were you here yesterday when Mr. Maguire
3 testified that he's exploring implementing just such a
4 push feature?

5 A Absolutely.

6 Q And did you hear him testify that he's actually
7 waiting to hear from AT&T's partner Broadview as to the
8 next step?

9 A Yes. I was surprised to hear that.

10 Q So do you know when Broadview is going to get
11 back to Verizon?

12 A That was the first I heard of it as of
13 yesterday.

14 Q Okay. And just so everybody here is aware, if
15 you would, briefly explain AT&T's relationship with
16 Broadview.

17 A Broadview is a vendor who performs hot cuts for
18 AT&T.

19 Q Another thing you mention in your testimony is
20 that you would like the batch process to cover -- well,
21 all processes to cover CLEC-to-CLEC migrations; is that
22 right?

23 A That is correct.

24 Q Okay. And you are aware of the fact that
25 Verizon has always said that it will handle these

1 migrations in the basic and project processes; is that
2 right?

3 A Yes. Tom went to great lengths yesterday to
4 say that although it can't be done in the batch process
5 as of yesterday, and he was looking into the possibility
6 of doing the CLEC-to-CLEC in the batch process, Verizon
7 does offer the basic hot cut process to do CLEC-to-CLEC
8 migrations.

9 Q During the direct presentation that the CLECs
10 just put on, one thing -- and I believe this was part of
11 the PowerPoint. But Mr. Van De Water, in talking about
12 problems with a hot cut process, batch cut process,
13 although it wasn't necessarily clear if he was
14 specifically talking about one or both of the ILECs at
15 issue here, but he said that it was only for the
16 embedded base.

17 Is it your understanding that Verizon's batch
18 cut process would apply to both the embedded base and
19 any new UNE-P arrangements going forward or CLEC-to-CLEC
20 migrations going forward?

21 A It's my understanding that the proposed batch
22 process that Verizon has put forth in this case would
23 take care of both ongoing UNE-P, ongoing hot cuts when
24 the CLEC acquires new customers, as well as handling
25 some of the embedded base.

1 Q Mr. Walsh, there was some discussion yesterday,
2 and this appears in your testimony as well. AT&T
3 asserts that it's important that it know the sequence of
4 cuts within any given, say, batch, batch of cuts that's
5 occurring; is that right?

6 A Yes. That's important to us, yes.

7 Q Okay. And the one reason that you've cited for
8 this is that your customers may have a hunting feature
9 on the line.

10 A That is correct.

11 Q Okay. And a hunting feature is something that
12 -- it forwards calls. When a customer has multiple
13 lines, it forwards any incoming calls into unbusy lines;
14 is that correct?

15 A It jumps, right. It --

16 Q Okay. Now --

17 A It allows the calls to progress through a
18 series of lines if one is busy, and it's controlled by
19 the switch. And so therefore, if you cut lines over to
20 one switch and you don't cut the lines over to the other
21 switch, there would be -- that functionality would be
22 missing. And that's why certain lines, lines involved
23 in hunt groups need to be cut in sequence. And the
24 batch process does not allow us to tell Verizon which
25 lines to cut in what sequence.

1 Q Okay. Mr. Walsh, this case is about -- or this
2 part of this case is about the hot cut process for mass
3 market customers; isn't that right?

4 A That is correct.

5 Q Now, residential customers, I mean, how likely
6 is it that residential customers would have a hunting
7 feature?

8 A Well, not very likely.

9 Q Have you ever come across a residential
10 customer that has?

11 A Has hunting? No. It's usually business
12 customers.

13 Q Okay.

14 A But all it takes is one business customer to
15 ruin your day if they're not receiving calls. And I've
16 been on the repair side where calls have come in and
17 they said certain functionality that they expect to have
18 is not working. And if that is not working, they have
19 complaints, and then the whole ball starts rolling. I
20 mean, you have to find out why that customer doesn't
21 have it, is it something in your switch. And if you're
22 dealing with Verizon -- you know, if you're dealing with
23 the incumbent, we might have to make calls to you to
24 find out is there something wrong, did you remove a
25 feature, or is this customer involved in a batch, and

1 only one line has been transferred and the other lines
2 have not.

3 Q But if you had one customer who had a hunting
4 feature, couldn't you have that customer's hot cut
5 performed through the basic process?

6 A That's exactly what Tom said yesterday. He
7 said that, you know, there is an option that's available
8 to have that.

9 What my testimony outlines is that the batch
10 process does not allow us to sequence cuts in the way
11 that we want to control that. So if we had a mass
12 market customer that had two hunting lines, a total of
13 three lines, we could control when those lines -- in
14 what sequence those lines are cut over in.

15 Q And presumably, if this is important to AT&T,
16 AT&T would choose to use Verizon's basic process to cut
17 over such a customer; is that right?

18 A That's the option that's available to us right
19 now, yes.

20 Q Okay. Mr. Walsh, do you know what percentage
21 of the business customers, AT&T business customers that
22 are part of the mass market have hunting features?

23 A No, I do not.

24 MS. KESTENBAUM: Thank you. I have no further
25 questions.

1 CHAIRMAN BAEZ: Staff, do you have --

2 MR. ROJAS: Staff has no questions at this
3 time.

4 CHAIRMAN BAEZ: Okay. Thank you.

5 CHAIRMAN BAEZ: Mr. O'Roark, you were making a
6 move for the -- no? Okay. No sudden moves.

7 MR. O'ROARK: MCI has no questions.

8 CHAIRMAN BAEZ: Thank you, Mr. Walsh.

9 THE WITNESS: Thank you.

10 COMMISSIONER JABER: Mr. Chairman?

11 CHAIRMAN BAEZ: Yes? Oh, I'm sorry.

12 Commissioners, are there questions?

13 COMMISSIONER JABER: Let me just ask one as a
14 follow-up to Mr. Walsh.

15 If you have the option of using the basic hot
16 cut process for those customers that have the hunting
17 service, I guess my fundamental question is, why not use
18 that? And the second question is, how is that option
19 different from what you are proposing to be able to
20 control the sequencing of the lines that get hot cut?

21 THE WITNESS: That's certainly a good question.
22 The criticism that we laid out in our testimony
23 criticized the batch process because the batch process
24 does not allow that sequence. And it takes controls,
25 certain controls that we currently have with the basic

1 and the large job project hot cut today.

2 So the offering by Verizon to have a new hot
3 cut product called "batch" whereby they perform some
4 activities, when we analyzed that, AT&T said that that's
5 not a worthwhile product that they would want to go
6 after. And that's what my testimony is about.

7 But you're right. We do have that available to
8 us as an option.

9 COMMISSIONER JABER: Is that something you'll
10 be considering in the future then?

11 THE WITNESS: Well, that's what we would
12 consider today, yes.

13 COMMISSIONER JABER: Okay. Thank you.

14 CHAIRMAN BAEZ: Commissioners, any other
15 question? No?

16 Thank you, Mr. Walsh.

17 A quick housekeeping before we take up the next
18 witness. We are switching witness Nilson and witness
19 Gillan in the order, and we would hope, if things move
20 well, that witness Nilson will be our last witness
21 tonight.

22 Okay. Next up is Ms. Lichtenberg.

23 THE WITNESS: Gentlemen, I apologize, but I'm
24 going to need a little room to spread out.

25 And, Commissioners, I apologize. I am freezing

1 to death, so I am going to have my coat up here.

2 CHAIRMAN BAEZ: We're sorry about the
3 temperature. I'm showing 76 degrees. That's balmy over
4 here.

5 Are you ready, Ms. Lichtenberg?

6 Thereupon,

7 SHERRY LICHTENBERG

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

11 CROSS-EXAMINATION

12 BY MS. FOSHEE:

13 Q Good evening, Ms. Lichtenberg. Lisa Foshee on
14 behalf of BellSouth.

15 Do you have a copy of your deposition up there
16 with you?

17 A Yes, I think I do.

18 Q Okay. Great. Ms. Lichtenberg, it's your
19 position, based on your testimony and your presentation
20 today, that BellSouth should collaborate with the CLECs
21 about its batch hot cut process; correct?

22 A Yes, it is.

23 Q Did you collaborate with Verizon about its
24 batch hot cut process?

25 A Yes, we have been collaborating with Verizon.

1 Q Is MCI supporting Verizon's hot cut process in
2 any TRO switching state case?

3 A MCI is --

4 Q Ms. Lichtenberg, if you could answer yes or no,
5 please, and then feel free to explain.

6 A Yes and no. We have agreed with a number of
7 the options that Verizon has put on the table, most
8 notably the use of WPTS and the local number portability
9 trigger. We have concerns about other issues, pieces of
10 the types of migrations, transitions that will not be
11 included.

12 Q Are you supporting Verizon's process in any
13 state TRO switching case, Ms. Lichtenberg?

14 A Not 100%.

15 Q Did you collaborate with SBC about its batch
16 hot cut process?

17 A Yes.

18 Q Are you supporting SBC's process in any state
19 proceeding?

20 A No. We have narrowed the issues from over 100
21 down to a small number. I believe it's close to 20 --
22 to 40. We are continuing to work through them, and
23 those are being litigated now.

24 Q I'm sorry. You narrowed it down to 40 issues?

25 A I believe it has been narrowed down to 40

1 issues. That is all CLECs, not just MCI.

2 Q And you also collaborated with Qwest on their
3 batch hot cut process; correct?

4 A Yes, we did.

5 Q And you're also not supporting Qwest's process
6 in any TRO switching case; correct?

7 A No, not 100%. But again, we narrowed those
8 issues from probably 150 down to I think less than 20
9 that MCI is concerned about.

10 Q In MCI's view, in fact, there's no manual hot
11 cut process that could support mass market volumes;
12 right?

13 A Not exactly. Let me explain. MCI believes
14 that the hot cut, the physical lifting and laying of the
15 wires, the manual process, cannot be scaled to the
16 volumes that will be needed in a post-UNE-P world.

17 We do, however, believe that we can work
18 through a continuum of changes as the ordering, the
19 internal operational support systems changes, and the
20 notification process are automated. We have said that
21 those processes, once the automation is completed, and
22 once there is a decision in each of the states where it
23 is being litigated, that assuming those changes are
24 made, we will see whether the process works.

25 Q Ms. Lichtenberg, today, is there a manual hot

1 cut process that MCI contends could support UNE-L mass
2 migration?

3 A We --

4 Q Yes or no, please.

5 A No.

6 Q Thank you. Now, the Florida Commission has an
7 ongoing collaborative on CLEC-to-CLEC migrations that is
8 considering all of the issues regarding CLEC-to-CLEC
9 migrations in your testimony; correct?

10 A Yes.

11 Q And so despite all of your criticism of
12 BellSouth for not collaborating, you chose not to use
13 that collaborative to resolve those issues; correct?

14 A No. We are working through those issues in
15 that collaborative. Unfortunately, I have not been able
16 to attend in person as often as I would have liked to.
17 We believe that some of those issues will get worked
18 through in that collaborative. But we think, frankly,
19 that we need to complete dealing with those issues
20 before we are no longer impaired.

21 Q Can you turn to page 11 of your direct
22 testimony, please, lines 13 through 14?

23 A (Examining document.)

24 Q Are you there?

25 A Yes, I am.

1 Q Okay. You make the statement there that -- you
2 say, "The success of that transition will be the best
3 evidence that CLECs are no longer impaired without
4 access to ILEC switching." Do you see that sentence?

