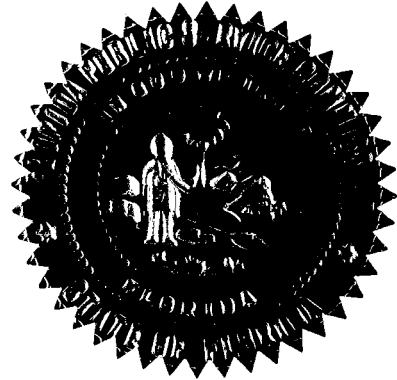


BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

JOINT PETITION BY TDS TELECOM DOCKET NO. 050119-TP  
D/B/A TDS TELECOM/QUINCY TELEPHONE;  
ALLTEL FLORIDA, INC.; NORTHEAST  
FLORIDA TELEPHONE COMPANY D/B/A  
NEFCOM; GTC, INC. D/B/A GT COM;  
SMART CITY TELECOMMUNICATIONS, LLC  
D/B/A SMART CITY TELECOM; ITS  
TELECOMMUNICATIONS SYSTEMS, INC.; AND  
FRONTIER COMMUNICATIONS OF THE SOUTH,  
LLC ["JOINT PETITIONERS"] OBJECTING  
TO AND REQUESTING SUSPENSION AND  
CANCELLATION OF PROPOSED TRANSIT  
TRAFFIC SERVICE TARIFF FILED BY  
BELLSOUTH TELECOMMUNICATIONS, INC.



-----  
PETITION AND COMPLAINT FOR SUSPENSION DOCKET NO. 050125-TP  
AND CANCELLATION OF TRANSIT TRAFFIC  
SERVICE TARIFF NO. FL2004-284 FILED  
BY BELLSOUTH TELECOMMUNICATIONS, INC.,  
BY AT&T COMMUNICATIONS OF THE SOUTHERN  
STATES, LLC.

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VOLUME 6

Pages 690 through 806

PROCEEDINGS: HEARING

BEFORE: CHAIRMAN LISA POLAK EDGAR  
COMMISSIONER J. TERRY DEASON  
COMMISSIONER ISILIO ARRIAGA  
COMMISSIONER MATTHEW M. CARTER, II  
COMMISSIONER KATRINA J. TEW

DATE: Thursday, March 30, 2006

TIME: Commenced at 9:00 a.m.  
Concluded at 3:03 p.m.

FLORIDA PUBLIC SERVICE COMMISSION

DOCUMENT NUMBER-D/

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FPSC-COMMISSION CLE

1 PLACE: Betty Easley Conference Center  
Room 148  
2 4075 Esplanade Way  
Tallahassee, Florida

3  
4 REPORTED BY: LINDA BOLES, RPR, CRR  
Official FPSC Reporter  
(850) 413-6734

5 APPEARANCES: (As heretofore noted.)  
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## 1 I N D E X

## 2 WITNESSES

3 NAME: PAGE NO.

4 DON J. WOOD

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18 CERTIFICATE OF REPORTER

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EXHIBITS

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

(Transcript continues in sequence from Volume 5.)

MR. GROSS: The FCTA's witness is Don Wood.

DON J. WOOD

was called as a witness on behalf of Florida Cable Telecommunications Association and, having been duly sworn, testified as follows:

## D I R E C T E X A M I N A T I O N

BY MR. GROSS:

Q Mr. Wood, have you been sworn?

A Yes, sir, I have.

Q Would you please state your name and business address.

A Yes. My name is Don J. Wood. My business address is 30000 Mill Creek Avenue, Suite 395, Alpharetta, that's A-L-P-H-A-R-E-T-T-A, Georgia.

Q By whom are you employed?

A I'm a principal in the firm of Wood & Wood.

Q On whose behalf have you submitted testimony in this case?

A The Florida Cable Telecommunications Association.

Q Did you cause to be filed rebuttal testimony consisting of 44 pages on January 30th, 2006?

A Yes, sir.

Q On behalf of the FCTA?

1 A Yes, sir.

2 Q Okay. Do you have any corrections or changes to your  
3 testimony?

4 A I do not.

5 Q If I asked you the same questions, would your answers  
6 be the same?

7 A They would.

8 MR. GROSS: At this time, Madam Chair, I'd move that  
9 Mr. Wood's rebuttal testimony be inserted into the record as  
10 though read.

11 CHAIRMAN EDGAR: Ms. Banks, clarification?

12 MS. BANKS: Yes, Madam Chair. As was indicated  
13 yesterday as a preliminary matter, by the prehearing officer's  
14 order issued on Tuesday, March the 28th, it was decided that  
15 there were certain portions of the witness's rebuttal testimony  
16 that would be stricken from the record, specifically pages,  
17 beginning at Page 37, Line 9 through Page 43, Line 20.

18 CHAIRMAN EDGAR: Mr. Gross, do you care to rephrase?

19 MR. GROSS: I would move that the portions of  
20 Mr. Wood's testimony that have not been stricken be inserted  
21 into the record as though read.

22 CHAIRMAN EDGAR: Thank you. Please show the portions  
23 of Mr. Wood's prefiled rebuttal testimony that has not  
24 previously been stricken to be entered into the record as  
25 though read.

1           MR. GROSS: I'd also like to call to Madam Chair's  
2 and the Commission's attention that Mr. Wood's testimony had  
3 two exhibits that have been stipulated into the record as  
4 Exhibits 32 and 33.

5           CHAIRMAN EDGAR: Thank you.

6           MR. GROSS: Wait. Did I get that right?

7           I think I got it right.

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1 **Background and Purpose of Testimony**

2 Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

3 A. My name is Don J. Wood. I am a principal in the firm of Wood & Wood, an  
4 economic and financial consulting firm. My business address is 30000 Mill  
5 Creek Avenue, Suite 395, Alpharetta, Georgia 30022. I provide economic and  
6 regulatory analysis of telecommunications and related convergence industries  
7 with an emphasis on economic policy, competitive market development, and  
8 cost-of-service issues.

9

10 Q. PLEASE DESCRIBE YOUR BACKGROUND AND EXPERIENCE.

11 A. I received a BBA in Finance with distinction from Emory University and an  
12 MBA with concentrations in Finance and Microeconomics from the College  
13 of William and Mary. My telecommunications experience includes  
14 employment at both a Regional Bell Operating Company ("RBOC") and an  
15 Interexchange Carrier ("IXC").

16 Specifically, I was employed in the local exchange industry by  
17 BellSouth Services, Inc. in its Pricing and Economics, Service Cost Division.  
18 My responsibilities included performing cost analyses of new and existing  
19 services, preparing documentation for filings with state regulatory  
20 commissions and the Federal Communications Commission ("FCC"),  
21 developing methodology and computer models for use by other analysts, and  
22 performing special assembly cost studies.



1 I was employed in the interexchange industry by MCI  
2 Telecommunications Corporation, as Manager of Regulatory Analysis for the  
3 Southern Division. In this capacity I was responsible for the development and  
4 implementation of regulatory policy for operations in the southern U. S. I  
5 then served as a Manager in MCI's Economic Analysis and Regulatory  
6 Affairs Organization, where I participated in the development of regulatory  
7 policy for national issues.

8

9 Q. HAVE YOU PREVIOUSLY PRESENTED TESTIMONY BEFORE STATE  
10 REGULATORS?

11 A. Yes. I have testified on telecommunications issues before the regulatory  
12 commissions of forty-one states, Puerto Rico, and the District of Columbia. I  
13 have also presented testimony regarding telecommunications issues in state,  
14 federal, and overseas courts, before alternative dispute resolution tribunals,  
15 and at the FCC. A listing of my previous testimony is attached as Exhibit  
16 DJW-1.

17

18 Q. ARE YOU FAMILIAR WITH THE INTERCONNECTION AND  
19 INTERCARRIER COMPENSATION OBLIGATIONS SET FORTH IN THE  
20 TELECOMMUNICATIONS ACT OF 1996?

21 A. Yes. I have participated in investigations into the rates for Unbundled  
22 Network Elements ("UNEs"), the underlying cost support for those rates, and

1 the application of element rates to the development of intercarrier  
2 compensation levels in Alabama, California, Colorado, Delaware, Georgia,  
3 Hawaii, Kentucky, Louisiana, Maryland, Mississippi, Montana, North  
4 Carolina, Oregon, South Carolina, Tennessee, Texas, Washington, Wyoming,  
5 the District of Columbia, Puerto Rico, and on several occasions here in  
6 Florida.

7 While I am not an attorney and do not intend to provide legal  
8 argument or conclusions in my testimony, I am familiar with the  
9 interconnection requirements set forth in §251 of the Act and with the details  
10 of the FCC's rules for calculating the rates for UNEs (and the intercarrier  
11 compensation rates based on those cost elements) pursuant to §252 of the Act.

12

13 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

14 A. I have been asked by the Florida Cable Telecommunications Association  
15 ("FCTA") to respond to the direct testimony of Mr. Kenneth McCallen on  
16 behalf of BellSouth Telecommunications, Inc. ("BellSouth") and Mr. Steven  
17 Watkins on behalf of the Small LEC Joint Petitioners ("small ILECs," or  
18 "Joint Petitioners"), and to respond to the list of seventeen tentative issues as  
19 set forth in Attachment A of Order No. PSC-05-1206-PCO-TP.

20

21 **FCTA's Interest and Summary of Recommendations**

22 Q. WHAT IS THE FCTA'S INTEREST IN THIS PROCEEDING?

1 A. The current dispute between BellSouth and the small ILECs has developed in  
2 a way that has the potential to fundamentally disrupt the way that carriers  
3 exchange local traffic in Florida and the way that carriers compensate each  
4 other when such traffic is originated on the network of one carrier and  
5 terminated on the network of another. The list of seventeen tentative issues  
6 set forth in Attachment A to Order No. PSC-05-1206-PCO-TP include issues  
7 that have important and significant implications for how FCTA members and  
8 other carriers will work together to ensure that end user customers have the  
9 ability to make calls to, and receive calls from, all other end user customers in  
10 an economically efficient manner.

11 The fact that the Commission's decision in this case will have  
12 implications for carriers beyond BellSouth and the Joint Petitioners is  
13 illustrated by the breadth of intervenors to this proceeding: CLECs that utilize  
14 a mixture of resale and their own facilities, CLECs with various types of  
15 wireline networks, and CMRS carriers have all sought to intervene and  
16 present testimony.

17

18 Q. HAVE YOU REVIEWED THE HISTORY OF THE DISPUTE BETWEEN  
19 BELLSOUTH AND THE JOINT PETITIONERS?

20 A. Yes, at least as that history has been set forth in their respective testimonies.

21

22 Q. WHAT IS YOUR UNDERSTANDING OF HOW A DISPUTE BETWEEN

1 BELL SOUTH AND A GROUP OF INDEPENDENT ILECS DEVELOPED  
2 INTO A BROADER PROCEEDING WITH SEVENTEEN IDENTIFIED  
3 ISSUES AND POTENTIALLY BROAD POLICY IMPLICATIONS?

4 A. At the risk of putting an overly fine point on it, it appears that three events got  
5 us where we are today:

6 1. BellSouth sought compensation for a network functionality that it is  
7 providing to certain small ILECs,<sup>1</sup>

8  
9 2. In response, the small ILECs took untenable positions regarding their  
10 interconnection obligations pursuant to §251 and sought to turn cost-causation  
11 on its head in order to avoid paying any such compensation.

12  
13 3. In an apparent attempt to gain negotiating leverage, BellSouth filed a tariff  
14 for the functionality in question that includes a rate for an essential network  
15 function that is well above cost and duplicative of the cost recovery already  
16 being accomplished via other rates. This tariff has the potential to impact  
17 numerous other carriers and to disrupt how those carriers interconnect,  
18 exchange traffic, and compensate each other for doing so.<sup>2</sup>

19

20 Q. HOW SHOULD THE COMMISSION APPROACH THIS PROCEEDING?

21 A. The Commission should approach the issues in this proceeding with the goal  
22 of addressing the specific dispute between BellSouth and the Joint Petitioners  
23 while avoiding a disruption of the way that other carriers currently

---

<sup>1</sup> As I will explain in more detail in the next section of my testimony, while I agree that BellSouth is performing these functions for the small ILECs and is due an appropriate level of compensation for doing so, I am in no way suggesting that the rate set forth in BellSouth's tariff is reasonable, reflective of the underlying cost incurred by BellSouth to provide these functions, or in any other way appropriate.

<sup>2</sup> While I disagree with the Joint Petitioners' positions regarding their §251 obligations and do not support their apparent refusal to compensate BellSouth for performing a transit function, I do agree with the small ILECs that BellSouth's tariff represents an attempt to leverage its unique legacy position in a way that will harm both the continued development of competition and the public.

1 interconnect with, exchange traffic with, and mutually compensate BellSouth,  
2 the small ILECs, and each other. Such a disruption would not only have  
3 business implications for a large number of carriers, it would have an adverse  
4 impact on end user customers in terms of higher rates, blocked calls, and  
5 competitive choice. The Commission should also attempt to avoid any  
6 disruption in the way that these carriers will interconnect, exchange traffic,  
7 and compensate each other in the future.

8

9 Q. WHAT SHOULD THE COMMISSION DO IN ORDER TO ADDRESS THE  
10 DISPUTE BETWEEN BELLSOUTH AND THE ILECS WHILE  
11 AVOIDING A SIGNIFICANT DISRUPTION FOR BOTH CARRIERS AND  
12 CUSTOMERS?

13 A. The Commission should do the following:

14 **1. While the Commission has no direct role in the §252 negotiation**  
15 **process, it should encourage BellSouth and the small ILECs to negotiate**  
16 **interconnection agreements that include the rates and terms for the**  
17 **transit services provided by BellSouth.** An interconnection agreement,  
18 rather than a tariff, is the proper place for interconnection rates and terms.  
19 The FCC has noted the advantages of developing intercarrier compensation  
20 arrangements within the context of a negotiated agreement rather than in a  
21 tariff, and has changed its rules to make it clear that the small ILECs have the  
22 opportunity to invoke the §252 negotiation and arbitration process. If one or

1 more parties do not agree to voluntary negotiations, either BellSouth or the  
2 small ILECs should seek to initiate the §252 negotiation and arbitration  
3 process.

4 If the negotiations between BellSouth and the small ILECs fail to  
5 result in a resolution of the issue and the Commission is ultimately called  
6 upon to arbitrate this dispute pursuant to the §252 process, then it should  
7 apply the following principles:

8 **a. The industry standard of cost causation and intercarrier**  
9 **compensation, created by the Act and subsequent FCC rules,**  
10 **should not be turned upside down.** The Act and subsequent FCC  
11 rules (consistent with industry practice) require that the originating  
12 carrier – as the cost causer – be responsible for compensating another  
13 carrier that performs transport and termination functions in order to  
14 complete a call.

15 **b. The small ILECs are not excused from their §251**  
16 **obligations.** The Joint Petitioners are seeking to avoid their  
17 interconnection obligations while seeking the ability to dictate network  
18 design and interconnection arrangements of other carriers.

19 **c. The rates for transit service functions, like other**  
20 **interconnection rates, must be cost-based.** BellSouth should not be  
21 permitted to mandate a rate that is in excess of its demonstrated level  
22 of costs, and conversely the small ILECs should not be able to insist

1           on a rate that does not permit BellSouth to recover its relevant  
2           economic costs.

3  
4           **2. Conclude that BellSouth's tariff for transit services seeks to**  
5           **preempt rates and conditions that are properly contained within an**  
6           **interconnection agreement, and therefore the tariff is both unnecessary**  
7           **and an inappropriate intrusion on the negotiation process.** Tariffing rates  
8           and conditions that are properly negotiated by the carriers effectively  
9           represents an attempt by one carrier to unilaterally dictate terms to other  
10          carriers.

11          **3. If BellSouth's tariff is not rejected by the Commission, the**  
12          **Commission should require that the language be changed to make it clear**  
13          **that application of the tariff is strictly limited to those instances in which**  
14          **the originating carrier elects not to seek an interconnection agreement**  
15          **with BellSouth.** The proper remedy for BellSouth, if it believes that it is not  
16          being properly compensated by a given carrier for performing an  
17          interconnection function, is to seek such compensation through an  
18          interconnection agreement. BellSouth's tariff for "transit traffic service"  
19          should exist (if it exists at all) *only as an option* for carriers that have chosen  
20          not to enter into an interconnection agreement with BellSouth for this purpose.  
21          If its application is mandatory in the absence of such an agreement, BellSouth  
22          would gain significant leverage in an interconnection agreement negotiation

1 or would have the ability to avoid the §252 negotiation and arbitration process  
2 altogether.

3 **4. If BellSouth's tariff is not rejected by the Commission, the**  
4 **Commission should require that the rate for this interconnection element**  
5 **is cost-based.** Removing the transit element (or any other interconnection  
6 element) from the context of an interconnection agreement and placing it in a  
7 tariff does not change the pricing requirements for that element. Evidence in a  
8 previous proceeding before the Commission indicates that BellSouth has no  
9 cost basis or support for its tariffed rate for "transit traffic service"<sup>3</sup> and the  
10 FCC has ruled that interconnection facilities must be provided at cost-based  
11 rates.<sup>4</sup> The absence of a cost study suggests that BellSouth has no pretense  
12 that its tariffed rate is cost-based, but instead suggests that the rate was set at  
13 an excessive level in order to create negotiating leverage for BellSouth.

14 **5. If BellSouth's tariff is not rejected by the Commission, the**  
15 **Commission should require that the language be changed to make it clear**

---

<sup>3</sup> In Order No. 040130-TP (October 11, 2005) the Commission noted in Section XV.B that "when BellSouth was queried on whether or not it had conducted any cost studies in support of the TIC, witness Blake responded that BellSouth had not."

<sup>4</sup> The FCC has been consistently clear regarding the ILECs' §251(c)(2)(a) obligation: facilities needed for "the transmission and routing" of "exchange access service" must be provided at cost-based rates. For example, in the *Triennial Review Remand Order*, the FCC notes "our finding of non-impairment with respect to entrance facilities does not alter the right of competitive LECs to obtain interconnection facilities pursuant to section 251(c)(2) for the transmission and routing of telephone exchange service and exchange access service. Thus, competitive LECs will have access to these facilities at cost-based rates to the extent that they require them to interconnect with the incumbent LEC's network." *Order on Remand*, FCC 04-290, released February 4, 2005, ¶140 ("*Triennial Review Remand Order*").



1           **that the existence of the tariff cannot interfere in any way with the**  
2           **negotiation of the rates or terms of future interconnection agreements.** A  
3           large number of carriers currently have interconnection agreements with  
4           BellSouth in Florida, and many if not all of these agreements include rates and  
5           terms for transit functions.<sup>5</sup> While the dates vary, at some point in the future  
6           each of these interconnection agreements will need to be renegotiated. As a  
7           practical matter, if BellSouth has in place a “transit traffic tariff” that (1)  
8           contains a rate that is well above cost and (2) will apply if no agreement is  
9           reached by the parties, BellSouth’s incentive (and perhaps its ability) to meet  
10          its §251(c)(1) obligation to “negotiate in good faith” will be reduced. The  
11          existence of the tariff would give BellSouth the leverage to insist on a higher  
12          rate or even to try to remove the rates and terms for transit functionalities from  
13          the interconnection agreement negotiation entirely.

