

BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

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In the Matter of  
  
Determination of the cost of  
basic local telecommunications  
service, pursuant to  
Section 364.025,  
Florida Statutes.  
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DOCKET NO. 980696-TP



PROCEEDINGS:           **MOTION HEARING**

BEFORE:                   **COMMISSIONER E. LEON JACOBS, JR.**  
                                  Prehearing Officer

DATE:                     **Monday, September 28, 1998**

TIME:                     Commenced at 8:15 a.m.  
                                  Concluded at 8:55 a.m.

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

REPORTED BY:            **H. RUTHE POTAMI, CSR, RPR**  
                                  Official Commission Reporter

RECEIVED DATE  
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1 **APPEARANCES:**

2 **TRACY HATCH**, 101 North Monroe Street, Suite  
3 700, Tallahassee, Florida 32301-1549, appearing on  
4 behalf of **AT&T Communications**.

5 **CHARLES REHWINKEL**, P. O. Box 2214,  
6 Tallahassee, Florida, appearing on behalf of  
7 **Sprint-Florida, Incorporated**.

8 **PHILLIP CARVER**, c/o Nancy Sims, 150 South  
9 Monroe Street, Suite 400, Tallahassee, Florida 32301,  
10 appearing on behalf of **BellSouth Telecommunications,**  
11 **Inc.**

12 **CHARLES J. BECK**, Deputy Public Counsel,  
13 Office of Public Counsel, 111 West Madison Street,  
14 Room 812, Tallahassee, Florida 32399-1400, appearing  
15 on behalf of the **Citizens of the State of Florida**.

16 **WILLIAM COX**, Florida Public Service  
17 Commission, Division of Legal Services, 2540 Shumard  
18 Oak Boulevard, Tallahassee, Florida 32399-0870,  
19 appearing on behalf of the **Commission Staff**.

20 **BRIAN FARLEY**, Collier, Shannon, Rill &  
21 Scott, PLLC, 3050 K Street N.W., Washington, D.C.,  
22 appearing on behalf of **GTE Florida Incorporated**.

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

(Hearing convened at 8:15 a.m.)

**COMMISSIONER JACOBS:** Good morning. Would you like to read the notice?

**MR. COX:** Pursuant to notice, this time and place has been set for a motion hearing in Docket 980696-TP, determination of the cost of basic local telecommunications service, pursuant to Section 364.025, Florida Statutes.

**COMMISSIONER JACOBS:** We'll take appearances.

**MR. REHWINKEL:** Charles J. Rehwinkel on behalf of Sprint-Florida Incorporated.

**MR. CARVER:** Phillip A. Carver of BellSouth.

**MR. HATCH:** Tracy Hatch on behalf of AT&T Communications of the Southern States, Inc.

**MR. BECK:** Charlie Beck, Public Counsel, on behalf of the citizens of Florida.

**MR. COX:** Will Cox on behalf of Commission Staff, and I believe GTE will make an appearance as well.

**MR. FARLEY:** Good morning. I'm sorry I'm late. I'm Brian Farley on behalf of GTE, from the law firm of Collier, Shannon, Rill & Scott, 300 K Street N.W., Washington, D.C. 20007.

1           **COMMISSIONER JACOBS:** Are there any  
2 preliminary matters we need to take care of before we  
3 get started?

4           **MR. COX:** No, there are not. I believe  
5 there is just one motion to compel that we're going to  
6 address and hear from the parties on this morning.

7           **COMMISSIONER JACOBS:** And that is the motion  
8 to compel filed originally by BellSouth --

9           **MR. COX:** Right; BellSouth's motion to  
10 compel production of documents by AT&T.

11           **COMMISSIONER JACOBS:** And as I understand  
12 it, Sprint has joined in on that petition.

13           **MR. COX:** Sprint has, as well as GTE.

14           **COMMISSIONER JACOBS:** Okay. The desire  
15 would be to have some limit on the time of arguments.  
16 I originally thought 10 minutes per side, but I'm  
17 thinking you guys have three and two. I'm willing to  
18 go to 15 minutes per side. Is that adequate?

19           **MR. CARVER:** Well, it's, of course,  
20 BellSouth's motion, and I think I can make my comments  
21 in about 10 minutes. That doesn't leave the others  
22 who have joined in very much time. I think I can  
23 finish in 10.

24           **MR. REHWINKEL:** Commissioner, Sprint does  
25 not have much in the way of argument other than to

1 support BellSouth, but we'd be here to answer any  
2 questions.

3           **MR. FARLEY:** And I agree with Sprint that it  
4 would only take a couple minutes for GTE to perhaps  
5 add to BellSouth's, but I believe that we're all on  
6 the same page here, and his argument should --

7           **COMMISSIONER JACOBS:** Does it sound like 15  
8 should be okay?

9           **MR. FARLEY:** Yes, sir.

10          **MR. CARVER:** Okay.

11          **COMMISSIONER JACOBS:** Is that okay with --

12          **MR. HATCH:** That's fine.

13          **COMMISSIONER JACOBS:** Great. Then no other  
14 preliminary matters, we'll proceed. We'll go with  
15 BellSouth.

16          **MR. CARVER:** Thank you. Again, I'm Phil  
17 Carver on behalf of BellSouth.

