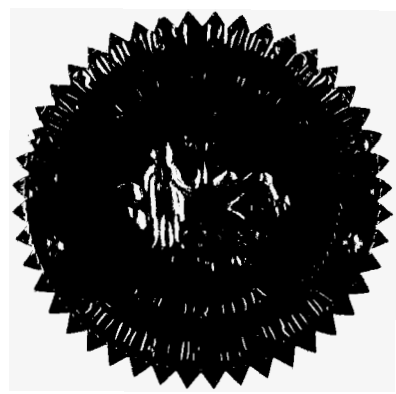


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 031046-TP

In the Matter of:

PETITION AND COMPLAINT OF AT&T
COMMUNICATIONS OF THE SOUTHERN
STATES, LLC AGAINST BELLSOUTH
TELECOMMUNICATIONS, INC. AND
BELLSOUTH LONG DISTANCE, INC.
FOR ALLEGED ANTICOMPETITIVE
PRICING OF LONG DISTANCE
SERVICE.



ELECTRONIC VERSIONS OF THIS TRANSCRIPT ARE
A CONVENIENCE COPY ONLY AND ARE NOT
THE OFFICIAL TRANSCRIPT OF THE HEARING,
THE .PDF VERSION INCLUDES PREFILED TESTIMONY.

PROCEEDINGS: AGENDA CONFERENCE
ITEM NO. 4

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

DATE: Tuesday, July 6, 2004

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

REPORTED BY: TRICIA DEMARTE, RPR
Official FPSC Reporter
(850) 413-6736

1 PARTICIPATING:

2 TRACY HATCH, ESQUIRE, representing AT&T
3 Communications of the Southern States, LLC.

4 HARRIS "HANK" ANTHONY, ESQUIRE, representing
5 BellSouth Long Distance, Inc.

6 NANCY WHITE, ESQUIRE, representing BellSouth
7 Telecommunications, Inc.

8 BETH KEATING, ESQUIRE, and JASON ROJAS, ESQUIRE,
9 representing the Florida Public Service Commission Staff.

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

P R O C E E D I N G S

CHAIRMAN BAEZ: We'll reconvene agenda conference.

3 We are on Item 4, Mr. Rojas.

4 MR. ROJAS: Commissioners, Item 4 is staff's
5 recommendation regarding several motions in this docket. And
6 counsel for AT&T has asked to comment.

7 CHAIRMAN BAEZ: Mr. Hatch.

8 MR. HATCH: It's their motion, but if you want me to
9 start, that's fine.

10 CHAIRMAN BAEZ: Again, these motions haven't come
11 before us before. It's just there's, like, I counted four or
12 five, so I don't even know --

13 MR. HATCH: Issue 1 is BellSouth's motion to dismiss.
14 I think that's where we start --

15 CHAIRMAN BAEZ: And forgive me --

16 MS. WHITE: No, it's okay.

17 CHAIRMAN BAEZ: -- it's a tough --

18 MS. WHITE: Actually, my motion was the only one
19 that's been recommended to be granted, so I'd just like to make
20 that point.

21 CHAIRMAN BAEZ: You had to get that in, didn't you?

22 MS. WHITE: I had to get that in with Mr. Anthony
23 here.

24 Nancy White for BellSouth Telecommunications. The
25 Issue 1 has to do with whether the Commission should grant

1 BellSouth Telecommunications' motion to dismiss AT&T's
2 petition. We strongly support the staff's recommendation on
3 this issue. We believe that AT&T's complaint has a lot of
4 allegations but very little fact. So let's talk about the
5 facts in this case.

6 The promotion that AT&T is complaining of was filed
7 by BellSouth Long Distance, not by BellSouth
8 Telecommunications. The fact is that the discount offered in
9 the promotion is on services offered by BellSouth Long
10 Distance, not BellSouth Telecommunications. The fact is that
11 no BellSouth Telecommunications service is discounted in
12 connection with the promotion complained of in AT&T's petition.
13 All BellSouth Telecommunications services are being sold at
14 tariffed rates, and BellSouth is being paid tariffed rates for
15 those services.

16 The statute section that AT&T relies upon,
17 364.051(5)(c), is irrelevant to this matter. That is a statute
18 that sets out the cost standard for nonbasic services. It does
19 apply to BellSouth Telecommunications because it applies to
20 ILECs who have elected price regulation. BellSouth
21 Telecommunications is an ILEC who has elected price regulation,
22 but it only applies to nonbasic services, and switched access
23 service is specifically excluded from the definition of
24 nonbasic services. And as I said before, any nonbasic services
25 required as part of the BellSouth Long Distance promotion are

1 being sold by BellSouth Telecommunications at tariffed rates.

2 Sections 272 of the Telecommunications Act, federal
3 Telecommunications Act governs the relationship between
4 BellSouth Telecommunications and BellSouth Long Distance. No
5 allegations have been made that there have been any violations
6 of Section 272. The structure of BellSouth Long Distance is
7 not the choice of BellSouth Corporation. It is a requirement
8 of law. BellSouth Long Distance and BellSouth
9 Telecommunications are not acting as one to provide this
10 promotion.

11 As for AT&T's demand that access charges be reduced,
12 that is covered by the Florida Statutes which have proceedings
13 in place to deal with that and, in fact, which are going on
14 now. It cannot just unilaterally be done at the request of
15 AT&T. The facts I've stated are uncontroverted by AT&T. There
16 are no close calls here. AT&T has no case against BellSouth
17 Telecommunications. There is no issue of material fact, and
18 there's no cause of action stated. And for those reasons, the
19 Commission should grant BellSouth Telecommunications' motion to
20 dismiss or, in the alternative, motion for summary judgment.
21 Thank you.

22 CHAIRMAN BAEZ: Mr. Hatch.

23 MR. HATCH: Commissioners, my name is Tracy Hatch
24 appearing on behalf of AT&T Communications of the Southern
25 States, LLC. Obviously I disagree with staff's recommendation.

1 should note initially that staff's recommendation does not
2 relay or comment or acknowledge the core factual allegation
3 that is at the heart of AT&T's complaint here.

4 The staff recommendation talks at great length about
5 the 1-cent promotion. And, yes, we are complaining about the
6 1-cent promotion that BellSouth Long Distance is providing.
7 What they don't acknowledge is that at the core of our
8 complaint as listed in our petition and in our complaint is
9 that that 1-cent promotion is offered in conjunction with
10 BellSouth local service. You cannot have that 1-cent promotion
11 unless you're a subscriber to BellSouth's local service in one
12 plan or another. And it's that inextricable connection that
13 forms the core of our allegation that they are acting as one,
14 and that they're attempting to -- that BellSouth Corp through
15 its affiliates, BellSouth and BellSouth Long Distance, are
16 attempting to do what by virtue of 364.051(5)(c) they cannot
17 do. It's simply by virtue of a corporate separation, a
18 corporate structure that allows them to accomplish this.

19 If BellSouth Telecommunications was providing toll,
20 which it does -- there's no dispute that they provide toll
21 today. They have always done it through intraLATA; now they
22 have the authority to do it on an interLATA basis. Now, we can
23 get into the 272 arguments later, but nonetheless, BellSouth
24 provides toll today. Toll is the nonbasic service that is at
25 issue with respect to my arguments about 364.051(5)(c).

1 BellSouth in the provision of its toll service by
2 virtue of that statutory provision could not provide the 1-cent
3 promotion because it would be priced below the cost to me as a
4 nonopoly component of the toll service that I provide in
5 competition. That's the core of AT&T's complaint. Staff's
6 recommendation does not delve into that at all. They just
7 overlooked that somehow.

