

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Consideration of) Docket No. 960786-TL
 BellSouth Telecommunications,)
 Inc.'s entry into interLATA)
 services pursuant to Section 271)
 of the Federal)
 Telecommunications Act of 1996.)

FOURTH DAY - MID AFTERNOON SESSION

VOLUME 17

Pages 1755 through 1879

PROCEEDINGS: HEARING

BEFORE: JULIA L. JOHNSON, CHAIRMAN
 SUSAN F. CLARK, COMMISSIONER
 J. TERRY DEASON, COMMISSIONER
 DIANE K. KIESLING, COMMISSIONER
 JOE GARCIA, COMMISSIONER

DATE: Friday, September 5, 1997

TIME: Commenced at 9:00 a.m.

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

REPORTED BY: Lisa Girod Jones, RPR, RMR

APPEARANCES:

(As heretofore noted.)

BUREAU OF REPORTING

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I N D E X

WITNESSES

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

2 (Transcript continues in sequence from
3 Volume 16.)

4 CHAIRMAN JOHNSON: Okay, very good. Then with
5 that -- Mr. Gillan is everybody's witness.

6 MS. KAUFMAN: But the Florida Competitive
7 Carriers Association is going to conduct Mr. Gillan's
8 preliminary matters. So we would call him to the
9 stand.

10 CHAIRMAN JOHNSON: Mr. Gillan, have you been
11 sworn?

12 MS. KAUFMAN: No.

13 CHAIRMAN JOHNSON: Do you prefer Gillan or
14 Gillan?

15 WITNESS GILLAN: Gillan.

16 CHAIRMAN JOHNSON: If you could stand and
17 raise your right hand.

18 JOSEPH GILLAN

19 was called as a witness on behalf of Florida Competitive
20 Carriers Association, MCI, AT&T & WorldCom, and having
21 been duly sworn, testified as follows:

22 MS. KAUFMAN: Chairman Johnson, while we're
23 getting set up, we are passing out some copies of
24 blowups that Mr. Gillan is going to use in his summary.

25 Could we have an exhibit number for those

1 blowups, please?

2 CHAIRMAN JOHNSON: Ms. Kaufman, what all do I
3 have for him? You handed us something yesterday.

4 MS. KAUFMAN: Yes. I was going to take that
5 up as we get to it, but we did provide that so the
6 parties could look over it last night.

7 CHAIRMAN JOHNSON: You didn't want it to be an
8 exhibit?

9 MS. KAUFMAN: Yes, I will want it to be an
10 exhibit.

11 CHAIRMAN JOHNSON: But right now you would
12 like for me to mark JPG-2?

13 MS. KAUFMAN: Yes, and it's his four-page
14 8 1/2 by 11 of some charts Mr. Gillan is going to use in
15 his summary.

16 CHAIRMAN JOHNSON: Would you like them as a
17 composite exhibit?

18 MS. KAUFMAN: That would be fine.

19 CHAIRMAN JOHNSON: We'll mark these two as
20 Composite Exhibit 60.

21 (Exhibit No. 60 marked for identification.)

22 COMMISSIONER CLARK: These are nice.

23 MS. KAUFMAN: Thank you.

24 COMMISSIONER CLARK: This is the source,
25 right?

1 MS. KAUFMAN: Yes, ma'am.

2 DIRECT EXAMINATION

3 BY MS. KAUFMAN:

4 Q Mr. Gillan, would you state your name and
5 address for the record please?

6 A Joseph Gillan, P. O. Box 541038, Orlando,
7 Florida 32854.

8 Q On whose behalf are you appearing in this
9 proceeding?

10 A Florida Competitive Carriers Association, AT&T
11 Communications, MCI Communications and WorldCom.

12 Q Mr. Gillan, did you file 40 pages of direct
13 testimony in this docket?

14 A Yes.

15 Q Do you have any changes or corrections to that
16 testimony?

17 A No, I do not.

18 Q And you didn't have any exhibits to your
19 direct testimony, did you?

20 A No, I did not.

21 Q If I asked you the questions contained in your
22 direct testimony today, would your answers be the same?

23 A Yes.

24 MS. KAUFMAN: I would ask that Mr. Gillan's
25 direct testimony be inserted in the record as though

1 read.