18                 Let me begin by talking a little bit about  
19 the information that we've requested and that we've  
20 moved to compel production on, because it's very  
21 important information.

22                 Essentially, there were two models that are  
23 being submitted for consideration by the Commission in  
24 this docket; the BCPM model and the Hatfield model.  
25 And both models essentially do two things; they locate

1 customers, and then they build network to the  
2 locations.

3           And when I say they locate and they build  
4 network, these are, of course, proxy models, so it's  
5 done hypothetically. But to some extent, customer --  
6 well, I should say it's done hypothetically, but they  
7 both try to model the real world to the extent that  
8 they can.

9           But, again, there are two crucial functions.  
10 What we have asked for here really goes to the heart  
11 of one of those two functions; and that's how  
12 customers are located.

13           What we have requested is what's referred to  
14 as the DBF file that's utilized in the Hatfield model,  
15 and it shows the actual customer locations. And when  
16 I say actual, I mean where they place customers for  
17 purposes of modeling their network.

18           Now, in the Hatfield model, I want to talk a  
19 little bit about how this is structured. The Hatfield  
20 model -- or developers, they made a, I guess a  
21 decision of sorts that the customer location process  
22 would not be in the model. So you can get the model,  
23 you can look at it; you can't see anything in there,  
24 though, about how customers are located, because  
25 essentially what they did was they farmed out that

1 entire piece of their model to a company called PNR.

2           So PNR goes through a data gathering  
3 process. They also go through a process for customers  
4 who can't be located by address, if they use a  
5 mathematical calculation, to try to place them in  
6 surrogate locations. When all of that's done, they  
7 apply mathematical formulas, they cluster them, and  
8 then it's these clusters to which the Hatfield builds  
9 network.

10           So, in essence, one half of the two  
11 functions of the model are done by PNR outside of the  
12 model, and then it simply goes into the Hatfield  
13 model. What we requested is the underlying data as  
14 processed that would show where customers are located.

15           AT&T's response to this was twofold. First  
16 of all they said that the information was not in their  
17 possession, it was in the possession of PNR, and that  
18 PNR is the third party over whom they have no control.  
19 Secondly, they said notwithstanding that, that we can  
20 come look at the information on PNR premises if we  
21 want to. And I'd like to respond to both of those.

22           As to the first contention, AT&T's entire  
23 case here is basically being made on the basis of the  
24 work, the analyses, and the testimony of third  
25 parties. The Hatfield model is done by Hatfield &

1 Associates. That's not an affiliate of AT&T. They're  
2 an independent company. PNR is an independent  
3 company. AT&T is sponsoring three witnesses in this  
4 proceeding to advocate those models -- their model,  
5 and to do comparison between the two.

6 COMMISSIONER JACOBS: Is PNR under contract  
7 to Hatfield or to AT&T?

8 MR. CARVER: I don't know. That's  
9 something -- I assume that to the extent they work  
10 with Hatfield, they would have to be under contract  
11 with them. Whether there's a direct contractual  
12 relationship I don't know.

13 In terms of their witnesses, they have three  
14 who support the model; Mr. Wood, Mr. Pitkin and  
15 Mr. Wells, and all of them are independent  
16 contractors. None of them work for AT&T. So, in  
17 effect, AT&T has put together their entire case based  
18 solely on the work and the testimony of people who are  
19 not their employees.

20 However, when we go to them and we say, we  
21 want discovery, we want to see how your model works so  
22 we can analyze it and so that we can file appropriate  
23 testimony before the Commission, their response is,  
24 sorry, you can't have that; that's in the possession  
25 of third party, and we don't have it, so you can't



1 have it either.

2           So, in effect, they're relying completely on  
3 those third parties. They're supporting the  
4 testimony. What the third parties are offering in the  
5 case are really the guts of the model, what makes it  
6 work, but their position is we can't have any  
7 discovery as to that underlying data because it's not  
8 in their possession. And I believe that there is an  
9 inherent conflict there.

10           If they're going to take the position that  
11 technically this is not in their possession so they  
12 can't be made to provide this, then ultimately they  
13 should not be allowed to rely on that information in  
14 what they submit to the Commission.

15           Now as to their second point, their  
16 position -- and it's a little hard to garner this from  
17 their response to our motion, but their position, as I  
18 understand it, is essentially that we can look at the  
19 data, but we can't have it.

20           Now, when I say their position, I'm piecing  
21 this together a little bit, because actually AT&T  
22 never filed a response per se to our discovery  
23 request. They filed an objection on August 4th, and  
24 they filed a response to our motion to compel, but  
25 never filed a formal response, so what I'm talking

1 about is what they've they said in their objection.

2           Again, they said that we can come on premise  
3 and view this. What they will not allow us to do,  
4 however, is to take away any sort of a record of that  
5 information. What we've requested that they do is  
6 simply download the file and they would provide it to  
7 us. They've declined to do that, and they've said  
8 instead we can go there.

9           Now, what they don't say in their response  
10 is that when representatives of U.S. West working on  
11 other cases went to the premises of PNR to do this,  
12 they were not allowed to take notes, they were not  
13 allowed to make charts, they were not allowed to make  
14 graphs. They were not allowed to do anything that  
15 would record in any manner this data.