14                   In summary, the present proceeding has evolved from a specific  
15          dispute between carriers, and its focus should remain on that dispute while  
16          avoiding a disruption of how other carriers interconnect, exchange traffic, and  
17          compensate each other. BellSouth is performing a service for the small ILECs  
18          for which it should be fairly compensated at a rate that will permit cost  
19          recovery, but the proper remedy for BellSouth is negotiation and if necessary  
20          arbitration, not an end-run around the negotiation process with a tariff filing.

---

<sup>5</sup> While I do not agree that it is either complete or accurate, BellSouth witness McCallen’s Exhibit KRM-2 does provide an illustration of the scope of this issue.

1

2 **The Dispute Regarding BellSouth's Transit Tariff**

3 Q. THE DISPUTE BETWEEN BELL SOUTH AND THE SMALL ILECS

4 CENTERS ON COMPENSATION FOR THE NETWORK

5 FUNCTIONALITY OF "TRANSIT." WHAT IS TRANSIT?

6 A. According to the FCC, "transiting occurs when two carriers that are not  
7 directly interconnected exchange non-access traffic by routing the traffic  
8 through an intermediary carrier's network. Typically, the intermediary carrier  
9 is an incumbent LEC and the transited traffic is routed from the originating  
10 carrier through the incumbent LEC's tandem switch to the terminating carrier.  
11 The intermediary (transiting) carrier then charges a fee for use of its  
12 facilities."<sup>6</sup>

13

14 Q. DOES THERE APPEAR TO BE A DISPUTE REGARDING A WORKING

15 DEFINITION OF "TRANSIT"?

16 A. No. Both Mr. McCallen (p. 3) and Mr. Watkins (pp. 5-6) provide a definition  
17 that is consistent with that of the FCC.

18

19 Q. THE TRANSIT COMPENSATION IN DISPUTE WOULD APPLY TO

20 LOCAL CALLS. DOES THERE APPEAR TO BE A DISPUTE

---

<sup>6</sup> *Further Notice of Proposed Rulemaking* in CC Docket No. 01-92, FCC 05-33, released March 3, 2005 ("2005 FNPRM").

1 REGARDING THE DEFINITION OF "LOCAL" FOR THIS PURPOSE?

2 A. No. Mr. McCallen correctly notes that (p. 8) "for wireline-to-wireline traffic,  
3 local traffic is any intraLATA circuit switched call transiting BellSouth's  
4 network that originates and terminates to TSPs other than BellSouth," and (pp.  
5 8-9) if a wireless carrier originates or terminates a call (or both), the call is  
6 "local" if it originates and terminates within the same Major Trading Area  
7 ("MTA"). Mr. Watkins does not define the term "local" in his testimony, but  
8 he does describe (pp. 9-10) the trunking arrangements currently in place  
9 between the small ILECs and BellSouth in a way that suggests that no dispute  
10 exists regarding the category of calls now at issue.

11

12 Q. IS IT REASONABLE AND APPROPRIATE FOR THE SMALL ILECS TO  
13 COMPENSATE BELLSOUTH WHEN IT PERFORMS TRANSIT  
14 FUNCTIONS FOR THEM?

15 A. Yes.

16

17 Q. HOW SHOULD THE RATE FOR THIS COMPENSATION BE  
18 ESTABLISHED?

19 A. The rate for transit functions, like the rates for other elements of intercarrier  
20 compensation, should be established in the context of a negotiated (or if  
21 necessary, arbitrated) interconnection agreement.

22

1 Q. IS BELLSOUTH'S "TRANSIT TRAFFIC SERVICE" TARIFF THE RIGHT  
2 WAY TO ESTABLISH THE RATES AND TERMS FOR INTERCARRIER  
3 COMPENSATION?

4 A. No. BellSouth's tariff, as filed, not only removes the issue of this component  
5 of intercarrier compensation from its proper place within an interconnection  
6 agreement, it gives BellSouth a significant amount of negotiating leverage and  
7 has the potential to distort the prices and terms of the transit function in future  
8 interconnection agreements.

9  
10 Q. MR. WATKINS ARGUES THAT BELLSOUTH – BY FILING ITS  
11 "TRANSIT TRAFFIC TARIFF" – IS ATTEMPTING TO USE ITS UNIQUE  
12 LEGACY NETWORK POSITION TO GAIN AN INAPPROPRIATE  
13 ADVANTAGE WHEN NEGOTIATING WITH THE SMALL ILECS. DO  
14 YOU AGREE?

15 A. Absolutely. Mr. Watkins states (p. 11) that the small ILECs are "concerned  
16 that BellSouth intends to use its network position to exploit the competitive  
17 marketplace, as it is attempting to do here with its proposed transit tariff  
18 service tariff." I agree with Mr. Watkins' concern. BellSouth entered the  
19 post-1996 competitive local market with a legacy "central network role" that  
20 makes it uniquely positioned to provide the transit functions that make  
21 indirect interconnection possible. Other carriers must and do rely on  
22 BellSouth to provide the transit function in those situations in which direct

1 connection is not economic (typically due to the small volume of traffic being  
2 exchanged) and in which no other transit provider is available.<sup>7</sup>

3 I also agree with Mr. Watkins' statement (p. 4) that "a tariff is not the  
4 proper mechanism to establish terms, conditions and rates for BellSouth's  
5 provision of transit service." Instead, an interconnection agreement is the  
6 proper place for interconnection rates and terms. As the FCC has recently  
7 concluded, "precedent suggests that the Commission intended for  
8 compensation arrangements to be negotiated agreements and we find that  
9 negotiated agreements between the carriers are more consistent with the pro-  
10 competitive process and policies reflected in the 1996 Act. Accordingly, we  
11 amend section 20.11 of the Commission's rules to prohibit LECs from  
12 imposing compensation obligations for non-access traffic pursuant to tariff."<sup>8</sup>

13

14 Q. MR. MCCALLEN STATES (P. 7) THAT BELLSOUTH IS PROVIDING  
15 TRANSIT SERVICE ONLY AS A "BUSINESS DECISION" AND (P. 17)  
16 THAT BELLSOUTH IS NOT REQUIRED TO PROVIDE A TRANSIT  
17 FUNCTION." DO YOU AGREE?

---

<sup>7</sup> No evidence of the existence of any such alternative transit provider has been produced in this case. Even BellSouth has been careful not to make a claim that alternative providers are available to provide this function.

<sup>8</sup> *Declaratory Ruling and Report and Order*, CC Docket No. 01-92, FCC 05-42, released February 24, 2005 ("*Declaratory Ruling*"), ¶14. While the rule changes referred to by the FCC apply specifically to the termination of traffic from CMRS carriers, the same fundamental principle is completely valid in the context of this case.

1 A. No. While Mr. McCallen makes these assertions, he does not provide any  
2 basis for them. The fact that BellSouth is currently providing transit service  
3 on what it calls a “voluntary” basis does not render this issue moot for two  
4 reasons: (1) transit service is an interconnection service that BellSouth must  
5 provide, and (2) BellSouth’s obligations under the 1996 Act determine the  
6 way that this interconnection service must be priced.

7  
8 Q. IN PREVIOUS PROCEEDINGS, BELLSOUTH HAS CITED TO THE  
9 WIRELINE COMPETITION BUREAU’S *VIRGINIA ARBITRATION*  
10 *ORDER*<sup>9</sup> AND TO A SENTENCE IN ONE OF TWO THOUSAND, FOUR  
11 HUNDRED, AND FORTY-SEVEN FOOTNOTES IN THE FCC’S  
12 *TRIENNIAL REVIEW ORDER*.<sup>10</sup> DO THE CITED PASSAGES SUPPORT A  
13 CONCLUSION THAT BELLSOUTH IS NOT REQUIRED TO PROVIDE  
14 TRANSIT SERVICE?

15 A. No. The *Virginia Arbitration Order* in no way supports a position that  
16 BellSouth is not required to provide transit service. As an initial matter, the  
17 Wireline Competition Bureau, hearing the case on delegated authority, did *not*  
18 conclude that BellSouth had no obligation to provide transit service, but  
19 simply noted (§117) that “the Commission has not had occasion to determine

---

<sup>9</sup> *Memorandum Opinion and Order*, CC Docket 00-251, released July 17, 2002  
 (“*Virginia Arbitration Order*”).

<sup>10</sup> *Report and Order and Order on Remand and Further Notice of Proposed  
 Rulemaking*, FCC 03-36, released August 21, 2003 (“*Triennial Review Order*”).

1           whether incumbent LECs have a duty to provide transit service under  
2           [§251(c)(2)]” and declined to determine on delegated authority that an ILEC  
3           has “a section 251(c)(2) duty to provide transit service at TELRIC rates.” In  
4           other words, the FCC has not concluded that BellSouth is *not* required to  
5           provide transit at TELRIC rates, it simply hasn’t yet issued language that gave  
6           the Wireline Competition Bureau sufficient comfort to conclude that it has  
7           done so (or at least it hadn’t prior to July 2002).

8                       Equally importantly, the *Virginia Arbitration Order* in no way  
9           suggests that an ILEC has no §251(a)(1) to provide transit at cost-based rates.  
10          At best, the *Virginia Arbitration Order* indicates that the FCC had not, as of  
11          July 2002, required that an ILEC’s cost-based rates for transit functions be  
12          consistent with the TELRIC methodology.<sup>11</sup>

13                      BellSouth has historically failed to cite the next paragraph of the  
14          *Virginia Arbitration Order* that *rejects* a Verizon proposal that would have  
15          allowed it to discontinue providing transit service in some circumstances. The  
16          Wireline Competition Bureau concluded (¶118) that

17                      Verizon’s proposal, which gives it unilateral authority  
18                      to cease providing transit services to WorldCom,  
19                      creates too great a risk that WorldCom’s end users  
20                      might be rendered unable to communicate through the  
21                      public switched network. The Commission has held, in  
22                      another context, that a ‘fundamental purpose’ of section  
23                      251 is to ‘promote the interconnection of all

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<sup>11</sup> Footnote 1640 to the *Triennial Review Order* similarly states that “to date” [in that case August 2003] the FCC has not required transit to be provided and priced as a UNE.

1 telecommunications networks by ensuring that  
2 incumbent LECs are not the only carriers that are able  
3 to connect efficiently with other carriers ... such a  
4 result would put new entrants at a severe competitive  
5 disadvantage in Virginia, and would under mine the  
6 interest of all end users in connectivity to the public  
7 switched network.  
8

9 Transit services are no less important to the fundamental purposes of  
10 §251 in Florida than they are in Virginia.

11

12 Q. HAS THE FCC ISSUED A MORE RECENT DECISION IN WHICH A  
13 CONCLUSION THAT ILECS – AT LEAST AS A POLICY MATTER –  
14 SHOULD BE REQUIRED TO PROVIDE TRANSIT FUNCTIONS?

15 A. Yes. After receiving comments on the issue, the FCC concluded in March  
16 2005 that:

17 The record suggests that the availability of transit  
18 service is increasingly critical to establishing indirect  
19 interconnection – a form of interconnection explicitly  
20 recognized and supported by the Act (*See* 47 U.S.C §  
21 251(a)(1)). It is evident that competitive LECs, CMRS  
22 carriers, and rural LECs often rely upon transit service  
23 from the incumbent LECs to facilitate indirect  
24 interconnection with each other. Without the continued  
25 availability of transit service, carriers that are indirectly  
26 interconnected may have no efficient means by which  
27 to route traffic between their respective networks ...  
28 Moreover, it appears that indirect interconnection via a  
29 transit service provider is an efficient way to  
30 interconnect when carriers do not exchange significant  
31 amounts of traffic.<sup>12</sup>

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<sup>12</sup> 2005 FNPRM, ¶¶ 125-126.



1  
2           Having made the public policy determination, the FCC is now taking  
3 comment on its legal authority to require transit obligations pursuant to  
4 §251(a)(1) and §251(c)(2)(B).

5  
6 Q.   HAVE OTHER STATE REGULATORS REACHED THE CONCLUSION  
7       THAT ILECS ARE OBLIGATED TO PROVIDE TRANSIT FUNCTIONS?

8 A.   Yes. For example, the North Carolina Utilities Commission, in its role as  
9 arbitrator, recently concluded – as it had done previously – that not only must  
10 BellSouth provide transit functionality at cost-based rates, it must do so at  
11 TELRIC rates.<sup>13</sup> The Commissioner arbitrators noted that “BellSouth initially  
12 contended that it was not required to provide a transit traffic function because  
13 it is not a section 251 obligation under the Act,” but that “witness Blake  
14 modified her position concerning BellSouth’s section 251 obligations by  
15 agreeing that BellSouth had an obligation to provide a tandem transit function  
16 based upon the FCC’s Virginia arbitration orders and the Commission’s  
17 [NCUC’s] September 22, 2003 Order in Docket No. P-19, Sub 454 that found  
18 ILECs have an obligation to provide transit service.” The arbitrators also  
19 noted the position of the Public Staff that “there appears to be no dispute that  
20 BellSouth is obligated to provide transit service. Witness Blake

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<sup>13</sup> *Recommended Arbitration Order*, North Carolina Utilities Commission Docket Nos. P-772, Sub 8; P-913, Sub 5; P-989, Sub 3; P-824, Sub 6; P-1202, Sub4; July 26, 2005, pp. 52-54.

1 acknowledged that the Commission has previously found ILECs have an  
2 obligation to provide transit service and that the FCC has found the tandem  
3 transit function is a section 251 obligation ... Although BellSouth has  
4 conceded that the tandem transit function is a section 251 obligation, it is  
5 unclear why BellSouth still maintains that this function is not subject to the  
6 pricing requirements set forth in section 252.” The arbitrators then reached  
7 the conclusion that “the transit function is a section 251 obligation, and  
8 BellSouth must charge TELRIC rates for it.”

9 The Public Utility Commission of Texas also has recently affirmed its  
10 prior decisions “that SBC Texas shall provide transit services at TELRIC  
11 rates,” and noted that “there has been no change in law or FCC policy to  
12 warrant a departure from prior Commission decisions on transit service.  
13 Further more, a federal court found that a state commission may require an  
14 ILEC to provide transiting to CLECs under state law (*Michigan Bell Te. Co. v.*  
15 *Chapelle*, 222 F. Supp. 2d 905, 918 (E.D. Mich. 2002)).” The PUCT based its  
16 decision on an observation that transit services are necessary for carriers to  
17 efficiently interconnect: “given SBC Texas’ ubiquitous network in Texas and  
18 the evidence regarding absence of alternative competitive transit providers in  
19 Texas, the Commission concludes that requiring SBC Texas to provide transit  
20 services at cost-based rates will promote interconnection of all  
21 telecommunications networks.” The PUCT also explicitly rejected an attempt  
22 by the ILEC to remove transit issues from the §252 negotiation and arbitration

1 process: “the Commission finds that SBC Texas’ proposal to negotiate transit  
2 services separately outside the scope of an FTA §251/252 negotiation may  
3 result in cost-prohibitive rates for transit service.” BellSouth’s attempt to  
4 remove transit issues from the §252 process by filing a tariff with inflated  
5 rates will have the same effect of creating “cost-prohibitive rates for transit  
6 service.”

7 The State Corporation Commission of Kansas recently reached a  
8 similar decision.<sup>14</sup> The Kansas Commission affirmed the decision of the  
9 arbitrators that transit issues are properly addressed in an interconnection  
10 agreement and are subject to §252 arbitration, even though the ILEC (SWBT)  
11 had argued that they are not. The Kansas Commission reached its decision in  
12 part because of the previous treatment of transit service: “transit traffic was  
13 included in the parties’ existing ICA and SWBT has not cited any change in  
14 law since that time to justify excluding these issues.” The Kansas  
15 Commission acknowledged that the FCC is in the process of considering the  
16 issue, but concluded that sound public policy required that it reach its  
17 decision: “As stated in the award, the proper treatment of transit traffic is  
18 before the FCC. Without the benefit of that decision, the Commission  
19 concludes that it is necessary to ensure that all traffic is exchanged by  
20 including these issues in the final ICA.” While treating transit issues within

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<sup>14</sup> *Order 11: Commission Order on Arbitrator’s Award*, State Corporation Commission of the State of Kansas, Docket No. 05-ABIT-507-ARB, July 21, 2005, pp. 15-16.

1 the scope of §252 negotiations and arbitrations will, according to the Kansas  
2 Commission, “ensure that all traffic is exchanged,” BellSouth’s “transit traffic  
3 tariff” would have the opposite effect: it has the potential to significantly  
4 disrupt the way that traffic is exchanged and compensated.

5

6 Q. MR. MCCALLEN SUGGESTS THAT BELLSOUTH’S TARIFFED RATE  
7 FOR “TRANSIT TRAFFIC SERVICE” IS REASONABLE. DO YOU  
8 AGREE?

9 A. No. The only basis for BellSouth’s rates provided by Mr. McCallen is that  
10 “BellSouth’s tariffed transit rate is comparable to rates in recently negotiated  
11 agreements between BellSouth and CLECs and between BellSouth and  
12 CMRS carriers for transit services.” As support for this statement, Mr.  
13 McCallen has produced Exhibits KRM-2 and KRM-3 that he claims are  
14 “listings of such agreements and associated transit rates in effect in Florida.”

15 There are several problems with this “basis” for BellSouth’s tariffed  
16 rate. First and foremost, BellSouth has produced no cost support at all for the  
17 proposed rate (and as explained above, has previously stated that none exists).  
18 Whether or not transit functions are subject to the TELRIC pricing  
19 requirements of §252, as interconnection elements they still must be cost-  
20 based. For this reason, Mr. McCallen’s exhibits, even if accurate, are simply  
21 irrelevant.

22 Second, Mr. McCallen’s exhibits are not accurate because they are

1 under-inclusive. Although he describes them as a “listing,” Exhibit KRM-2 is  
2 incomplete. For example, AT&T – whose current interconnection agreement  
3 with BellSouth reflects a transit rate of only \$0.0005767 per MOU<sup>15</sup>  
4 (significantly less than the tariffed rate of \$0.003) – does not appear in Exhibit  
5 KRM-2. Other carriers may also be missing.

6 Third, Mr. McCallen’s exhibits are not accurate because at least some  
7 of the information contained in Exhibit KRM-2 is just plain wrong. For  
8 example, on page 2 of Exhibit KRM-2 he lists Comcast Phone, LLC  
9 (“Comcast”) as having an effective transit rate of \$0.0025 in their current  
10 interconnection agreement. This is incorrect. Attached as Exhibit DJW-2 is a  
11 copy of page 170 of Comcast’s currently-effective interconnection agreement  
12 with BellSouth (on file with the Commission). As this page shows, the parties  
13 have agreed that a “bill and keep” arrangement (indicated by the “bk” notation  
14 in this table) will apply for many of the interconnection elements. The  
15 effective transit rate due to BellSouth from Comcast is not \$0.0025 as Mr.  
16 McCallen’s Exhibit KRM-2 indicates, but is instead only \$0.0015 (the amount  
17 of the “Tandem Intermediary Charge”) – one-half of BellSouth’s tariffed rate.