8 Now, by virtue of BellSouth Long Distance being a
9 separate corporation, they are now offering this 1-cent
10 promotion. Now, the staff says, well, 364.051 doesn't apply to
11 BellSouth Long Distance because it's not an ILEC. I would
12 agree if BellSouth Long Distance were just any other IXC.
13 Unfortunately, it is not. It is a corporate affiliate of
14 BellSouth Long Distance. They are both wholly owned
15 subsidiaries of BellSouth Corp. By virtue of that structure,
16 they almost cannot act in contravention of each other. They
17 almost must act in concert with each other and, in fact, they
18 do. Their tariff offering here is -- I mean, they're joined at
19 the hip with respect to this promotion. It's not just the Long
20 Distance promotion, it is also the local service that you must
21 buy in order to get it. That is the core of our complaint.
22 That is a factual allegation that we have made. There are
23 others, but as the staff correctly notes in its recommendation,
24 the only way you can dismiss our complaint is if you assume all
25 of our facts to be absolutely true and as a pure matter of law

1 those facts cannot support any possible legal remedy. And I
2 would submit to you that what we have argued at the core of our
3 complaint is that they are acting together, and together they
4 are accomplishing what BellSouth cannot on its owns as a matter
5 of law.

6 That's the allegation. That's the law under which
7 I'm approaching it. And I would respectfully request that
8 BellSouth's motion to dismiss be denied.

9 CHAIRMAN BAEZ: Thank you, Mr. Hatch. Commissioner
10 Bradley.

11 COMMISSIONER BRADLEY: For a question to staff.

12 CHAIRMAN BAEZ: Go ahead.

13 COMMISSIONER BRADLEY: Staff, the allegation has been
14 made that you all have overlooked certain components of
15 Mr. Hatch's argument. Would you respond to that, please. Did
16 you all in fact overlook certain components of his argument?

17 MS. KEATING: Commissioner, I respectfully disagree
18 with Mr. Hatch. We recognize that that's part of the argument.
19 The problem that we had in analyzing it is that we don't
20 believe that AT&T made that connection as far as making it a
21 full and complete allegation in its complaint and didn't
22 translate it into what violation of law had occurred and a
23 violation of law that the Commission has jurisdiction to
24 address. And that's part of the reason, frankly, Commissioner,
25 we had difficulty with this pleading, and that's why we're

1 recommending as part of our recommendation that, you know, the
2 motion to dismiss be granted, but that AT&T be given some leave
3 to perhaps clarify some of the allegations and alleged
4 violations that it's put forth.

5 But we believe that -- we had difficulty with that
6 because we didn't believe it was translated into an actual
7 allegation of a violation of statute or other law that the
8 Commission is charged with addressing.

9 COMMISSIONER BRADLEY: Thank you.

10 CHAIRMAN BAEZ: Commissioner Deason.

11 COMMISSIONER DEASON: Well, I guess I have a question
12 for staff. You're saying that the pleading is deficient and
13 that it should be dismissed, is that correct, with leave to
14 amend or refile?

15 MS. KEATING: Yes, Commissioner, in a nutshell, not
16 just deficient as a procedural matter, but we believe that
17 there may be -- there is potential that allegations could be
18 made if properly pled.

19 COMMISSIONER DEASON: Well, I guess I'm having
20 difficulty. What was failed to be alleged that should have
21 been alleged to persevere against a motion to dismiss?

22 MS. KEATING: We had difficulty following exactly
23 what it was that AT&T was alleging had occurred and how
24 whatever it was they were alleging was a violation of any state
25 statute that the Commission is charged with addressing. If

1 T&T could come back and lay out perhaps what it is exactly
2 hat they allege has occurred and then tie that back to some
3 aw that the Commission is charged with addressing, then I
4 hink that perhaps there might be a different outcome.

5 COMMISSIONER DEASON: Well, did staff recognize the
6 possibility that there could be some type of a tie arrangement
7 or linking arrangement between one entity and another entity
8 such that the more regulated entity can overcome and achieve
9 something that it couldn't on its own? I mean, do you dismiss
10 that as a possibility, or is that a possibility that you
11 recognize could exist, it just depends upon the allegations and
12 the facts?

13 MS. KEATING: I think that it is a possibility I
14 would hate to preclude based on just what was pled here. I
15 think it's a possibility, yes, Commissioner.

16 CHAIRMAN BAEZ: Commissioner Davidson.

17 COMMISSIONER DAVIDSON: Thank you, Chairman.
18 Mr. Hatch, you stated that BellSouth Telecom and BellSouth Long
19 Distance are acting together to accomplish what BellSouth
20 Telecom could not do alone.

21 MR. HATCH: That's correct.

22 COMMISSIONER DAVIDSON: Let's take the two critical
23 elements of that statement. Explain how BellSouth and
24 BellSouth Long Distance are acting together.

25 MR. HATCH: If you look at the tariff that was

1 attached to our petition that lays out and describes the 1-cent
2 promotion, that tariff says that in order to be eligible for
3 the 1-cent promotion, the subscriber to the 1-cent promotion
4 must also subscribe to BellSouth's CompleteChoice plan,
5 BellSouth's Area Plus plan or flat rate residential individual
6 lines. It is hard to imagine any other way in which they could
7 be even more acting in concert. Those two are tied absolutely
8 together. BellSouth Long Distance couldn't just do that on its
9 own. It would have to do that in concert.

10 COMMISSIONER DAVIDSON: Well, that was the next
11 prong, to accomplish what BellSouth could not do alone. So
12 again, even risking the sake of repetition, what is it that
13 BellSouth could not do alone that AT&T contends it's now able
14 to do?

15 MR. HATCH: If you look at 364.051(5)(c) --

16 COMMISSIONER DAVIDSON: Cite again, please.

17 MR. HATCH: 364.051(5)(c) --

18 COMMISSIONER DAVIDSON: Got it.

19 MR. HATCH: -- that language says that the price
20 charged to a consumer for a nonbasic service -- the nonbasic
21 service at issue here is toll service -- shall cover the direct
22 cost to providing the service and shall, to the extent a cost
23 is not included in the direct cost, include as an imputed cost
24 the price charged by the company to competitors for any
25 monopoly component used by a competitor in the provision of the

1 same or functionally equivalent service.

2 Now, the way that works out for me is BellSouth in
3 provision of its toll service has to cover in the price of its
4 toll service its direct costs and impute the monopoly
5 components that it charges to others. The monopoly component
6 in this instance is switched access charges. AT&T in provision
7 of toll service buys originating and terminating switched
8 access from BellSouth.

9 COMMISSIONER DAVIDSON: Pause just there for a
10 second. So AT&T contends BellSouth has to cover its direct
11 cost and also address imputed costs related to the monopoly
12 component here, access charges.

13 MR. HATCH: Correct.

14 COMMISSIONER DAVIDSON: Does AT&T allege that in its
15 petition?

16 MR. HATCH: Yes, I believe that I do. Obviously
17 staff takes a different view.

18 THE WITNESS: In your petition, you argue
19 364.051(5)(c) and 364.01(4)(g) to -- for the proposition that
20 it's our obligation to ensure that all providers of
21 telecommunications services are treated fairly by preventing
22 anticompetitive behavior. Articulate again, and again I
23 apologize if you're having to be repetitive, the
24 anticompetitive behavior that AT&T is alleging.