5 A Yes, I do.

6 Q When you use the term "that transition," you
7 are referring to moving from UNE-P to UNE-L; correct?

8 A Let me read the whole paragraph just to make
9 sure.

10 Q Please do.

11 A Yes.

12 Q So, Ms. Lichtenberg, in your view, if there are
13 CLECs successfully providing mass market service to
14 customers using UNE-L, that is the best evidence that
15 CLECs are no longer impaired without access to ILEC
16 switching; correct?

17 A Yes, as long as those CLECs are providing
18 service to residential customers in the volumes that MCI
19 expects to see, and are providing that kind of service
20 seamlessly and economically and operationally in a way
21 that makes sense for customers.

22 Q Do you have a copy of your presentation in
23 front of you?

24 A No, I do not.

25 Q Could your lawyer hand you one?

1 MR. O'ROARK: Her lawyer can get her one.

2 MS. FOSHEE: Thank you, sir.

3 BY MS. FOSHEE:

4 Q If you could turn to page 100 of that
5 presentation, please.

6 A Yes.

7 Q On that page, you criticize BellSouth for
8 performing only 19,000 hot cuts a month, approximately,
9 and only 8,600 UNE-L cutovers per month. You --

10 A I -- I'm sorry.

11 Q You would agree with me that MCI is not
12 ordering UNE loops in Florida; correct?

13 A Yes, we are not using loops. However, the
14 statement that we make is the highest number of hot cuts
15 that BellSouth has ever done in a month, and I believe
16 that is a regional number, is 19,000.

17 Q Okay. Well, I think you'll agree with me that
18 BellSouth can't perform hot cuts if CLECs don't order
19 UNE loops; correct?

20 A Yes.

21 Q So your position, if I understand it, is that
22 if you don't order UNE loops, we can't prove we can
23 perform, and UNE-P will remain in perpetuity; right?

24 A No.

25 Q Okay. How is it exactly that we could prove

1 scalability, in MCI's opinion?

2 A We believe that the systems changes that have
3 been proposed that will automate more of the ordering
4 and provisioning process can be implemented. Once they
5 are implemented, CLECs will be able to order, we hope,
6 in volumes, and at that point, we will be able to see
7 how it works.

8 Q So contrary to what your slide implies, it is
9 possible to adopt a batch hot cut process in this
10 proceeding and then have UNE loop volumes develop;
11 correct?

12 A Yes. We believe that a batch hot cut process
13 could be adopted and that this Commission could keep the
14 finding of impairment until that process is fully
15 developed and implemented and we have some way to tell
16 that it works. What we are saying is that we have a
17 number of promises and a number of tools that are
18 proposed, but we have not yet seen those tools, and we
19 understand that the operational support system
20 development process takes time. And until that process
21 -- until those changes are made, that process cannot be
22 said to fully exist.

23 Q Ms. Lichtenberg, your testimony talks about two
24 types of hot cuts. You have your transition batch cut
25 process and your mass market hot cut process; right?

1 A Yes.

2 Q And the MCI transition hot cut process only
3 addresses the issue of transitioning to UNE-L the base
4 of customers that competitors like MCI have acquired on
5 UNE-P; correct?

6 A Yes. MCI believes that two processes need to
7 be corrected and made to work in the mass market, and by
8 that I mean the residential and very small business
9 space. One of them is a process that will allow us to
10 move the embedded base of customers, and the other is
11 the process that will allow us to sell to a customer and
12 provision them to UNE loops.

13 Q And your transition batch hot cut process
14 equates to the FCC's batch hot cut process; correct?

15 A Yes, that is correct.

16 Q And so it is the transition batch hot cut
17 process, which is for migrating UNE-P to UNE-L, that the
18 Commission should adopt in this nine-month proceeding;
19 correct?

20 A It is my understanding --

21 Q Yes or no, please, ma'am.

22 A Yes, for the migration of customers from UNE-P
23 to UNE-L. And by definition, if those changes are made
24 and we can have the operational support tools, perhaps
25 the tools even that BellSouth has proposed, and they can

1 be applied to the one-at-a-time process, we might have
2 the ability to start to get our customers onto loops
3 when the operational problems are solved and when it is
4 economically feasible.

5 Q And the one-at-a-time process to which you just
6 referred is MCI's mass market hot cut process, and
7 that's the process that you say should be deferred to a
8 later proceeding; correct?

9 A I'm not sure that I said it should be deferred
10 to a later proceeding. Can you point me to where I said
11 that?

12 Q Sure. If you'll look at page 48 of your direct
13 testimony, lines 10 through 13. I believe what you say
14 there is that the Commission must adopt the transition
15 batch process in nine months, but it shouldn't distract
16 the Commission from working towards the mass market hot
17 cut process.

18 A Yes, but I don't believe that I asked for
19 another time do it. What we said is that you can adopt
20 this process; you can move forward to ensure that the
21 process works and to correct the other operational
22 difficulties that lead to impairment.

23 Q Which process are you asking the Commission to
24 adopt, your transition process or your mass migration
25 process, in this nine-month proceeding?

1 A The TRO says that the Commission needs to adopt
2 a transition batch hot cut process.

3 Q Now, you also agree with me, Ms. Lichtenberg, I
4 think, that the Commission should open a separate docket
5 from the current proceeding to address issues of manual
6 processing and multiple party coordination, in other
7 words, CLEC-to-CLEC migrations, rather than address
8 those issues in this docket; correct?

9 A Yes. The CLEC-to-CLEC migrations process is
10 complex, as we have noted in the workshop format that
11 we've been using to work on CLEC-to-CLEC migrations. We
12 believe that the Commission needs to continue to work
13 through that and make sure that all parties are able to
14 keep customers from being stranded on one platform or
15 another.

16 MS. FOSHEE: Mr. Chairman, I've worked very
17 hard to have very tailored questions, and I think the
18 witness is adding a bit more explanation than is
19 necessary.

20 CHAIRMAN BAEZ: How might -- if you're not
21 getting the answers that you want, that's a whole other
22 story.

23 MS. FOSHEE: No, actually, I am, but -- all
24 right. Well, we'll just continue and see how it goes.

25 CHAIRMAN BAEZ: Let's move on.

1 MS. FOSHEE: Okay.

2 CHAIRMAN BAEZ: Ms. Lichtenberg, obviously, you
3 have the luxury of elaborating your answers, but to the
4 extent that you've answered the question, you can feel
5 free to stop.

6 THE WITNESS: Thank you, sir.

7 BY MS. FOSHEE:

8 Q Ms. Lichtenberg, in your testimony you state
9 that -- I'm sorry. I'm on page 1 of your rebuttal,
10 lines 2 through 1. You state that the move from UNE-P
11 to UNE-L would involve an exponential increase in UNE-L
12 provisioning volumes.

13 A I'm sorry. What line was that?

14 Q Oh, I'm sorry. Lines 19 through 20.

15 A Thank you.

16 Q I'm sorry. I had it written wrong.

17 Is MCI one of the biggest UNE-P providers of
18 service to mass market customers in Florida?

19 A I think so.

20 Q And so because you're one of the biggest UNE-P
21 providers, the exponential increase that you testify
22 about would by necessity include MCI moving to UNE
23 loops, would it not?

24 A Yes.

25 Q And so is it your position that MCI can provide

1 service using UNE loops?

2 A No.

3 Q Well, how is it, Ms. Lichtenberg, that on the
4 one hand you say there will be an exponential increase
5 in UNE loop volume, and on the other hand say that MCI
6 can't provide service using UNE loops?

7 A We say that if we could make the process work,
8 if we could cover the economic and operational problems,
9 we will begin moving our customers, and so will other
10 CLECs, and so volumes will go up exponentially.

11 Q Ms. Lichtenberg -- I'm sorry. I'm having
12 problems with my mike. Is it your position that if the
13 Commission finds no impairment in BellSouth's 12 trigger
14 markets in this proceeding and makes no other changes,
15 that the exponential increase that you talk about here
16 won't exist?

17 A Yes, but I do need to elaborate on that one.

18 Q Go ahead.

19 A If changes aren't made and no impairment is
20 found, as the panel has described to you today, what you
21 will see, I believe, is the dropping away, the withering
22 away of competition. I hope you will see some UNE loop
23 competition, but I don't know.

24 Q Ms. Lichtenberg, you've also testified that
25 BellSouth's 271 evidence proving that BellSouth's

1 individual hot cut process works is not relevant to this
2 proceeding; correct?

3 A Yes. I believe that the FCC said the same
4 thing.

5 Q Do you think that testimony filed in the
6 BellSouth 271 case allegedly showing that BellSouth's
7 individual hot cut process doesn't work is relevant to
8 this proceeding?

9 A No. I don't believe that the 271 process,
10 which focused on the UNE-P platform for mass market
11 customers as the way to have competition, provided
12 enough focus on the loop process.

13 Q With respect to scalability, your view is that
14 the definition of scalability is that the hot cut
15 process must be able to handle mass market volumes;
16 correct?

17 A Yes, that is correct.

18 Q And you've defined mass market volumes as the
19 equivalent of the volumes that we see today for UNE-P;
20 correct?

21 A Yes.

22 Q Ms. Lichtenberg, is MCI providing service using
23 UNE loops anywhere in BellSouth's region?

24 A MCI mass markets does not provide a UNE loop
25 product to the residential and small business customer.

1 Q Now, your prefiled testimony, Ms. Lichtenberg,
2 was that LFACS was incorrect.

3 A Yes.

4 Q Isn't that true?

5 A Yes.

6 Q And on February 5th I took your deposition;
7 correct?

8 A Yes.

9 Q In that deposition, you stood behind your
10 testimony that LFACS was incorrect. Do you remember
11 that?

12 A Actually, I believe in that deposition, I
13 agreed with you that we needed to look at the orders
14 that we cited, and that we would make a change to
15 explain that stance once we had had time to review the
16 orders. We submitted an errata today that took out that
17 paragraph of the -- I believe it's rebuttal.

18 Q Well, in fact, on February 6th, about 12 hours
19 after I took your deposition, you filed discovery
20 responses that said that MCI had no information
21 regarding the accuracy of or errors in the LFACS
22 database; correct?

23 A Yes, that is correct.

24 Q Okay. Now, when you filed your errata this
25 morning, you didn't remove the portions of your

1 surrebuttal testimony talking about errors in LFACS, did
2 you?

3 A I need to look at that.

4 Q Okay.

5 A Could you give me the page and --

6 Q Sure. It's your surrebuttal, page 6 through 7.

7 A You are correct, and that was our error.

8 Q Okay. And also, you had said in your rebuttal
9 testimony that Mr. Webber also discusses this issue in
10 his rebuttal testimony, and I didn't see an errata from
11 him taking out any reference to LFACS being correct. Is
12 MCI planning on doing that?

13 A Yes.

14 Q Okay. Now, Ms. Lichtenberg, I want to turn to
15 slide number 102 of your presentation.

16 A Yes.

17 Q This is the slide on which you listed the
18 enhancements that BellSouth has agreed to do?

19 A That is correct.

20 Q Okay. All of these items were MCI's
21 complaints; correct?

22 A MCI -- yes. MCI requested that changes be
23 made. We have not seen enough documentation yet on
24 these changes to know for sure that they meet our needs
25 or address our concerns. That's one of the reasons that

1 we recommend that, like Qwest, like Verizon, like SBC,
2 that BellSouth sit down with CLECs, talk about what we
3 need in these tools, and work together to design them.