18 Fourth, while some of the rates listed in Exhibits KRM-2 and KRM-3  
19 are equal to or above BellSouth’s tariffed rate of \$0.003, many are lower.

20 Even if it were complete and accurate, it is not clear that this listing would

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<sup>15</sup> See Petition and Complaint of AT&T Communications of the Southern States, LLC, filed February 17, 2005.

1 provide support for BellSouth's tariffed rate, and it certainly would not  
2 replace the need for the cost study necessary to demonstrate that the rate is  
3 cost-based.

4  
5 Q. WHAT WEIGHT SHOULD THE COMMISSION PLACE ON EXHIBITS  
6 KRM-2 AND KRM-3?

7 A. Very little. Rates in existing interconnection agreements, even if accurately  
8 and completely listed, do not necessarily indicate what the level of a cost-  
9 based rate should be.

10 One possible legitimate use of Exhibits KRM-2 and KRM-3 is for the  
11 Commission to note that for a large number of carriers in Florida, the rates  
12 and terms for transit functions exist exactly where they should – in  
13 interconnection agreements.

14  
15 Q. THROUGHOUT HIS TESTIMONY, MR. MCCALLEN SEEKS TO  
16 MINIMIZE THE IMPACT OF BELLSOUTH'S TARIFF BY POINTING  
17 OUT THAT ITS RATE WILL APPLY ONLY TO CARRIERS WHO DO  
18 NOT HAVE A CONTRACT WITH BELLSOUTH THAT ADDRESSES  
19 TRANSIT SERVICE. DOES THIS PROVISION TRULY MINIMIZE THE  
20 TARIFF'S POTENTIAL IMPACT?

21 A. No. Mr. McCallen states (p. 7) that "the tariff *allows* TSPs that have not  
22 negotiated contractual arrangements with BellSouth and that choose to send

1 their originated traffic over BellSouth's network to do so at the tariffed rate"  
2 (emphasis added). This is not quite accurate; in reality, Section A16.1.2(A)  
3 states that these charges "shall apply" in the absence of an interconnection  
4 agreement. A more accurate characterization would be that "the tariff  
5 *requires* TSPs that have not negotiated contractual arrangements with  
6 BellSouth and that choose to send their originated traffic over BellSouth's  
7 network to do so at the tariffed rate."

8 This distinction is significant. If a tariffed rate applies only if a carrier  
9 *chooses* to have that rate apply rather than enter into an interconnection  
10 agreement with BellSouth, then the tariff could be characterized as an option  
11 that could be used to make the interconnection and intercarrier compensation  
12 process more efficient.<sup>16</sup> *But this is not what BellSouth has created:* the rate  
13 in BellSouth's transit tariff "shall apply" in the absence of an interconnection  
14 agreement. As a result, the tariff is not an option for carriers that can be  
15 exercised to increase the efficiency of the interconnection process, it is better  
16 characterized as a "big stick" that BellSouth can wield during the negotiation  
17 process. Having a tariff in place that "shall apply" if no agreement is reached  
18 means that BellSouth has significant leverage to dictate terms, and in no case  
19 would it have an incentive to agree in an interconnection agreement  
20 negotiation to a rate that is less than what it knows it can charge via the tariff

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<sup>16</sup> BellSouth should still be required to demonstrate that the rate in such a truly optional tariff is cost-based.

1 if no agreement is reached. The undisputed fact that the rate in BellSouth's  
2 "shall apply" tariff is well above cost makes BellSouth's big stick even  
3 bigger. *The implementation of BellSouth's "shall apply" tariff with a rate*  
4 *that is above cost would mean that – unless BellSouth is just feeling charitable*  
5 *that day – no future interconnection agreement can be negotiated with a cost-*  
6 *based rate for transit service.* With the FCC having concluded that "the  
7 availability of transit service is increasingly critical to establishing indirect  
8 interconnection – a form of interconnection explicitly recognized and  
9 supported by the Act" and now considering its legal authority to make transit  
10 a §252 functionality, BellSouth's tariff certainly appears to be an attempted  
11 end-run around the FCC.

12

13 Q. DOES BELLSOUTH CLAIM THAT ALTERNATIVES TO ITS "TRANSIT  
14 TRAFFIC SERVICE" EXIST SO THAT ITS TARIFFED RATE – IF  
15 EXCESSIVE – COULD BE AVOIDED?

16 A. No. Mr. McCallen appears to have been very careful in his language on this  
17 point to avoid actually making a claim that such alternatives exist. He  
18 suggests (p. 8) that the small ILECs could avoid BellSouth's tariffed transit  
19 rate "by entering into contractual service arrangements for transit service with  
20 BellSouth or *possibly* with any other TSPs that *may* offer transit service"  
21 (emphasis added): While there is no evidence that carriers have the option of  
22 avoiding BellSouth's tariffed rate by utilizing another provider of transit



1 services, the first half of Mr. McCallen's statement is correct: the small ILECs  
2 could avoid the tariffed rate if they enter into an interconnection agreement (or  
3 some other "contractual service arrangement") with BellSouth; in fact, this is  
4 how such rates should be established and the process by which BellSouth  
5 should seek compensation for the transit functions that it performs for the  
6 small ILECs. If this route is followed, the current dispute between certain  
7 carriers can be resolved by involving (and impacting) only those carriers. In  
8 direct contrast, BellSouth's tariff creates problems that extend well beyond the  
9 dispute between itself and the small ILECs, and represents the wrong way to  
10 settle a dispute regarding payment for transit service.

11

12 **The Dispute Regarding the Small ILECs' §251 Obligations**

13 Q. WHEN DID THE DISPUTE BETWEEN BELLSOUTH AND THE SMALL  
14 ILECS ORIGINATE?

15 A. Mr. McCallen indicates (pp. 2-3) that BellSouth "initiated communications  
16 and discussions about transit traffic" with some of the small ILECs in  
17 December 2004 and that an "active effort" to resolve the dispute continued  
18 until April 2005 (with some discussions still ongoing)."

19

20 Q. WHAT IS BELLSOUTH SEEKING FROM THE SMALL ILECS?

21 A. According to Mr. McCallen (p. 5), BellSouth is seeking "compensation for the  
22 use of its network." He asserts (p. 11) that such compensation should be

1 consistent with an “originating party pays” concept and that small ILECs,  
2 “just like” other telecommunications carriers, “should be responsive for  
3 paying for the services they use.”

4

5 Q. IS BELLSOUTH’S REQUEST TO RECEIVE SOME LEVEL OF  
6 COMPENSATION FROM THE SMALL ILECS FOR PERFORMING A  
7 TRANSIT FUNCTION REASONABLE?

8 A. Yes. While I *do not* agree that the tariffed rate of \$0.003 per MOU is  
9 reasonable or that BellSouth’s tariff is the appropriate mechanism for such a  
10 rate to be established or assessed, I do agree with Mr. McCallen that (1)  
11 BellSouth should be compensated for the use of its network, (2) such  
12 compensation should come from the carrier that originates a call that  
13 “transits” BellSouth’s network, and (3) small ILECs should not be exempt  
14 from paying for services received from other carriers.

15

16 Q. JOINT PETITIONER WITNESS WATKINS ARGUES THAT THE SMALL  
17 ILECS HAVE NO OBLIGATION TO INTERCONNECT WITH OTHER  
18 CARRIERS UNLESS THOSE CARRIERS ESTABLISH A POINT OF  
19 INTERCONNECTION ON THE SMALL ILEC’S NETWORK. ARE YOU  
20 AWARE OF ANY BASIS FOR SUCH AN ASSERTION?

21 A. No. Mr. Watkins makes various claims regarding the small ILECs’  
22 interconnection obligations in his testimony. For example, he argues (p. 4)

1 that “the Commission should conclude that the small LECs have no obligation  
2 to pay for transit service traffic for delivery of local traffic to points beyond  
3 any technically feasible interconnection point on their incumbent LEC  
4 networks.” Unfortunately, Mr. Watkins provide no citations to any authority  
5 that would support his counter-intuitive and (at least in my experience) novel  
6 claims.

7 Like Mr. Watkins I am not an attorney, but I do have some familiarity  
8 with the language of the 1996 Act and an understanding of how that language  
9 has been applied by the FCC, state regulators, and the courts. §251(a)(1)  
10 creates a duty for all telecommunications carriers “to interconnect *directly or*  
11 *indirectly* with the facilities and equipment of other telecommunications  
12 carriers” (emphasis added). Any claim by Mr. Watkins that other carriers  
13 must establish a form of direct connection with the small ILECs appears to be  
14 directly at odds with the “directly or indirectly” phrase, and any suggestion  
15 that the small ILECs have engaged in such interconnection only on a  
16 “voluntary” basis certainly appears to be at odds with the phrase “every  
17 telecommunications carrier has the duty.”

18 As incumbent local exchange carriers, and subject only to the  
19 exemptions contained in §§251(f)(1) and (2), the small ILECs have additional  
20 duties pursuant to §251(c), including a duty to “provide, for the facilities and  
21 equipment of any requesting telecommunications carrier, interconnection with  
22 the local exchange carrier’s network at any technically feasible point within

1 the carrier's network" (§251(c)(2)(B)). In other words, the small ILECs have a  
2 duty to provide for interconnection "at any technically feasible point" on their  
3 network *if* such a request is made by another telecommunications carrier. Mr.  
4 Watkins is trying to turn this ILEC duty around 180 degrees to create a  
5 requirement for the interconnecting carrier to come to the small ILEC and  
6 interconnect at the point of the small ILEC's choosing. He complians (p. 14)  
7 that BellSouth – by providing a transit function – has allowed CLECs and  
8 CMRS carriers "to exchange traffic with the small LECs without establishing  
9 an interconnection point at a technically feasible point on the incumbent  
10 networks of the small LECs as required under the Act." It is again  
11 unfortunate that Mr. Watkins has provided no citation to the Act that might  
12 support his claim. It is clear that §251 does not do what Mr. Watkins claims;  
13 while it creates a duty for ILECs to accept interconnection – upon request – at  
14 any technically feasible point, it in no way creates an obligation for all carriers  
15 who have a need to interconnect with the ILEC to do so directly rather than  
16 indirectly.

17           Again without providing any citations to support his claims, Mr.  
18 Watkins argues (p. 8): "In lieu of establishing their own EAS facility  
19 arrangements with the small LECs at the typical border location, the CLECs  
20 simply chose to utilize the services of BellSouth to have their EAS traffic  
21 switched and trunked in tandem." What Mr. Watkins neglects to explain or  
22 support is why such arrangements might be illegal, improper, inefficient, or

1 even bad public policy. There is of course no requirement for all carriers to  
2 directly interconnect with all other carriers (including but not limited to the  
3 small ILECs), nor would such universal “direct interconnection” be efficient  
4 or desirable. His reference to direct interconnection as “typical” is  
5 demonstrably false: far more carriers are indirectly connected than are directly  
6 connected.

7 In direct contrast to Mr. Watkins’ uncited (and nonexistent)  
8 requirement that all carriers must come forth and directly interconnect with  
9 the small ILECs, the FCC has recently concluded that indirect interconnection  
10 accomplished through the use of transit service is “a form of interconnection  
11 explicitly recognized and supported by the Act,” that such interconnection  
12 may represent the only “efficient means by which to route traffic” between  
13 carrier networks, particularly “when carriers do not exchange significant  
14 amounts of traffic.”<sup>17 18</sup>

15  
16 Q. MR. WATKINS ARGUES (P. 11) THAT BELLSOUTH SHOULD NOT  
17 HAVE THE RIGHT TO DICTATE THE SMALL ILECS’ NETWORK

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<sup>17</sup> 2005 FNPRM, ¶¶125-126.

<sup>18</sup> On January 12, 2006, the Tennessee Regulatory Authority (“TRA”) issued an *Order of Arbitration Award* in Docket No. 03-00585, in which Mr. Watkins presented virtually identical arguments on behalf of the small ILECs. In its order, the TRA rejects Mr. Watkins’ arguments and concludes that small ILECs do indeed have §251 interconnection and compensation obligations consistent with those that I describe in my testimony.

1 ARRANGEMENTS. DO YOU AGREE?

2 A. Yes, but Mr. Watkins' testimony is inconsistent on this point. He states (p.11)  
3 that "one carrier should not be allowed to thwart another carrier's network and  
4 service options. BellSouth has no more right to dictate the small LECs end  
5 office/tandem subtending arrangements than the small LECs have such right  
6 to dictate such network decisions to BellSouth." With no acknowledgment of  
7 the inherent irony, he goes on (p. 14) to assert that the small ILECs are now  
8 being disadvantaged because "the CLECs and CMRS providers have not  
9 established interconnection points with the small LECs at a point on the  
10 network of the small LECs" – something, of course, that the CLECs and  
11 CMRS providers are not required to do – and "the small LECs have no  
12 apparent way to force the CLECs and CMRS providers to do so." Apparently  
13 Mr. Watkins' "no right to dictate" rule does not apply universally; according  
14 to Mr. Watkins' the only thing that is keeping the small ILECs from "forcing"  
15 other carriers to conform to a network design of the small ILEC's choosing is  
16 that lack of an apparent way for the small ILEC to do so. In reality, Mr.  
17 Watkins' "one carrier should not be allowed to thwart another carrier's  
18 network and service options" dictum is consistent with the requirements of the  
19 Act, while his assertion that all carriers have an obligation to establish, at their  
20 expense, a direct connection with the small ILECs is not.

21

22 Q. MR. WATKINS ARGUES THAT OTHER TELECOMMUNICATIONS

1 CARRIERS SHOULD COMPENSATE BELLSOUTH FOR PROVIDING  
2 TRANSIT FUNCTIONS BECAUSE THOSE OTHER CARRIERS ARE  
3 THE BENEFICIARIES OF THE INDIRECT INTERCONNECTION WITH  
4 THE SMALL ILECS. IS HE RIGHT?

5 A. No. Throughout his testimony he claims that “CLECs and CMRS providers  
6 have been the direct beneficiaries” of the indirect interconnection  
7 arrangements, and that “by virtue of the convenient and beneficial transit  
8 arrangement,” CLECs and CMRS providers have been allowed, in a  
9 presumably efficient fashion, to engage in what Mr. Watkins apparently  
10 believes is the highly questionable activity of “transmitting to, and receiving  
11 traffic from, other carriers (such as the small LECs).”

12 There are two primary problems with Mr. Watkins’ view. First, the  
13 “convenient and beneficial transit arrangement” that permits indirect  
14 connection among carriers that he derides is in reality “a form of  
15 interconnection explicitly recognized and supported by the Act,” that may  
16 represent the only “efficient means by which to route traffic” between carrier  
17 networks. There is nothing at all pernicious about an efficient means of  
18 exchanging traffic among carriers so that customers of all service providers  
19 can make calls to the customers of all other service providers. Mr. Watkins  
20 complains (p. 9) that BellSouth did not “involve the small LECs” when  
21 negotiating interconnection agreements with other carriers, but of course  
22 BellSouth is not required to do so. More importantly, the small ILECs’ duty

1 to interconnect was *not* created, as Mr. Watkins suggests, by the act of  
2 BellSouth entering into an interconnection agreement with another carrier, but  
3 instead was created the act of Congress that created §251.

4 Second, Mr. Watkins sees only half of the story in terms of the  
5 benefits that are created by indirect interconnection. He consistently points  
6 out that the indirect interconnection made possible when BellSouth acts as a  
7 transit provider provides benefits to other carriers (and the customers of those  
8 carriers), but he fails to recognize that these benefits are reciprocal. As Mr.  
9 McCallen correctly points out (pp. 4-5): “the ability to place calls to the  
10 networks of these additional TSPs is valuable to ICOs – it allows ICO end  
11 users to place calls ubiquitously to friends, family members, and businesses  
12 that have opted to use wireless phones or that have switched their telephone  
13 service to a CLEC. It also allows the ICO to avoid the expense of building  
14 facilities to interconnect directly with each of these TSPs. *The transit service*  
15 *functionalities and value to an ICO as an originating TSP are inherently the*  
16 *same as those for CLEC and CMRS originated traffic” (emphasis added). Mr.  
17 Watkins’ characterization of indirect interconnection as an arrangement  
18 beneficial to other carriers and their customers is only half right: the small  
19 ILECs and their customers equally benefit.*

20  
21 Q. MR. WATKINS CLAIMS THAT A REQUIREMENT TO COMPENSATE  
22 BELLSOUTH FOR THE USE OF ITS NETWORK WILL CAUSE SMALL



1 ILECS TO INCUR ADDITIONAL COSTS. IS HE RIGHT?

2 A. No. Mr. Watkins refers throughout his testimony to what he calls (p. 11)  
3 “new and extraordinary costs foisted upon the small LECs and their  
4 customers.” In reality, for as long as small ILEC customers have originated  
5 local calls that terminated on the network of another carrier via a BellSouth  
6 tandem, the small ILECs have *caused* the costs at issue to occur. It is my  
7 understanding that for some period of time the cost-causers (the small ILECs)  
8 did not contribute to the recovery of those costs. What is new in this dispute  
9 is not the cost, but the intercarrier compensation that would permit its  
10 recovery.

11 Mr. Watkins goes on (p. 8) to point out that BellSouth now “wants to  
12 charge the small LECs for the transiting service” that it has been providing  
13 them, and argues that “this new treatment by BellSouth will impose a new  
14 cost to be imposed on the small LECs that the small LECs and the  
15 Commission never contemplated when the CLECs and CMRS providers  
16 established their arrangements with BellSouth.” Given the requirements of  
17 the 1996 Act, it is difficult to imagine how the small ILECs could have “never  
18 contemplated” that they would be required to interconnect, exchange traffic,  
19 and compensate other carriers when doing so. To the extent that any “new  
20 cost” was “imposed” on the small LECs, it happened when the 1996 Act went  
21 into effect, not when other carriers entered into interconnection agreements  
22 with BellSouth.

1           Mr. Watkins' characterization (pp. 14-15) of the small ILECs as  
2 victims with "no options" gets premised on an example that is factually  
3 backward. He states that "for traffic originating from a CLEC or from a  
4 CMRS provider that is destined to a small LEC end user, the small LEC has  
5 no real choice now but to accept the tandem-switched, commingled delivery  
6 of this traffic by BellSouth." This is wrong for two reasons. First, the small  
7 ILECs certainly *do* have a choice: they can take the initiative to establish a  
8 direct connection with the CLEC or CMRS carrier rather than sitting back and  
9 demanding that the other carrier come to them. Second, in the example Mr.  
10 Watkins uses (presumably to make it appear that it is customers of other  
11 carriers that are creating a "new and extraordinary cost"), the small ILECs are  
12 the terminating, not the originating carrier. It would be the CLEC or CMRS  
13 provider in Mr. Watkins' example that would be required to compensate  
14 BellSouth for performing a transit function, *not* the small ILEC. In fact, if the  
15 small ILEC has availed itself of its ability pursuant to 47 CFR §20.11(f) to  
16 request an interconnection agreement and "invoke the negotiation and  
17 arbitration procedures contained section 252 of the Act" *it will be the carrier*  
18 *that is receiving compensation* for completing the call.