25 MR. HATCH: The anticompetitive behavior is that if

1 you look at a pure economic standard of predatory pricing --
2 predatory pricing is by definition below the provider's cost of
3 the service. Now, if you look at BellSouth Long Distance and
4 BellSouth Telecommunications as affiliates of a corporate whole
5 BellSouth Corp, BellSouth in its provision of switched access,
6 its cost for that is very, very low. It's in the tenths of
7 cents. The rate that we essentially used as an equivalency in
8 our complaint is the recip comp rate or the interconnection
9 rate. Essentially that is the rate that the Commission has
10 determined is the cost-based rate for the use of the facilities
11 for termination, and then there would also be the originating
12 side, it would be an equivalent cost. Now, that's in the
13 tenths of cents.

14 The price that BellSouth charges for the use of those
15 facilities to IXCs is about 4.6 cents a minute roughly for both
16 ends. And so if you look at BellSouth Long Distance and a
17 1-cent promo, the 1 cent per minute is below the relevant
18 access charges that it pays, but it is above the cost to
19 BellSouth in the provision of access.

20 COMMISSIONER DAVIDSON: So it's below the 4.6
21 cents you allege, but above its actual cost.

22 MR. HATCH: Correct. And so a pure predatory pricing
23 allegation wouldn't necessarily succeed. Now, my point is it's
24 anticompetitive because it creates a price squeeze. It creates
25 a price that I can't match. A 1 cent a minute is profitable to

1 BellSouth Corp at the end of the day. It is not profitable
2 under any circumstances to AT&T.

3 COMMISSIONER BRADLEY: Mr. Chairman.

4 MR. HATCH: We must eat the loss, but there's no
5 loss --

6 COMMISSIONER DAVIDSON: Just one final question on
7 this. Is it AT&T's allegation that by doing this BellSouth
8 Corporation is discriminating between how it treats its long
9 distance arm versus how it treats other long distance
10 providers?

11 MR. HATCH: Not in a pure sense, no. The
12 discrimination claim that I raised in citing 364.08, .09, and
13 .10 have to do with whether, in fact, access charges are paid
14 by BellSouth Long Distance to BellSouth. If they are not at
15 all paid, then we have a discrimination issue. If they are
16 paid, then we have an anticompetitive issue but not necessarily
17 a discrimination issue. But these are all factual allegations
18 that would otherwise be explored in the proceeding.

19 COMMISSIONER DAVIDSON: And one final question -- I
20 apologize, Chairman -- for staff. Accepting everything in
21 AT&T's petition as true, which we must under the applicable
22 standard, is there no reading of that petition that could
23 allege any violation of law? We may not find it ultimately to
24 be supported, but is there no reading of the petition that
25 would in the first instance allege a violation?

1 MS. KEATING: In my opinion, Commissioner, no. But
2 again, staff has indicated that we think there is an
3 opportunity if given more chance to plead its case that a cause
4 of action could be stated. And I recognize that the standard
5 for dismissal is high. But we really struggled with this and
6 had difficulty tying back what Mr. Hatch is saying to a
7 violation of law that the Commission has jurisdiction to
8 address. Part of the issue, particularly with the 364.01(4)(g)
9 argument, is I have a concern about jurisdiction in the context
10 of how it's applied to an IXC, and that was largely how it
11 appeared to be argued.

12 COMMISSIONER DAVIDSON: Staff never has concerns
13 about jurisdiction.

14 MS. KEATING: That was where we got hung up with that
15 argument was that it appeared to be directed primarily at the
16 actions and activities engaged in by BellSouth Long Distance
17 primarily, and we didn't feel that the petition tied in
18 whatever acting in concert had been engaged in back to that. I
19 mean, that was one area that we -- it was just really hard to
20 tie it back in, but that's not to say we -- there's not an
21 argument that could be made the other way.

22 CHAIRMAN BAEZ: Commissioner Bradley, a question.

23 COMMISSIONER BRADLEY: Yes, for a question of staff
24 Statutorily what -- how does the statute define promotion
25 versus telecommunications service, telecommunications promotion

1 and -- how does it differentiate between a telecommunications
2 promotion and a telecommunications service?

3 MS. KEATING: There is no definition in the statute
4 for a telecommunications promotion. It is typically something
5 that is a short-term service that's provided usually in an area
6 that's seeing a particular amount of competition. But it's not
7 specifically defined separate and apart from a service.

8 COMMISSIONER BRADLEY: So then would you say,
9 generally speaking, a service is an action that is not short
10 term but generally long term or intermediate?

11 MS. KEATING: Not necessarily. No, sir, I would not
12 say that telecommunications service is time limited one way or
13 the other.

14 COMMISSIONER BRADLEY: Okay. Mr. Hatch, I'd like to
15 ask you a question. You made the statement that BellSouth is
16 offering this service below cost, this promotion.

17 MR. HATCH: That goes back to the discussion I had
18 with Commissioner Davidson.

19 COMMISSIONER BRADLEY: Did you make that statement,
20 yes or no?

21 MR. HATCH: In part yes, in part no.

22 COMMISSIONER BRADLEY: Yes or no?

23 MR. HATCH: Yes. But let me explain that statement.

24 COMMISSIONER BRADLEY: Okay. Now, let me ask this
25 question. What is there that's preventing -- if BellSouth is

1 offering this promotion below cost to consumers, what is there
2 that prevents AT&T from doing -- from reciprocating?

3 MR. HATCH: BellSouth is not offering it to other
4 LECs below cost. That's the whole point of my complaint.

5 COMMISSIONER BRADLEY: Okay. My point is this
6 though. If BellSouth is below cost, then that means that AT&T
7 could go below cost and also offer the promotion and you have
8 parity. Both of you would be losing money then; right?

9 MR. HATCH: We can all sell it --

10 COMMISSIONER BRADLEY: And the customers would be
11 benefitting --

12 MR. HATCH: -- at a loss and make it up on volume.
13 Commissioner Bradley, let me respond to you this way. It is
14 not below BellSouth's cost.

15 COMMISSIONER BRADLEY: You said it was.

16 MR. HATCH: It's not -- it goes back to my question
17 from Commissioner Davidson. It's -- I pay 4.6 cents a minute
18 to BellSouth when I buy access. If I charge 1 cent a minute, I
19 lose money on every call. BellSouth Long Distance, even if you
20 assume for sake of argument that it is paying the same switched
21 access charges that I am to BellSouth, at the end of the day it
22 doesn't matter to BellSouth Corp, whose financials are truly at
23 issue, because it is financially indifferent to BellSouth Long
24 Distance and to BellSouth Corp if BellSouth Long Distance sells
25 it at a loss because BellSouth Telecommunications makes money

1 on it. Their cost is tenths of a cent, and at 1 cent a minute,
2 they're making money on every call. I am not but BellSouth is.

3 COMMISSIONER BRADLEY: Okay. Then factor in AT&T
4 Long Distance and AT&T Corp. How do you reconcile your ability
5 to be profitable if you use both of your corporations?

6 MR. HATCH: The difference is, is I don't own a
7 legacy monopoly local network. And that's --

8 COMMISSIONER BRADLEY: That's not my question.

9 MR. HATCH: That's essentially what your question --

10 COMMISSIONER BRADLEY: But that's not my question.
11 My question is, use the same example for AT&T that you just
12 used for BellSouth, and then give me some numbers with respect
13 to costs and your ability to be profitable.

14 MR. HATCH: AT&T in order to be profitable must
15 charge a rate that covers its cost. It must cover its direct
16 expenses, its indirect expenses.