4 Q And those are the same collaborative processes
5 that you're litigating now; correct?

6 A Yes, they are being litigated, but some of
7 those tools have been accepted, and we will use them.

8 Q Well, this is what's confusing to us,
9 Ms. Lichtenberg. In the past, as I think you've
10 mentioned in your introduction and your presentation,
11 MCI has complained freely and extensively to this
12 Commission about processes and systems changes that
13 BellSouth has refused to make, or in your view has
14 refused to make; correct?

15 A Yes.

16 Q So now MCI is here complaining to this
17 Commission about changes that you want that BellSouth
18 has agreed to make; right?

19 A Yes. However, when we have complained about
20 changes that couldn't be made or changes that were
21 delayed, we had a clear understanding of what those
22 changes were going to be. Once we see full
23 documentation for these changes, and once the changes
24 are specified and the software development process
25 starts, we will know what it is specifically that we

1 will be getting. Right now we have words that say there
2 will be a Web-based notification tool in June. I'm not
3 really sure what that tool is.

4 Q On page 9 of your rebuttal testimony, lines 19
5 and 20, you testified that BellSouth has not provided
6 documentation on how the process, meaning the batch
7 ordering process, will work. That was your testimony;
8 right?

9 A Yes.

10 Q MCI received the UNE-to-UNE bulk ordering user
11 requirements via the Change Control Process, did it not?

12 A Yes.

13 MS. FOSHEE: Mr. Chairman, I have no further
14 questions. Thank you.

15 CHAIRMAN BAEZ: Staff?

16 MR. SUSAC: Staff would like to defer its
17 questions for Ms. Lichtenberg.

18 CHAIRMAN BAEZ: Okay. Oh, I'm sorry,
19 Ms. Kestenbaum.

20 MS. KESTENBAUM: I'm sorry. Yes, I actually
21 have a few questions.

22 CHAIRMAN BAEZ: Okay. You may proceed.

23 CROSS-EXAMINATION

24 BY MS. KESTENBAUM:

25 Q Good evening, Ms. Lichtenberg. And I do only

1 have a few, so this will be relatively brief.

2 Ms. Lichtenberg, in contrast to AT&T, MCI
3 supports the feature of the Verizon batch process by
4 which Verizon would activate the port on behalf of the
5 CLEC; is that right?

6 A Yes, we do.

7 Q Okay. And isn't it true that MCI in other
8 proceedings has actually asked Verizon to consider
9 adding that feature to its other hot cut processes?

10 A Yes.

11 Q And isn't it the case that MCI likes this
12 aspect of Verizon's batch process because it should
13 reduce the need or MCI's need for coordination with
14 Verizon on the day of the cut?

15 A Yes, because we deal with residential mass
16 market customers.

17 Q Ms. Lichtenberg, with respect to the WPTS, the
18 wholesale provisioning tracking system, you have been
19 trained on that system; is that right?

20 A Yes, I have played with the system. I'm not
21 sure I would count it as official training, but I did
22 walk through the training documents.

23 Q Okay. Good enough. And isn't it the case that
24 you are of the view that WPTS is -- I believe you called
25 it a robust system?

1 A Yes.

2 Q Okay. And isn't it the case that you have
3 urged other CLECs to adopt similar systems?

4 A Yes.

5 Q Now, Ms. Lichtenberg, you're not appearing in
6 this case, are you, as a cost witness on behalf of MCI?

7 A No, I am not.

8 Q Okay. So, in other words, we can't look to you
9 for any kind of cost study from MCI proposing rates for
10 Verizon's hot cut processes?

11 A No, you cannot.

12 Q Okay. And is there a witness in this case, an
13 MCI witness that we can look to for that?

14 A I apologize, because I cannot answer that
15 question.

16 Q Okay. So you're not aware of a witness who has
17 submitted any cost study or rates for Verizon's hot cut
18 processes from MCI?

19 A I'm not aware of such.

20 Q Ms. Lichtenberg, at least as of the date of
21 your deposition in this case, which was February 5th,
22 MCI did not have any UNE-P customers in the Verizon
23 territory in Florida; isn't that right?

24 A Yes.

25 Q Okay. And is it not the case that Verizon is

1 -- I'm sorry, MCI is going to be launching some UNE-P
2 business in the Verizon territory in the near future?

3 A I believe that we actually have launched, but I
4 did not go back and check with the launch folks.

5 Q Okay. Well, at least at your deposition at the
6 beginning of February, you said that everything was on
7 track for a launch sometime during the month of
8 February?

9 A That is correct.

10 Q Are you aware of any marketing efforts that MRI
11 has taken to promote this new business?

12 A I am not personally aware.

13 Q You've said that at least as of a month ago,
14 there were no UNE-P lines, MCI UNE-P lines in the
15 Verizon territory. Then would you agree that to the
16 extent MCI had lines in the Verizon territory, that they
17 were UNE-L?

18 A MCI has some UNE-L lines in the Verizon
19 territory that are on the enterprise side of the house.

20 MS. KESTENBAUM: Thank you. I have no further
21 questions.

22 CHAIRMAN BAEZ: Thank you, Ms. Kestenbaum.

23 Mr. Feil, do you have questions?

24 MR. FEIL: (Shakes head.)

25 CHAIRMAN BAEZ: No? Staff, you deferred.

1 Commissioners, do you have any questions?

2 Okay. Thank, Ms. Lichtenberg.

3 THE WITNESS: Thank you.

4 MR. HATCH: Mr. Chair, while we're waiting for
5 the next witness to take the stand, I have an inquiry.
6 Nobody listed Mr. Steve Turner as a witness that they
7 were going to call, but reserved the right for anybody
8 that was on the panel. I would just like to inquire if
9 there was anyone that is going to take -- or is going to
10 call Turner for cross.

11 CHAIRMAN BAEZ: Well, I'm showing Mr. Turner as
12 reserved. I mean, I don't know if we can confirm --

13 MR. SHORE: I can confirm, as I did at the
14 break with Mr. Henry, that BellSouth doesn't have any
15 questions, and as far as --

16 CHAIRMAN BAEZ: Doesn't have any questions?

17 MR. SHORE: -- we're concerned, he can be
18 excused.

19 CHAIRMAN BAEZ: Verizon, did you have questions
20 for Mr. Turner?

21 MS. KESTENBAUM: No, we do not.

22 CHAIRMAN BAEZ: Staff?

23 MR. ROJAS: Staff has no questions for
24 Mr. Turner.

25 MR. PHILLIPS: Mr. Chairman?

1 CHAIRMAN BAEZ: Yes.

2 MR. PHILLIPS: This is Ed Phillips with
3 Sprint. Mr. Kent Dickerson and Ms. Christie Londerholm
4 are not listed on anybody's list for cross-examination.
5 I was wondering if any of the parties had planned on
6 doing so.

7 CHAIRMAN BAEZ: Well, let's shortcut this. I
8 have three names. We've already confirmed that
9 Mr. Turner is -- the reservation is gone, as it were.
10 And I have Mr. Reith and Mr. Dickerson. What's the
11 status of those?

12 MR. SHORE: We don't have any questions for
13 Mr. Reith. We do have questions for Mr. Dickerson.

14 CHAIRMAN BAEZ: Okay. So you have your answer,
15 Mr. Phillips.

16 MR. SHORE: And we don't have questions for
17 Ms. Londerholm.

18 MR. PHILLIPS: Very good.

19 CHAIRMAN BAEZ: Okay.

20 MR. PHILLIPS: Thank you.

21 CHAIRMAN BAEZ: Let me check with the rest of
22 the parties, and staff as well. You don't have
23 questions, Verizon?

24 MS. KESTENBAUM: We don't have questions for
25 any of those witnesses. We do have some questions -- I

1 don't know if this goes to what's being discussed, but
2 for Mr. Webber, who is on the list.

3 CHAIRMAN BAEZ: No, Webber -- we're working on
4 Reith, Dickerson, and Turner.

5 MS. KESTENBAUM: Okay. Yes, nothing further.

6 CHAIRMAN BAEZ: Nothing for them. Okay.

7 Mr. Rojas?

8 MR. ROJAS: We have no questions for
9 Mr. Reith, but we do for Mr. Dickerson.

10 MR. PHILLIPS: Thank you, Mr. Chairman.

11 MR. HATCH: May Mr. Turner be excused?

12 CHAIRMAN BAEZ: Yes, Mr. Turner can be excused
13 with our thanks. And we have Mr. Webber?

14 MR. O'ROARK: Mr. Webber is available for
15 cross.

16 CHAIRMAN BAEZ: Good evening, sir. You've been
17 sworn?

18 THE WITNESS: Yes, I have.

19 CHAIRMAN BAEZ: Okay. Who will be crossing
20 Mr. Webber?

21 MR. MEZA: BellSouth has no questions.

22 MS. KESTENBAUM: Verizon has a few questions.

23 CHAIRMAN BAEZ: Okay, Ms. Kestenbaum.

24 MS. KESTENBAUM: If you'll bear with me one
25 second while I get out his testimony.

1 Thereupon,

2

JAMES WEBBER

3

was called as a witness on behalf of MCI WorldCom

4

Communications, Inc., and having been duly sworn,

5

testified as follows:

6

CROSS-EXAMINATION

7

BY MS. KESTENBAUM:

8

Q Good evening, Mr. Webber.

9

A Good evening.

10

Q Now, I want to confirm, you're not appearing

11

here in this case as a cost witness on behalf of MCI; is

12

that right?

13

A That's correct.

14

Q Okay. So the Commission can't look to you for

15

any kind of cost study with respect to any of Verizon's

16

hot cut processes; isn't that true?

17

A Certainly not in these proceedings.

18

Q Okay. And you haven't suggested any changes to

19

the rates proposed by Verizon?

20

A No, I have not.

21

Q Okay. And you also haven't submitted any kind

22

of estimate with respect to the volume of hot cuts that

23

would be created by the withdrawal of UNE-P; is that

24

right?

25

A Certainly not with respect to Verizon, no.

1 Q Okay. And you haven't submitted or suggested
2 any adjustments to the volume estimates provided by
3 Verizon witness Dr. Taylor; isn't that right?

4 A That's also correct.

5 Q Okay. Now, on page 24 of your direct testimony
6 --

7 A I'm there.

8 Q Okay. Is it fair to say that on page 24,
9 you're basically advocating greater automation of the
10 hot cut process?

11 A Yes, I would say that I am. But I'm certainly
12 not making that as a recommendation involving any sort
13 of precondition to a finding of no impairment, but
14 rather something which the network ought to evolve to in
15 the future.

16 Q Okay. So then it's not your position that in
17 the course of this nine-month proceeding, there has to
18 be the adoption of some kind of automated hot cut
19 process?

20 A While it would be nice, that's certainly not
21 our recommendation.

22 Q Okay. So then just to be clear, it's MCI's
23 position that a process can satisfy the TRO even if the
24 work that's done, the actual cutover of the loop is
25 manual?

1 MR. O'ROARK: If I may interject and object to
2 the form, I'm not sure it's clear that we're talking
3 about a batch hot cut process or the individual cut
4 process.