2 CHAIRMAN JOHNSON: It will be so inserted.

3 Q (By Ms. Kaufman) Mr. Gillan, did you also
4 file 19 pages of rebuttal testimony?

5 A Yes, I did.

6 Q Do you have any changes or corrections to that
7 testimony?

8 A No, I did not.

9 Q If I asked you the questions contained in that
10 testimony, would your answers today be the same?

11 A Yes.

12 MS. KAUFMAN: I would ask that Mr. Gillan's
13 rebuttal testimony be inserted into the record as though
14 read.

15 CHAIRMAN JOHNSON: It will be so inserted.

16 Q (By Ms. Kaufman) Now your rebuttal testimony
17 had one exhibit; did it not?

18 A That's correct.

19 Q Was that prepared under your supervision and
20 direction?

21 A Yes.

22 MS. KAUFMAN: Could we have an exhibit number
23 for Mr. Gillan's rebuttal exhibit, please?

24 CHAIRMAN JOHNSON: 61.

25 (Exhibit No. 61 marked for identification.)

1 Q (By Ms. Kaufman) Do you have any changes or
2 corrections to that exhibit?

3 A No.

4 Q I think a short title would be Road Map to
5 Competition.

6 CHAIRMAN JOHNSON: Thank you.

7 COMMISSIONER CLARK: Ms. Kaufman, could I just
8 ask you something? Would you all look at Page 29 of the
9 direct? Lines 10 and 11.

10 Is that citation to Section IV correct?

11 WITNESS GILLAN: At one point in the drafting
12 process this was a -- this paragraph appeared at a
13 different place in the testimony. It was referencing
14 you to this section. So when the paragraph itself got
15 moved to this section, the reference to itself should
16 have been eliminated. So that other answer about there
17 being no changes, that reference should be deleted.

18 MS. KAUFMAN: So we're deleting the
19 parenthetical?

20 WITNESS GILLAN: Yes.

21 COMMISSIONER CLARK: It's funny how those
22 things can really cost you time.

23 MS. KAUFMAN: Mr. Gillan, yesterday we
24 distributed an exhibit to the parties. And I think this
25 is the one you're referring to, Chairman Johnson. If we

1 could have an exhibit number, please.

2 CHAIRMAN JOHNSON: We'll mark that
3 Exhibit 62.

4 (Exhibit No. 62 marked for identification.)

5 Q (By Ms. Kaufman) Mr. Gillan, could you just
6 explain briefly what Exhibit 62 is.

7 A Yes, the -- as I understand it, we have the
8 opportunity to address in our summary the relationship
9 between our testimony and the Ameritech order. In my
10 summary I do have some references to it, but there were
11 so many interrelationships between the Ameritech order
12 and my testimony. I thought it would be simpler for the
13 Commission if I took the testimony and footnoted the
14 testimony to provide a cross reference to which portions
15 of the Ameritech order address the same topics in my
16 testimony to make it easier to follow the -- and to
17 shorten the summary, quite frankly.

18

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Docket No. 960786-TL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**DIRECT TESTIMONY****OF****JOSEPH GILLAN****1 I. INTRODUCTION AND WITNESS QUALIFICATION**

2

3 **Q. Please state your name and business address.**

4

5 A. My name is Joseph Gillan. My business address is P.O. Box 541038,
6 Orlando, Florida 32854.

7

8 **Q. What is your occupation?**

9

10 A. I am an economist with a consulting practice specializing in
11 telecommunications. My clients span a range of interests and have
12 included state public utility commissions, consumer advocate organizations,
13 local exchange carriers, competitive access providers, and long distance
14 companies.

15

16 **Q. Please briefly outline your educational background and related**

1 **experience.**

2

3 A. I am a graduate of the University of Wyoming where I received B.A.
4 (1978) and M.A. (1979) degrees in economics. My graduate program
5 concentrated on the economics of public utilities and regulated industries
6 with course work emphasizing price theory and statistics.

7

8 In 1980, I joined the staff of the Illinois Commerce Commission where I
9 had responsibility over the policy content of Illinois Commission filings
10 before the U.S. District Court and the Federal Communications
11 Commission. In addition, I was responsible for staff testimony relating to
12 the emergence of competition in regulated markets, in particular the
13 telecommunications industry. While at the Commission, I served on the
14 staff subcommittee for the NARUC Communications Committee and was
15 appointed to the Research Advisory Council overseeing NARUC's research
16 arm, the National Regulatory Research Institute.