17 COMMISSIONER BRADLEY: Is that AT&T Corp or AT&T Long
18 Distance?

19 MR. HATCH: That's AT&T Long Distance.

20 COMMISSIONER BRADLEY: Okay. But --

21 MR. HATCH: AT&T --

22 COMMISSIONER BRADLEY: -- we're comparing BellSouth
23 Corp with AT&T -- with BellSouth Long Distance, and you're
24 saying that -- you're using both companies in order to arrive
25 at a 1-cent promotion that's profitable -- harmful to AT&T Long

1 Distance. But now use that same analogy and don't just use
2 AT&T Long Distance, use AT&T Long Distance and AT&T Corp, and
3 then give me a figure and tell me -- let's have that
4 discussion.

5 MR. HATCH: When AT&T Long Distance loses money on
6 every call, AT&T Corp loses money on every call. When
7 BellSouth Long Distance loses money on every call, AT&T Corp by
8 virtue of BellSouth local makes money on every call, so at the
9 end of the day BellSouth Corp doesn't care. It's only in how
10 much money it makes.

11 COMMISSIONER BRADLEY: What, in your opinion, is
12 the -- I know that you all have studied this promotion. What's
13 the duration of the promotion in general?

14 MR. HATCH: I understand the duration I believe
15 typically for promotions is three months.

16 COMMISSIONER BRADLEY: What is there that prevents
17 AT&T from offering the same promotion?

18 MR. HATCH: If AT&T offered the same promotion, it
19 would lose money because it's paying switched access charges.

20 COMMISSIONER BRADLEY: But you just said that
21 BellSouth is also losing money.

22 MR. HATCH: BellSouth Long Distance on paper may be
23 losing money. BellSouth local, to whom it pays access charges,
24 for sake of argument, is making money.

25 COMMISSIONER BRADLEY: How do you know?

1 MR. HATCH: Because if you assume that BellSouth Long
2 Distance is paying 4.6 cents a minute originating and
3 terminating --

4 COMMISSIONER BRADLEY: Well, let's not assume. We
5 need factual information.

6 MR. HATCH: I cannot tell you of my own personal
7 knowledge that BellSouth makes money. I can only assume that
8 they're making a lot of money at 4.6 cents a minute because the
9 Commission has determined that its cost is, what, about .27
10 cents a minute I believe is the number that we came up with.
11 So at .27 cents for the cost to BellSouth to provide switched
12 access, at 1 cent a minute they're making a good chunk of
13 change.

14 For AT&T to pay BellSouth 4.6 cents for every minute,
15 if I offered a 1 cent per minute rate, I'm losing 3-plus cents
16 on every call.

17 MR. ANTHONY: Mr. Chairman, Hank Anthony on behalf of
18 BellSouth Long Distance, if I might be heard. I think that
19 BellSouth Long Distance had some information that it submitted
20 in its motion for summary judgment. I realize it goes to Issue
21 2, but I think it also helps to answer some of Commissioner
22 Bradley's questions, if I might.

23 CHAIRMAN BAEZ: Go ahead, Mr. Anthony.

24 MR. ANTHONY: All right. Thank you. This discussion
25 has assumed a lot of facts about BellSouth Long Distance

1 providing service below its cost. AT&T alleges that BellSouth
2 Long Distance and BellSouth Telecommunications have acted in
3 concert. We think and we've submitted papers that we think
4 demonstrate that they have not acted in concert, but even if we
5 had, which again we disagree, we have submitted uncontroverted
6 evidence that we cover costs every month that we offered this
7 promotion.

8 We filed the affidavit of James Lauter who showed,
9 and AT&T has not controverted this, there's no fact -- these
10 are facts that are irrefuted, that BellSouth Long Distance does
11 cover costs. And what is missing here is the fact that
12 BellSouth Long Distance in connection with this penny promotion
13 also charges a monthly recurring charge of \$3.95. And when you
14 combine that \$3.95 that each customer who takes this promotion
15 pays during the promotional period and thereafter and you
16 combine it with the penny that each customer pays for each
17 minute of long distance, we showed that based on the actual
18 usage of the customers we more than cover the access costs that
19 AT&T is complaining about. That evidence is uncontroverted
20 here.

21 Moreover, if you look at the average life of the
22 customer, and of course, we don't have that because they
23 haven't been on this promotion, but if you look at the typical
24 average life of our customers, which has also been submitted in
25 our affidavit, you'll see that the rate after the first three

1 months goes to 5 cents a minute. And when you combine the 5
2 cents with the typical usage during that subsequent period of
3 time with the \$3.95 monthly recurring charge, that again we
4 more than cover access costs in every time period that could
5 possibly be relevant to AT&T's complaint. We do cover costs.
6 This is a nice theoretical discussion that AT&T has submitted
7 to you, but it's simply factually groundless.

8 Moreover, in discussions with Commissioner Bradley
9 there was a discussion about AT&T and could it offer services
10 below its cost. Well, in our motion for summary order, we
11 demonstrated, taken off of AT&T's Web site, that they do offer
12 services. They had a promotional offer where they offered
13 customers 30 free minutes of long distance calling a month.
14 Today, they have a promotional offering where they offer 60
15 free minutes for six months with no monthly recurring charge
16 unlike BellSouth Long Distance.

17 So I simply say that to say, Commissioner Bradley,
18 that you are right, others can do what AT&T alleges we do, but
19 we don't do what they allege. We cover our costs every month.
20 Thank you.

21 MR. HATCH: If I may.

22 CHAIRMAN BAEZ: Mr. Hatch, you were not finished.

23 MR. HATCH: These are all, including the affidavit
24 submitted, all go back and forth as to the factual allegations
25 in our complaint. They cannot be used as a means to dismiss

1 our complaint because we're fighting about what the facts are.

2 MR. ANTHONY: I respectfully disagree with Mr. Hatch.
3 We fought a motion for summary order. And the standard there
4 is that we're permitted to file facts, and if those facts show
5 that there's no material issue of fact -- and AT&T has not
6 refuted them, so those are the only facts in the record. There
7 are allegations that they filed, but no facts. We filed an
8 affidavit that has no refutation whatsoever. Then those show
9 that there are no material issue of fact, and it shows that we
10 are entitled to judgment as a matter of law. That's the
11 standard for a motion for summary order or summary judgment.

12 MR. HATCH: I would just point out as a curious
13 annotation to that, in the staff recommendation, they deny
14 everybody's motions for summary final order because there are
15 disputes of fact.

16 MS. WHITE: I don't believe that's correct.

17 CHAIRMAN BAEZ: Now, now, now, now, now, now, now.

18 MS. WHITE: Oh, that's right, motion to dismiss.
19 You're right.

20 CHAIRMAN BAEZ: If ever there were disagreements;
21 right?

22 Commissioners, any other questions?

23 COMMISSIONER JABER: I have one of Mr. Hatch.

24 CHAIRMAN BAEZ: Okay.

25 COMMISSIONER JABER: Now that we've seen staff's

1 recommendation and you've digested the difficulty as
2 articulated by staff that they've had in terms of recommending
3 a vehicle for us to entertain the concerns you've raised, are
4 you willing to voluntarily withdraw your pleading with the
5 understanding that you apparently have a different -- you have
6 a new opportunity to file a different clearer petition?