5 CHAIRMAN BAEZ: You want to reask the question,
6 Ms. Kestenbaum?

7 MS. KESTENBAUM: Sure, certainly.

8 BY MS. KESTENBAUM:

9 Q I was talking about the batch process, and my
10 question is, so then it's MCI's position that a batch
11 cut process can satisfy the TRO even if the actual
12 cutover is manual?

13 A I think Ms. Lichtenberg just spoke to that
14 issue. My opinion is that it's not likely to be the
15 case, although it could be possible, and ultimately, I
16 think time will tell.

17 Q Well, if the Verizon process were revised to
18 make -- were changed to satisfy all the recommendations
19 that MCI has made in this case, would that process
20 satisfy the TRO?

21 A Ultimately it gets down to performance. To the
22 extent that the transitions occur seamlessly, that
23 customers are not affected, that it can be done
24 economically speaking, and that all the other criteria
25 that we went through and discussed in our testimony are

1 all satisfied, then it's possible.

2 Q Okay. But the Commission has to decide on the
3 process first, and then the process will actually be
4 implemented. So it isn't until after the process is
5 approved that we'll really know how it's going to affect
6 customers; isn't that right?

7 A I think after a process is implemented, you'll
8 know what the effect is on customers, and you'll know
9 whether it's seamless. And to the extent that we
10 actually get that far down the road and that transitions
11 are happening on a seamless basis, then discussions
12 regarding impairment should be a little bit more clear,
13 and the decisions will be more discernible at that
14 point.

15 Q Okay. So then is it your position that there's
16 no way that the Commission can tell at this point
17 whether a batch process, even one that takes into
18 account all of MCI's criteria, satisfies the TRO?

19 A If you mean by satisfy that impairment is
20 removed, I don't think we'll know until after a process
21 is designed and implemented and tested and we know what
22 the reality is in the marketplace.

23 Q Okay. And it's not possible to do that,
24 though, during this nine-month period; isn't that right?

25 A To have a process designed and approved maybe,

1 but to see the results, that's very unlikely.

2 Q Right. I mean, sort of by definition, the
3 process can't be implemented before it has been designed
4 and approved?

5 A I would agree with that.

6 Q Okay. Getting back to your direct testimony,
7 one example you cite of increased automation of at least
8 the overall hot cut process is Verizon's WPTS; isn't
9 that right?

10 A With respect to systems, that's correct.

11 Q Okay. In your testimony, you say that ILECs
12 don't have enough incentive to develop systems that
13 would automate the hot cut process; is that right?

14 A I recall something to that effect, yes.

15 Q Okay. Well, if you want to take a look, it's
16 on page 25 of your direct.

17 A Yes, I see that.

18 Q Okay. But just on the page before, you cited
19 WPTS as an example of a way in which Verizon has sought
20 to more fully automate its hot cut process; isn't that
21 true?

22 A Yes, I would agree with that.

23 Q Okay. And what commission has ordered Verizon
24 to develop the WPTS system?

25 A I don't know whether it has been required by a

1 commission or not.

2 Q Okay. Mr. Webber, are you aware of the fact
3 that Verizon has, in very small central offices of 5,000
4 lines or less, implemented something called automatic
5 MDF equipment?

6 A Yes, I am. And in fact, I refer to that in my
7 surrebuttal testimony.

8 Q Okay. And you would agree that that's an
9 example of increased automation of the hot cut process;
10 right?

11 A Yes. And in fact, that type of technology is
12 something that we would hope to see evolve in the
13 network in the future, and that sort of technology we
14 believe will aid in facilitating seamless hot cuts.

15 Q Okay. Well, at least up till now, Verizon has
16 rolled that out and determined that it's feasible in
17 very small offices of 5,000 lines or less. What
18 commission has ordered Verizon to install those
19 machines?

20 A Again, I don't know whether Verizon was
21 required to do that or not. And if it is the case that
22 Verizon is doing it voluntarily and that sort of network
23 upgrade can be done here more frequently, then I think
24 that's something I think that this Commission ought to
25 explore on a going-forward basis in order to facilitate

1 seamless hot cuts going forward.

2 Q Okay. Have you done any kind of cost-benefit
3 analysis with respect to the use of that equipment in
4 larger central offices?

5 A No, I have not.

6 MS. KESTENBAUM: All right. That's all. I
7 have no further questions. Thank you.

8 CHAIRMAN BAEZ: Mr. Rojas?

9 MR. ROJAS: Staff has no questions.

10 CHAIRMAN BAEZ: Staff has no questions.
11 Commissioners, no questions?

12 Thank you, Mr. Webber.

13 THE WITNESS: Thank you.

14 CHAIRMAN BAEZ: Next we have Mr. Van De Water.

15 MS. ROSS-BAIN: Mr. Van De Water is available
16 for cross.

17 CHAIRMAN BAEZ: Thank you, Ms. Ross. Go ahead.
18 Thereupon,

19 MARK VAN DE WATER
20 was called as a witness on behalf of AT&T Communications
21 of the Southern States, LLC, and having been duly sworn,
22 testified as follows:

23 CROSS-EXAMINATION

24 BY MS. FOSHEE:

25 Q Good evening, Mr. Van De Water. Lisa Foshee

1 on behalf of BellSouth.

2 A Good evening, Ms. Foshee.

3 Q Do you have a copy of your presentation up
4 there with you?

5 A I do.

6 Q Okay. Great. Now, you were here for
7 Mr. Walsh's testimony; is that correct?

8 A I was.

9 Q Did you disagree with anything he said?

10 A You need to be more specific. I mean, I don't
11 remember everything that he said.

12 Q Were you here when he talked about having
13 performed area station transfers that he performed
14 before 1996?

15 A Ask that again, please.

16 Q Were you here when he talked about performing
17 area station transfers before 1996?

18 A Actually, I don't recall that questioning.

19 Q Okay. Now, if you could turn to page 91 of
20 your presentation, please. It's the one entitled "The
21 Facts of AT&T's Hot Cut Experience."

22 A I'm there.

23 Q Now, the facts to which you're referring are
24 Denise Berger's 271 testimony and the Brenner
25 declaration; correct?

1 A No. It's more global than that, actually. We
2 agree with the TRO, not just from those two
3 declarations, but from our experiences nationwide when
4 we were doing the UNE loop product. It wasn't just
5 here, and it wasn't just those two documents.

6 Q Well, the facts underlying your testimony, as I
7 understand it, Mr. Van De Water, and as you've testified
8 to and responded in interrogatories, are Denise Berger's
9 271 testimony; right?

10 A That was a response, yes.

11 Q Okay. And when you say consistent with the FCC
12 TRO findings in your presentation, the FCC relied on the
13 Brenner declaration; correct?

14 A I believe that was one of the declarations they
15 did rely on.

16 Q Okay. And the Brenner declaration is the one
17 that AT&T had no facts to support when we asked AT&T to
18 produce them in discovery; right?

19 A That I don't recall, Ms. Foshee.

20 Q Do you have a copy of AT&T's seventh
21 interrogatory responses to BellSouth with you?

22 A I do not.

23 MS. ROSS-BAIN: And if counsel has that and
24 wants to supply it --

25 MR. FOSHEE: May I approach the witness,

1 Mr. Chairman?

2 CHAIRMAN BAEZ: Please do.

3 MS. ROSS-BAIN: And I would also just like to
4 make the point that if he's going to be crossed about
5 any of the discovery, I assume that this will include
6 all the supplemental responses and we have the complete
7 set.

8 May I have a copy?

9 MS. FOSHEE: No. I don't --

10 MS. ROSS-BAIN: Well, I would like to have a
11 copy, as your attorney requested yesterday in cross, so
12 I would like to have a copy as well.

13 CHAIRMAN BAEZ: Is there an extra copy
14 available, or is there -- are those in the record,
15 Ms. Foshee?

16 MS. FOSHEE: Yes, they are in the record. I'm
17 not using something that's not --

18 CHAIRMAN BAEZ: Okay. Well, I know where
19 there's one copy for sure.

20 MS. FOSHEE: I'm sorry. I don't have
21 additional copies, but I would be happy if Ms. Ross-Bain
22 would look over my shoulder while I show it to
23 Mr. Van De Water.

24 CHAIRMAN BAEZ: Well, that's about as good as
25 we're going to get on such short notice, unless somebody

1 wants to hunt it out of here.

2 MS. ROSS-BAIN: Thank you. I've had the
3 opportunity to look at it.

4 CHAIRMAN BAEZ: You have? Okay. Go ahead. Be
5 careful with the wires.

6 BY MS. FOSHEE:

7 Q Mr. Van De Water, this is BellSouth's seventh
8 set of interrogatories, and this is the set that I used
9 in our presentation the other day when I was asking --
10 when we asked AT&T to produce documents supporting the
11 allegations made in Ms. Brenner's declaration. For
12 example, in interrogatory number 266, we asked that you
13 produce all evidence that supports that coordinated hot
14 cuts cause significant delays in provisioning service.
15 Do you see that interrogatory?

16 A I do.

17 Q Okay. And did AT&T in fact produce any
18 documents to support that allegation?

19 A Let me read through this.

20 Q Please take your time.

21 A Okay. I do have it now. Could you repeat the
22 question?

23 Q Absolutely. Can you confirm that AT&T had no
24 documents to support the allegation in Ms. Brenner's
25 declaration that coordinated hot cuts cause significant

1 delays in provisioning service?

2 MS. ROSS-BAIN: Speak into the microphone too.

3 A I see that. At the time that this was asked
4 for, or at this time, there are no documents existing,
5 because the report cards and the dashboard documents
6 that she got her information from when she was part of
7 the team for the AT&T local business services was a
8 dynamic. It says here the documents were dynamic, and
9 it was not necessary to maintain the many versions of
10 the documents.

11 Q Mr. Van De Water, did AT&T produce any evidence
12 to support those allegations in this proceeding?

13 A In the FCC --

14 MS. ROSS-BAIN: Speak into the microphone.

15 THE WITNESS: In the FCC proceeding?

16 MS. FOSHEE: No, in this proceeding, sir.

17 MS. ROSS-BAIN: If you could hand that to the
18 witness and let him have it in front of him, and then if
19 you want to ask him a question, I think that would be
20 the appropriate way to perform the cross-examination.

21 THE WITNESS: Ms. Berger's testimony is what
22 was used.

23 BY MS. FOSHEE:

24 Q Okay. Thanks. Now, Mr. Van De Water, I could
25 go through the remaining one, two, three, four, five,

1 six, seven interrogatories that we asked you, but does
2 this refresh your recollection that AT&T produced no
3 documents in support of Ms. Brenner's declaration in
4 this Florida proceeding?

5 A Yes, as far as Ms. Brenner's FCC hearings and
6 this proceeding, yes.

7 Q Thank you.

8 CHAIRMAN BAEZ: Ms. Foshee.

9 MS. FOSHEE: I'm definitely not reliable.

10 CHAIRMAN BAEZ: That's state property, ma'am.

11 (Laughter.)

12 CHAIRMAN BAEZ: A quick question, and I just
13 need to know so that we can somehow provide for it. Do
14 you intend on using any other responses or so on with
15 Mr. Van De Water?