16           And, again, what we're talking about here is  
17 customer location data, so there's, in effect, a data  
18 point, or a dot, that corresponds to every customer in  
19 the state of Florida. So basically AT&T's position is  
20 that we can go to Pennsylvania and pull up on a  
21 computer screen some subset of 8 million dots, but we  
22 can't do anything to record it, and we can't have any  
23 record of what those dots represent or how they're  
24 clustered in the model.

25           In effect, their position is, is that we can

1 look at it, but we can't make any kind of notation or  
2 record that would allow us to do a meaningful analysis  
3 to support testimony that we want to file.

4           Actually, at this point let me say this: I  
5 don't really to want get into a swearing contest with  
6 AT&T, but in their response they say a couple things  
7 that are, I think, materially that I simply disagree  
8 with their characterization of the situation. So I  
9 want to try to clarify those.

10           AT&T suggests that when they provided us  
11 with the Minimum Spanning Tree Analysis, that they  
12 thought that would suffice to meet our request and  
13 they were somehow surprised by our motion to compel,  
14 that if they had known earlier, maybe we could have  
15 worked something out. This is essentially --

16           **COMMISSIONER JACOBS:** You say they provided  
17 you with the analysis. What did that entail?

18           **MR. CARVER:** Well, we have asked for the  
19 data points to do several different types of analyses.  
20 So what they said to us was, they said, well, one of  
21 them is the Minimum Spanning Tree Analysis, and Sprint  
22 has developed software to do that. So they said they  
23 could use the Sprint software to do the analysis and  
24 provide us with the end result of it without providing  
25 us with the underlying data.

1           Around August 4 or thereabouts I spoke to  
2 Gene Coker (phonetic) of AT&T -- he's one of their  
3 attorneys -- and I thanked him for that. I told him  
4 we would take it, analyze it, and see what we could do  
5 with it, but I anticipated that it was not going to be  
6 adequate for our motions and that we would need to  
7 file a motion to compel.

8           And, again, their response suggests that  
9 they were unaware that we were going to file a motion  
10 to compel, and I frankly don't understand that,  
11 because I did have this conversation with Mr. Coker  
12 around the 4th.

13           Now, as it turns out, we got the information  
14 from them around the middle of the month.  
15 Dr. Duffy-Deno, our expert, did an analysis of it, and  
16 he filed testimony on September 2nd. And if you look  
17 at the testimony, you can see that there are  
18 definitely some holes. He mentions two or three  
19 different types of analyses, in addition to the  
20 Minimum Spanning Tree Analysis, that he would like to  
21 do, but he simply can't because he doesn't have the  
22 information. So, therefore, on September 4th, two  
23 days later, we filed the motion to compel.

24           Now, since then there have been some efforts  
25 to try to work this out. Mr. Hatch has called me and

1 asked me if we were interested in going to look at the  
2 information at PNR. The question that I've never  
3 really gotten an answer to is, what does that mean. I  
4 mean, if we go there, would we be allowed to bring our  
5 people in to take the week that it would take to do  
6 the analysis, to load software into their computers,  
7 et cetera. And I've never really gotten a response to  
8 that.

9           As it turns out, though, I think it's  
10 probably moot, because what I've been told is that the  
11 analysis does require software that's not on the PNR  
12 computers and that we would need to take the data and  
13 that we would need to take the data and to take it  
14 back to the premises of our experts so that they can  
15 use the programs that they have in place.

16           Also, they've informed me that the analysis  
17 that they would like to do would, in final form,  
18 incorporate some of these data points. So if AT&T  
19 won't let us take it away in the form of raw data,  
20 then I assume they're also not going to let us take  
21 something away that includes the raw data in a more  
22 refined analysis.

23           So the bottom line is, in order to do the  
24 analysis that we would want to do, we would need that  
25 information, and we need to have possession of it. I

1 have offered to AT&T that we will sign any sort of  
2 proprietary agreement that they wish. I have been  
3 told, though, we cannot have the information  
4 regardless of what we sign.

5           Where does this leave us? Well, I think you  
6 can see the answer to that from the rebuttal  
7 testimony. As I mentioned, Dr. Duffy-Deno's testimony  
8 has some definite holes in it, because there are  
9 analyses of the Hatfield model that he would like to  
10 do that he can't because he doesn't have this  
11 information.

12           On the other hand, AT&T filed rebuttal  
13 testimony of Mr. Wood and Mr. Pitkin in which they  
14 purport to do a comparative analysis of BCPM and  
15 Hatfield. And this is important for two reasons.  
16 First of all, they couldn't have done this if they  
17 didn't have the BCPM information. And the fact is,  
18 when AT&T requested this information from us in the  
19 first data request, we gave them our customer location  
20 information; and in many instances our information is  
21 exactly the same type of thing as the information that  
22 they have.

23           As I mentioned before, some of the locations  
24 are surrogate locations that they have developed in  
25 house. That's been done in exactly the same way that

1 BCPM was done by INDETEC, which is the company that  
2 developed BCPM.

3           **COMMISSIONER JACOBS:** I've done a little bit  
4 of reading. There's a geocoding that's done for some  
5 of the locations? Is that the process that you're  
6 speaking of?