19  
20 Q. DOES MR. WATKINS' TESTIMONY PROVIDE THE COMMISSION  
21 WITH ANY VALID REASON TO CHANGE THE "ORIGINATING  
22 CARRIER PAYS" REGIME CURRENTLY IN PLACE IN THE

1 INDUSTRY?

2 A. No. 47 CFR 51.703(b) directly and clearly states that "a LEC may not assess  
3 charges on any other telecommunications carrier for telecommunications  
4 traffic that originates on the LEC's network." Mr. Watkins has provided no  
5 basis, in law or public policy, for a conclusion that this rule should simply be  
6 ignored.

7

8 **Response to the List of Tentative Issues**

9 ~~Q. IS BELLSOUTH'S TRANSIT SERVICE TARIFF AN APPROPRIATE~~

10 ~~MECHANISM TO ADDRESS TRANSIT SERVICE PROVIDED BY~~

11 ~~BELLSOUTH (ISSUE 1)?~~

12 A. No. BellSouth should pursue compensation for transit service through the  
13 negotiation (and if necessary, arbitration) of an interconnection agreement.

14

15 Q. IF AN ORIGINATING CARRIER UTILIZES THE SERVICES OF

16 BELLSOUTH AS A TANDEM PROVIDER TO SWITCH AND

17 TRANSPORT TRAFFIC TO A THIRD PARTY NOT AFFILIATED WITH

18 BELLSOUTH, WHAT ARE THE RESPONSIBILITIES OF THE

19 ORIGINATING CARRIER (ISSUE 2)?

20 A. The responsibilities of the originating carrier, if a request made by

21 BellSouth, are to (1) negotiate in good faith with BellSouth to develop an

22 interconnection agreement that sets forth the rates and terms for the transit

1 functions performed by BellSouth, and (2) to compensate BellSouth, pursuant  
2 to a negotiated or arbitrated cost-based rate, for providing this function.

3

4 Q. WHICH CARRIER SHOULD BE RESPONSIBLE FOR PROVIDING  
5 COMPENSATION TO BELLSOUTH FOR THE PROVISION OF THE  
6 TRANSIT TRANSPORT AND SWITCHING SERVICES (ISSUE 3)?

7 A. The originating carrier is responsible for compensating the transit provider.

8

9 Q. WHAT IS BELLSOUTH'S NETWORK ARRANGEMENT FOR TRANSIT  
10 TRAFFIC AND HOW IS IT TYPICALLY ROUTED FROM AN  
11 ORIGINATING PARTY TO A TERMINATING THIRD PARTY (ISSUE  
12 4)?

13 A. FCTA believes that BellSouth is in the best position to provide information  
14 regarding its network arrangements.

15

16 Q. SHOULD THE FISC ESTABLISH THE TERMS AND CONDITIONS  
17 THAT GOVERN THE RELATIONSHIP BETWEEN AN ORIGINATING  
18 CARRIER AND THE TERMINATING CARRIER, WHERE BELLSOUTH  
19 IS PROVIDING TRANSIT SERVICE AND THE ORIGINATING  
20 CARRIER IS NOT INTERCONNECTED WITH, AND HAS NO  
21 INTERCONNECTION AGREEMENT WITH, THE TERMINATING  
22 CARRIER? IF SO, WHAT ARE THE APPROPRIATE TERMS AND

1 CONDITIONS THAT SHOULD BE ESTABLISHED (ISSUE 5)?

2 A. No. The terms and conditions that govern interconnection and inter-carrier  
3 compensation should be negotiated by the carriers. It is not necessary for an  
4 originating carrier to have an interconnection agreement with a terminating  
5 carrier in order for the originating carrier to properly compensate BellSouth.  
6 If the terminating carrier elects to pursue compensation for this traffic, it  
7 should initiate negotiations with the originating carrier for the development of  
8 an interconnection agreement.

9  
10 Q. SHOULD THE FPSC DETERMINE WHETHER AND AT WHAT  
11 TRAFFIC THRESHOLD LEVEL AN ORIGINATING CARRIER SHOULD  
12 BE REQUIRED TO FOREGO USE OF BELLSOUTH'S TRANSIT  
13 SERVICE AND OBTAIN DIRECT INTERCONNECTION WITH A  
14 TERMINATING CARRIER? IF SO, AT WHAT TRAFFIC LEVEL  
15 SHOULD AN ORIGINATING CARRIER BE REQUIRED TO OBTAIN  
16 DIRECT INTERCONNECTION WITH A TERMINATING CARRIER  
17 (ISSUE 6)?

18 A. No. Carriers should be permitted to determine how best to efficiently  
19 interconnect their networks.

20  
21 Q. HOW SHOULD TRANSIT TRAFFIC BE DELIVERED TO THE SMALL  
22 LEC'S NETWORKS (ISSUE 7)?

1 A. FCTA has no position on this issue, but is not aware of any reasons why the  
2 existing trunking arrangements cannot be used.

3  
4 Q. SHOULD THE FPSC ESTABLISH THE TERMS AND CONDITIONS  
5 THAT GOVERN THE RELATIONSHIP BETWEEN BELLSOUTH AND A  
6 TERMINATING CARRIER, WHERE BELLSOUTH IS PROVIDING  
7 TRANSIT SERVICE AND THE ORIGINATING CARRIER IS NOT  
8 INTERCONNECTED WITH, AND HAS NO INTERCONNECTION  
9 AGREEMENT WITH, THE TERMINATING CARRIER? IF SO, WHAT  
10 ARE THE APPROPRIATE TERMS AND CONDITIONS THAT SHOULD  
11 BE ESTABLISHED (ISSUE 8)?

12 A. No. The terms and conditions that govern interconnection and intercarrier  
13 compensation should be negotiated by the carriers. It is not necessary for an  
14 originating carrier to have an interconnection agreement with the terminating  
15 carrier in order for the originating carrier to properly compensate BellSouth.

16  
17 Q. SHOULD THE FPSC ESTABLISH THE TERMS AND CONDITIONS OF  
18 TRANSIT TRAFFIC BETWEEN THE TRANSIT SERVICE PROVIDER  
19 AND THE SMALL LECS THAT ORIGINATE AND TERMINATE  
20 TRANSIT TRAFFIC? IF SO, WHAT ARE THE TERMS AND  
21 CONDITIONS (ISSUE 9)?

22 A. No. These terms and conditions should be negotiated by the carriers. The

1 Commission's involvement should be limited to those occasions in which the  
2 parties are unable to reach an agreement and have submitted the dispute to the  
3 Commission for arbitration.

4  
5 Q. WHAT EFFECT DOES TRANSIT SERVICE HAVE ON ISP BOUND  
6 TRAFFIC (ISSUE 10)?

7 A. FCTA has no position on this issue.

8  
9 Q. HOW SHOULD CHARGES FOR BELLSOUTH'S TRANSIT SERVICE BE  
10 DETERMINED (ISSUE 11)?

11 (a) WHAT IS THE APPROPRIATE RATE FOR TRANSIT  
12 SERVICE?

13 (b) WHAT TYPE OF TRAFFIC DO THE RATES IDENTIFIED IN  
14 (A) APPLY?  
15

16 A. The appropriate rate for transit service is the rate negotiated by the parties to  
17 an interconnection agreement. If no agreement is reached and the issue is  
18 submitted for arbitration, the appropriate rate is a cost-based rate as  
19 determined by the Commission. This rate would apply whenever a carrier that  
20 is not the originating or terminating carrier delivers a local call to the  
21 terminating carrier so that the call can be completed.

22  
23 Q. CONSISTENT WITH ORDER NOS. PSC-05-0517-PAA-TP AND PSC-05-  
24 0623-CO-TP, HAVE THE PARTIES TO THIS DOCKET ("PARTIES")

1 PAID BELLSOUTH FOR TRANSIT SERVICE PROVIDED ON OR  
2 AFTER FEBRUARY 11, 2005? IF NOT, WHAT AMOUNTS IF ANY ARE  
3 OWED TO BELLSOUTH FOR TRANSIT SERVICE PROVIDED SINCE  
4 FEBRUARY 11, 2005 (ISSUE 12)?

5 A. FCTA has no position on this issue.

6  
7 Q. HAVE PARTIES PAID BELLSOUTH FOR TRANSIT SERVICE  
8 PROVIDED BEFORE FEBRUARY 11, 2005? IF NOT, SHOULD THE  
9 PARTIES PAY BELLSOUTH FOR TRANSIT SERVICE PROVIDED  
10 BEFORE FEBRUARY 11, 2005, AND ALSO, WHAT AMOUNTS, IF ANY,  
11 ARE OWED TO BELLSOUTH FOR TRANSIT SERVICE PROVIDED  
12 BEFORE FEBRUARY 11, 2005 (ISSUE 13)?

13 A. FCTA has no position on this issue.

14  
15 Q. WHAT ACTION, IF ANY, SHOULD THE FPSC UNDERTAKE AT THIS  
16 TIME TO ALLOW THE SMALL LECS TO RECOVER THE COSTS  
17 INCURRED OR ASSOCIATED WITH BELLSOUTH'S PROVISION OF  
18 TRANSIT SERVICE (ISSUE 14)?

19 A. It is FCTA's position that any questions regarding the recovery of costs by the  
20 small LECS are separate and distinct from questions regarding the appropriate  
21 method of compensation for transit services. Any action regarding small  
22 LECS cost recovery is properly addressed within the context of the



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Commission's regulation of each individual ILEC.

Q. SHOULD BELLSOUTH ISSUE AN INVOICE FOR TRANSIT SERVICES AND IF SO, IN WHAT DETAIL AND TO WHOM (ISSUE 15)?

A. BellSouth should seek payment from the originating carrier according to the terms set forth in its interconnection agreement with that carrier.

Q. SHOULD BELLSOUTH PROVIDE TO THE TERMINATING CARRIER SUFFICIENTLY DETAILED CALL RECORDS TO ACCURATELY BILL THE ORIGINATING CARRIER FOR CALL TERMINATION? IF SO, WHAT INFORMATION SHOULD BE PROVIDED BY BELLSOUTH (ISSUE 16)?

A. Yes. The scope and form of this information should be pursuant to the terminating carrier's interconnection agreement with BellSouth.

Q. HOW SHOULD BILLING DISPUTES CONCERNING TRANSIT SERVICE BE ADDRESSED (ISSUE 17)?

A. Billing disputes for transit services, like other interconnection services, should be handled according to the dispute resolution language in each carrier's interconnection agreement with BellSouth.

21  
22

Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?

Rebuttal Testimony of Don J. Wood  
On Behalf of the FCTA  
Docket Nos. 050119-TP/050125-TP  
January 30, 2006

1 A. Yes.

2

1 BY MR. GROSS:

2 Q Mr. Wood, do you have a summary of your testimony?

3 A Yes, sir, I do.

4 Q Would you please go ahead and give your summary?

5 A Yes, sir. Thank you. Good afternoon, Commissioners.

6 I'm the last one. Sometimes what starts out as a limited  
7 conflict among a fairly small number of parties has the  
8 potential, sometimes through unintended consequences, to grow  
9 into something that has much broader implications.

10 CHAIRMAN EDGAR: Mr. Wood, I'm so sorry to interrupt  
11 you, but we are having a little difficulty hearing. If you  
12 could maybe pull the microphone toward you and we'll go from  
13 there. Thank you.

14 THE WITNESS: Is that better? Okay.

15 Whichever diagram you look at, there doesn't appear  
16 to be any dispute that BellSouth is, in fact, providing a  
17 transit functionality for the small LECs. So when the small  
18 ILEC customers originate traffic, those calls can be actually  
19 completed to the person that those customers are calling. Now  
20 that's not altruism on BellSouth's part. We can -- setting  
21 aside for a minute the dispute about whether Section 251 of the  
22 Act requires them to provide transit -- I think it does, they  
23 think it doesn't -- but as a practical matter, BellSouth is  
24 continuing to provide transit service and they're going to  
25 likely provide it in the future because their network position

1 as they came into the competitive environment in 1996 put them  
2 in a unique position to make money providing transit service.  
3 There was nothing wrong with that. Certainly in that position  
4 they're providing an important service. And in terms of  
5 recovering their costs and a fair profit of doing that, I don't  
6 think there's any objection. The problem gets created when  
7 they take that unique position and use it to extract more money  
8 than that level of rates.

9           How did we get a room -- start with a small conflict  
10 and end up with a room full of people? It looks like BellSouth  
11 sought from the small ILECs a compensation arrangement for that  
12 transit service. Both parties, it looks like, then took a  
13 pretty hard line position. The small LECs took, I guess I  
14 would have to call it, a creative interpretation of Section  
15 251 and turned an obligation of all carriers under 251(a) to  
16 interconnect directly or indirectly and turned it into a  
17 requirement that has an exclusion for small LECs. 251(a) is  
18 completely symmetrical. It doesn't distinguish between types  
19 of carriers in terms of the obligations. They took the  
20 251(b)(2) obligation to provide an interconnecting carrier with  
21 a point of interconnection at any technically feasible point  
22 and turned that completely around into their ability to demand  
23 that other carriers come to them at the point of the ILEC's  
24 choosing.

25           Well, there's certainly nothing in the Act, nothing

1 in the FCC rules, nothing in the FCC orders, nothing in any  
2 state commission orders that I've found that supports the small  
3 LEC position that when a small LEC customer originates a call  
4 and other telecommunications carriers are involved in  
5 completing that call from the LEC to its customer, that the  
6 ILEC doesn't have to compensate those other carriers.

7           Now on the other side of the table, BellSouth took an  
8 equally hard line position. Rather than going through the  
9 251/252 negotiation and, if necessary, coming to you with an  
10 arbitration avenue that was available to them, they tried to  
11 shortcut that by -- and gain, what they say was to gain  
12 negotiating leverage by filing a tariff, and it's a filing with  
13 a big scary rate in it, to get the ILECs to the table to agree  
14 to a rate. At one time it was going to be six-tenths, then  
15 they went down to three-tenths. Now I understand they may be  
16 going back to six-tenths in some places.

17           The broader implications, whether they're intentional  
18 or not of this tariff -- not only has the BellSouth tariff  
19 failed in its intended purpose, they didn't get the ILECs to  
20 the table to negotiate the agreement, but it has now a very  
21 real threat to disrupt how a much broader set of carriers  
22 interconnect, exchange traffic and compensate each other,  
23 carriers that today are exchanging and compensating that  
24 traffic based on negotiated interconnection agreements. Now  
25 BellSouth suggests that these other carriers won't be affected

1 because the tariff represents an option that would apply only  
2 in the absence of an interconnection agreement. But that's not  
3 what the tariff says. The tariff says it shall apply if the  
4 parties don't agree.

5           What's the exposure to all these other carriers in  
6 the room that already have an interconnection agreement? All  
7 of those interconnection agreements expire, and prior to their  
8 expiration they have to be renegotiated each time, usually on a  
9 three-year cycle. If BellSouth has a tariff with a high, what  
10 it says was a high rate created for leverage purposes, it has  
11 the ability to go in and say this tariff shall apply if we  
12 don't agree to a rate, then their incentive to negotiate, meet  
13 their duty to negotiate under 251 for a reasonable rate for  
14 that exchange is gone. They have no reason to agree to  
15 anything below what their tariff says.

16           You entered an arbitration order in, for NuVox and  
17 BellSouth that's been referenced over the past couple of days  
18 last fall. And I'm not going to sit here and presume to tell  
19 you what your order says because it's your order. But what I  
20 note at the end of this transit section is that what you did is  
21 you told the parties to go negotiate a transit rate. And they  
22 were starting at .0015, significantly less than the tariff.  
23 And, you know, with all due respect, I think that's what  
24 BellSouth and the small LECs ought to be doing right now is  
25 negotiating that transit rate.

1           The problem with the BellSouth tariff kind of hanging  
2 out there in this process is not only it wasn't effective and  
3 what they tried, they intended it for, which is getting the  
4 small ILECs to agree, but now it has the potential for some  
5 very significant consequences for other carriers, how they  
6 interconnect and how they compensate each other, and that's a  
7 long-term problem the tariff creates. Thank you.

8           MR. GROSS: Mr. Wood is available for cross.

9           CHAIRMAN EDGAR: Thank you. Mr. Tyler.

10          MR. TYLER: Mr. Culpepper.

11          MR. CULPEPPER: Thank you, Madam Chair.

12   CROSS EXAMINATION

13 BY MR. CULPEPPER:

14          Q     Good afternoon, Mr. Wood.

15          A     Good afternoon, Mr. Culpepper. Good to see you.

16          Q     You don't know how many members of the FCTA have  
17 interconnection agreements with BellSouth, do you?

18          A     Total, no. I know that a couple of them do and we've  
19 responded with some details in data requests, but I don't know  
20 the total number.

21          Q     And you haven't participated in any transit traffic  
22 related interconnection negotiations with BellSouth since the  
23 transit tariff went into effect.

24          A     With BellSouth since the tariff took effect, that's  
25 correct.

1 Q And you don't know whether any FCTA member has been  
2 involved in any transit traffic related negotiations with  
3 BellSouth since the transit traffic tariff went into effect.

4 A I don't know where those negotiations were in the  
5 timing of the tariff. I know that at least Comcast reached an  
6 agreement late last year that would be subsequent to the tariff  
7 taking effect.

8 Q And you've learned that since the taking of your  
9 deposition two weeks ago?

10 A No. I think I told you at the deposition that I  
11 didn't know the timing of the agreement of the different  
12 provisions and the implementation of the tariff. I still don't  
13 because I wasn't part of the negotiations.

14 Q Do you have your deposition with you?

15 A Yes, sir.

16 Q Would you turn to Page 12? Would you agree with me  
17 on Page 12 at Line 18 the question is, "Do you know whether any  
18 members of the FCTA has been involved in any transit traffic  
19 related negotiations with BellSouth since the transit traffic  
20 tariff went into effect?" And what's your answer?

21 A My answer is, "I wouldn't know that," and it still  
22 is. The agreement was signed subsequent. But, as I said a  
23 minute ago, I don't know when various terms of that agreement  
24 were negotiated, so I don't know the timing.

25 Q You're not aware of any FCTA member that is buying



1 transit service from BellSouth out of the tariff.

2 A Out of the tariff? No, I'm not.

3 Q And I believe it's your testimony that carriers must  
4 rely on BellSouth to provide the transit function in two  
5 situations: One, when direct connection is not economic and,  
6 two, when there are no other transit providers available; is  
7 that correct?

8 A Both of those things would be true, yes. They would  
9 have to rely on BellSouth.

10 Q Okay. And then as to the first situation, you  
11 haven't performed any analysis as to what traffic level should  
12 be reached before an originating carrier should directly  
13 interconnect with a terminating carrier, have you?