7 MR. HATCH: If it is your wish for me to withdraw and
8 refile the same complaint, I'll be glad to do that.

9 COMMISSIONER JABER: The same complaint, Mr. Hatch?
10 I think we're talking past each other.

11 MR. HATCH: It will be far more extensive. It will
12 not be better. The facts --

13 COMMISSIONER JABER: I can't believe you just said
14 that.

15 MR. HATCH: The facts that I allege are the facts
16 that I allege. They're clearly set forth at the very least in
17 Paragraph 8 of my complaint. The law applicable is in
18 Paragraph 7.

19 COMMISSIONER JABER: Mr. Hatch, that's fair. Let me
20 back up and bring us back to where we need to be, I think. Now
21 that you've seen staff's recommendation and you've taken into
22 account the areas that they've had difficulty understanding, in
23 light of the fact that you may have an opportunity to refile
24 something, is that an opportunity you would like to take by
25 withdrawing your original petition, or would you like us to

1 wrote it out?

2 MR. HATCH: Madam Chairman --

3 COMMISSIONER JABER: No, I'm a Commissioner. He's
4 the Chairman.

5 MR. HATCH: Oh, I'm sorry. Mr. Chairman, Madam
6 Commissioner.

7 COMMISSIONER JABER: That's the first time that
8 happened.

9 MR. HATCH: Some habits just die hard.

10 COMMISSIONER JABER: I haven't had that problem just
11 so you all know.

12 CHAIRMAN BAEZ: Did someone call my name?

13 COMMISSIONER JABER: Do you understand the question,
14 Mr. Hatch?

15 MR. HATCH: Yeah. Here's what I will do. At this
16 point I will take a voluntary dismissal of my complaint. You
17 can expect it back fairly soon. I would request since this has
18 been hanging out there a long time -- and I'm not throwing
19 stones because I know everybody was buried in the TRO stuff for
20 so long -- that it be taken up at least fairly quickly one way
21 or the other because we do really need an answer to this.

22 COMMISSIONER JABER: When did you originally file
23 this?

24 MR. HATCH: Back in November, I believe.

25 MS. WHITE: November.

1 MR. HATCH: November the 12th.

2 CHAIRMAN BAEZ: Ms. Keating, because it is
3 essentially a refiling, what kind accommodations do we have,
4 which I think -- to be fair to everybody, I think everybody
5 deserves a quick response such as it will be.

6 Ms. White, I think you might agree with that. So
7 what kind of accommodations or what kind of expeditions -- is
8 that a word?

9 MS. KEATING: As expeditiously as the Commission
10 wishes to hear it. And if I could just follow up on -- I
11 appreciate not throwing stones, but staff was trying to work
12 with the parties to try to gain a better understanding as well.

13 COMMISSIONER JABER: Well, I think we were busy in
14 November, weren't we?

15 MS. KEATING: A little bit.

16 COMMISSIONER JABER: As a direct consequence of this
17 industry --

18 CHAIRMAN BAEZ: We had a few things on our plate, I
19 think.

20 COMMISSIONER JABER: -- I think we had a few things
21 on our plate, so --

22 MS. KEATING: Little bit.

23 COMMISSIONER JABER: -- it's a good thing stones are
24 not being thrown. But, you know, saying all of that --

25 MS. KEATING: Like I said, we were trying to work

1 with the parties to better understand it, but we can certainly
2 get this on as expeditiously as you would like to see. And of
3 course, that also depends on what is filed in response to the
4 new anticipated petition. But we will certainly expedite it.

5 COMMISSIONER BRADLEY: Mr. Chairman.

6 CHAIRMAN BAEZ: Commissioner Bradley.

7 COMMISSIONER BRADLEY: I think I heard Mr. Hatch say
8 that he probably is not going to change his refiled petition.
9 Is he just going to make it more verbose?

10 CHAIRMAN BAEZ: He may have said that -- he may have
11 suggested that initially, Commissioner, but I'm sure Mr. Hatch
12 would deny to the death that that's what he's going to do.

13 COMMISSIONER BRADLEY: And what I was going to
14 suggest is this. If we're going to have the same petition,
15 then we may as well vote today.

16 CHAIRMAN BAEZ: I would agree with you.

17 COMMISSIONER BRADLEY: I mean, staff is very busy.
18 There's no need to take up their valuable time with a petition
19 that's going to be identical to the one that we have before us.
20 And maybe it might be best for us to vote on this petition, and
21 then Mr. Hatch can refile a dissimilar or a more extensive or a
22 different petition if he so desires the next time rather than
23 having him voluntarily -- you know, I was kind of taken aback
24 by the fact that he would suggest that he was withdrawing it
25 because we are asking him to or telling him to. I don't think

1 that that should be part of the record. We just asked him if
2 he would like to.

3 CHAIRMAN BAEZ: Yes. I think that's -- the question
4 was put accurately, and I think Mr. Hatch is thinking about it.
5 As to voting out this petition in particular, here's the way I
6 see it, Commissioner. Where the staff has already at least
7 acknowledged that there may be some pleadings that can be made
8 that would take this farther and merit our attention, although
9 in their opinion they have now been made, they do acknowledge
10 that there may be something, I think in an effort to maintain
11 as efficient a process as possible, we don't necessarily -- I
12 wouldn't counsel necessarily to start this process all over
13 again. That's just my feeling.

14 If Mr. Hatch wants to -- is amenable to withdrawing
15 it, I think it would serve probably the same purpose as what
16 staff was recommending in the first place because the denials
17 weren't without -- or rather the granting of the motions or the
18 dismissals wasn't going to be without prejudice at least by
19 staff's recommendation in any case, but those are just my
20 thoughts.

21 Commissioner Deason.

22 COMMISSIONER DEASON: I have a question for staff.
23 Mr. Anthony indicated that it's unrefuted that there are no
24 services being provided by BellSouth Telecommunications or
25 BellSouth Long Distance that are below either cost or cost

1 defined in terms of imputed access charges; is that correct?

2 MS. KEATING: There are a number of affidavits that
3 BellSouth Long Distance filed to which AT&T did not respond.

4 COMMISSIONER DEASON: Why don't we just grant the
5 motion for summary judgment and this will be over with, and
6 then we can go on to the next case if that is true?

7 MS. KEATING: To the extent that -- if that were the
8 only allegation that we understood AT&T's petition to address,
9 then --

10 COMMISSIONER DEASON: How can there be any predatory
11 pricing or any anticompetitive behavior if all prices cover all
12 costs plus imputed access charges? How can that exist?

13 MS. KEATING: I don't know, Commissioner. I don't
14 have the answer to that question. But again, this was based
15 largely on us trying to interpret what AT&T was arguing. As we
16 understood it, that they were arguing something a little bit
17 beyond just predatory pricing. I think Mr. Hatch even conceded
18 a few minutes ago that perhaps what he was alleging didn't rise
19 to the level of predatory pricing, that it was something else.

20 COMMISSIONER DEASON: Do you think he said
21 anticompetitive behavior?

22 MS. KEATING: And that in large part it was related
23 to the acting in concert, as I understand it, between BellSouth
24 and BellSouth Long Distance.

25 CHAIRMAN BAEZ: Commissioner Deason, I think

1 Mr. Melson had something to add as well.

2 MR. MELSON: Commissioner Deason, I think there are
3 probably two reasons staff did not recommend granting the
4 notion for summary judgment. While BellSouth Long Distance
5 affidavits go to whether or not their charges for these
6 services cover access charges, best to my recollection is they
7 did not address whether it also covers their other direct and
8 indirect costs of providing this service so that there could be
9 a factual dispute about do they cover total cost as opposed to
10 covering just the access charge component.