7           **MR. CARVER:** Yes, sir. Basically the way  
8 Hatfield functions is that they attempt to locate  
9 customers by addressed geocoding. It's fairly  
10 successful in dense areas. In sparse areas it doesn't  
11 work very well. In fact, in some sparse areas they  
12 can geocode 5, 6, 7% by address. For everyone else,  
13 for the 90% plus that can't be geocoded that way,  
14 there's a surrogate process that they go through  
15 whereby they develop locations.

16           And AT&T's position as of right now is that  
17 we can't have the surrogate location data and we can't  
18 have the actual geocoding data. And, again, the  
19 geocoding, to the extent PNR may have gotten that from  
20 someone else, we're willing to enter into a  
21 proprietary agreement and not disclose that. But all  
22 we've been told so far is PNR won't do it, we can't  
23 have it, period. But, again, the exact same type of  
24 information, as least as to the surrogate locations,  
25 is what they've requested and what we've given them.

1           The second thing about Mr. Wood and  
2 Mr. Pitkin's analyses that's important is that they  
3 compare BCPM to Hatfield. And I don't know exactly  
4 their process, but they have done an analysis that  
5 really can't be done without having some sort of  
6 access to the underlying data points.

7           **COMMISSIONER JACOBS:** I'm sorry. And those  
8 are AT&T's witnesses who have done the comparison?

9           **MR. CARVER:** Yes. And they've done the  
10 comparison, again, because we've given them our  
11 information, and because somehow they've managed to  
12 get the exact same location information which AT&T  
13 won't provide to us.

14           So we're in a situation where basically they  
15 have filed rebuttal testimony because they have both  
16 sides' information. We can't do adequate rebuttal  
17 testimony, at least to do all the tests we'd like to,  
18 because even though their people have this information  
19 and their witnesses have it, they won't provide it to  
20 us.

21           Finally, let me just touch upon the relief  
22 that we're requesting. I mean, obviously we've asked  
23 that they be compelled to produce the testimony -- I'm  
24 sorry -- the information. Once we have it, though, we  
25 would like to take a brief period of time and to



1 analyze it and file supplemental rebuttal testimony.

2 I believe that we can do the analysis that  
3 we would need to do within seven days, and that's  
4 pretty much working 24 hours a day, but I understand  
5 the hearing is not too long in the future, so we would  
6 certainly do that if necessary.

7 So what we're requesting is that AT&T be  
8 compelled to produce this information and that we  
9 would have until seven days after the date of the  
10 production to supplement our rebuttal testimony just  
11 to cover the areas that we couldn't otherwise analyze  
12 without this information.

13 Thank you.

14 MR. REHWINKEL: Commissioner Jacobs, I can't  
15 say any better what Mr. Carver has said factually in  
16 his argument.

17 Just to briefly state, though, that we did  
18 have a similar round of discussions with AT&T. We  
19 were hopeful that the submittal of our software to  
20 AT&T and PNR would accomplish what we wanted. My  
21 understanding is our experts were not satisfied with  
22 the results, and we agree with BellSouth that we  
23 actually need to see the data itself.

24 And that's all I have to say.

25 COMMISSIONER JACOBS: So I'm clear, you all

1 background algorithms, the background inputs that PNR  
2 uses and that AT&T and MCI rely upon exclusively for  
3 developing the geocoded and customer locations used in  
4 the Hatfield model. Without that data, without that  
5 information, again, the Hatfield model simply cannot  
6 run.

7           What BellSouth, Sprint, and GTE are asking  
8 is simply for the opportunity to review what PNR does;  
9 to review the data that they used to ensure that what  
10 comes out of PNR and what the Hatfield model uses is  
11 correct and is accurate and reflects what is actually  
12 being claimed by the Hatfield model sponsors.

13           GTE's motion in joining BellSouth and  
14 Sprint, our data requests went a little bit more  
15 broadly and asked for more information, all of which  
16 though, is contained by PNR.

17           And so in resolving this matter today, and  
18 by calling AT&T's bluff essentially by saying no  
19 parties can look at data that PNR has, if we resolve  
20 that issue today, many of the outstanding data request  
21 disputes that GTE has with AT&T will be resolved,  
22 because they all relate to the PNR data that  
23 BellSouth, Sprint, and now GTE are looking for.

24           And with that, I think Mr. Carver and Sprint  
25 have adequately described the importance and why it's

1 necessary for all of us to have a chance to look at  
2 it.

3           **COMMISSIONER JACOBS:** So I take it, then, it  
4 will resolve BellSouth's motion. You essentially will  
5 accept that information in completion of your motion  
6 as well?

7           **MR. FARLEY:** Our motion joins the request  
8 that BellSouth made. What we also did attach to our  
9 joiner was the actual data request that GTE propounded  
10 upon AT&T. But the simple fact is if the Commission  
11 today resolves -- or whenever -- resolves the fact  
12 that AT&T can't hide behind PNR and refuse to turn  
13 over data to the parties to this proceeding, that  
14 should resolve all the outstanding data requests that  
15 GTE has with respect to PNR.

16           **COMMISSIONER JACOBS:** Okay. AT&T?

17           **MR. HATCH:** Where to start. A couple  
18 things.