16 MS. FOSHEE: I hope not, sir. I think if I do,
17 they're going to be on the computer.

18 CHAIRMAN BAEZ: Okay. Very well.

19 MS. FOSHEE: Okay. Thanks.

20 CHAIRMAN BAEZ: Thank you.

21 BY MS. FOSHEE:

22 Q Mr. Van De Water, we talked about Denise
23 Berger's 271 testimony. Do you have a copy of that with
24 you?

25 A I believe that was part of the interrogatories.

1 Let me -- I think it might have been an attachment,
2 actually, in one of the --

3 MS. FOSHEE: Okay. Well, how about --

4 MS. ROSS-BAIN: And if she could provide a copy
5 to counsel, I would appreciate it.

6 MS. FOSHEE: I'm going to have my able
7 assistant hand out copies of that one, and I'll move on,
8 and we'll come back to it. How about that?

9 CHAIRMAN BAEZ: That's sort of why I asked.

10 BY MS. FOSHEE:

11 Q Mr. Van De Water, the Florida CLEC-to-CLEC
12 collaborative is a more appropriate place to resolve
13 issues around CLEC-to-CLEC migrations than this
14 proceeding; correct?

15 A Yes. But I don't agree it's the only place.

16 Q Now, we've agreed, I think, in the past that
17 this Commission must adopt a batch hot cut process in
18 this proceeding; right?

19 A That's correct.

20 Q And your definition of seamless is that there's
21 no interruption in service; correct?

22 A I believe actually what I stated was that the
23 customer notices no interruption in their incoming or
24 outgoing services.

25 Q And that means there's no interruption in

1 service?

2 A It could be perceived a little bit differently,
3 Ms. Foshee. As long as the customer notices no
4 interruption in their service, it's invisible to them.
5 That doesn't mean that it's necessarily -- they're not
6 down for 10 seconds.

7 Q So there could be a disruption of -- there
8 could be a minimal disruption of service, and that would
9 constitute a seamless process?

10 A Very, very, very minimal, yes.

11 Q Let me ask it this way. Is ELP a seamless hot
12 cut, in your opinion?

13 A Yes.

14 Q And ELP, as I think we've talked about, is not
15 an issue in this docket; correct?

16 A Correct.

17 Q And at least part of the reason for that is
18 that ELP can't be implemented in nine months; correct?

19 A Correct.

20 Q So your view then, by necessity, is that the
21 Florida Commission cannot implement a seamless batch hot
22 cut process in this proceeding; right?

23 A That would be correct.

24 Q So, Mr. Van De Water, that means, does it not,
25 that you're really just arguing that the Triennial

1 Review Order is wrong because it directed state
2 commissions to implement a process in nine months that
3 in your view can't be done?

4 A I would not agree with that. The Triennial
5 Review notes that there are deficiencies in the current
6 hot cut process and seeks to improve that, upon which
7 time -- during the nine months, it needs to be improved
8 upon, but then we need to have a metric around them. We
9 need to have them tested. And then it may mitigate the
10 operation, but again, there may be problems with the new
11 process, as we discussed earlier. It needs to be
12 established first what that is, and then we'll work
13 toward it.

14 Q So you disagree that this Commission has to
15 adopt a seamless hot cut process in this nine-month
16 proceeding?

17 A I would say we need to have a better hot cut
18 process, and that's what we're working toward.

19 Q I think in your deposition, you used the term
20 "close to seamless." Do you remember that?

21 A Can you point me to it?

22 Q Sure. Page 78 of your deposition, lines 18
23 through 21.

24 A I don't have a copy of my deposition.

25 Q That's not my fault.

1 A I have all my --

2 MS. ROSS-BAIN: Ms. Foshee, if you have
3 something that you would like to cross the witness on,
4 if you could give him a copy of it.

5 MS. FOSHEE: Sure. It's up on the screen.

6 MS. ROSS-BAIN: Okay. And with the Chairman's
7 permission, I'll take a copy to the witness.

8 CHAIRMAN BAEZ: That will be fine.

9 THE WITNESS: Thank you. Excellent.

10 BY MS. FOSHEE:

11 Q And I asked you, sir, in your deposition, "What
12 process does AT&T want the Commission to adopt in this
13 nine-month proceeding?" And your answer was, "The best
14 possible process that can be done that's as close to
15 seamless and low cost that can be adopted." Do you
16 remember that testimony?

17 A I see that up there, but I do have my
18 deposition now.

19 Q Okay. Well, feel free to look at it.

20 A What page is it?

21 Q Sure. Page 78.

22 A That's accurate.

23 Q Okay. Now, you would agree, I think, that AT&T
24 needs, at a minimum, a three-day interval for a customer
25 moving to UNE-L; correct?

1 A Yes. We had discussed the need for us to
2 notify our customers when they are changing their
3 facilities due to switch programmable features, that
4 that was the -- I felt the minimum time to get a snail
5 mail letter to the customer to let them know those were
6 changing. I'm sorry. So, yes, I think that's why I
7 came down to that three-day, was because of the mailings
8 to notify the customer of the change, yes.

9 Q So by definition, AT&T needs a UNE-L interval
10 that is longer than the same or next day UNE-L interval;
11 correct?

12 A Correct.

13 Q Now, if you could turn to page 108 of your
14 presentation, and here you characterized a BellSouth
15 promise, because we referenced our 271 case. And also,
16 in your testimony, you have testified that evidence from
17 the 271 case that BellSouth's individual hot cut process
18 works is irrelevant to this case; correct?

19 A Yes.

20 Q But you've relied on AT&T's testimony from the
21 271 case that BellSouth's individual hot cut process
22 allegedly does not work. So I assume you believe that's
23 relevant; right?

24 A Again, it wasn't --

25 Q Yes or --

1 A Yes, yes. It's not the only place that we have
2 that experience. It's a manual process, and we were
3 sharing the UNE loop transition process that happened
4 when we were in service doing that between '99 and 2001.
5 And it is what happens. There is a lift and lay, and
6 the customer does lose service. So that hasn't changed,
7 as your process hasn't changed.

8 Q But the 271 testimony -- but the only thing
9 that you relied on in writing your testimony was the 271
10 testimony that you contend for you is relevant and for
11 BellSouth is not relevant; right?

12 A No, that is not correct. I do have many years
13 doing this, albeit with SBC. It is still my experience
14 with this process of UNE loop provisioning that does
15 give me some background to talk about this outside
16 Denise Berger's testimonial.

17 Q With respect to the Triennial Review's
18 requirement that the Commission establish a volume in
19 the batch, for the batch hot cut process, AT&T has no
20 specific volume that it contends should be in the batch;
21 correct?

22 A Yes. But again, I believe I have alluded to it
23 needs to be operationally and economically the best
24 number that we can both come to as we're looking to
25 this. We've talked about time frames, four hours. Can

1 BellSouth do 20 in that four hours? Well, the batch
2 could be 80, or the minimum could be 20 in that one
3 hour. But that's what we need to come to together, is
4 what is that minimum for a batch and how long can it be
5 done over.

6 Q Well, if AT&T has no proposed volume for the
7 batch, you don't have any grounds to dispute that 125 is
8 the appropriate volume; correct?

9 A Correct, but with the caveat of what I just
10 said.

11 Q When you talk about the batch provisioning
12 process, Mr. Van De Water, you describe the orders being
13 worked at a specific time. That means working the batch
14 within a time window; correct?

15 A Yes.

16 Q On page 9 of your direct, sir, line 22, you
17 testified that due to the provisioning problems and the
18 high cost of hot cut and backhaul costs, AT&T is not
19 using UNE-L. Do you see that testimony?

20 A This is where we're starting on the bottom of
21 page 9 and going over to 10; is that correct?

22 Q Yes, sir.

23 A I do see it.

24 Q You don't know the backhaul costs to which you
25 referred in that testimony, do you?

1 A No, I do not.

2 Q And the costs for the individual hot cuts to
3 which you referred are the TELRIC rates set by this
4 Commission; correct?

5 A No, not entirely, Ms. Foshee. It's not just
6 the dollar cost, but it is the cost to AT&T as a company
7 when we are having troubles with our customer's service
8 and we're getting blamed for it. That is a cost to us.

9 Q The evidence that you talk about of
10 provisioning problems, that was your evidence from the
11 Denise Berger testimony; right?

12 A Do you have a cite for me to look at?

13 Q Well, I'm just asking, when you say "due to the
14 provisioning problems" in that sentence, the
15 provisioning problems to which you are referring were in
16 Ms. Berger's 271 testimony; right?

17 A Again, not entirely. We were in the market
18 nationwide doing UNE loop orders. This is same process
19 used all over. We've experienced this all over. So
20 it's not -- in other words, no, it's not entirely on
21 Denise Berger's testimonial.

22 Q What evidence other than Denise Berger's -- and
23 I'm a little confused, because I think you're changing
24 your testimony. What evidence in the BellSouth region
25 do you have other than Denise Berger's 271 testimony?

1 A For the specific numbers that were referred to
2 in there and the specific problems for the BellSouth
3 region, yes, I did refer to Denise Berger's testimony,
4 as it did mirror experiences that I knew about as well
5 in other regions.

6 Q Can you turn to page 109 of your presentation,
7 please? You make the statement there that BellSouth has
8 promised that current standards and penalties will
9 ensure performance. Did you read Mr. Varner's testimony
10 filed in this case?

11 A Yes, I did.

12 Q Did you read about all the new measures that he
13 had proposed?

14 A Yes, and I saw that they were changed up here
15 as well. What I'm alluding to on this is that currently
16 the bulk of the standards and performance measures and
17 penalties are wrapped around UNE-P, because that has
18 been the method of choice for a number years, so now we
19 need to look at UNE loop more stringently if that's
20 going to be the process of choice.

21 Q Have you reviewed this Commission's SQM
22 document?

23 A I've seen it.

24 Q Are you aware of the hundreds of UNE loop
25 measures that are contained in that document?

1 A I am.

2 Q Now, Mr. Van De Water, with respect to the
3 alleged operational issues you discuss in your
4 testimony, you have no opinion as to whether those are
5 relevant to the triggers analysis; correct?

6 A I am not the trigger witness, no.

7 Q Now, Mr. Van De Water, you testified on page 59
8 of your direct, lines 10 through 11, that if all UNE-P
9 customers are migrated to UNE-L, significant blocking of
10 trunks connected to the tandem or tandem switching,
11 quote, "can be expected." Do you see that testimony?

12 A I'm there.

13 Q You didn't look at BellSouth's PMAP trunk
14 blockage data before you filed this testimony, did you?

15 A No. I didn't need to.

16 Q And you didn't look at BellSouth's traffic
17 management processes; correct?

18 A I didn't need to.

19 Q And you didn't look at BellSouth's trunk
20 augmentation guidelines; correct?

21 A I didn't need to.

22 Q In fact, you had no empirical data to support
23 your conclusion that blockage can be expected, correct?

24 A Again, my experience is what drives this. The
25 traffic will change if everything is going through the

1 CLEC switches and then into the tandems.

2 Q Well, I think "changing" and "blockage can be
3 expected" are different, are they not?

4 A Well, the change will cause the blocking. That
5 could be expected. I mean, that's what I'm getting at.
6 It's going to be changing from your switches and your
7 tandem -- your trunking to the CLEC's into the tandem.
8 It's going to be a problem. If there's a finding of no
9 impairment and all the traffic then goes -- begins to go
10 over the UNE loop and the CLEC switches, there's going
11 to be problems.