11 Second, just as a general matter, at an early stage
12 in the proceeding the Commission has been pretty reluctant to
13 grant motions for summary judgment until some discovery has
14 been done and the facts have gelled. And this appeared to us
15 to be at an early enough point that summary judgment probably
16 would not be appropriate.

17 CHAIRMAN BAEZ: Commissioners, any questions or a
18 notion?

19 COMMISSIONER DAVIDSON: Just one final question for
20 staff.

21 CHAIRMAN BAEZ: Commissioner Davidson.

22 COMMISSIONER DAVIDSON: Has there been any allegation
23 made or is there any evidence to support an allegation that
24 BellSouth Long Distance and AT&T are charged different rates
25 for access?

MS. KEATING: There was sort of an end run
2 allegation, if I can put it that way. As AT&T phrased it, and
3 I'm sure Mr. Hatch will correct me if I'm wrong, it was stated
4 if BellSouth is not charging BellSouth Long Distance access
5 charges as opposed to AT&T believes that BellSouth is not
6 charging BellSouth Long Distance access charges, and we did not
7 perceive that to be a true allegation. It was sort of a, if
8 this is what's happening, then maybe this is what the remedy
9 should be or where the Commission's jurisdiction is called into
10 play. It was a very tenuous assertion if you could even call
11 it an assertion.

12 COMMISSIONER DAVIDSON: A follow-up question on that.
13 I'm assuming no problem if both BellSouth Long Distance and
14 AT&T were charged 4.6 cents a minute by BellSouth.

15 MS. KEATING: If they were both charged the same --

16 COMMISSIONER DAVIDSON: If they were both charged, if
17 both BellSouth Long Distance and AT&T were charged 4.6 cents a
18 minute.

19 MS. KEATING: They should be charged the same, yes,
20 Commissioner.

21 COMMISSIONER DAVIDSON: All right. So the problem
22 would arise if they're not charged the same. Is that really
23 what this boils down to?

24 MS. KEATING: I believe at least in part that calls
25 into play I believe Mr. Hatch's or AT&T's allegations under

1 364.08, .09, and .10.

2 COMMISSIONER DAVIDSON: For the discrimination. And
3 then your second -- I guess the second sort of central theme of
4 this petition is -- that's theme one, that you may allege --
5 theme two is, by virtue of the relationship, BellSouth Long
6 Distance, according to AT&T, is doing something that it could
7 not do if it was sort of a stand-alone long distance company
8 like AT&T. Is that it in a nutshell?

9 MR. HATCH: In a nutshell, it would be economically
10 suicidal to do if you were a stand-alone IXC.

11 MS. WHITE: Commissioner Davidson, may I,
12 Commissioner?

13 CHAIRMAN BAEZ: Ms. White

14 MS. WHITE: Let me just make one thing clear again.
15 BellSouth Telecommunications filed an affidavit of Mr. Tom
16 Lohman that was totally un rebutted by AT&T that specifically
17 swears under oath that BellSouth Telecommunications charges
18 BellSouth Long Distance fully tariffed access charge rates and
19 that BellSouth Long Distance pays those tariffed access charge
20 rates. I don't know what more else BellSouth
21 Telecommunications can do.

22 So his first theme is just blown out of the water by
23 an affidavit that he hasn't contested. He hasn't put anybody
24 forth that says, oh, that's not true. I mean, that is
25 uncontroverted. So his first theme is just -- has no water at

1 all.

2 MR. HATCH: May I respond?

3 COMMISSIONER JABER: I have a question, Mr. Chairman.

4 CHAIRMAN BAEZ: Let's continue with questions, and I
5 think we're moving past the argument stage.

6 Go ahead.

7 COMMISSIONER JABER: Staff, the part of AT&T's
8 argument that I would like more information on relates to the
9 tariff. I had a chance to take a look at the tariff when
10 Mr. Hatch made reference to it. And unless I missed it in your
11 recommendation, I don't see an analysis of the allegation that
12 the tariff makes clear -- I should say that it is not clear
13 that they are two different companies, but rather that
14 BellSouth Long Distance is acting in a fashion that BellSouth
15 local cannot do directly. And I've lost the tariff, but if you
16 look at the language, the 1, 2, and 3 in the tariff, the
17 conditions precedent for a customer taking advantage of the
18 promotion, you all -- unless I missed it, you all don't discuss
19 that in your recommendation. Is it because you don't share the
20 concern, or does that go beyond the scope of this
21 recommendation?

22 MS. KEATING: We discussed at some extent at the
23 bottom of Page 6 and the top of Page 7, and it is certainly a
24 very limited discussion primarily because again we couldn't
25 figure out, okay, so you say they're acting in concert in

1 violation of what? You know, we do disagree with how AT&T has
2 tied this in to 364.051, and the rest of the arguments didn't
3 seem to relate back that acting in concert into a violation of
4 another provision of the state statute. There are arguments
5 about state statutes, but as staff was reading it, the rest of
6 those arguments tended to be geared more towards addressing
7 BellSouth Long Distance's actions rather than the acting in
8 concert. Now, we may have been reading that entirely wrong,
9 but --

10 COMMISSIONER JABER: Well, I don't know. I don't
11 have that sort of analysis in front of me. But I guess the
12 thing that piqued my interest was the reference in the tariff
13 that the customers that qualified for the promotion had to be
14 current BellSouth customers that had prior service from a
15 competitive provider. Could you read that language? I just
16 had the tariff and I've lost it. That particular provision in
17 the tariff, would you read that out loud, please. And I'll
18 look for my copy as well. Oh, here it is.

19 This is the language, Ms. Keating, that gave me some
20 pause. It says, To be eligible for this plan, customers must
21 be new or existing subscribers to BellSouth Long Distance;
22 number two, they have to be new customers to the company's
23 affiliated ILEC; and three, they must subscribe to BellSouth --
24 oh, I'm sorry, to the company's affiliated ILEC but previously
25 have had local exchange service from a competitive local

1 exchange entity at the customer's present address. Maybe
2 that's completely appropriate, I just -- I don't know.

3 MS. KEATING: The problem I have is AT&T didn't make
4 that allegation. That as I understand what you're pointing
5 out, is that part of your concern is that they were taking
6 customers from a former -- from a competitor, and they had to
7 come back to BellSouth. Almost like a winback?

8 COMMISSIONER JABER: No, that's not my concern at
9 all. I thought that the allegations coming from the tariff
10 were that somehow there was some anticompetitive behavior.
11 And, no, my concern is not whether this is a winback customer
12 or anything like that. I can't definitively understand the
13 allegation that it's anticompetitive behavior, that somehow
14 terms of the tariff that show which customers qualify for the
15 promotion how this results in anticompetitive behavior; you
16 don't either.

17 MS. KEATING: I don't either. I share your --

18 COMMISSIONER JABER: Okay.

19 CHAIRMAN BAEZ: Commissioner Davidson -- oh,
20 Commissioner Bradley, you had a question? I'm sorry. Are you
21 getting ready for a --

22 COMMISSIONER DAVIDSON: I have a question.

23 CHAIRMAN BAEZ: Okay. Let me take you second.

24 COMMISSIONER BRADLEY: And I guess my question still
25 would be, is -- and I don't know if staff can answer this or

1 not, but what is there that does not allow AT&T to offer the
2 same -- is this promotion available also to AT&T to be offered?
3 Can they offer the same promotion at the same price in order to
4 promote themselves? Is it illegal?

5 MS. KEATING: I assume that they could. Now whether
6 it would make business sense for them to do so, I of course
7 defer to AT&T, but I don't know of any legal prohibition.