19           First, I guess I ought to start with the  
20 Rules of Civil Procedure. And the Rules of Civil  
21 Procedure basically say that parties are entitled to  
22 discovery of documents -- and I think that's probably  
23 what we're talking about here -- of any information  
24 otherwise relevant. I don't think that's really the  
25 argument here -- that is in the possession, custody,

1 and control of the person to whom the request is  
2 directed.

3           And the problem here is, what everybody has  
4 failed to point out to you or fails to understand is  
5 that AT&T does not have possession, custody or control  
6 of this information. This is information that is  
7 generated, developed by PNR. It's a commercial  
8 product that belongs to PNR. PNR is a vendor for the  
9 information that we use for purposes of an input into  
10 the Hatfield model, or the HAI.

11           The cluster analysis: Essentially, PNR  
12 generates the clusters that go into the Hatfield  
13 analysis for essentially the first prong of what  
14 Mr. Carver described in the functions of the models as  
15 location of customers. We simply don't have it. We  
16 cannot give up what we do not have, what we have no  
17 legal right to, have never possessed, have no legal  
18 right to possess.

19           It is no different than any other market  
20 vendor out there. For example, BellSouth uses SCIS  
21 under license from Bellcore. BellSouth does not have  
22 possession, custody, or control of the underlying SCIS  
23 coding, the underlying SCIS algorithms. SCIS  
24 generates an output which then becomes an input into  
25 BCPM for purposes of switching.

1           Those sorts of models exist all the way  
2 through both sides of this process. To suggest that  
3 every conceivable piece of information should be filed  
4 and made part of the underlying record to support the  
5 model just won't work, either for HAI or for BCPM.

6           Now, the information that is generated by  
7 PNR, the underlying geocoded point data is developed  
8 by information that they in turn purchase from other  
9 vendors; Dunn & Bradstreet for business addresses,  
10 Metromail for residence addresses. Those are the two  
11 principals.

12           If you will refer to the back of our motion,  
13 the last attachment is a letter from PNR that was  
14 generated in response to the same conflict that's  
15 going on now in the state of Washington. The State of  
16 Washington has ordered AT&T to produce the  
17 information, notwithstanding our arguments that we  
18 don't have it and can't produce it. This letter from  
19 PNR again reiterates that it's their information; they  
20 don't give it to us; if anybody wants to come and look  
21 at it, they're free to do so.

22           As Mr. Carver mentioned earlier, we have  
23 been in discussions with BellSouth regarding an  
24 opportunity for them to go up to PNR to run the tests  
25 that they want. Now, I disagree with Mr. Carver to

1 the extent that we haven't responded to them as to  
2 what they can do. It is not clear to us yet what it  
3 is they want to do.

4 Now, he will refer to, or has referred me  
5 to, the tests that Dr. Duffy-Deno wants to run.  
6 That's fine. Apparently requires his own software. I  
7 don't know what that entails. I cannot give a blanket  
8 commitment on behalf of PNR that he can go run any  
9 test he wants and take possession of any information  
10 he wants.

11 My understanding is, is that they will allow  
12 him to run the tests, but they will screen out and  
13 retain possession of the underlying geocoded point  
14 data, and that seems to be the point of contention.

15 For some reason unclear to me,  
16 Dr. Duffy-Deno must for some reason have possession of  
17 the data in order to run his tests. I do not know why  
18 that's required. I do not know why he can't go to  
19 PNR, load his software, run his software, figure out  
20 what the analysis and the output of his tests are, and  
21 then negotiate with PNR as to what they can have and  
22 what they cannot have.

23 I can't give you an answer as to what he can  
24 and cannot do. All I can say is AT&T has reiterated  
25 over and over the opportunity for them to go to PNR

1 and look at the data. PNR has reiterated again that  
2 it is an open invitation.

3 In point of fact, Dr. Duffy-Deno has been to  
4 PNR on at least one occasion; apparently was not  
5 satisfied with the circumstances under which his visit  
6 took place. I don't know what I can do about that.  
7 But the very bottom line here is it's PNR's  
8 information. PNR is not an a affiliate related to  
9 AT&T in any way other than through perhaps some  
10 contractual arrangement through which we purchased the  
11 cluster analysis.

12 **COMMISSIONER JACOBS:** How did PNR undertake  
13 the analysis on AT&T's behalf? Did you provide them  
14 company-specific information that they then loaded  
15 into their database and they ran it and gave you back  
16 results?

17 **MR. HATCH:** My understanding of that is, is  
18 that we went to PNR because PNR does the kinds of  
19 analysis that takes the raw address data. They have  
20 software that then assigns the latitude and longitude  
21 which becomes the geocoded points, and they do that  
22 analysis, and that analysis generates the clusters.

23 **COMMISSIONER JACOBS:** So it's not  
24 necessarily AT&T specific? These are addresses of  
25 anyone?

1           MR. HATCH: Basically the addresses are by  
2 vendors to PNR, Dunn & Bradstreet and Metromail, to  
3 mass mail type agencies; mailing lists essentially.

4           COMMISSIONER JACOBS: Do you know if there's  
5 any kind of confidentiality agreement between AT&T and  
6 PNR?