12 Q Well, it's only going to be a problem if you
13 don't augment your trunking network; correct?

14 A It's not just our network, though. It's going
15 to be everybody's.

16 Q Mr. Van De Water, is it your testimony that any
17 increase in traffic over a tandem switching network
18 causes blockage?

19 A No.

20 Q Now, on page 60 of your direct, lines 2 through
21 3, you testified that, quote, "At the very least, the
22 interval to obtain and build out collocation space
23 likely will increase." Do you see that testimony?

24 A Yes, I do.

25 Q You didn't look at any of BellSouth's PMAP

1 collocation data before you filed this testimony, did
2 you?

3 A Actually, I did look at some of it, Ms. Foshee.

4 Q Before you filed your testimony?

5 A I was part of a national team --

6 Q Yes or no, please.

7 A Yes.

8 Q Okay. Can you turn to page 118 of your
9 deposition, please, lines 4 through 6. I asked you in
10 your deposition, "Did you look at any of BellSouth's
11 PMAP collocation data before you made that statement?"
12 And your answer was no. Do you recall that testimony?

13 A Yes.

14 Q Now, on page 60 of your direct, you testified
15 with respect to collocation space that, quote,
16 "Sufficient space may not be available," close quote,
17 for collocation. Do you see that testimony?

18 A Yes, I do.

19 Q You didn't review any specific offices in
20 Florida before you filed that testimony, did you?

21 A No specific offices, no.

22 MS. FOSHEE: We have no further questions,
23 Mr. Chairman. Thank you.

24 CHAIRMAN BAEZ: Ms. Kestenbaum?

25 MS. KESTENBAUM: We have no questions.

1 CHAIRMAN BAEZ: Mr. Feil?

2 MR. FEIL: No.

3 CHAIRMAN BAEZ: Staff?

4 MR. SUSAC: No questions.

5 CHAIRMAN BAEZ: Commissioners?

6 COMMISSIONER JABER: No, none here.

7 CHAIRMAN BAEZ: Thank you, Mr. Van De Water.

8 COMMISSIONER DAVIDSON: Now, Commissioner
9 Jaber, you haven't eaten dinner, have you? Because we
10 haven't.

11 COMMISSIONER JABER: Actually, no, I haven't.
12 You're right.

13 CHAIRMAN BAEZ: As far as we know she hasn't.

14 COMMISSIONER JABER: No, I promise. I promise.

15 CHAIRMAN BAEZ: Next up is Mr. Nilson.

16 MR. O'ROARK: Mr. Chairman, while we're
17 changing witnesses, since I don't think anyone else has
18 questions for Mr. Webber, may he be excused?

19 CHAIRMAN BAEZ: Yes, I believe he can, with
20 our thanks. Thank you.

21 (Witness excused.)

22 CHAIRMAN BAEZ: Someone has left a pair of
23 glasses. One of your witnesses?

24 Mr. Cruz.

25 MR. CRUZ: Mr. Chairman, our witness is ready

1 for cross-examination.

2 CHAIRMAN BAEZ: Thank you, sir. Mr. Meza.
3 Thereupon,

4 DAVID A. NILSON
5 was called as a witness on behalf of Supra Telecom, and
6 having been duly sworn, testified as follows:

7 CROSS-EXAMINATION

8 BY MR. MEZA:

9 Q Good evening, Mr. Nilson.

10 I believe in your presentation, you stated that
11 between December 28, 2003, and sometime in -- February
12 11, 2004, Supra experienced something to the effect of
13 628 trouble tickets; is that correct?

14 A That's correct.

15 Q All right. Where is that testimony in your
16 testimony, your prefiled testimony?

17 A I'm sorry?

18 Q Where -- can you refer to me in your prefiled
19 direct testimony where that statement exists?

20 A My surrebuttal testimony, page 7, lines 12
21 through 19.

22 Q And in that surrebuttal testimony, you
23 specifically refer to 628 trouble tickets, sir?

24 A I did not. I referred to the situation that we
25 encountered. And you asked me about that, I believe, in

1 my deposition. I received a compilation of the data
2 Tuesday morning while I was here in Tallahassee.

3 Q All right. So it wasn't until Tuesday that you
4 obtained the information that you testified about at
5 this hearing today; is that correct?

6 A No, that's not correct.

7 Q Your 628 identification of trouble tickets you
8 did not identify until Tuesday; is that correct?

9 A No. We track this on a daily basis. I
10 received a report that compiled all the information that
11 has been reported on a daily basis since November on
12 Tuesday.

13 Q When did you file your surrebuttal testimony?

14 A January 28th.

15 Q All right. And the data -- the date range that
16 you referred to in your summary went all the way up to
17 February of 2004; is that correct?

18 A That's correct.

19 Q So it wasn't in your surrebuttal testimony, was
20 it, Mr. Nilson?

21 A My surrebuttal testimony talked about the
22 issue. The data that I reported in my presentation
23 documented the specifics.

24 Q Now, you also referred to a date of November
25 24, 2003, where there were something like 200 late

1 go-ahead notifications in your presentation; is that
2 correct?

3 A That's correct.

4 Q Can you point to me anywhere in your prefiled
5 testimony where that statement exists?

6 A This gets into the issue of Mr. Ainsworth's
7 accusation that the --

8 MR. MEZA: I'm sorry, Mr. Chairman. I would
9 like a yes or no answer before he explains --

10 THE WITNESS: I'm sorry. I didn't think that
11 led to a yes or no answer.

12 MR. CRUZ-BUSTILLO: Mr. Chairman, can I just
13 say that sometimes some questions don't lead to yes or
14 no answers.

15 CHAIRMAN BAEZ: Hang on, hang on, hang on. And
16 we're not going to go down this road today, I swear to
17 you. All right? The question was can you point in
18 anywhere in your testimony, Mr. Nilson. You can answer
19 yes or no whether you can point, and then you will be
20 allowed to elaborate.

21 THE WITNESS: (Examining document.)

22 COMMISSIONER BRADLEY: Did you all take a
23 break, Mr. Chairman?

24 THE WITNESS: Yes.

25 BY MR. MEZA:

1 Q Where?

2 A The question starts on page 2, line 1, and
3 continues on to page 3.

4 Q And in that cited testimony, you specifically
5 refer to the date of November 24, 2003, where BellSouth
6 allegedly failed to timely provide approximately 200
7 go-ahead notifications?

8 A That's where we discussed the issue of the
9 timeliness of the go-ahead notices.

10 Q I appreciate --

11 A I did not use the number that you referred to
12 in the testimony.

13 Q And you didn't even use the date, did you?

14 A No. But I'll point out that this report was
15 compiled this week after -- we had expected
16 Mr. Ainsworth's testimony to recant what he said about
17 Supra being the cause of these disruptions in his
18 testimony. And when he repeated it on the stand on
19 Monday, I had the report sent to me on Tuesday.

20 Q So again, Mr. Nilson, in your presentation
21 today, you presented information and data that was
22 created this week?

23 A No. The data was created on November 24th.
24 The report was compiled and sent to me this week.

25 Q All right. So you agree it wasn't anywhere in

1 your testimony; is that right?

2 A No, I don't agree.

3 Q Now, you did include as an exhibit to your
4 surrebuttal testimony approximately 20 go-ahead
5 notifications; is that right?

6 A That's correct.

7 Q Twenty is a lot less than approximately 200; is
8 that right?

9 A That's correct.

10 Q All right. And if we could pull up that
11 e-mail, I want to refer you to one, sir, of January 19th
12 of 2004. This is one of the e-mails that you attached
13 to your surrebuttal testimony, isn't it? And it has my
14 name up there because your counsel e-mailed it to me.

15 A Subject to check, yes.

16 Q And you see that the e-mail was sent on January
17 19th of 2004 at 3:54 p.m.; correct?

18 A Yes.

19 Q And would you agree with me that 3:54 p.m. is
20 during normal business hours; is that right?

21 A Right. But there was a number of e-mails in
22 that exhibit that were sent after 7:00 p.m. at night and
23 another whole group that were sent after 9:00 p.m. at
24 night.

25 Q Thank you, Mr. Nilson. If you could proceed

1 down the e-mail, you see that the due date is January
2 19th of 2004; is that right?

3 A Correct.

4 Q So you would agree with me that this go-ahead
5 notification was sent on the due date and during normal
6 business hours, yet you attached this e-mail as an
7 exhibit to support your contention that BellSouth sends
8 late go-ahead notifications; is that right?

9 A I provided a sample of go-ahead notices, and,
10 yes, sometimes you do notify us during normal business
11 hours.

12 Q So the e-mails that you provided in support of
13 your rebuttal testimony actually helps BellSouth. Is
14 that your testimony?

15 A I'm apparently not trying to hide anything.

16 Q Well, we appreciate it, Mr. Nilson.

17 Also, you would agree with me that at the time
18 of your deposition on February 11, 2004, Supra had
19 converted approximately 13,000 lines from UNE-P to
20 UNE-L; is that right?

21 A That seems to be about the right number.

22 Q All right. And with those 13,000 conversions,
23 you only produced 20, approximately 20 late go-ahead
24 notifications as a surrebuttal exhibit; is that right?

25 A I don't understand that question. I provided a

1 count of go-ahead notices.

2 Q Some which you say are late, and some which you
3 now say today proves BellSouth's case that they submit
4 timely notifications; is that right?

5 MR. CRUZ-BUSTILLO: Objection.
6 Mischaracterization of his testimony.

7 CHAIRMAN BAEZ: Sustained, Mr. Meza. Good
8 try. Ask him again.

9 BY MR. MEZA:

10 Q The go-ahead notifications that you sent to
11 BellSouth, at least from your testimony today, actually
12 included go-ahead notifications that were sent during
13 normal business hours and during -- and on the due date;
14 is that correct?

15 A Yes. Supra never said you were always late.

16 Q Okay. And you agree with me that the go-ahead
17 notifications that you did send to -- that you submitted
18 as an exhibit totaled approximately 20; is that right?

19 A That's correct.

20 Q So of the 13,000 conversions that had taken
21 place at the time of your deposition, you chose to
22 submit 20 go-ahead notifications in support of your
23 testimony; is that right?

24 A That's what I did, yes.

25 Q Okay. And not all of those actually prove that

1 BellSouth submits them late; is that right?

2 A That's right. Like I said, we've never said
3 that you are 100% late all the time, but we did make a
4 claim that you submit go-ahead notices for work that
5 ostensibly was done no later than 4:59 at night beyond
6 7:00 p.m. and beyond 9:00 p.m., and those 20 go-ahead
7 notices do very definitely demonstrate that fact. I'm
8 not quite sure how big a pile we needed to provide to
9 prove the point. I thought what we did provide was
10 sufficient.

11 Q Now, Supra has one switch in the Golden Glades
12 central office; is that right?

13 A Yes.

14 Q Supra has an extension of the Golden Glades
15 switch in the Miami Red Road office; is that right?

16 A Yes.

17 Q And with this switch and the extension of the
18 switch, Supra serves residential end users in Florida;
19 is that right?

20 A I'm sorry. I didn't hear the whole question.

21 Q With the switch in Golden Glades and the
22 extension in Red Road, Supra serves residential end
23 users in Florida; is that right?

24 A Yes.

25 Q In fact, the customers that you serve with this

1 switch and extension reside all the way from Miami to
2 Pensacola, Florida; is that right?