14 A No. As I told you in my deposition, that's a  
15 carrier-specific analysis. It will be specific to a given  
16 carrier's traffic patterns, volume of originating traffic,  
17 geographic relationship to the terminating carrier. You have  
18 to do that specific for each carrier. You can't do a general  
19 analysis for that.

20 Q And as for the second situation, you haven't done any  
21 research regarding the availability of any other transit  
22 service providers in Florida, have you?

23 A No. I think I told you there's -- Mr. McCallen in  
24 his testimony was, was very careful not to suggest that there  
25 were options available. There's been references to a website,

1 but no evidence that there's actually an alternative provider.  
2 So we still don't know.

3 Q You've been in the hearing room the last couple of  
4 days, haven't you, Mr. Wood?

5 A Yes, sir, I have.

6 Q I assume you've heard some testimony regarding  
7 Neutral Tandem?

8 A I've heard the testimony that they've been pointed to  
9 as an alternative and that they have a website. I haven't  
10 heard any testimony that they're actually providing service.

11 Q Are you aware that Neutral Tandem provides transit  
12 service in the Miami and Tampa areas?

13 A No, sir. I'm aware that they have at least on the  
14 web advertised that capability, but we haven't heard any  
15 evidence that they're actually providing it anywhere.

16 Q Are you aware that Neutral Tandem has plans to  
17 provide transit service in the Jacksonville, Orlando,  
18 Fort Myers and Naples area of Florida?

19 A I don't think any of us in this room can say what  
20 their plans are. I mean --

21 MR. CULPEPPER: Madam Chair, may I distribute an  
22 exhibit?

23 CHAIRMAN EDGAR: You may.

24 COMMISSIONER CARTER: Madam Chair.

25 CHAIRMAN EDGAR: Commissioner Carter for a question.

1           COMMISSIONER CARTER: Yes, ma'am. Thank you, Madam  
2 Chairman.

3           You were saying in your summary, Mr. Wood, that  
4 there, based upon what BellSouth and the small companies are  
5 trying to do, there are long-term implications for others in  
6 the industry.

7           THE WITNESS: Yes, sir.

8           COMMISSIONER CARTER: Would you care to delineate  
9 what those are?

10          THE WITNESS: Sure. They're trying to negotiate a  
11 rate and they've both taken their postures to try to get to  
12 that, and I don't have a problem with how they negotiate. The  
13 problem is if there's a tariff out there that says it shall  
14 apply if the carriers don't agree in their negotiations to a  
15 rate and it has a rate in it that's well in excess of costs,  
16 well in excess of a reasonable rate, then all of these other  
17 carriers who currently have interconnection agreements, those  
18 interconnection agreements are cyclical, they all expire, and  
19 it's usually they're only effective for three years. So  
20 usually by the beginning of year three you have to start  
21 renegotiating the next agreement. And if BellSouth can just  
22 point to a tariff and say I'm going to get .3 cents if we don't  
23 agree, then, you know, their incentive to negotiate with  
24 anybody for a rate anything less than .3 cents -- I mean, if I  
25 were them, I certainly wouldn't, wouldn't agree to it.

1           Having that out there disrupts that negotiation  
2 process. That, that negotiation process ought to be where  
3 these things are determined. And if there's a tariff out there  
4 that BellSouth has that's going to apply if the parties don't  
5 reach an agreement, I think that completely undermines that  
6 negotiation because BellSouth is going to get that higher rate  
7 if there's no agreement. And that could increase the rates  
8 that a lot of different carriers are paying for this function.

9           COMMISSIONER CARTER: Follow-up, Madam Chair.

10          CHAIRMAN EDGAR: Commissioner Carter.

11          COMMISSIONER CARTER: Now what would be the  
12 implications of what the small companies are asking? I think  
13 you distinguished that there are implications for BellSouth,  
14 but you said that there were other implications for, long-term  
15 implications for the industry, for the companies that are  
16 contrary to BellSouth's position, the small companies.

17          THE WITNESS: Well, yes, sir. If you took the small  
18 company's position here on what their 251 obligations are,  
19 well, you'd pretty much just turn the industry upside down.  
20 There is a consistent requirement that the carrier whose  
21 customer originates the call, who picks up the phone and dials  
22 the numbers, that carrier has the responsibility to deliver  
23 that call or to make sure it gets delivered to the customer  
24 that they're calling. Now it might be just on their network,  
25 it might involve one or more other telecommunications carriers

1 to deliver the call, but it's the originating carrier's  
2 responsibility from start to finish. And if it's their  
3 network, they incur the cost. If it's somebody else's network,  
4 they have the obligation to compensate the other carrier  
5 fairly, not an excessive level, but at a fair level.

6 What they're suggesting is that obligation of all  
7 carriers set forth in 251(a) somehow doesn't apply just to them  
8 or just doesn't apply to them.

9 If we -- you know, this is what the FCC referred to  
10 as the road map for how intercarrier compensation should get  
11 determined between the carriers. If we turn that upside down,  
12 you know, I think we're now disrupting all of these agreements  
13 in the industry, and we don't know who's going to pay for what.  
14 You know, I don't think -- the Act is pretty clear. We've all  
15 interpreted it for ten years one way. The small ILECs now have  
16 a different interpretation that flips that around. But I think  
17 if we go to that, we're going to have a far-reaching  
18 disruption.

19 COMMISSIONER CARTER: Thank you, Madam Chair.

20 CHAIRMAN EDGAR: Mr. Culpepper.

21 MR. CULPEPPER: Yes, Madam Chair. I would ask that  
22 the Neutral Tandem Network Map be identified as the next  
23 hearing exhibit.

24 MR. GROSS: Madam Chair, I have an objection to this  
25 exhibit.

1 CHAIRMAN EDGAR: Let's take it up at the end.

2 Okay. Thank you. Mr. Culpepper.

3 BY MR. CULPEPPER:

4 Q Mr. Wood, have you had an opportunity to look at the  
5 Neutral Tandem network map?

6 A Is that the second page?

7 Q Yeah. The second page is a blowup of the map that's  
8 on the first page.

9 A Okay. It's a little easier on the second page. Yes,  
10 sir.

11 MR. McDONNELL: I'm going to object to that  
12 characterization of what this is. I don't think a predicate  
13 has been laid other than it's a piece of paper. I don't know  
14 if this witness can testify that this is Neutral Tandem's  
15 network map or not.

16 CHAIRMAN EDGAR: Mr. Culpepper, can you address?  
17 Let's give some context, if you would, please, to the document.  
18 That would be helpful to me.

19 MR. CULPEPPER: Certainly. This network map comes  
20 off of the website of Neutral Tandem.

21 MR. McDONNELL: I'm going to object to this lawyer  
22 testifying, Your Honor. If he has a question of this witness  
23 to lay a predicate for something he wants to put in evidence,  
24 I'd ask that he ask his question and not testify.

25 CHAIRMAN EDGAR: Mr. McDonnell, I would like a little

1 more information about what has been put before me.

2 MR. McDONNELL: I apologize.

3 CHAIRMAN EDGAR: That's all right.

4 MR. CULPEPPER: Mr. Wood --

5 CHAIRMAN EDGAR: Mr. Culpepper, again, to me, if you  
6 could tell me what it is that I have here.

7 MR. CULPEPPER: Okay.

8 CHAIRMAN EDGAR: Thank you.

9 MR. CULPEPPER: Certainly. What you have here is the  
10 website home page of Neutral Tandem, and Neutral Tandem is an  
11 independent transit service provider that has operations in  
12 Florida.

13 CHAIRMAN EDGAR: All right. I'm going to allow very  
14 limited questioning on here because there has been some  
15 discussion prior to this, to this point. But let's keep it  
16 narrow, please.

17 MR. CULPEPPER: Certainly.

18 COMMISSIONER DEASON: Madam Chairman.

19 CHAIRMAN EDGAR: Commissioner Deason.

20 COMMISSIONER DEASON: I mean -- I'm going --  
21 obviously it's your discretion, but I just don't think this  
22 witness -- Mr. Wood, do you even talk about alternative  
23 providers in your testimony?

24 THE WITNESS: No, sir. I mean, I'd note that  
25 Mr. McCallen is careful not to claim that there are any, but

1 that's the limit of my addressing the issue.

2 COMMISSIONER DEASON: So nowhere in your direct  
3 testimony do you talk about other providers of Neutral Tandem  
4 services or even other options that small LECs may have at  
5 their disposal.

6 THE WITNESS: Whether there are or aren't, no, sir.

7 COMMISSIONER DEASON: Okay. That's what I thought.

8 CHAIRMAN EDGAR: Mr. Culpepper, to address  
9 Commissioner Deason's concern, can you tie this line of  
10 questioning and this document to the testimony linked to this  
11 witness?

12 MR. CULPEPPER: Certainly. On Page 14 of the  
13 rebuttal testimony Mr. Wood testifies that there are no -- that  
14 there are -- Mr. Wood's testimony is that instead of using  
15 BellSouth as a transit provider, a carrier has two options,  
16 direct connection or an alternative service provider. And his  
17 testimony goes on to say he's unaware of any alternative  
18 transit service provider.

19 MR. GROSS: Would you cite the lines, Mr. Culpepper?

20 MR. CULPEPPER: Page 14 of his direct testimony.

21 MR. GROSS: It's rebuttal. But what lines are you  
22 referring to? I'm not able to find that.

23 MR. CULPEPPER: Bottom of Page 14, top of Page 15.  
24 And I will add that, if I'm not mistaken, the witness just  
25 testified he's been in the hearing room and he's heard some



1 testimony regarding Neutral Tandem as an alternative transit  
2 service provider, and I will limit my questions regarding this  
3 exhibit.

4 CHAIRMAN EDGAR: I ruled previously that I will allow  
5 limited, and I again rule that I will allow limited.

6 MR. CULPEPPER: Thank you, Madam Chair.

7 MR. GROSS: Madam Chair, I apologize if I'm being  
8 disruptive, but for the record, just to preserve my client's  
9 rights, I just have to object in that there's been a  
10 representation that one page is a blowup of the other page, and  
11 the first page is barely legible, if not illegible, and the  
12 blowup cuts off a lot of essential information. And I just  
13 would object to this document on that basis also.

14 CHAIRMAN EDGAR: All right. My -- what I believe I  
15 heard counsel for BellSouth to say was that it was a blowup of  
16 the map on the first page, not the full page. I don't know if  
17 that addresses your concern or not, Mr. Gross.

18 MR. GROSS: Well, I think that it's not clear what  
19 the map represents without the narrative that might be relevant  
20 to what is actually shown on the map.

21 CHAIRMAN EDGAR: All right. Once again --

22 MR. CULPEPPER: And Madam Chair.

23 CHAIRMAN EDGAR: Mr. Culpepper.

24 MR. CULPEPPER: Madam Chair, with all due respect,  
25 I'm not going to ask him to read anything off of either page of

1 the handout.

2 CHAIRMAN EDGAR: All right. I will reiterate for the  
3 benefit of all of us that initially to your objection,  
4 Mr. Gross, I said that we would take it up after the testimony.  
5 I've ruled now twice that we would receive limited testimony,  
6 limited questioning. I'm going to give you a chance, but,  
7 again, for the third time, and I'm not going to say it again,  
8 okay, limited. Let's move on.

9 BY MR. CULPEPPER:

10 Q Mr. Wood, does the Neutral Tandem website indicate  
11 that they provide service in Florida?

12 MR. McDONNELL: I'm going to object. That's assuming  
13 a fact not in evidence that there's a Neutral Tandem website  
14 that is in front of him.

15 MS. BANKS: Madam Chair --

16 CHAIRMAN EDGAR: Ms. Banks.

17 MS. BANKS: -- if I may interject. Staff has just  
18 taken a look at BellSouth's, BellSouth's responses to staff's  
19 first set of interrogatories, which as I understand is a part  
20 of Exhibit 2. And there is -- I believe the first page of the  
21 document that has been marked as Exhibit 51, that is a part of  
22 BellSouth's response. It may not be an exact duplication, but  
23 it's similar information.

24 CHAIRMAN EDGAR: Thank you. Mr. Culpepper, let's go.

25 BY MR. CULPEPPER:

1 Q Mr. Wood, does the exhibit that you've just been  
2 handed indicate whether or not Neutral Tandem provides services  
3 in Florida?

4 A No, sir, not that I can tell.

5 Q Well, let's move on, Mr. Wood.

6 I believe it's your testimony on Page 23 that the  
7 total transit charge for Comcast that's set forth in  
8 Mr. McCallen's Exhibit KRM-2 is wrong.

9 A That is correct. It is my testimony that his number  
10 is incorrect.

11 Q And that testimony is based, is based on your review  
12 of a rate sheet from Comcast's interconnection agreement with  
13 BellSouth; correct?

14 A And the text of the relevant section of that  
15 agreement. I think it's Attachment 3 to that agreement.

16 MR. CULPEPPER: Madam Chair, I'd like to distribute  
17 another exhibit and have it identified as the next hearing  
18 exhibit.

19 CHAIRMAN EDGAR: We will number as 52.

20 (Exhibit 52 marked for identification.)

21 CHAIRMAN EDGAR: Commissioner Carter.

22 COMMISSIONER CARTER: I really don't know who to ask  
23 this question to, but this -- and I know we've moved on beyond  
24 this, but this document that we were recently handed says  
25 Neutral Tandem is the industry's only independent tandem

1 service provider -- I guess in the world? So there's only like  
2 one -- is that what -- I guess, Mr. Culpepper, is that what  
3 you're saying, what you're -- am I reading that correctly, sir?

4 MR. CULPEPPER: From the Neutral Tandem?

5 COMMISSIONER CARTER: Yes, sir.

6 MR. CULPEPPER: The way -- this document indicates  
7 that they provide tandem service in Florida.

8 COMMISSIONER CARTER: It says that they're the only,  
9 Neutral Tandem is the industry's only independent tandem  
10 service provider offering a neutral intercarrier exchange  
11 for -- some of it is wiped out. Is that right? I mean, am I  
12 reading this wrong or --

13 MR. CULPEPPER: I don't know. My client is not  
14 looking for an alternative transit service provider.

15 COMMISSIONER CARTER: Ms. -- excuse me, Madam  
16 Chairman. But to staff and the exhibit that you have, is this  
17 even clear? I'm trying to, I'm trying to get my mind around  
18 this. We've been here two days dancing around about whether or  
19 not there are alternatives, and then we get this document that  
20 says there's only one in the industry. I guess there's only  
21 one in the whole wide world, so maybe staff can be helpful on  
22 this. What is --

23 MS. BANKS: Commissioner Carter, I think it might be  
24 helpful, the reference I gave earlier, and I can read into the  
25 record if it's going to be useful for you and the other

1 Commissioners, I referenced earlier Exhibit 2 that the, I  
2 guess, excerpt of the Neutral Tandem map was inserted. I'm  
3 reading actually BellSouth's response, which is Page 26 of  
4 Exhibit 2.

5           And the request is, "For the purpose of the following  
6 questions, please refer to the direct testimony of BellSouth's  
7 Witness McCallen, Page 5, Lines 11 through 13. Please identify  
8 known transit providers other than the ILEC in the State of  
9 Florida, if any."

10           Response, "BellSouth is aware of Neutral Tandem, a  
11 transit provider," and it says, "see attachment for a copy of a  
12 Neutral Tandem website page. Any facility-based  
13 telecommunications service provider with switching and  
14 transport functionality could possibly be a transit provider.  
15 Although lacking the ubiquity of BellSouth's network, there are  
16 many TSPs offering sophisticated network capabilities. The  
17 approval of a market-based tariff rate could encourage  
18 additional TSPs to become transit providers."

19           COMMISSIONER CARTER: Excuse me, Madam Chair. I know  
20 we've got to go and I hate -- I thank you for your indulgence.  
21 But I didn't hear anything that seemed to contradict what it's  
22 saying that this is the only. She just read about a number of  
23 providers. I'm trying to get my mind around this thing here.

24           CHAIRMAN EDGAR: Commissioner Carter, I will note  
25 that my understanding of the document before us and from Ms.

1 Banks' additional information is that this is a marketing tool.

2 COMMISSIONER CARTER: Okay.

3 CHAIRMAN EDGAR: And I will leave it at that.

4 COMMISSIONER CARTER: Thank you, Madam Chairman.

5 CHAIRMAN EDGAR: Mr. Culpepper.

6 MR. CULPEPPER: Thank you, Madam Chair.

7 BY MR. CULPEPPER:

8 Q Mr. Wood, do you have Attachment 3 to Comcast's  
9 interconnection agreement with you?

10 A The one that you just handed out?

11 Q Yes.

12 A Yes, sir.

13 Q Would you agree with me that the last page of this  
14 Attachment 3 is the rate sheet that you attached to your  
15 rebuttal testimony, as Exhibit 2 to your rebuttal testimony?

16 A It appears to be. If I could just ask for a  
17 clarification. Is the text here from the agreement that  
18 Comcast and BellSouth signed for Florida or is it from the  
19 agreement that BellSouth then filed with the Commission?  
20 Because they're two different things.

21 Q Do you, do you have your exhibit with you, your  
22 attachment, your Exhibit 2 to your rebuttal testimony?

23 A Yes, sir.

24 Q Okay. Would you review your Exhibit 2 and review the  
25 last page of Attachment 3 that I gave you?

1           A     Yes, sir. This appears to be the rate page that I  
2 attached. I was asking about the text.

3           MR. GROSS: I mean, I'm going to object because I see  
4 at the top of the first page -- well, no, I withdraw that.

5 BY MR. CULPEPPER:

6           Q     Mr. Wood, just so we, just so we're clear, the Page  
7 170 of 426 of the Attachment 3 I just gave you is identical to  
8 the rate, the rate sheet, the Page 170 that you attached to  
9 your rebuttal testimony; correct?

10          A     Identical is a strong word. I think it is. Other  
11 than the header at the top of the exhibit, I believe it is the  
12 same page. Yes, sir.

13          Q     The header that identifies Page 170 as your exhibit;  
14 correct?

15          A     That's right.

16          MR. GROSS: Mr. Culpepper, I mean, I have to object  
17 because -- are you representing --

18          CHAIRMAN EDGAR: Mr. Gross, to the Chair.

19          MR. GROSS: Madam Chair, I'm -- I think it's very  
20 relevant as to whether Mr. Culpepper is representing that this  
21 is an accurate copy of a portion of an interconnection  
22 agreement that was indeed filed with the Florida Public Service  
23 Commission.

24          CHAIRMAN EDGAR: Mr. Culpepper.

25          MR. CULPEPPER: Madam Chair, this is Attachment 3 of

1 the interconnection agreement between Comcast and BellSouth  
2 that has been filed with the Florida Public Service Commission.

3 CHAIRMAN EDGAR: Mr. Gross, I'm not, I'm not sure  
4 that I understand your objection.

5 MR. GROSS: Well, I won't pursue that.

6 CHAIRMAN EDGAR: Although I'm always appreciative of  
7 a little excitement right after lunch. Mr. Culpepper, let's  
8 move along.

9 (Laughter.)