7           MR. HATCH: To my knowledge, there is no  
8 proprietary agreements between AT&T and PNR, but,  
9 understand, the proprietary agreement would go to the  
10 underlying data base information that they have  
11 compiled. And we don't have it, so there's no  
12 necessity for us to have the agreement.

13           Now, to the extent that we have gone -- and  
14 I don't know the answer to this. I'd be certainly  
15 happy to find out -- gone and looked at the underlying  
16 data, then, yes, we would have entered into a  
17 proprietary agreement with them to not take possession  
18 of that data, but, you know, the ability to look at  
19 and examine what they do and how they do it.

20           Just a couple of more points to pick up on  
21 it. There is -- I mean, there's a certain amount of  
22 swearing going on between AT&T and BellSouth. I was  
23 not the one that conducted the negotiations with  
24 BellSouth. And be that as it may, when we provided  
25 the Minimum Spanning Tree Analysis to Sprint, that



1 satisfied Sprint.

2 My conversations with Sprint's counsel were  
3 that they were satisfied and that they would recede  
4 from their motion to compel that they filed -- I think  
5 August 11th, something like that -- and that for all  
6 practical purposes we were done with that.

7 Whether AT&T said they were going to file a  
8 motion to compel, whether they made it clear or it was  
9 not clear that they were, I honestly don't know. My  
10 counterpart's recollection is different from  
11 Mr. Carver's, and it probably is not profitable to  
12 engage in a he-said, she-said kind of analysis.

13 The bottom line is that we provided them the  
14 same information we provided to Sprint and assumed,  
15 perhaps wrongly, that it was sufficient to them. We  
16 did not hear anything more back from them until after  
17 rebuttal was filed. There's lots of reasons for that,  
18 and I'm not going to throw rocks. I just wanted to  
19 sort of clarify where that all stands.

20 It is not clear to me now why Sprint has  
21 renewed its motion to compel that it abandoned before  
22 and has negotiated essentially a settlement and a  
23 resolution of that.

24 With respect to GTE, I'm assuming that their  
25 motion in support is really an independent motion to

1 compel. Otherwise, as a response to a motion, it's  
2 untimely. But I'm not going to throw rocks at that  
3 necessarily, because however this comes out, it's  
4 going to apply equally to everybody.

5           Mr. Carver made one point with respect to  
6 Mr. Pitkin's and Mr. Wood's analyses on rebuttal. It  
7 is my understanding that Mr. Wood's and Mr. Pitkin's  
8 analyses and comparison of the BCPM and the HAI did  
9 not require underlying possession of the geocoded  
10 point data. So to that extent, Mr. Carver is in error  
11 with his allegations that we must have somehow had the  
12 data that he wants in order to do our rebuttal. My  
13 understanding is that's just not correct.

14           That's all. Thank you.

15           **COMMISSIONER JACOBS:** Your witnesses who  
16 have done the comparison, are they relying on the  
17 underlying data?

18           **MR. HATCH:** They're relying on the cluster  
19 analysis that's been provided to us. They're also  
20 presumably relying on whatever information we have  
21 been able to acquire from BCPM.

22           One thing you've got to remember here is  
23 Mr. Carver went to great length explaining how  
24 everything essentially at the core of BCPM has been  
25 done by third parties. Essentially, that's true for

1 BCPM as well.

2 INDETEC is the developer of BCPM. They're  
3 an independent vendor/contractor to most of the RBOCs  
4 and to GTE for purposes of BCPM. So in that sense,  
5 there's just no difference here.

6 COMMISSIONER JACOBS: So your contention  
7 would be that your access to the cluster analysis is  
8 available to BellSouth?

9 MR. HATCH: To the extent we do an analysis  
10 of the clusters that we receive, yes, that's available  
11 to BellSouth.

12 I don't think we have done an independent  
13 analysis along the lines that I think you're  
14 suggesting with respect to the clusters. We have  
15 dealt with PNR. We say, this is the kind of  
16 information we need, and we buy it from them.

17 Certainly we are satisfied with the quality  
18 and validity and reliability of the information we get  
19 from PNR. No different than when you buy a product;  
20 you're just happy with the product without necessarily  
21 having everything and all bits of information  
22 underlying related to that product that the vendor may  
23 have.

24 COMMISSIONER JACOBS: Okay. That was all  
25 for you? Public Counsel?

1           **MR. BECK:** Commissioner, we don't intend to  
2 argue on this motion.

3           **MR. CARVER:** Commissioner, may I respond  
4 very briefly?

5           **COMMISSIONER JACOBS:** I think that would be  
6 okay.

7           **MR. CARVER:** I'll just take a moment.  
8 Mr. Hatch raises an interesting point and one that I  
9 agree with, and that's that both Hatfield and BCPM are  
10 done by outside parties, not by BellSouth and by AT&T.  
11 I did not raise that point to criticize them for that.  
12 I don't think there's anything wrong with having  
13 outside parties who have expertise to develop models  
14 to do that.

15           The difference between the two is that AT&T  
16 is attempting to, on the one hand, say, here's the  
17 model that AT&T supports and that we're submitting to  
18 the Commission for adoption; however, because pieces  
19 of this have been done by outside parties over whom we  
20 have no control, we're immune from discovery.

21           And that's the problem; that on the one hand  
22 they're advocating something; at the same time they're  
23 saying that they can't be made to provide any  
24 discovery about it because it's being done by third  
25 parties. And that is a crucial difference between the

1 two.