3 A Yes.

4 Q Are you familiar with the term "backhaul of
5 traffic"?

6 A Yes.

7 Q And you agree that backhauling of traffic
8 allows a carrier to serve customers that reside out of
9 the central office where the switch is located?

10 A Yes.

11 Q All right. Does Supra purchase any services
12 from BellSouth for hauling traffic from its switch to
13 areas around Florida?

14 A You may need to be more specific. The answer
15 to your question would be yes and no, but I'm not quite
16 sure --

17 Q The actual -- let me see if I can clarify it.
18 The actual hauling of traffic, not the collocation in
19 its various central offices in which the traffic
20 actually ends up.

21 A Again, there's a yes and no answer to that. We
22 purchase facilities from BellSouth to haul traffic
23 between the Supra switch and the BellSouth switch, as
24 well as between Supra and various other carriers. We do
25 not purchase any facilities from BellSouth to haul

1 traffic between Supra equipment.

2 Q Now, I believe you agree with me that at the
3 time of your deposition, Supra served over 13,000
4 customers from its own switch; is that right?

5 A If that's what I said that day, that was
6 accurate, because I had just come from the morning
7 status meeting.

8 Q In addition to these UNE-L customers, Supra
9 also has UNE-P customers; is that right?

10 A That's correct.

11 Q And Supra doesn't charge its customers a
12 different price depending on how Supra decides to
13 provision service to that customer; is that right?

14 A No. Our products are sold to customers based
15 on the value of the product, not the method we provision
16 the service with.

17 Q So you charge a UNE-L customer the same price
18 you charge a UNE-P customer; is that right?

19 A Yes.

20 Q And are you familiar with Supra's product Total
21 Solutions?

22 A Yes.

23 Q How much is that?

24 A I don't recall what the current price is.

25 Q Would you agree it's about \$27?

1 A That seems reasonable.

2 Q And with that package, you get a couple of
3 calling features, basic local service, and free
4 LATA-wide local; is that right?

5 A At least that much.

6 Q Okay. Are you aware of any UNE-L providers in
7 Florida that provide residential customers with a
8 similar product with similar pricing?

9 A Could you define the term "UNE-L buyers"?

10 Q Providers. Excuse me. UNE-L CLECs that
11 provide to residential customers in Florida a similar
12 product with similar pricing.

13 A No.

14 Q Now, in addition to the switches installed
15 today, Supra also has switches in storage; is that
16 right?

17 A I'm sorry. I didn't hear that.

18 Q Switches in storage.

19 A Yes.

20 Q There are approximately four switches in
21 storage; is that right?

22 A There's exactly four switches in storage.

23 Q And Supra purchased these switches during the
24 Windstar bankruptcy proceeding; is that right?

25 A It was subsequent to the Windstar bankruptcy

1 proceeding.

2 Q And while I'm not asking you the price that you
3 paid, the price that you did pay was substantially less
4 than the list price of those switches; is that right?

5 A Yes.

6 Q And Supra doesn't intend to keep those switches
7 idle; is that right?

8 A No, sir.

9 Q In fact, Supra is collocated, powered up, and
10 ready to serve in 18 BellSouth central offices; is that
11 right?

12 A No.

13 Q Do you remember telling the FCC that?

14 A I'm sorry?

15 Q Do you remember telling the FCC that Supra was
16 ready -- that Supra was collocated, powered up, and
17 ready to serve customers in 18 BellSouth end offices?

18 A Yes.

19 Q Is that still true today?

20 A No.

21 Q Why not?

22 A I believe we're in at least 20 offices at this
23 time.

24 Q So since informing the FCC that you are ready
25 to serve customers because you're collocated in

1 BellSouth's end offices, you've actually expanded your
2 operations; is that right?

3 A That's correct.

4 Q In fact, Supra has spent a considerable amount
5 of money on its UNE-L network; is that right?

6 A Define considerable.

7 Q Millions of dollars.

8 A I'm sorry?

9 Q Million of dollars.

10 A Yes.

11 Q Now, is Supra intending to go out of business?

12 A It's not our intention to do so.

13 Q And you would agree with me that Supra wants to
14 serve all segments of the residential market except for
15 those customers that don't pay their bills; is that
16 right?

17 A Yes.

18 Q Does Supra recognize benefits to the facilities
19 -- excuse me. Does Supra recognize that there are
20 benefits to facilities-based competition?

21 A Yes.

22 Q In fact, you told the FCC, didn't you, that
23 there were certain benefits to such competition; is that
24 right?

25 A Can you refresh my memory?

1 Q Sure. If we could pull up the FCC complaint,
2 please. Page 2.

3 Mr. Nilson, I'm going to highlight the last
4 paragraph, which bleeds over to page 3. And this is the
5 complaint that Supra filed at the FCC against BellSouth.

6 A Which one is that?

7 Q This is the one you filed in July of 2003, or
8 June of 2003.

9 A Is this the one relating to the costs of the
10 hot cut process?

11 Q That's right.

12 A All right. Thank you.

13 Q You would agree with me that in this letter,
14 which we're passing out the original, Supra says that it
15 recognizes the benefits of facilities-based competition;
16 is that correct?

17 A Yes.

18 Q And if you go to page 3, the first full
19 paragraph, you highlight specifically the benefits that
20 you believe exist with facilities-based competition,
21 don't you?

22 A I'm sorry. Where do you want me to look?

23 Q The highlighted part on the screen.

24 For instance, you informed the FCC that by
25 relying on your own switches, Supra is able to stop

1 purchasing many BellSouth UNEs; is that right?

2 A Yes.

3 Q You also advised the FCC that UNE-L gives Supra
4 more direct control over the provision of service to its
5 customers; is that right?

6 A Yes, because certainly at the point at which
7 the only element we're purchasing from BellSouth is the
8 loop, Supra is responsible for doing everything and can
9 effect repairs and change the customer's service at
10 will. That has not always been the case when we're
11 purchasing UNE-P.

12 Q And in your deposition, you told me that Supra
13 believes that UNE-L provides Supra with network
14 efficiency; is that right?

15 A I don't remember that.

16 Q Okay. If we go to page 40, line 25, to 41, of
17 your deposition, please, I asked you, "What are those
18 benefits?" And you state, "The cost of operation,
19 particularly in terms of network efficiency." Do you
20 see that?

21 A Could I see the entire --

22 Q The preceding question?

23 A -- context, because I see some stuff blacked
24 out ahead of that.

25 Q Well, it looks like your counsel blanked out my

1 question.

2 A That means there was obviously an argument
3 going on at that point.

4 MR. CRUZ-BUSTILLO: Maybe you can just give him
5 the whole answer, let him look at line 25 and the next
6 page and let him read the whole answer.

7 MR. MEZA: That's okay. We can move on.

8 BY MR. MEZA:

9 Q Now, you believe that facilities-based
10 competition is preferable to UNE-P; is that right?

11 A (Examining document.)

12 Q I'm asking you a different question,
13 Mr. Nilson.

14 A I'm sorry. I didn't know I answered the first
15 one.

16 Q Sure. You believe that facilities-based
17 competition is preferable to UNE-P; is that right?

18 A There are certain economies of scale that must
19 be met before that's the case. Given the fact that
20 there are sufficient customers to justify the capital
21 investment in the equipment and overcome the fixed costs
22 of implementing a transport network and things of that
23 case, once you've crossed over the breakeven point,
24 yes.

25 Q Do you remember what you told the FCC?

1 A I'm sorry?

2 Q Do you remember what you told the FCC in
3 Supra's complaint?

4 A I would think it was quite similar to that.

5 Q If we could pull up page 2 of the FCC
6 complaint, last paragraph.

7 A The last full paragraph or --

8 Q Yes.

9 A -- the last paragraph?

10 Q The last paragraph that says -- the next one.
11 "Indeed, its ongoing battles to collocate its equipment
12 in BellSouth's central offices at reasonable cost and on
13 reasonable terms have been premised on the notion that
14 facilities-based competition is preferable to relying on
15 the facilities and services of one's principal rival."
16 Do you still agree with that statement?

17 A I certainly do. I don't think it's any secret
18 to anyone in this room that the relationship between
19 Supra and BellSouth has been tenuous at times, and we
20 would rather control our own destiny than to continue to
21 have those issues with you.

22 Q Now, isn't it a fact, sir, that you believe
23 that it is the FCC's desire to migrate CLECs to
24 facilities-based competition?

25 MR. CRUZ-BUSTILLO: Objection. Excuse me.

1 Objection. Calls for a legal conclusion.

2 CHAIRMAN BAEZ: Can you ask it again, because
3 --

4 MR. MEZA: Sure.

5 CHAIRMAN BAEZ: -- I was looking somewhere
6 else.

7 MR. MEZA: Isn't it a fact that Mr. Nilson
8 believes that it is FCC's desire to migrate CLECs to
9 facilities-based competition.

10 CHAIRMAN BAEZ: Ask it a different way,
11 Mr. Meza, if you can.

12 BY MR. MEZA:

13 Q In your interpretation of the various FCC
14 orders that have resulted and that form the basis of
15 your testimony, do you believe that it's the FCC's
16 desire to migrate CLECs to facilities-based competition?

17 MR. CRUZ-BUSTILLO: Mr. Chairman, could I just
18 renew my objection for the record only, but not to upset
19 the proceedings. I'm going to object on the record that
20 it still calls for a legal conclusion.

21 CHAIRMAN BAEZ: No, that question I'm going to
22 allow. Go ahead, Mr. Nilson, in your opinion as a
23 non-lawyer.

24 A Yes. But, of course, we must reflect on the
25 fact that UNE-P is also considered facilities-based

1 competition.

2 Q Now, you agree that Supra is serving
3 residential customers throughout Florida with its
4 switch; is that right?

5 A I --

6 Q Mr. Nilson, it's a yes or no answer.

7 A No.

8 Q You are not serving residential customers in
9 Florida with your switch; is that right?

10 MR. CRUZ-BUSTILLO: Objection. That --

11 A Well, that's different question.

12 Q Are you serving residential customers in
13 Florida with your switch?

14 A Yes, but your original question was am I
15 serving residential customers throughout Florida with my
16 switch, and the answer to that is no.

17 Q You're not serving customers from Miami to
18 Pensacola?

19 A I am, but I'm not serving a single customer in
20 the Verizon region or the Sprint region with my switch,
21 which would have been a necessity to say yes to your
22 first question.

23 Q Okay. And based upon your answer, I believe
24 that you would agree that Supra is capable of serving
25 residential customers in Florida; is that right?

1 A To a certain limited extent, the answer to that
2 question would be yes. And the explanation for that is
3 that we have collocation in Pensacola, up through
4 Jacksonville, Orlando. We don't have large
5 concentrations of customers there. As a matter of fact,
6 our capability of serving customers up in North Florida
7 was initially about 512 customers per office. It might
8 have expanded to about a thousand. The predominant
9 customers that are being served off of that switch are
10 being served in the Southeast LATA.

11 And there's a contractual reason for that.
12 When we obtained the collocation in those North Florida
13 sites, our contract with BellSouth requires that in
14 order for us to obtain that collocation and keep it, we
15 had a certain minimum time frame which we must be
16 providing basic telephone service from the collocation
17 space.

18 Our plans are to augment the network with
19 additional switches, but in order to keep from losing
20 the collocation space that took us five years to get, we
21 had to put in service in Pensacola and Jacksonville and
22 then grow a reasonable scale at a later date.