8 COMMISSIONER BRADLEY: I think I heard you say at the
9 very beginning of this discussion that there's nothing in the
10 statute that covers promotional activity; is that true?

11 MS. KEATING: No, sir. Actually, I think I was just
12 trying to point out that promotions aren't defined separately
13 from telecommunications service in the statute.

14 COMMISSIONER BRADLEY: Okay. Let me ask this
15 question. Is there anything in the statute that prevents a
16 company from offering a promotion for a short term, for a short
17 period time?

18 MS. KEATING: Oh, no, sir. There's no prohibition
19 against promotions. And I'd also point out, too, that, you
20 know, AT&T as an IXC and BellSouth Long Distance as an IXC,
21 there's limited authority now over what they offer anyway.

22 COMMISSIONER BRADLEY: Thank you.

23 CHAIRMAN BAEZ: Commissioner Davidson.

24 COMMISSIONER DAVIDSON: Thank you. This question is
25 for Mr. Hatch. Assuming for the sake of argument BellSouth

1 Long Distance pays the same amount for access that AT&T pays
2 and that -- well, per the terms of the tariff, the 1-cent
3 promotional offering is of a limited duration, three months?

4 MR. ANTHONY: Yes, sir.

5 COMMISSIONER DAVIDSON: Three months. Then it goes
6 up to 5 cents a minute thereafter?

7 MR. ANTHONY: Yes, sir.

8 COMMISSIONER DAVIDSON: And there's a charge. Let's
9 assume for the sake of argument that whatever the actual cost
10 of access is, 4.6 cents a minute, that sort of they're covering
11 that through this pricing mechanism. My question for -- a
12 two-part question for AT&T. One, what's wrong with that from a
13 business standpoint? And two, could AT&T, following up on
14 Commissioner Bradley's question, have some type of similar
15 promotion, for example, a promotion by which it would charge 1
16 cent a minute for three months, it would have a per line
17 charge, I know people hate those per line charges, we'll hear
18 from all types of groups, but a per line charge of 2.95, 3.95,
19 and then it ups the access to 5 cents a minute, you know, in
20 month three, could AT&T do something like that?

21 I'm trying to get at because I don't want to just
22 sort of be in a position where, you know, I'm saying dismissed
23 out of hand, but I'm having a hard time understanding based on
24 those facts where the real problem is.

25 MR. HATCH: Before I get to your specific questions

1 let's me say something really quick that may change it, it may
2 not, and then I'll proceed to answer your questions
3 specifically.

4 You cannot compare AT&T and BellSouth on an apples to
5 apples basis under these circumstances because you have
6 BellSouth local that essentially for all practical purposes is
7 the effective monopoly provider for network services; then you
8 have BellSouth Long Distance which is an IXC. If AT&T had a
9 legacy monopoly network in place coextensive or even reasonably
10 coextensive with BellSouth's local network, then the answer to
11 all of your questions would be, yeah, we could compete fairly
12 in the same way.

13 COMMISSIONER DAVIDSON: But the essence of your
14 argument then depends upon an allegation that somehow BellSouth
15 Long Distance is being treated differently and more favorably
16 than AT&T because if you're both being charged the 4.6 cents a
17 minute, BellSouth chooses to cover that cost through a really
18 low offering for three months, and then they up it to 5 cents
19 and they have a per line charge. If AT&T could do that also,
20 assuming you're both paying the same, what does the existence
21 of market power in a local network have to do with the
22 argument?

23 MR. HATCH: See if I can do this easily. It can't
24 work the way you're suggesting because it doesn't matter what
25 BellSouth Long Distance charges up or down whether it covers

1 its costs. It could offer a 1-cent promotion without any
2 monthly recurring charge. It could at the same time on paper
3 pay switched access charges to BellSouth local. BellSouth
4 Corp's financials would show a profit for every minute. Now,
5 BellSouth Long Distance financials would bleed red ink. But
6 those financials roll up into BellSouth Corp. BellSouth
7 local's financials would be fine because they're making money
8 on every minute, and it would roll up to BellSouth Corp.

9 For AT&T, if we offered a 1-cent rate and I am paying
10 a literal expense, I write a check to BellSouth local for every
11 minute of toll that I have, if I'm paying 4.6 cents a minute
12 and I'm charging a penny, just like BellSouth Long Distance,
13 I'm losing 3 cents on every call.

14 COMMISSIONER DAVIDSON: Well, but that takes a very
15 short-term sort of perspective because the scenario, the
16 hypothetical was, you pay 4.6 cents a minute for three months,
17 you charge 1 cent a minute, and then at three months you up
18 that rate to 5 cents, and let's throw in there an equivalent
19 per line charge, over a 12-month period it's very possible that
20 AT&T will be in the black, BellSouth Long Distance will be in
21 the black.

22 MR. HATCH: If you look at it in isolation from those
23 two scenarios, if you say like -- I hate to use the number
24 3.95, but just say it's a 3.95 charge, coupled with 5 cents a
25 minute, 5 cents covers at least the direct access costs,

1 hopefully the 3.95 would cover all of your indirect marketing,
2 customer acquisition, customer care, and everything else that
3 goes into running a business, if you look at it in just that
4 isolation, then, yes, that's fine. The difference is, and
5 here's where the real problem is, and here's where the
6 anticompetitive behavior comes in, is because they're not doing
7 that. They're offering it on -- for me as AT&T to offer that
8 same promotion, I'm losing way too much money in trying to
9 acquire customers.

10 COMMISSIONER DAVIDSON: It would have to be, would
11 you agree, alleged anticompetitive behavior of BellSouth
12 Telecom Corporation? I mean, BellSouth Long Distance doesn't
13 have market power. It's a competitive player in a very
14 competitive market, so any sort of allegation of wrongful
15 conduct would have to be of BellSouth proper over which we
16 would have jurisdiction.

17 MR. HATCH: That's the rub of my entire complaint,
18 frankly, because you have two corporate affiliates. By virtue
19 of 272, they have to be structurally separate. But you can't
20 look at them in isolation as two stand-alone entities because
21 they're simply not.

22 COMMISSIONER DAVIDSON: Well, I mean, you can sort of
23 have that relationship exist between, for example, AT&T, AT&T
24 Long Distance, AT&T ISP. I mean, there are different versions.
25 So I guess the question is, and staff, I suppose you've

1 answered this, is there sufficient allegations of alleged
2 wrongful conduct by sort of BellSouth proper, the entity over
3 which we have jurisdiction?

4 MS. KEATING: And based on this complaint, staff
5 thinks no.

6 COMMISSIONER BRADLEY: Mr. Chairman.

7 CHAIRMAN BAEZ: Commissioner Bradley.

8 COMMISSIONER BRADLEY: And I can imagine that you are
9 ready to move on, but just one other question. This whole
10 issue of anticompetitive behavior, I'm trying to reconcile how
11 AT&T can offer 30 minutes and in some instances 60 minutes for
12 free, but it's anticompetitive for BellSouth to offer a 1-cent
13 promotion for a short period of time, and then to go back to a
14 5 cent per minute plan, which I'm sure AT&T also does, I'm sure
15 that after you use your 60 minutes, AT&T probably goes to 5
16 cents or 6 cents or 7 cents in order to reconcile its books or
17 to make up the difference between what the free promotional
18 activity -- well, the cost of the charges that the free
19 promotional activity caused AT&T to experience and as a result,
20 as I said earlier, they then go back to a charge other than
21 something that's free later on. I'm just trying to figure -- I
22 wouldn't want to -- for us to make a ruling that discourages
23 competition by allowing companies to offer promotions and, as
24 AT&T does, free service to consumers to grab their attention as
25 long as when they get their attention, they don't gouge them by

1 charging them a per minute charge that's unfair. But it seems
2 to me that this is a good deal for consumers. And I think that
3 we need to be careful so as to not create -- well, so as to not
4 make a ruling that takes away this activeness to the consumers.