2 BCPM -- I can't think offhand of any  
3 relevant request that AT&T has made that we have not  
4 complied with. We've given them our customer location  
5 information. We've told them how the model has  
6 worked. We've given them information about underlying  
7 inputs. And let me give you one brief example of  
8 that.

9 We have not had a dispute on our side at all  
10 about this, but the input information that we've had,  
11 although some of it's proprietary, it's very limited.  
12 In other words, it's not like the entire customer  
13 location process that's proprietary. Instead, it's  
14 very specific inputs.

15 Here's how we handled it. We have some  
16 switching inputs that went into our model.

17 **COMMISSIONER JACOBS:** This is a SCIS?

18 **MR. CARVER:** Well, it's actually a little  
19 different than SCIS. SCIS is part of a switching  
20 model that's developed by Bellcore, and that has been  
21 made available to AT&T. But we also have specific  
22 vendor prices for a particular type of switches that  
23 are inputs into the model.

24 The vendors had contracts with us that  
25 basically said we could not disclose that information,

1 period. We went back to them and explained that if  
2 we're going to say our model is open and verifiable,  
3 then it has to be open and verifiable; therefore, we  
4 have to be able to turn that information over to the  
5 Commission and to other parties. And the agreement  
6 that we worked out with them is that as long as the  
7 propriety and confidential treatment is maintained,  
8 then we would do that.

9           So what's happened is we had a particular  
10 proprietary agreement that was approved by those  
11 switch vendors that AT&T has signed, and they can have  
12 the information now if they'll sign that agreement.  
13 And I can assure you that the switch vendors did not  
14 want to give this information out that we considered  
15 important. And we would work to negotiate something  
16 with them.

17           In contrast, what we have from AT&T here is  
18 just a blanket statement that PNR won't turn it over.  
19 And in conversations that I've had with Mr. Hatch and  
20 with Mr. Coker, I've asked the question, what have you  
21 tried to do to get them to turn it over. And I  
22 haven't heard anything at all in terms of attempts to  
23 get PNR to allow this to truly be an open process.

24           The final thing I'll say is that Mr. Hatch  
25 talked about information that PNR has from third

1 parties, but I think it's very important that he did  
2 not address the surrogate locations. And, again,  
3 these surrogate locations are not based on anything  
4 that PNR has from some other source. Those are  
5 developed using particular algorithms. They're  
6 developed in house, and to that extent they are  
7 precisely like the BCPM customer location information  
8 that we have made available to them.

9           **COMMISSIONER JACOBS:** I just thought of one  
10 thing, and I'll allow you both to address briefly --  
11 well, both sides to address briefly -- and that is  
12 your interpretation of the statutes' standard, the  
13 evidentiary rule of -- what is it? Control and  
14 custody.

15           **MR. HATCH:** 1.350.

16           **MR. CARVER:** Should I --

17           **COMMISSIONER JACOBS:** Yes.

18           **MR. CARVER:** Well, as Mr. Hatch noted, it  
19 says "possession, custody, or control". Now, if they  
20 say it's not in their possession or custody, then I  
21 suppose we have to take their word for that.

22           I'm not really sure it's not in their  
23 control, though. I mean, they have paid a third  
24 party. The third party has done the analysis. The  
25 third party has provided it to them. Somehow the

1 third party has managed to make the underlying data  
2 available to Mr. Wood and to Mr. Pitkin.

3           Again, I don't know what effort AT&T has  
4 made to try to make this available under a propriety  
5 agreement, but I think without some sort of a factual  
6 basis as to discussions they've had, the position of  
7 PNR, or what's occurred, we can't really say that they  
8 don't have control over this.

9           In fact, my assumption would be that when  
10 you go out and pay a third party to do an analysis,  
11 then -- with the understanding that the analysis will  
12 be the basis of testimony that's filed in a Commission  
13 proceeding, I would assume that you would always have  
14 control of the information to the extent necessary to  
15 make your case.

16           So I find it very questionable, the  
17 proposition that they have control adequate to have  
18 witnesses take the stand and swear that this is the  
19 best model, but not adequate to allow us to have  
20 discovery of the information.

21           So, again, they know facts that I don't.  
22 But I think the argument that they have no control  
23 over this is, at best, questionable.

24           **MR. REHWINKEL:** Commissioner, in addition to  
25 what Mr. Carver says, which I agree with, I think it's



1 clear from the argument today that AT&T is relying on  
2 this information.

3           And regardless of what the standard is, I  
4 don't think it's appropriate for them to rely on it  
5 affirmatively before the Commission and then use the  
6 shield and the sword at the same time. I don't think  
7 that's appropriate, and I think that the Commission  
8 needs to take that into consideration.

9           **MR. FARLEY:** Clearly, Commissioner, that the  
10 question is control, and I believe that both BellSouth  
11 and Sprint have adequately argued that.

12           AT&T and MCI are relying on the Hatfield  
13 model. They're asking this Commission and all parties  
14 to believe that what the Hatfield model produces is  
15 correct, but they are not allowing any parties to go  
16 and review the data that's used by the Hatfield model  
17 to produce its output.