10 BY MR. CULPEPPER:

11 Q Mr. Wood, would you agree with me that on the Page  
12 170 of the rate sheet it shows a tandem intermediary charge per  
13 MOU of .0015?

14 A That's correct.

15 Q Would you agree with me that the rate sheet states  
16 that this charge is applicable only to transit traffic and is  
17 applied in addition to applicable switching and/or  
18 interconnection charges?

19 A Yes, to the extent there are any applicable switching  
20 and/or interconnection charges, it would be in addition to  
21 those. In this case, of course, there aren't any, but it would  
22 add to them if they were added to.

23 Q Would you turn to Section 7 of the Attachment 3 I  
24 just gave you. That's Page 157. Are you there?

25 A I'm sorry. 157?



1 Q Section 7, which is going to be on Page 157 of 426.

2 A Yes, sir.

3 Q Would you agree with me that Section 7.1 addresses  
4 compensation for call transportation and termination for local  
5 traffic and ISP-bound traffic?

6 A Yes, sir.

7 Q Would you agree with me that the next section,  
8 Section 7.1.1, contains a definition for local traffic?

9 A Yes.

10 Q Okay. Would you agree with me that Section  
11 7.1.2 contains a definition for ISP-bound traffic?

12 A Yes.

13 Q Turn to the next page. Would you agree that in  
14 Section 7.1.4 that the parties have agreed that neither party  
15 shall pay compensation to the other party for a per minute of  
16 use rate element associated with the call transport and  
17 termination of local traffic and ISP-bound traffic?

18 A Yes, sir. I agree that's what it says.

19 Q Stated differently, the parties here have agreed to a  
20 bill-and-keep arrangement with respect to local traffic and  
21 ISP-bound traffic?

22 A That's right. For --

23 Q Thank you. Let's look at the next section, Section  
24 7.4, 7.1.4.1. Would you agree with me in the provision the  
25 parties have agreed that the elemental rates set forth in

1 Exhibit A to this agreement shall apply to transit traffic?

2 A The elemental -- that's right. The elemental rates.  
3 And, of course, when you go to that referenced Exhibit A, those  
4 elemental rates have a BK notation next to them, which is the  
5 bill-and-keep notation. So there's still nothing to add to  
6 that .0015.

7 Q I believe it's your testimony, Mr. Wood, that transit  
8 terms and conditions belong in an interconnection agreement,  
9 and if the parties can't agree on transit terms and conditions,  
10 then the parties should arbitrate the issue.

11 A I'm sorry. I missed the conjunction, Mr. Culpepper.  
12 I'm sorry.

13 Q Okay. Is it your testimony that transit terms and  
14 conditions properly belong in an interconnection agreement, and  
15 if the parties can't agree on transit terms and conditions,  
16 then the parties should arbitrate the issue?

17 A Can't agree? Yes.

18 Q And you'd agree with me that the Commission should  
19 rule in a consistent manner when presented with the same issue?

20 A I think what I said in my deposition was that all  
21 else equal, if there's been no change of law, if there's no  
22 difference in fact, then it should rule consistently based on  
23 the same set of facts. But if it has new facts, that it  
24 shouldn't simply ignore those in order to doggedly persist in a  
25 previous decision.

1 Q And, Mr. Wood, you're familiar with the recent  
2 arbitration decisions in which NuVox and Xspedius arbitrated  
3 BellSouth's TIC rate; correct?

4 A Yes, sir.

5 Q In fact, you cite a North Carolina ruling on Page 19  
6 of your rebuttal testimony; correct?

7 A That's right. And it's the same one I mentioned in  
8 my summary.

9 Q And you would agree with me that the same parties  
10 arbitrated the same issue here in Florida and this Commission  
11 ruled that BellSouth's TIC charge should be a negotiated rate  
12 and not a TELRIC-based rate; correct?

13 A Not quite. I think what the Commission said was that  
14 since the FCC had not determined yet whether transit is subject  
15 to those requirements, that it wasn't going to require a TELRIC  
16 rate. And I believe the language is in the immediate case or  
17 something to that, in the immediate proceeding, something to  
18 that effect, and they directed the parties to go and negotiate  
19 the rate, which is what should happen.

20 Q And since that arbitration order was issued in  
21 October of 2005, has the FCC obligated ILECs to provide a  
22 transit function?

23 A Well, yes and no. I mean, there's an FNPRM where the  
24 FCC is seeking comment on whether it can require TELRIC pricing  
25 for transit explicitly. But the FCC has also noted that

1 cost-based requirements apply to interconnection,  
2 251 interconnection elements even if TELRIC doesn't. So that  
3 requirement has been in place for a while.

4 Is there going to be an additional requirement  
5 specifically making transit a UNE and, therefore, subject to  
6 TELRIC specifically rather than another cost-based standard?  
7 That's really -- we're going to find that out when the FNPRM  
8 gets ruled on, I guess.

9 Q And no ruling has been issued yet; correct?

10 A That's right. They've been, they've been taking  
11 comment on that.

12 Q So is it your testimony this Commission got it wrong  
13 in the arbitration order?

14 A No. It's my testimony -- I don't read that as the  
15 Commission guiding it at all. It said that the FCC hadn't  
16 required it. Since they hadn't, they weren't going to require  
17 it in that arbitration and the parties should go negotiate,  
18 which is what ought to be happening here between BellSouth and  
19 the small LECs.

20 MR. CULPEPPER: No further questions.

21 CHAIRMAN EDGAR: Mr. Hatch.

22 MR. HATCH: No questions.

23 CROSS EXAMINATION

24 BY MR. O'ROARK:

25 Q Good afternoon, Mr. Wood.

1           A     Good afternoon.

2           Q     I have just a few questions for you on Issue 5.  And  
3 I want to take a look at FCTA's position statement in this case  
4 as it's recorded in the prehearing order.

5                     You'll recall that Issue 5 concerns whether the  
6 Commission should establish the terms and conditions for the  
7 originating and terminating carriers in a transit situation.

8           A     That's right.

9           Q     And the position statement is quite short.  Let me  
10 just read it to you to refresh your memory.

11          A     I have it.

12          Q     You have it in front of you?

13          A     Yes, sir.

14          Q     The basic position is that, no, the Commission should  
15 not do that.

16          A     Well, that's right.  I mean, their -- the terms and  
17 conditions that are going to be appropriate for any two  
18 carriers and their interconnection is going to be specific to  
19 those two carriers, to their traffic patterns, to their balance  
20 of traffic, to their locations, all of those things.  To try  
21 and come up with some generic structure that's going to work  
22 for all carriers -- I mean, there's no compelling reason to  
23 impose it.  And if you do, it's not -- this is not a one size  
24 fits all.  This is very much a carrier specific and pair of  
25 carrier specific situation.  So that's how it ought to be done

1 is between those two carriers.

2 Q Let me explore one aspect of that position. Does  
3 FCTA have a position on whether a CLEC such as Verizon Access  
4 can establish terms and conditions in a tariff for terminating  
5 local traffic?

6 A Can -- well, could you issue a tariff? I suppose you  
7 can issue a tariff and offer anything you want. You can't  
8 issue a tariff, at least pursuant to the FCC's rulemaking, that  
9 kind of circumvents this negotiation process. You can't say,  
10 you know, you can't issue a tariff that supersedes an  
11 interconnection negotiation and you can't offer one that or  
12 shouldn't offer one that shall apply like the BellSouth tariff  
13 here.

14 Q Assuming that the tariff doesn't purport to override  
15 existing interconnection agreements, does FCTA have a position  
16 as to whether such a tariff could be appropriate?

17 A As an offer -- I don't have a problem with a tariff  
18 as an offer. Anybody who wants it can buy it. If you don't  
19 want to buy it from that tariff, there's no way that the  
20 company can compel you to do so.

21 I don't have a problem with any company offering, you  
22 know, any service at any rate. The problem with the BellSouth  
23 tariff is that it isn't that, it isn't simply an offer, it's  
24 something that is mandated in certain circumstances, and that  
25 ability to mandate it undercuts the negotiation process. So if

1 this, you know, if this were a tariff where any party could opt  
2 into it but at that party's discretion, then I don't think we'd  
3 have the same issue here at all.

4 Q And a CLEC like Verizon Access is in a little  
5 different position than BellSouth, wouldn't you agree, because  
6 Verizon Access doesn't have the ability to compel another CLEC  
7 to enter into an interconnection agreement with it or to compel  
8 arbitration with that CLEC?

9 A I agree it's in a different position. You need to be  
10 more specific on the rest of your question. But, yes, the CLEC  
11 is in a different position, it has a different legal  
12 obligation, it has a different level of market power certainly.  
13 And if they wanted to put out terms for how that  
14 interconnection would occur, then there's no problem with them  
15 doing that.

16 MR. O'ROARK: Thank you, Mr. Wood. Nothing further.

17 CROSS EXAMINATION

18 BY MS. BERLIN:

19 Q Good afternoon, Mr. Wood.

20 A Good afternoon.

21 Q Commissioner Arriaga asked Mr. Pruitt what the  
22 components of a TELRIC rate are.

23 A Yes, ma'am.

24 Q And he said he was not an expert. But you're pretty  
25 well-versed in TELRIC, aren't you?

1 A Yes, ma'am.

2 Q Maybe you could explain what the components of a  
3 TELRIC rate are.

4 A Sure. In this particular case, it's all the network  
5 components that are used to provide the functionality, it's all  
6 the operations costs, the maintenance, all of those things that  
7 go along with those facilities. It is a fair level of profit  
8 as determined by the Commission, and that would be, you know,  
9 for an investment of comparable risk what could a company out  
10 in a competitive market expect to get as a return in terms of  
11 profitability for those costs. That's added in. And then  
12 there are also loadings for shared costs and for overall  
13 corporate overhead costs. All of those things are included.

14 So when we talk about TELRIC, it's not simply just  
15 the basic direct cost of the nuts and bolts, if you will, to  
16 provide this. It includes the fair profit, the shared cost,  
17 the overheads, all of those kinds of things are all in the  
18 rate.

19 MS. BERLIN: Thank you. Nothing further.

20 COMMISSIONER CARTER: Madam Chair.

21 CHAIRMAN EDGAR: Commissioner Carter.

22 COMMISSIONER CARTER: Thank you, Madam Chairman.

23 Mr. Wood, you've been here both days, and I think it  
24 was either the gentleman before you or certainly the one  
25 before, he talked about something on the order of about



1 \$40 million. Who pays that?

2 THE WITNESS: Well, ultimately customers pay that. I  
3 mean, the end-user customers ultimately -- you know, we talk  
4 about what carriers are paying, but ultimately the end-user  
5 customer is going to pay for those things.

6 As I understood his testimony, I think that was  
7 Mr. Gates, he was talking about how much money in addition to  
8 recovering all these costs that I was just describing that are  
9 included in that TELRIC rate, how much above and beyond that  
10 BellSouth might stand to receive from other carriers if it can  
11 impose this, this level of rate that's in its tariff.

12 COMMISSIONER CARTER: And that -- Madam Chair.

13 CHAIRMAN EDGAR: Commissioner Carter.

14 COMMISSIONER CARTER: And that \$40 million was based  
15 upon the three -- the 003 or the 0015. Do you remember that?

16 THE WITNESS: It was Mr. Gates' calculation.

17 COMMISSIONER CARTER: I understand. But you were  
18 here and listening and, I mean, we're on money, so, I mean --

19 THE WITNESS: Sure. My understanding was that it was  
20 the difference between the .003 that's in the tariff and then  
21 the sum of the TELRIC rates for the underlying network pieces  
22 that you have to put together to provide transit. So what  
23 is -- you know, BellSouth's costs including profit and overhead  
24 and all of those things is here. Then the 003 is above that.  
25 This margin, this additional gap times an estimated number of

1 minutes that that charge would apply to would be that much  
2 additional money to BellSouth, as I understood it.

3 COMMISSIONER CARTER: So roughly -- Madam Chair.

4 CHAIRMAN EDGAR: Commissioner Carter.

5 COMMISSIONER CARTER: So what he's saying roughly is  
6 that there's \$40 million that will be, that the consumers will  
7 have to pay based upon your interpretation of his numbers on  
8 the change from the 0015 to the 003?

9 THE WITNESS: Yeah. Taking his numbers as, for  
10 discussion purposes.

11 COMMISSIONER CARTER: Right.

12 THE WITNESS: Because I can't tell you right or  
13 wrong, although I've known Mr. Gates a long time, they're  
14 probably right, yeah, that is money that represents two things.  
15 I mean, I absolutely agree with BellSouth that it should be  
16 fairly compensated. I don't believe the small LECs should be  
17 able to sit there and not pay for costs that they cause.

18 But that recovery -- BellSouth is in a unique  
19 position here. Nobody else has a tandem that's connected to  
20 all these people, you know. Nobody else can sit there in  
21 BellSouth's shoes and say I'll do this for you but you've got  
22 to pay me X. And they should absolutely be fairly compensated,  
23 they should absolutely be able to recover their costs and make  
24 a profit.

25 Where we have a problem is where they're in that

1 unique position and they can through this tariff filing  
2 process, which is not how this is supposed to be done, start  
3 dictating these terms and going around that negotiation.  
4 That's more money for them, ultimately for any originating  
5 carrier, small LECs, CLECs, wireless carriers, any of them  
6 that's going have to pay in that extra for that \$40 million,  
7 that's going to, I mean, that's going to come from their  
8 customers. There's no doubt about that. That's the problem  
9 here with just having this tariff hanging out here that shall  
10 apply if negotiations break down.

11 COMMISSIONER CARTER: Thank you, Madam Chairman.

12 CHAIRMAN EDGAR: Mr. Atkinson.

13 MR. ATKINSON: No questions, Madam Chair.

14 CHAIRMAN EDGAR: Mr. McDonnell.

15 MR. McDONNELL: No questions. Thank you.

16 MR. SELF: No questions.

17 MR. GERKIN: No questions, Madam Chair.

18 CHAIRMAN EDGAR: Thank you. Staff.

19 MS. BANKS: No questions.

20 CHAIRMAN EDGAR: Mr. Gross, redirect.

21 MR. GROSS: No redirect.

22 COMMISSIONER DEASON: I'm sorry, Madam Chairman. I  
23 have some questions, if I could, please.

24 CHAIRMAN EDGAR: Commissioner Deason.

25 COMMISSIONER DEASON: Mr. Wood, pending clarification

1 from the FCC as to whether TELRIC does or does not apply, if we  
2 make the assumption we're not going to apply TELRIC, what  
3 costing or pricing standard should apply?

4 THE WITNESS: Well, what we have right now from the  
5 FCC is, you know, its conclusion that an interconnection rate  
6 that falls outside of the narrow scope of a TELRIC obligation  
7 is supposed to be, is supposed to be a cost-based rate, and  
8 that's, that's the extent of the guidance they've given us is  
9 cost-based. They haven't, you know, there's no methodology  
10 that applies yet.

11 Obviously you've got some latitude in what you  
12 consider to be a cost-based rate. But certainly if it's  
13 several multiples of the cost including profit and overhead,  
14 you know, it's hard to, hard to call it cost-based under  
15 anybody's definition.

16 COMMISSIONER DEASON: Are you familiar with Mr.  
17 McCallen's testimony?

18 THE WITNESS: Yes, sir.

19 COMMISSIONER DEASON: And have you reviewed his, his  
20 Exhibit KRM-2?

21 THE WITNESS: In detail, yes, sir.

22 COMMISSIONER DEASON: Yes. Do you believe that any  
23 of those rates listed there are cost-based?

24 THE WITNESS: There are a couple that are the lower  
25 ones that probably are. I know that he's got a different rate

1 listed for AT&T than AT&T originally included in its petition  
2 in this case. He's got a higher rate listed for them. But I  
3 think if you look at their rate that they initially indicated  
4 in their petition, that's probably close to a cost-based rate.

5 You know, what you've got for a lot of these  
6 carriers, I think it was brought out yesterday that, you know,  
7 of the 200 or some odd that he's got listed, only about 40 of  
8 them have any transit traffic at all. So if we're going to  
9 look to this in terms of these rates having any meaning, it's  
10 really just for those 40 that might conceivably pay the rate.  
11 The rest of them agreed to whatever they needed to agree to to  
12 get the agreement done, but they're not going to pay it, so I  
13 don't think it indicates anything.

14 COMMISSIONER DEASON: But you would -- in your  
15 opinion, the three-tenths of a cent is not cost-based?

16 THE WITNESS: That's -- I cannot craft internally a  
17 scenario, given what I understand the cost to be in Florida,  
18 that you could characterize three-tenths as being cost-based.  
19 If you're three times the level of cost including profit and  
20 overhead, you're outside that realm.

21 COMMISSIONER DEASON: I'm going to ask you a question  
22 that requires you to speculate some, and if you're  
23 uncomfortable, that's fine. But I think you're certainly  
24 qualified as an expert to offer some speculative testimony.  
25 Hopefully no one will object.

1           Why do you think these negotiations failed?

2           THE WITNESS: Based on what I've read, both parties  
3 came in and dug in pretty good pretty quick. The ILECs came in  
4 and dug in with -- I mean, I don't know how else to describe  
5 it. It's a pretty extreme position that they're somehow  
6 excluded from these obligations and they don't, they should pay  
7 zero.

8           BellSouth in response came in and said, well, if you  
9 don't, you know, if you're not going to pay us something, we're  
10 going to hit you with .006 originally, and then they decided  
11 they really couldn't do that with a straight face and they came  
12 down to .003. And they've held apparently steadfast to that in  
13 the tariff. So now you've got both parties dug in with  
14 probably as extreme as they could get on both sides, and  
15 there's nothing, I guess, that's happened to break that logjam.

16           COMMISSIONER DEASON: What can the Commission do to  
17 break that logjam, in your opinion?

18           THE WITNESS: Purely my opinion, not a legal answer  
19 as to what your authority is, I mean, if I were -- I don't know  
20 if I dare say it, but if I were sitting in that chair,  
21 (laughter) I'd want to do two things. I'd want to tell the  
22 independent LECs, you have the same 251(a) obligations that  
23 everybody else does. You, as an originating carrier, cause  
24 costs just like all the other carriers, you cause the cost for  
25 the other carriers and you need to compensate them for it at a

1 fair level, and go seriously negotiate what that fair level  
2 should be. I think I'd probably turn to BellSouth and say  
3 this, you know, this is a negotiation arbitration option for  
4 you, but you can't end run that by filing a tariff with a big  
5 scary rate. You've got to go seriously talk to them about a  
6 serious rate. And I'd end it pretty much kind of like the  
7 NuVox decision ends, which, you know, is something like the  
8 Commission strongly encourages the parties to go and negotiate  
9 starting at .0015, I think is where they had left off in that  
10 proceeding. I mean, I don't know what else you do to break the  
11 logjam. The problem with the logjam is that you've got  
12 carriers taking extreme positions that if they get carried  
13 forward somehow broadly, like they would be with this tariff,  
14 it's going to affect all these people. That's why we've got a  
15 room full of people for what should be a pretty narrow issue.