23 Q And Supra will continue to provide residential
24 customers with service from its switch; is that right?

25 A I didn't hear the last part of your question.

1 Q Is that right? Is that correct, that Supra
2 will continue to provide customers with service,
3 residential customers with service from its switch?

4 A That's our plan as long as it's economically
5 feasible to do so.

6 Q And you don't believe Supra is a trigger
7 company, do you?

8 A I'm sorry?

9 Q You don't believe Supra is a trigger company,
10 do you?

11 A Well, as I said in my presentation, I think
12 BellSouth's filing in Bankruptcy Court last week
13 disqualified us as a trigger.

14 What I said in our testimony was that it does
15 depend on what the definition of market and the market
16 size is. I take the definition that the appropriate
17 market a wire center, at the outside, a rate center. In
18 that case, we would probably be qualified, in my
19 opinion, to be a trigger in the North Dade Golden Glades
20 central office, simply based on the equipment we've
21 deployed and the customers we're serving.

22 You have issued an opinion that we're not going
23 to stay in business, and that would disqualify us from
24 being a trigger.

25 Q And just to make sure everyone knows what we're

1 talking about, BellSouth filed that motion in the
2 context of having the Bankruptcy Court appoint a trustee
3 to run Supra's business; is that right?

4 A There have been so many filings, I'm not sure
5 exactly which one of the adversarial proceedings that
6 particular pleading was filed in.

7 Q So because BellSouth articulated a reason why a
8 trustee needs to be appointed in Bankruptcy Court, you
9 believe that Supra is not a trigger company; is that
10 right?

11 A Well, your statement is you don't expect us to
12 stay in business, and that's one of the requirements for
13 being considered a trigger company.

14 Q So whatever BellSouth says is the way it should
15 be; is that right?

16 A I don't think I ever said that in my entire
17 life. The issue is that BellSouth said Supra was a
18 trigger company, and BellSouth also said that Supra is
19 not going to stay in business. Therefore, I don't see
20 how BellSouth with make the claim that Supra is a
21 trigger company.

22 Q Now, would you agree with me that Supra has
23 used the process that BellSouth describes as the batch
24 hot cut process?

25 A I'm sorry.

1 Q Would you agree that Supra has used BellSouth's
2 batch hot cut process?

3 A Yes. We have attempted to use BellSouth's
4 batch hot cut process. We have, to the best of my
5 knowledge, submitted four 99-loop batches, a total of
6 approximately 400 loops, and in that process, 175 fell
7 out of the process.

8 Q All right. So when you testified in your
9 deposition that you used the batch hot cut process every
10 day, you were incorrect?

11 A We use BellSouth's hot cut process every day.
12 It's not correct that we use BellSouth's batch hot cut
13 process every day.

14 The only place we've actually used the
15 BellSouth batch hot cut process is in the Pembroke Pines
16 central office, which has approximately 82% of lines
17 served on integrated digital loop carrier. And because
18 it was our understanding that BellSouth was providing a
19 batch pre-ordering capability in that process, we did
20 use the batch process in that office just to work
21 through the greater magnitude of the issues that are
22 associated with integrated digital loop carrier. The
23 problems we had with that have led us to use the
24 individual hot cut process in all the other offices.

25 Q And Supra has worked with a project manager to

1 negotiate due dates; is that right?

2 A Yes.

3 Q Now, Supra only orders uncoordinated cuts; is
4 that correct?

5 A Yes, and we would hope that you would do those
6 correctly as well.

7 Q And you would agree with me that BellSouth has
8 worked with Supra regarding Supra's efforts to migrate
9 its lines from UNE-P to UNE-L; is that right?

10 A Yes, you have.

11 Q And Supra and BellSouth have had at least three
12 face-to-face meetings in 2003 to discuss Supra's UNE-L
13 conversions; is that right?

14 A Yes. We've requested more that were denied,
15 but we've had that many, yes.

16 Q And as of February 11, 2004, Supra had migrated
17 over 13,000 lines from UNE-P to UNE-L using either
18 BellSouth's individual or batch hot cut process; is that
19 right?

20 A Yes. I think it would be fair to say that we
21 had moved 13,000 lines using your individual hot cut
22 process.

23 Q And at the time Supra filed direct testimony on
24 December 4th, Supra had converted approximately 2,400
25 lines; is that right?

1 A Say that again.

2 Q At the time that Supra filed direct testimony
3 on December 4th of 2003, Supra had converted
4 approximately 2,400 lines?

5 A That's correct.

6 Q All right. So you would agree that from
7 December 4, 2003, to December 11, 2004 (sic), Supra
8 converted over 10,000 lines from UNE-P to UNE-L; is that
9 right?

10 A Yes.

11 Q Now, isn't it a fact that since your deposition
12 on February 11, 2004, BellSouth has performed over 3,400
13 hot cuts for Supra?

14 A I'm not sure what the exact number is. I was
15 almost willing to say it was more than that, but if
16 that's your number, I'll agree with you on that.

17 Q And today, 664 hot cuts were scheduled, weren't
18 they?

19 A I'm sorry. I wasn't able to attend this
20 morning's meeting, so I don't know what today's schedule
21 was.

22 Q Yesterday, 364 were completed, though, weren't
23 they?

24 A It's my understanding that we've only been
25 submitting -- it's possible. I don't know what

1 yesterday's number was. I've been up here all this
2 week.

3 Q Now, you agree that it's Supra's responsibility
4 to port the number to its switch after BellSouth
5 performs a cut; isn't that right?

6 A Yes, but we do need to be notified that the cut
7 has actually occurred.

8 Q And of the 13,000 lines, or now the 16,000
9 lines that Supra has migrated, you don't know what
10 percentage of those lines experienced no incoming calls
11 because Supra failed to port the number to its switch,
12 do you?

13 A Well, no. I think we would have a huge dispute
14 on that, because you're going to make a claim that we
15 didn't port a number when we received the go-ahead
16 notice well after hours. You're going to tell me that
17 Supra failed to port that number timely, when in fact we
18 know that you stop at a certain time. Our people go
19 home after -- three, four hours after that.

20 And when go-ahead notices come in beyond that
21 time, Mr. Ainsworth's testimony has indicted my company
22 for being at fault. So I don't think we would ever get
23 to a resolution that you and I could agree on as to who
24 was at fault for those after-hours and notifications
25 that came a day or two or three late.

1 Q Of the 16,000 cuts that have been performed,
2 how many times has BellSouth provided Supra a go-ahead
3 notice after 7:00 p.m.?

4 A You know, I don't have the answer to that,
5 largely because we don't have that many people sitting
6 around compiling data to try to prove that the pain
7 we're suffering is actually in a documentable fashion.
8 The data is available. I don't think we have the
9 personnel to have compiled it at this point.

10 MR. CRUZ-BUSTILLO: We would be glad to provide
11 a late-filed exhibit.

12 CHAIRMAN BAEZ: If you're volunteering, in
13 answer to the question.

14 MR. MEZA: I'm perfectly happy with the answer.
15 I don't need a late-filed exhibit.

16 This is my last question, Mr. Chairman. I know
17 everyone is tired. And it's in relation to the exhibit
18 I failed to locate, so we'll wrap up with this.

19 MR. CRUZ-BUSTILLO: Mr. Chairman, can I
20 supplement the record with what we discover from
21 compiling that data?

22 CHAIRMAN BAEZ: I'm sorry?

23 MR. CRUZ-BUSTILLO: Can I supplement the record
24 with --

25 CHAIRMAN BAEZ: You're free to do it.

1 MR. CRUZ-BUSTILLO: Thank you, Chairman.

2 BY MR. MEZA:

3 Q Mr. Nilson, do you remember the series of
4 questions I asked you relating to whether or not a UNE-L
5 CLEC in Florida was offering a residential product that
6 was similar in nature and price to Supra's Total
7 Solution product? Do you remember that?

8 A Yes, I do.

9 Q And I've forwarded to you from FDN's website a
10 product that they're charging 27.95 for. And wouldn't
11 you agree that except for the difference that the FDN
12 product doesn't provide for free LATA-wide local, the
13 two products -- this product and Supra's Total Solution
14 product are similar?

15 A Well, it's not the same product as Total
16 Solution. It's \$4.95 a month more than Total Solution.

17 Q I'm not including the free LATA-wide local. If
18 you take out the free LATA-wide local, they're pretty
19 similar, aren't they?

20 A Well, they're not the same product. And I
21 don't know how long this product has been on the
22 market. I see it's copyrighted 2003. But it is not the
23 same product.

24 Q But they're similar; correct?

25 A Well, I think there's a lot of products that

1 provide local telephone service that are similar,
2 Mr. Meza.

3 Q So you believe that a UNE-L provider can offer
4 the same product at the same pricing that you can offer
5 as a UNE-P provider; is that right?

6 A Well, this is not the same price, sir.

7 MR. MEZA: I have no further questions.

8 CHAIRMAN BAEZ: Staff, you're reserving, or --

9 MR. SUSAC: No questions.

10 CHAIRMAN BAEZ: No questions? Commissioners?

11 COMMISSIONER JABER: No questions, Chairman.

12 MR. MEZA: Mr. Chairman, I'm sorry. I --

13 COMMISSIONER DAVIDSON: I've actually got
14 about an hour's worth.

15 CHAIRMAN BAEZ: You've got about an hour's
16 worth? All right, Commissioner Davidson, have at it.

17 Mr. Meza, you --

18 COMMISSIONER JABER: Yeah, but now I want
19 dinner, Commissioner Davidson. That's fine.

20 MR. MEZA: I would like to mark this as the
21 next exhibit, please.

22 COMMISSIONER BRADLEY: I don't have any
23 questions.

24 CHAIRMAN BAEZ: The FDN?

25 MR. MEZA: Yes, sir.

1 CHAIRMAN BAEZ: I'm sorry, Commissioner
2 Bradley. What was that?

3 COMMISSIONER BRADLEY: I said I don't have any
4 either.

5 CHAIRMAN BAEZ: Thank you, Commissioner
6 Bradley.

7 The FDN? I'm sorry.

8 MR. MEZA: Yes, sir, the FDN website page.

9 MR. CRUZ-BUSTILLO: And we have no objection.

10 CHAIRMAN BAEZ: And you have no objection.
11 That's music, music.

12 We'll mark that Exhibit 117.

13 (Exhibit 117 was marked for identification.)

14 CHAIRMAN BAEZ: We're going to start tomorrow
15 at nine o'clock again, and we are -- what am I showing?
16 We're going to start with witness Gillan.

17 And can someone clear up for me, the only -- of
18 the three witnesses that I was showing, any one of the
19 parties reserving, the only one for which there's any --
20 the ones for which there are questions are Mr. Reith and
21 Mr. Dickerson; correct?

22 MS. FOSHEE: I'm not sure anyone had anything
23 for Reith.

24 MR. MEZA: I don't believe we had anything for
25 Mr. Reith.

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CHAIRMAN BAEZ: Nobody's got questions for Mr. Reith? Okay.

MS. FOSHEE: I think it was just Mr. Dickerson.

CHAIRMAN BAEZ: Okay. Mr. Dickerson.

All right. Thank you all. We are in recess until tomorrow at 9:00.

(Proceedings recessed at 8:36 p.m.)

(Transcript continues in sequence in Volume 27.)

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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 3738 through 3873 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 2nd day of March, 2004.

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