18           And one last thing. In the letter that AT&T  
19 attaches to their response from PNR, Point No. 3 on  
20 that letter where it says "The PNR National Access  
21 Line Model," and then in the following paragraph it  
22 says "Item 3, PNR's National Access Line Model is the  
23 custom version, and this custom version is proprietary  
24 to AT&T and MCI." That's at the conclusion of that  
25 first full paragraph following the six numbers.

1           Commissioner, GTE requested specifically the  
2 PNR National Access Line Model, Version 2.0, and the  
3 objection that GTE received from AT&T is that it's  
4 proprietary to PNR. PNR here in this exact letter  
5 that AT&T now offers as proof that the data from PNR  
6 is not available to anyone else, they admit that it is  
7 proprietary to AT&T and MCI, not proprietary to PNR.  
8 But AT&T still has not produced that to GTE, and I  
9 believe that that's indicative of AT&T's refusal to  
10 produce things from PNR, even those things that are  
11 proprietary to AT&T and MCI themselves.

12           MR. HATCH: A couple of points. First, AT&T  
13 is not seeking to immunize itself from discovery.  
14 Everything that we have that's otherwise relevant that  
15 they've asked for we've given them.

16           All three of these parties, all the parties  
17 in the proceeding, can go to PNR, examine the  
18 underlying data, examine the process by which the  
19 underlying data becomes clusters, that kind of  
20 analysis. Nobody here has said they can't do that or  
21 have been precluded from doing that. All they have  
22 suggested to you is it's more convenient and more  
23 useful and easier if they can take possession of the  
24 data itself.

25           Now, there's an underlying current that you

1 have understand here, particularly with respect to  
2 Dr Duffy-Deno, and that is he works for INDETEC.  
3 INDETEC is a competitor of PNR. PNR is understandably  
4 very concerned about turning over its proprietary work  
5 product to its competitor in terms of taking it away  
6 from the premises for whatever use it may be put to.

7 Now, I'm not going to cast at all any  
8 aspersions on Dr. Duffy-Deno and his desire to take  
9 possession of it for other competitive reasons. That  
10 is not what I'm suggesting at all. But understand the  
11 motivation for PNR being very, very reticent to just  
12 turn this stuff over, even subject to a propriety  
13 agreement.

14 I mean, for example take BellSouth's  
15 propriety agreement for the SCIS model, which is a  
16 completely separate agreement from their normal  
17 agreement in which we exchange information all the  
18 time.

19 **COMMISSIONER JACOBS:** Did you get that under  
20 a proprietary --

21 **MR. HATCH:** Yes, we have SCIS; that's  
22 correct, through a separate proprietary agreement, but  
23 even in there there's specific limitations on  
24 competitors being able to view that information.

25 So, I mean, it's clearly something that both

1 sides and all the parties here understand and are very  
2 sensitive to. So that's the source of PNR's reticence  
3 and concern with respect to producing this data and  
4 letting them take possession of it.

5           With respect to the PNR National Access Line  
6 database, I'm still trying to track that down. In  
7 terms of the National Access Line model, I don't think  
8 it's a problem of turning over the model itself. I  
9 think the underlying problem is screening out the  
10 underlying input geocoded data that forms part of that  
11 model. That's what they're really nervous about  
12 turning over. It's not the PNR Access Line Model  
13 itself.

14           With respect to the PNR Access Line Model,  
15 that's only recently come to my attention, and I'm  
16 still trying to track it down to determine whether, in  
17 fact, we can respond to what GTE has asked for or not.

18           **COMMISSIONER JACOBS:** Okay. I think we'll  
19 take this under advisement and issue a ruling  
20 posthaste, because I know the parties need to move  
21 ahead. Any idea when you would like to get this out?

22           **MR. COX:** I think we probably need it out by  
23 the end of the week. That would be our best bet. If  
24 we were to allow, the Commission were to allow,  
25 supplemental rebuttal testimony as BellSouth

1 suggested, we need to at least give them a week. I  
2 think that would probably be reasonable under the  
3 circumstances, and we need to get that filed before  
4 the hearing date, which starts October 12th. So that  
5 probably needs -- we need a ruling by Friday.

6           **COMMISSIONER JACOBS:** Okay. Will that work?  
7 Very good. Thank you. It's been educational. And  
8 we're adjourned.

9           (Thereupon, the hearing concluded at  
10 8:55 a.m.)

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1 STATE OF FLORIDA)  
: CERTIFICATE OF REPORTER  
2 COUNTY OF LEON )

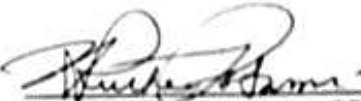
3 I, H. RUTHE POTAMI, CSR, RPR, Official  
4 Commission Reporter,

5 DO HEREBY CERTIFY that the Motion Hearing in  
6 Docket No. 980696-TP was heard by the Prehearing  
7 Officer at the time and place herein stated; it is  
8 further

9 CERTIFIED that I stenographically reported  
10 the said proceedings; that the same has been  
11 transcribed under my direct supervision; and that this  
12 transcript, consisting of 38 pages, constitutes a true  
13 transcription of my notes of said proceedings.

14 DATED this 30th day of September, 1998.

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H. RUTHE POTAMI, CSR, RPR  
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