16 COMMISSIONER DEASON: So if you were advising the  
17 small LECs, would you advise them to agree to pay something  
18 above zero, but a reasonable amount, and would you advise  
19 BellSouth to expect a rate closer to a TELRIC rate and sign the  
20 agreement and be happy?

21 THE WITNESS: Well, that would put me in a position  
22 even higher than that chair. But, yes, I mean, I think at the  
23 risk of injecting reason into this whole thing, that's exactly  
24 what the message ought to be.

25 COMMISSIONER DEASON: And let me ask you this. If

1 this tariff were to disappear either by a withdrawal or by a  
2 denial by this Commission, does your client have any problem  
3 with that?

4 THE WITNESS: I don't think they have any problem  
5 with that because I think the way that they would and have  
6 compensated BellSouth for transit is through negotiation and  
7 interconnection agreement. I think that would be a positive  
8 step to eliminate the tariff because the tariff being there  
9 interferes with that negotiation, and I think ultimately  
10 interferes with BellSouth's ability to meet its duty under  
11 251 to negotiate those rates.

12 COMMISSIONER DEASON: If this Commission were to  
13 decide to deny this tariff and order the parties, the small  
14 LECs and BellSouth, to enter into further negotiations and  
15 those negotiations were not fruitful, would that, would that  
16 generate an arbitration before the Commission?

17 THE WITNESS: My understanding is the fact that the  
18 negotiations themselves aren't fruitful won't necessarily  
19 trigger it. One of those carriers, and in this case I would  
20 presume BellSouth, would have to begin that 252 process to  
21 start the clock and compel the negotiation, which it certainly  
22 appears that they have the right to do. Any telecommunications  
23 carrier under 251 can initiate the process and ILECs have to  
24 negotiate in good faith if that happens. So if BellSouth took  
25 that step, then I think this issue reaches you in the form of



1 an arbitration.

2 COMMISSIONER DEASON: Thank you, Madam Chairman.

3 CHAIRMAN EDGAR: Thank you. Commissioner Arriaga.

4 COMMISSIONER ARRIAGA: Mr. Wood, I'm glad that  
5 Ms. Berlin clarified for me your expertise. So going back to  
6 the question of elements, the components of a TELRIC rate, and  
7 you have said and the previous witness said that it includes a  
8 reasonable amount of profit.

9 THE WITNESS: Yes, sir.

10 COMMISSIONER ARRIAGA: Now I have seen throughout  
11 these last two days 0015, 001, 003, 005, 009. What is a  
12 reasonable profit?

13 THE WITNESS: The total would be going to, and I  
14 don't, I haven't added them up, it's a number close to .001,  
15 but I haven't summed them up. I think it's slightly less than  
16 that. But it would be the sum of -- see, the Commission has  
17 already set these cost-based rates including fair profit for  
18 the pieces that we need to hook together here to provide this  
19 capability. And certainly there's a tandem switching element  
20 in terms of, in terms of the functioning of the switch and the  
21 port where you connect to the switch for tandem switching, and  
22 there are also transport elements in the termination and in the  
23 mileage that would apply. But if you add those pieces  
24 together, that will give you the total rate for this  
25 functionality that BellSouth is providing that would include

1 the profit, the overhead and those other things.

2 COMMISSIONER ARRIAGA: Do you know what your  
3 client -- is it Comcast?

4 THE WITNESS: That's one of them, yes, sir.

5 COMMISSIONER ARRIAGA: Okay. What is your client  
6 paying BellSouth?

7 THE WITNESS: .0015 as a negotiated rate.

8 COMMISSIONER ARRIAGA: And that's recent?

9 THE WITNESS: Yes, sir.

10 COMMISSIONER ARRIAGA: Thank you.

11 THE WITNESS: That's what they determined in the  
12 broad context of that larger negotiation, given all the  
13 tradeoffs and everything that happened, that's what they agreed  
14 to.

15 COMMISSIONER ARRIAGA: So how is it that other  
16 companies pay 003, 005, 009? Is it part of a market-based  
17 rate, is it a negotiated rate, or is it an imposed rate by  
18 BellSouth?

19 THE WITNESS: Well, there's two pieces to that. And  
20 first of all, when you look at what's listed on Mr. McCallen's  
21 exhibit that have, carriers that have that high rate, the  
22 answer for most of those carriers is they're not paying that  
23 rate because they aren't using this service. So, you know,  
24 it's easy to agree to pay a high rate if you know you're never  
25 going to buy whatever it is you're agreeing to. And in all of

1 the horse trading that goes on, that's what happens and that's  
2 where you see a lot of these rates come from.

3 For some of these carriers that are using it, you  
4 don't see the much higher rates. You see something lower. My  
5 concern is if BellSouth has a tariff today at .3, and I think I  
6 understood Mr. McCallen saying Mississippi and South Carolina,  
7 now they're thinking about taking the .3 to .6, now you do have  
8 an ability for BellSouth to impose those kind of higher,  
9 extremely high rates. Because if the party they're negotiating  
10 with doesn't agree in the negotiation, the tariff kicks in at  
11 whatever that higher rate is. That's where you would actually  
12 see carriers having to pay those kind of exorbitant rates is if  
13 the tariff stayed into effect.

14 COMMISSIONER ARRIAGA: Thanks.

15 CHAIRMAN EDGAR: Mr. Gross.

16 MR. GROSS: I have no further questions. And if no  
17 one else does, I would ask that the witness please be excused.

18 MR. McDONNELL: I'm sorry, Madam Chair.

19 CHAIRMAN EDGAR: Mr. McDonnell.

20 MR. McDONNELL: I don't think the cross-examination  
21 got down to me.

22 CHAIRMAN EDGAR: I thought that it had.

23 MR. McDONNELL: Did I waive? I thought of some great  
24 questions.

25 (Laughter.)

1 CHAIRMAN EDGAR: 2:30 is the time I had in my mind,  
2 but that's okay. That's okay. I don't believe I missed you,  
3 but if I did and you have a burning pressing for one or two  
4 questions, I will come back to you. But this is not a  
5 precedent, note.

6 MR. McDONNELL: I appreciate you giving me  
7 unwarranted opportunity to ask a couple of questions.

8 CROSS EXAMINATION

9 BY MR. McDONNELL:

10 Q Mr. Wood, you were asked about the negotiations  
11 between the independents and BellSouth regarding a transit  
12 rate.

13 A Yes, sir.

14 Q Okay. And I appreciate that you gave your best  
15 perspective.

16 A I think we called it speculation.

17 Q Okay. You weren't part of the negotiations.

18 A That's right. And I was hoping to be clear before.

19 Q Okay.

20 A I've read the testimony of the parties, I've seen the  
21 data request responses. What I responded to Commissioner  
22 Deason was my piecing together of that time line based on that  
23 testimony.

24 Q Okay. I understand. I understand. And when  
25 negotiations between your clients and BellSouth break down

1 pertaining to anything under 251, what typically happens next?

2 A Typically it would go, the unresolved issues would go  
3 to the Commission for arbitration.

4 Q It wouldn't be the unilateral application of a  
5 tariff?

6 A It decidedly would not be.

7 MR. McDONNELL: Nothing further.

8 CHAIRMAN EDGAR: Before we excuse the witness, let's  
9 go to the exhibits. I'm waiting with baited breath. So  
10 Mr. Culpepper.

11 MR. CULPEPPER: Yes, Madam Chair. I would ask that  
12 Exhibits 51 and 52 be moved into the record.

13 CHAIRMAN EDGAR: And, Mr. Gross, earlier you raised  
14 an objection to 51 and I said that we would come back to it.

15 MR. GROSS: As far as 51, I don't think there's been  
16 any foundation or any predicate established as to the  
17 authenticity and accuracy of this particular exhibit. And it's  
18 illegible, and in the blown-up version a lot of the verbiage is  
19 cut off. So on that, on that basis, I would object to the  
20 introduction.

21 CHAIRMAN EDGAR: Commissioner Carter.

22 COMMISSIONER CARTER: Madam Chairman, before you make  
23 your ruling, I think staff said this was included in one of the  
24 exhibits already. Would it, would it be helpful if we just  
25 take what's already in the exhibit, if it's more legible than

1 this document here?

2 MS. BANKS: If I could just clarify, Madam Chair.  
3 Commissioner Carter, when I referenced that document earlier,  
4 it's, it's not the exact same document. It's something similar  
5 with Neutral Tandem's map. It's actually Page 28 of Exhibit,  
6 of Exhibit 2, excuse me. I don't know if you want to have a  
7 moment to look at that. It's not the exact same document but  
8 it does show a map.

9 CHAIRMAN EDGAR: Commissioner Carter, thank you for  
10 your question.

11 MR. SELF: Chairman Edgar.

12 CHAIRMAN EDGAR: Mr. Self.

13 MR. SELF: I believe there's some objections down at  
14 this end of the table as well.

15 CHAIRMAN EDGAR: Oh, further objections. You don't  
16 want to hear what I'm going to say first?

17 (Laughter.)

18 Are the additional comments, should we get into them,  
19 pertaining to Exhibit 51?

20 MS. KAUFMAN: Yes, ma'am.

21 MR. SELF: Yes.

22 CHAIRMAN EDGAR: Okay. All right. Then let's hold  
23 for a moment.

24 Mr. Culpepper --

25 MR. CULPEPPER: Madam Chair --

1           CHAIRMAN EDGAR:  -- I'm talking.  I did allow -- I  
2 wanted to kind of see where you were going and I did say we  
3 would take up the objection at the end, which is the way we  
4 have handled this all through the hearing.  I've got real  
5 questions and concerns about this, and so in this instance I'm  
6 not going to admit Item 51 into evidence.

7           MR. McDONNELL:  Along those lines, Madam Chair, I  
8 would move to strike the comments of BellSouth's counsel  
9 asserting to what Exhibit 50 purports to be.  I don't think  
10 it's in the record and I don't think it's appropriate for  
11 somebody who's not subject to cross-examination to be  
12 testifying.

13           CHAIRMAN EDGAR:  Mr. McDonnell, I'm going to allow  
14 the discussion as to what it is we were discussing to continue  
15 to be a part of the record.  I will disallow the exhibit into  
16 evidence and I think we will leave it there.

17           MR. McDONNELL:  Yes, ma'am.  I understand the ruling.

18           CHAIRMAN EDGAR:  Okay.  However, we will admit item  
19 52.  Did I hear any objections on Item 52?  Seeing none, we  
20 will admit Item 52 into evidence.  And I'm going to look, Ms.  
21 Banks, to staff:  Are there any further items?

22                   (Exhibit 52 admitted into evidence.)

23           MS. BANKS:  Madam Chair, the only, I guess,  
24 housekeeping note I was going to add is that posthearing briefs  
25 for this matter are due on May 9th.  A transcript of this

1 hearing should be made available by April 7th. Counsel for  
2 BellSouth, Mr. Tyler, mentioned that he had one housekeeping  
3 matter that he wanted to address. If you think this is the  
4 appropriate time to do that, I'll defer to him.

5 CHAIRMAN EDGAR: Mr. Tyler.

6 MR. TYLER: Madam Chair, it was just Late-filed  
7 Exhibit 40 that the Commission asked to be filed by this coming  
8 Monday. We -- BellSouth has that late-filed exhibit available  
9 today. If you would feel that it's appropriate to provide that  
10 to the Commission now, we'd be glad to do so.

11 CHAIRMAN EDGAR: Absolutely. We can accept that now.

12 MR. TYLER: Thank you.

13 (Exhibit 40 admitted into evidence.)

14 MR. HOFFMAN: Madam Chairman, I have one final item  
15 that I'd like to raise.

16 CHAIRMAN EDGAR: Mr. Hoffman.

17 MR. HOFFMAN: Yes. Yesterday we had some testimony  
18 that was placed on the record that we believe was in violation  
19 of a confidentiality agreement that the small LECs have with  
20 BellSouth. Now the testimony was first provided by Mr.  
21 McCallen and, frankly, I did not pick up on it when he made a  
22 certain statement. However, I did pick up on it when Ms. Blake  
23 made the statement in response to a question from Mr. Palmer to  
24 the effect that BellSouth had offered the small LECs a lower  
25 rate than the rate that's set forth in their tariff.



1           Now we have a confidentiality agreement that says  
2 that any proposals made by either party as a part of the  
3 settlement negotiations directed to a resolution of the issues  
4 in Florida Public Service Commission docket numbers, and it  
5 gives the two docket numbers of this docket, shall be  
6 confidential and not disclosed to any third party.

7           Now, you know, that toothpaste is out of the tube.  
8 It cannot be confidential. I did attempt to resolve this with  
9 BellSouth's counsel. Frankly, they were unwilling to accept my  
10 representation of what I had just heard and they felt it  
11 necessary for there to be a transcript for verification of my  
12 representation. Of course, typically that would not be until  
13 after the hearing is concluded, which would require post-filing  
14 motions and so forth. Staff and the court reporter were kind  
15 enough to do an expedited page of transcript, and I'm going to  
16 provide the Commissioners and BellSouth's attorney with a copy  
17 of the statement that Ms. Blake made, and I'll ask Mr.  
18 McDonnell to give BellSouth's counsel and the Commissioners a  
19 copy.

20           Consistent with my representation to BellSouth's  
21 attorney, the statement reads as follows, quote, this is from  
22 Ms. Blake, "Like Mr. McCallen stated, we have offered  
23 provisions and contracts to the small LECs and other providers  
24 that are lower than the tariff rate that we are proposing  
25 here." And I'm only asking, Madam Chairman, this cannot be

1 taken out of the public record, but at this point I would ask  
2 that Ms. Blake's statement and the prior statement of  
3 Mr. McCallen to the same, to the same effect be stricken from  
4 this record and not used for any further purpose in this  
5 proceeding.

6 MR. CULPEPPER: Madam Chair, briefly, my client would  
7 like an opportunity to review the transcript. Yes, there  
8 was -- I had discussions with Mr. Hoffman with respect to  
9 Ms. Blake yesterday, and basically what I told them was let's  
10 look at the transcript. With respect to Mr. McCallen, I have  
11 not seen the transcript and it is not my belief that he said  
12 anything that breached any NDA between the parties. And I'll  
13 disclose, I haven't had an opportunity to look at the NDA to  
14 see how it addresses confidentiality, and more particularly  
15 what rights and remedies the parties may have for a breach. So  
16 a lot of this seems real premature and I would like an  
17 opportunity to review the transcript.

18 CHAIRMAN EDGAR: Ms. Banks.

19 MS. BANKS: Madam Chair, I had an opportunity to talk  
20 to both counsels between the breaks, and it's not a matter that  
21 we've dealt with before the Commission very often. As a matter  
22 of fact, this may be a first instance that I'm aware of. I  
23 believe -- I would agree with counsel, Mr. Tyler, that some of  
24 the information as it relates to the agreement between the  
25 parties we can't speak to to even know if it's a violation,

1 that being their protective agreement. So from that respect  
2 and in that context it may be premature to actually make any  
3 kind of remedy or ruling at this time.

4 CHAIRMAN EDGAR: Mr. Wiggins.

5 MR. WIGGINS: Thank you, Madam Chairman. I'd like to  
6 make a last minute appearance for purposes of addressing the  
7 posthearing brief. Thank you.

8 The posthearing brief, the issues are arranged in a  
9 way to give the parties great latitude to make their arguments  
10 that best serves their purposes, and that's the way it should  
11 be and staff certainly doesn't want to impinge upon that.

12 Having said that, there are a couple of items that  
13 would be very useful to staff if it fit their purposes to be  
14 addressed when they make their arguments. Specifically, for  
15 example, under Issue 1 it would be useful to staff for, for the  
16 meaning and significance of the term "presumptively valid"  
17 under Section 364.051(5) to be addressed.

18 Likewise, in Issues 5, 8 and 9, which are the  
19 "should" issues, you know, should these rates and conditions be  
20 imposed, it would be useful to staff for the parties to address  
21 the T-Mobile decision as well as the general authority of the  
22 Commission under Chapter 364 to determine the issues in  
23 dispute. Moreover, it would be useful for the parties to  
24 address the specific authority of this Commission under Section  
25 364(1), Florida Statutes, to determine the issues in dispute.

1 That's an old provision that hasn't been used lately because it  
2 gives us the authority to set interconnection rates.

3 MR. SELF: Mr. Wiggins, what was, what was that  
4 statutory cite again?

5 MR. WIGGINS: I believe it's 364.1(1). 364.16, I  
6 guess, in English.

7 MR. SELF: Oh, 16.

8 MR. WIGGINS: On a more general basis, there are no  
9 doubt various PSC orders and FCC orders and other state orders  
10 that the parties will find useful to cite in support of  
11 propositions that advance their cause. What would be  
12 particularly useful is if there's some clarity about how you  
13 believe it advances your cause. For example, there have been  
14 arbitration orders in the past that are referred to that the  
15 Commission decided something the following way. I personally  
16 would like to know if that's meant to say that controls us,  
17 that if we did something different, it would be arbitrary and  
18 capricious, or that we should just really look at that because  
19 the arguments in that were persuasive, that kind of thing, so  
20 that we're directly addressing these arguments.

21 And I'd like to say that we're asking this because we  
22 want to make sure that in hearing your arguments, in reading  
23 them, we really hear them, and that we don't allow our  
24 assumptions about what something means get in the way of what  
25 you're trying to convey in support of your arguments because we

1 want to show you that respect so that we do the best job we can  
2 in addressing these issues. So we think this will be useful to  
3 us evaluating the record and advising the Commission as to what  
4 they may or may not do with these issues. So thank you.

5 CHAIRMAN EDGAR: Okay. Thank you. We would ask that  
6 the parties take into account the comments from staff when  
7 compiling your briefs. And --

8 COMMISSIONER DEASON: Madam Chairman.

9 CHAIRMAN EDGAR: Yeah. Let me come back and then,  
10 absolutely, Commissioner Deason.

11 I guess my question, in order to come back,  
12 Mr. Hoffman, to the issue that you've raised, Ms. Banks, and it  
13 is, it is the first time that, that this situation has, has  
14 presented itself or a similar one to me as well. So,  
15 Ms. Banks, do we have the option of taking this under  
16 advisement?

17 MS. BANKS: I'm sorry, Madam Chair. When you say  
18 under advisement, meaning just note it for the record or --

19 CHAIRMAN EDGAR: And with the option to, to make a  
20 ruling later.

21 MS. BANKS: Madam Chair, I do believe you have that  
22 discretion to make a ruling at a time certain.

23 CHAIRMAN EDGAR: That is my preference unless,  
24 Mr. Hoffman, you have further comment that needs to be  
25 considered.

1 MR. HOFFMAN: Yes, ma'am. Having just spoken off  
2 the record with BellSouth's counsel, I think we have a  
3 suggested resolution.