5 MR. HATCH: If I may, Commissioner Bradley. I think
6 the answer to your question is the statutory provision in
7 Chapter 364.051(5)(c), that's the difference, because that's
8 the statutory provision that makes inappropriate types of
9 competition proscribed by BellSouth.

10 CHAIRMAN BAEZ: Commissioners, I don't know if you
11 want more discussion, but we can move on. I don't know.
12 Commissioner Davidson, you had a question or a comment or a
13 motion?

14 COMMISSIONER DAVIDSON: No.

15 CHAIRMAN BAEZ: Okay. We can entertain a motion at
16 this point, although I don't even know if the offer is even on
17 the table anymore.

18 MR. HATCH: If it is the Commission's desire that it
19 be better explained and more extensively laid out to explain
20 the allegations, I would be most happy to take a voluntary
21 dismissal. I'll be glad to do that.

22 COMMISSIONER BRADLEY: Mr. Chairman, I still have a
23 problem with that wording, "if it is the Commission's desire."
24 I think it needs to be AT&T's desire. I think AT&T needs to
25 make a request of the Commission that we give consideration

1 :o --

2 MR. HATCH: Let me rephrase it this way. Would it be
3 helpful if I better explained my complaint to the Commission?

4 COMMISSIONER JABER: No, let me articulate the
5 question.

6 CHAIRMAN BAEZ: Go ahead, Commissioner Jaber. You
7 started this.

8 COMMISSIONER JABER: Yeah, and I still think it's a
9 good idea.

10 COMMISSIONER DAVIDSON: You did start it.

11 COMMISSIONER JABER: Mr. Hatch, the question I posed
12 to you is, after you've digested the information raised by
13 staff in the recommendation and heard the concerns, is it your
14 desire, would you be willing --

15 MR. HATCH: I'd be most happy to. If it would in any
16 way be helpful, I will be happy to take a voluntary dismissal.

17 COMMISSIONER JABER: So are you asking this
18 Commission --

19 MR. HATCH: Let --

20 COMMISSIONER JABER: Mr. Hatch, wait a minute. Are
21 you asking this Commission to acknowledge the withdrawal of
22 your petition?

23 MR. HATCH: Without prejudice to refile.

24 COMMISSIONER JABER: Without prejudice.

25 MR. HATCH: Yes, ma'am.

1 COMMISSIONER JABER: Sounds like AT&T wants us to
2 acknowledge that, Mr. Chairman.

3 CHAIRMAN BAEZ: And I would love to hear some
4 consensus with it. Commissioner Bradley, there seems to be a
5 withdrawal afoot, so --

6 COMMISSIONER JABER: Now, to be fair to staff and to
7 BellSouth, Mr. Chairman, there have been responsive pleadings
8 to the petition that was started by AT&T, and in my naive mind
9 I'm thinking that all of that goes away with AT&T's withdrawal
10 and at the end of the day we probably get to the same place,
11 but if I'm wrong, this is an opportunity to correct me.

12 MS. KEATING: If you accept AT&T's voluntary
13 dismissal without prejudice, it renders all the outstanding
14 notions moot.

15 CHAIRMAN BAEZ: Very well. And as for clocks
16 starting again upon a refiling, possible refiling, are we -- I
17 guess we should maintain options open. I don't know when or
18 where or even if at this point, but we should maintain some
19 options open to get -- I think we can fold -- somehow all of
20 this gets folded into a dispute resolution that may become more
21 expeditious as time goes by, but we should maintain options
22 open and try and entertain whatever comes along these lines in
23 as quick a manner as possible.

24 MS. KEATING: We will certainly bring this to the
25 Commissioners as expeditiously as humanly possible.

1 CHAIRMAN BAEZ: Thank you.

2 COMMISSIONER JABER: Mr. Chairman, I can make a
3 motion then to acknowledge AT&T's withdrawal of its underlying
4 petition. I would add to that motion that we strongly
5 encourage the parties and staff to take the opportunity now to
6 sit across from each other and better understand what these
7 issues are and what potential resolution is.

8 The catch in this, quote, unquote, delay, Mr. Hatch,
9 is that you all now have to go back and sit across the table
10 from each other and better understand what the concerns are and
11 how we resolve them. And my hope is that it never comes back
12 here, at least certainly not in this fashion.

13 That would be my motion, Mr. Chairman.

14 CHAIRMAN BAEZ: There's a motion.

15 COMMISSIONER BRADLEY: Second.

16 CHAIRMAN BAEZ: And a second. All those in favor
17 say, "aye."

18 (Simultaneous affirmative vote.)

19 CHAIRMAN BAEZ: Show the motion carries unanimously.
20 And I think all the other -- well, we're done. We're done on
21 this issue, right, on this item?

22 MS. KEATING: May I ask one question?

23 CHAIRMAN BAEZ: Yes.

24 MS. KEATING: In accepting the voluntary dismissal,
25 is it your intent to go ahead and close this docket or to allow

1 AT&T to refile in this docket? I don't know that it really
2 matters one way or the other, but --

3 CHAIRMAN BAEZ: And I can't tell you sitting here,
4 Ms. Keating, what the most administratively efficient means is.
5 If you have any suggestions, then we can entertain them up
6 here. Personally I don't have a problem closing the docket.

7 COMMISSIONER JABER: Actually, Mr. Chairman, that
8 would have only resolved Issue 1. So my motions on Issues
9 2 and 3 would be to make a finding that the other responsive
10 pleadings have been rendered moot and that the docket be
11 closed.

12 CHAIRMAN BAEZ: And I think that that was -- well, I
13 thought I heard you ask the question and it got answered in the
14 affirmative, so I just assumed that that was part of your
15 notion originally. But if we need a motion, is there a second?

16 COMMISSIONER BRADLEY: Second.

17 CHAIRMAN BAEZ: Motion and a second. All those in
18 favor say, "aye."

19 (Simultaneous affirmative vote.)

20 CHAIRMAN BAEZ: Ms. Keating, getting back to the
21 closing of the docket, Commissioners, I don't know sitting
22 here --

23 COMMISSIONER JABER: My motion was to close the
24 docket.

25 CHAIRMAN BAEZ: Was it to close the docket? Very

1 well. Show the docket closed per the previous vote. Thank you
2 all.

3 (Agenda Item Number 4 concluded.)

4 - - - - -

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

TATE OF FLORIDA)
 :
OUNTY OF LEON)

CERTIFICATE OF REPORTER

I, TRICIA DeMARTE, RPR, Official Commission Reporter,
o hereby certify that the foregoing proceeding was heard at
he time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically
eported the said proceedings; that the same has been
ranscribed under my direct supervision; and that this
ranscript constitutes a true transcription of my notes of said
roceedings.

I FURTHER CERTIFY that I am not a relative, employee,
attorney or counsel of any of the parties, nor am I a relative
r employee of any of the parties' attorneys or counsel
onnected with the action, nor am I financially interested in
he action.

DATED THIS 12th DAY OF JULY, 2004.

Tricia DeMarte

TRICIA DeMARTE, RPR
FPSC Official Commission Reporter
(850) 413-6736