4 CHAIRMAN EDGAR: Suggested resolutions are always  
5 welcome.

6 MR. MEZA: Yes, Madam Chairman. I apologize for my  
7 late appearance in this matter. My name is Jim Meza. I'm an  
8 attorney for BellSouth. And after reviewing the transcript  
9 that Mr. Hoffman provided to us as well as the NDA, BellSouth  
10 has a proposal that I believe is acceptable to Mr. Hoffman and  
11 his clients, and that is to strike from -- it's Page 1 of the  
12 excerpt, Line 24, the following words, "to the small LECs." If  
13 we strike that from the record, I believe his concerns are  
14 addressed and it will alleviate the Commission of any further  
15 involvement in the matter.

16 CHAIRMAN EDGAR: Mr. Hoffman.

17 MR. HOFFMAN: I agree. The only thing I would add,  
18 Madam Chairman, is that we don't have the transcript from the  
19 statement evidently made by Mr. McCallen. And once the  
20 transcript comes out, to the extent there is the same type of  
21 statement, we would just suggest similar treatment.

22 CHAIRMAN EDGAR: Okay. All right. Well, the  
23 suggested resolution make sense to me. So we will ask that, in  
24 the official record that the phrase "to the small LECs" at the  
25 point and place noted from the BellSouth attorney will be made

1 in the official record that comes out. Does that address your  
2 concern?

3 MR. HOFFMAN: Yes, ma'am. And, again, the same would  
4 apply to a statement that has not yet been transcribed that was  
5 made by Mr. McCallen earlier in the hearing. But the  
6 transcript will, will or will not reflect that.

7 MR. MEZA: We have no problem with that as long as we  
8 agree that there's a potential violation of the NDA.

9 CHAIRMAN EDGAR: All right. So ruled.

10 Commissioner Deason.

11 COMMISSIONER DEASON: Yes, Madam Chairman. I have a  
12 question for staff that hopefully they can confirm something  
13 for me, and then, based upon their response, I may have a  
14 comment or suggestion about the remaining schedule that's in  
15 front of us.

16 CHAIRMAN EDGAR: Commissioner Deason.

17 COMMISSIONER DEASON: Staff, I believe that there's  
18 no statutory time frame under which this case has to be  
19 determined. Is that correct?

20 MS. BANKS: Commissioner Deason, that's my  
21 understanding. It's not -- my understanding is that there's  
22 anything regarding the Act or -- when I say Act, I'm talking  
23 about the Telecommunications Act or Florida Statutes, that  
24 would bind us to a time certain to have a resolution in this  
25 case.

1           COMMISSIONER DEASON:  Yeah.  Madam Chairman, perhaps  
2 I'm forever the optimist.  I believe that this case can be  
3 settled.  And with all due respect to all of the parties and  
4 all the efforts they've put in, I just don't think this case  
5 should have ever come to the Commission.  It should have been  
6 settled.  And, Madam Chairman, I would suggest, obviously with  
7 comment and input from fellow Commissioners, that we extend the  
8 filing of briefs and the decision by this Commission to give  
9 the parties one last opportunity to reach an agreement that  
10 would not necessitate a tariff.  And that if an agreement could  
11 be reached, that agreement could be filed with the Commission  
12 and the tariff could be withdrawn.  Absent that, we could  
13 continue with briefs and a decision.  And the only reason I  
14 suggest deferring the briefs, I just don't -- I think it's  
15 unrealistic to require parties to be working on briefs at the  
16 same time that we hope that they would be entering into  
17 fruitful negotiations.  Those are my thoughts.  I would -- and  
18 if there's something that creates some type of tremendous  
19 burden or if there's some unintended consequences that I'm not  
20 seeing at this time, I would certainly welcome the parties to  
21 tell me why that's not a workable schedule in this case.  And I  
22 would also welcome feedback from staff and Commissioners as to  
23 your desire as to whether there's still a possibility of some  
24 type of a negotiated settlement.

25           CHAIRMAN EDGAR:  Okay.  I'll open to comments from my



1 colleagues in a moment to the comments and suggestion from  
2 Commissioner Deason. But before we do that, is there a date or  
3 a burden that any of the parties would like to raise first?

4 MR. ATKINSON: Madam Chairman, Bill Atkinson on  
5 behalf of Sprint Nextel. If I might just very briefly to  
6 Commissioner Deason's comments, while Sprint Nextel would  
7 certainly welcome a settlement, a negotiated resolution to any  
8 matter that's brought before state commissions, that's  
9 certainly usually better if it suits all the parties.

10 We would observe that in the Georgia transit traffic  
11 proceedings from a couple of years ago, I believe that  
12 BellSouth filed a transit traffic tariff, the terms of which  
13 may have been different than the one that they've, that they  
14 ended up filing in Florida, but the parties, some of the  
15 parties did reach a negotiated settlement. It was a settlement  
16 in Georgia between the Georgia rural ILECs and BellSouth. And  
17 the competitive carriers felt like those two sides came  
18 together and tried to set rates for these competitive carriers  
19 who were not a party of this negotiated settlement.

20 So my observation and my strong suggestion, if you  
21 will, to the Commission if you would take it under advisement  
22 is that if the parties, if some of the parties do come in with  
23 a negotiated settlement, that the -- if any party is left out  
24 of the settlement, that we have the opportunity to -- of notice  
25 and to be heard on the settlement. Because at least in one

1 other jurisdiction a negotiated settlement attempted to set  
2 rights and obligations for a bunch of parties who are not party  
3 to this settlement. Thank you for your attention. Thank you.

4 CHAIRMAN EDGAR: Mr. Gerkin.

5 MR. GERKIN: Yes, Madam Chairman. MetroPCS is in a  
6 possibly unique position in this docket. As I indicated in my  
7 opening statement, MetroPCS negotiated with BellSouth for some  
8 time in an effort to reach agreement on a transit rate, and  
9 BellSouth would not agree to any rate less than the tariff rate  
10 even on the basis of subject to true-up. We filed for  
11 arbitration. In the arbitration docket -- at about the same  
12 time we filed for arbitration, the Commission issued its order,  
13 and I apologize, I don't have the order number handy, but it  
14 was the order that consolidated these two dockets and indicated  
15 that the tariff would be allowed to go into effect subject to  
16 BellSouth escrowing the revenues and indicated that the  
17 Commission would be setting a rate subject to -- and I believe  
18 indicated that that rate would be subject to true-up.

19 MetroPCS and BellSouth agreed in their arbitration  
20 that rather than arbitrating between the two parties what the  
21 rate would be, that since the Commission had already determined  
22 that it would review the rate in this docket, we agreed that we  
23 would defer the arbitrated issue to this docket instead.  
24 And MetroPCS and BellSouth have an agreement now that MetroPCS  
25 will pay the rate in the tariff subject to a true-up based upon

1 the rate that the Commission establishes in, in the order that  
2 the Commission established that was contemplated in the order  
3 establishing this docket.

4 So I'd just -- it, it -- we've already reached an  
5 impasse. BellSouth would not budge. They have not offered us  
6 any lesser rate as they may have offered someone else. And  
7 the -- if the parties, if the small LECs and BellSouth reach  
8 agreement on a rate, that does not eliminate the rate issue  
9 from this docket.

10 COMMISSIONER DEASON: I have a question.

11 CHAIRMAN EDGAR: Commissioner Deason.

12 COMMISSIONER DEASON: Under your agreement, what rate  
13 would apply if we went through this hearing and it was the  
14 decision of this Commission simply to reject the tariff?

15 MR. GERKIN: Honestly, Commissioner, I don't know.  
16 The, the order establishing, consolidating the dockets  
17 indicated that the Commission would determine the rate to be  
18 applied; that BellSouth was to, was to escrow the revenues  
19 until, until the Commission determined the appropriate rate.  
20 And what our agreement says is that we will pay the tariffed  
21 rate subject to true-up to whatever rate the Commission  
22 establishes in this docket.

23 If the Commission simply strikes the tariff and does  
24 not establish a rate, I honestly don't know off the top of my  
25 head what the outcome would be.

1 CHAIRMAN EDGAR: Further comment from any of the  
2 parties before we open it up to a discussion here at the bench?  
3 No?

4 Mr. Tyler, I can't tell if you're waiting to talk to  
5 us or not. I'm not trying to put you on the spot, but I'm just  
6 not sure.

7 MR. TYLER: Madam Chair, it would be -- one moment,  
8 please.

9 CHAIRMAN EDGAR: A moment.

10 MR. GROSS: Madam Chair, would it be all right if  
11 Mr. Wood were excused to make, make his flight?

12 CHAIRMAN EDGAR: Oh, I'm sorry. Mr. Wood, my  
13 apologies. I was taken up in the moment, but I appreciate your  
14 patience. Absolutely.

15 MR. TYLER: Madam Chair, I was just waiting on  
16 Mr. Hoffman, who I believe has an announcement, and then  
17 BellSouth will respond in kind.

18 MR. HOFFMAN: Madam Chairman, the only input that I  
19 have at this point is a desire to sort of keep this docket on  
20 track and on pace. We have been in negotiations with BellSouth  
21 and we would commit to continue to do so. But that's really  
22 all I can -- that's all I have at the moment.

23 CHAIRMAN EDGAR: Commissioners, comments, questions,  
24 feedback, input to the comments from our colleague,  
25 Commissioner Deason?

1 COMMISSIONER CARTER: Madam Chairman.

2 CHAIRMAN EDGAR: Commissioner Carter.

3 COMMISSIONER CARTER: I think that the, from the last  
4 day and a half, well, day and three-quarters or however long  
5 we've been here, it seems like forever, the, the perspective is  
6 such that rather than to create an unwarranted and going down a  
7 black hole, no pun intended, is to look at -- I think  
8 Commissioner Deason makes eminently more sense than for us to  
9 tie up the Commission's time, tie up these parties' time when  
10 this is a process that's been working, I mean, for 23 years.  
11 And then after the Act in '99 and then all of the -- I mean, is  
12 there really such an emergency, is there really, really, really  
13 such a dire, I mean, is the country at war, is the state in a  
14 state of emergency, is there really such an emergency where  
15 this process cannot be negotiated, where we've just got to stop  
16 everything and turn things on their head? I mean, the issues  
17 are fairly -- it seems to me from listening to everybody, the  
18 issues are fairly simple and the issues are fairly consistent  
19 with what's been resolved before. So I just -- I mean, unless  
20 I'm missing something, and I don't think that I am, it just  
21 seems to me that a negotiation is far better use of these  
22 parties' time and the Commission's time, as well as the  
23 interest of the people of the State of Florida than us  
24 continuing to run a docket just for the sake of running a  
25 docket. That's just my opinion.

1 CHAIRMAN EDGAR: And I will now turn slowly to my  
2 left. Commissioners, comments?

3 COMMISSIONER TEW: I guess I have a question for, I  
4 guess, BellSouth and the small LECs. If we were -- if the  
5 docket were to proceed and we were to reject the tariff, then  
6 what would be your next course of action if negotiations  
7 weren't fruitful?

8 CHAIRMAN EDGAR: Mr. Hoffman.

9 MR. HOFFMAN: Commissioner Tew, I don't know as I sit  
10 here today what the answer to that would be. These types of  
11 questions, frankly, would have to be discussed amongst the, all  
12 of the companies that I represent to give them a fair  
13 opportunity to respond. I'm fortunate enough to have one  
14 representative with me today. I do not have all of my clients'  
15 representatives with me today, so it just makes it difficult to  
16 give you a straight, quick answer on that particular question.

17 COMMISSIONER TEW: And BellSouth as well?

18 MR. TYLER: Commissioner Tew, BellSouth would, of  
19 course, have to do an investigation and we'd have to confer  
20 with our clients and make a business decision regarding what we  
21 would do next.

22 COMMISSIONER TEW: It was worth a shot.

23 CHAIRMAN EDGAR: That's a good question and a fair  
24 response, so.

25 MR. HOFFMAN: Madam Chairman, if I could adjust one

1 clarification or revision to a previous statement that I made.

2 CHAIRMAN EDGAR: Mr. Hoffman.

3 MR. HOFFMAN: That is that in connection with the  
4 negotiations, I do have some additional feedback that reflects  
5 a willingness to set the timetable back to allow for the, you  
6 know, dedication of full efforts to the negotiation process  
7 along the lines suggested by Commissioner Deason. So I just  
8 wanted to make that change in my statement.

9 COMMISSIONER DEASON: Mr. Tyler.

10 MR. TYLER: Madam Chair, with that clarification,  
11 BellSouth would certainly be willing to enter into a 30-day  
12 abatement.

13 CHAIRMAN EDGAR: Commissioner Arriaga, did you have a  
14 comment or question?

15 COMMISSIONER ARRIAGA: I would like to share the  
16 optimism that always Commissioner Deason brings to the table.  
17 But I don't see it, Commissioner, unfortunately I don't see a  
18 real desire to come to a conclusion here. And the fact that  
19 these very professional ladies and gentlemen who are sitting  
20 here in front of us after almost a year of negotiation is that  
21 they're coming to us to resolve a situation that they haven't  
22 been able to resolve. I would suggest that we allow the 30  
23 days for negotiations, but at the same time if after 30 days it  
24 doesn't happen, we assume the responsibility that we're  
25 supposed to assume and enter into whatever decision and

1 consequences.

2 I do warn you that in arbitrations or whatever  
3 decisions we make, not everybody is happy. As a matter of  
4 fact, everybody is going to be unhappy because we cannot please  
5 everyone. So having, being that the case, these 30 days are  
6 crucial to all of you. Come to a decision because -- or come  
7 to an agreement because whatever happens here is not going to  
8 satisfy every one of you. There's always going to be a loser,  
9 and probably all of you. You're coming to the last possibility  
10 that you have, and it is an expensive possibility, it's  
11 tiresome, it's cumbersome and it will not result in what you're  
12 looking for. I'm not saying what it's going to result in so I  
13 don't have to recuse myself. I'm just saying we will not be  
14 able to please everyone all of the time. Thank you.

15 CHAIRMAN EDGAR: Commissioner Carter.

16 COMMISSIONER CARTER: I promise I'll be brief. I  
17 promise.

18 CHAIRMAN EDGAR: You're recognized.

19 COMMISSIONER CARTER: Thank you, Madam Chairman.

20 To all of the parties here, do you really, really  
21 want us to make this decision? I mean, think about it. Here  
22 we are in this environment in our country and at this point in  
23 time where people are saying we want deregulation, we want a  
24 free market, we want a fair market, we want competition. Do  
25 you really, really, really believe that? And if so, then why



1 would you bring something like this -- it's obviously a  
2 business decision that could be -- you know, let's think about  
3 it. Do you really -- the question you've got to ask yourself  
4 is do you really want the Commission to make this decision or  
5 is this a normal business practice in your day-to-day existence  
6 and how you communicate business to business?

7 I mean, we'll -- Commissioner Arriaga is right, we'll  
8 make a decision. Commissioner Deason is right, we'll make a  
9 decision. But really in the context of business, and we're  
10 talking about being on the cutting edge, of our country being  
11 on the cutting edge, of the economy being on the cutting edge,  
12 of international business being on the cutting edge, of what's  
13 in the best interest of the public being on the cutting edge of  
14 what are the new best practices. I mean, the question, do you  
15 really want us to make that decision? That's all I've got to  
16 say.

17 CHAIRMAN EDGAR: Commissioner Deason, an almost final  
18 word.

19 COMMISSIONER DEASON: It really wasn't my intent to  
20 stir things up so much. I was just looking for a little bit of  
21 opportunity for one last opportunity for the parties to  
22 negotiate without us going full bore into filing briefs and,  
23 and putting all our efforts in that direction. And, you know,  
24 I think 30 days was suggested by counsel. I think 30 days is  
25 sufficient. And if it doesn't get done in 30 days, we're not

1 going to shirk our responsibility. We've got a full record  
2 here. And I appreciate all of the participation that we've  
3 had. I think the record is complete, and we will not shirk our  
4 responsibility. We'll make a decision.

5 But I would echo what Commissioner Arriaga said. If  
6 you want us to make a decision, to some extent you're rolling  
7 the dice. And I hate to use that term because, I mean, I'm  
8 sure we're going to make our decision based upon the evidence  
9 in the record, and each side thinks their evidence is the best,  
10 I'm sure. But we hear it all and we're going to weigh it, and  
11 you might win some or lose some or you might win nothing and  
12 the other side win everything. I don't know where it's going  
13 to come down.

14 But if you're confident in going forward with that  
15 process, so be it. You know, I'm not trying to shirk my  
16 responsibility. I'm sure the other Commissioners aren't  
17 either.

18 But I just -- listening to this case, it just seems  
19 to me that there's some room here that, that I think it can be  
20 settled. I would encourage the parties to try to reach a  
21 settlement.

22 CHAIRMAN EDGAR: Thank you. I for one like to make  
23 decisions.

24 (Laughter.)

25 I also like a few fireworks at the end of day. It's

1 always anticlimactic when we end these hearings with just, you  
2 know, not even a whimper. So I like to put time frames on  
3 things as well. And 30 days does seem very reasonable to me  
4 and it sounds like to my colleagues as well.

5 I do think we need to put an end point at some point,  
6 and it sounds -- I don't hear any objection that 30 days  
7 additional is onerous from any of the parties as well.

8 And I recognize and appreciate that you have not had  
9 any problem telling me when you had a concern and I value that.  
10 So I guess procedurally, help me think this through, for adding  
11 30 days, you know, what we had said is the posthearing briefs  
12 would be due on May 9th. Glancing at the calendar here, I'm  
13 going to just pull that forward, that we could have posthearing  
14 briefs due June 9th, which is a Friday as well.

15 Now does that address all of the procedural questions  
16 or are there other concerns if we move that date back that far?  
17 Staff, any --

18 MS. BANKS: Staff has no concern, Madam Chair. The  
19 only thing that I would just get some additional clarification,  
20 we heard earlier Mr. Wiggins mention to the extent we do go  
21 forward with this case and a decision is made, some things that  
22 would be useful to staff. Currently right now we've  
23 provisioned for 40 pages for briefs, and I just wanted to  
24 address the parties and see if they believe that is still  
25 sufficient to address those additional items included.

1 CHAIRMAN EDGAR: Forty days (sic.) strikes me as  
2 sufficient, and I see a number of nods. Thank you for the  
3 question, Ms. Banks.

4 MS. BANKS: I'm sorry. I meant to say 40 pages.

5 CHAIRMAN EDGAR: Did I say days? Sorry. Forty  
6 pages. Forty days, 40 nights we've been in this chair.

7 (Laughter.)

8 Okay. So I am going to put out there that we will  
9 request posthearing briefs be due June 9th, ask the parties to  
10 take into account all of the comments that we have had here at  
11 the close of our discussion this day, including the comments  
12 from our staff about items that they would like to see included  
13 in the briefs, if indeed we get to the point of submitting  
14 briefs. And with that, are there any other closing matters?  
15 No? All right. With that then, I thank the parties, I thank  
16 the witnesses, I thank our staff and my colleagues, and we are  
17 adjourned.

18 (Adjourned at 3:03 p.m.)

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1 STATE OF FLORIDA )  
2 COUNTY OF LEON )

CERTIFICATE OF REPORTER


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I, LINDA BOLES, RPR, CRR, Official Commission Reporter, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

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

DATED THIS 13<sup>th</sup> DAY OF APRIL, 2006.

  
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