17

18 In 1985, I left the Commission to join U.S. Switch, a venture firm
19 organized to develop interexchange access networks in partnership with
20 independent local telephone companies. At the end of 1986, I resigned my
21 position of Vice President-Marketing to begin a consulting practice. I
22 currently serve on the Advisory Council for New Mexico State

1 University's Center for Regulation.

2

3 **Q. On whose behalf are you testifying?**

4

5 A. My testimony is sponsored in this proceeding by the Florida Competitive
6 Carriers Association (FCCA), AT&T Communications of the Southern
7 States, Inc. (AT&T), MCI Telecommunications Corporation (MCI), and
8 WorldCom, Inc. (WorldCom). The FCCA is the successor organization to
9 the Florida Interexchange Carriers Association. In anticipation of the
10 fundamental change that will result from the full implementation of the
11 Telecommunications Act of 1996 (Act), FIXCA has broadened its name
12 and membership to respond to a broader range of competitive issues.

13

14 **Q. What is the purpose of your testimony?**

15

16 A. The purpose of my testimony is two-fold:

17

18 (1) to explain why the Act requires that BellSouth first satisfy each of
19 its obligations under Sections 251, 252 and 271 of the
20 Telecommunications Act, including all applicable federal rules,
21 before it will be authorized to provide interLATA services, and

22

1 (2) to demonstrate that BellSouth does not provide the unbundled local
2 switching network element (and its use in combinations) as required
3 by the Act and the FCC's implementing regulations.

4

5 As my testimony below explains, BellSouth does not satisfy critical areas
6 of the 14-point Competitive Checklist. Therefore, its application for
7 interLATA authority is premature.

8

9 **Q. What specific issues does your testimony address?**

10

11 **A.** My testimony will address the following issues (as delineated in the Issue
12 List):

13

14 1.A. Has BellSouth met the requirements of Section 271(c)(1)(A)
15 of the Telecommunications Act of 1996?

16

17 3. Has BellSouth provided nondiscriminatory access to
18 network elements in accordance with the requirements of
19 Sections 251(c)(3) and 252(d)(1) of the Telecommunications
20 Act of 1996, pursuant to 271(c)(2)(B)(ii) and applicable
21 rules promulgated by the FCC?

22

1 7. Has BellSouth provided unbundled local switching from
2 transport, local loop transmission, or other services,
3 pursuant to Section 271(c)(2)(B)(vi) and applicable rules
4 promulgated by the FCC?

5
6 13. Has BellSouth provided nondiscriminatory access to such
7 services or information as are necessary to allow the
8 requesting carrier to implement local dialing parity in
9 accordance with the requirements of Section 251(b)(3) of
10 the Telecommunications Act of 1996, pursuant to Section
11 271(c)(2)(B)(xii) and applicable rules promulgated by the
12 FCC?

13
14 The fact that I do not address other requirements of the Act and FCC rules
15 does not mean that I believe BellSouth is in compliance with them.
16 BellSouth must prove its compliance with each and every requirement.

17
18 **Q. What is the basic conclusion of your testimony?**

19
20 A. The Telecommunications Act of 1996 represents Congress' affirmation that
21 the competitive process unleashed by the AT&T divestiture brought
22 substantial benefits to American consumers. In large part, the Act is

1 structured to extend these same competitive benefits to the local market by
2 applying the same principle which made the divestiture so successful --
3 that is, by requiring that the local network be opened to competitive
4 providers on nondiscriminatory terms. The MFJ limited this obligation to
5 the use of the local network in only *one* of its roles (the origination and
6 termination of long distance traffic); the Act applies this obligation to the
7 incumbent's network in *all* of its roles (including local and access).
8 Further, the Act provides that when the network is practicably available on
9 nondiscriminatory terms to others -- including entrants deploying facilities
10 -- then BellSouth may be authorized to provide long distance services.

11

12 **Q. How should the Commission approach its role with respect to**
13 **evaluating Section 271 compliance?**

14

15 A. Under the Act, the fundamental role of a state commission is a *fact-*
16 *consultant* to the FCC, determining through a practical and quantitative
17 review of the conditions in its state whether BellSouth has fully
18 implemented each of the tools required by the Checklist. This review
19 includes determining whether BellSouth is in full compliance with each of
20 the effective FCC rules implementing Sections 251 and 252, and that broad
21 scale, commercial level, local competition is now possible. Only through
22 a critical examination, where BellSouth's compliance can be empirically

1 demonstrated through practical experience, can the Commission perform
2 its statutory role.

3

4 **Q. Why is empirical review so important?**

5

6 A. Conducting an empirical review is a necessary step in this process because,
7 for all practical purposes, Congress adopted a national blueprint for local
8 competition based on the limited experience of a few states, none of which
9 had even fully implemented their own policies. The result is a law with
10 excellent intentions, but without the benefit of a working model.

11

12 The dramatically higher barriers to entry to the local exchange market
13 (particularly relative to long distance) must be *successfully* eliminated in
14 order for exchange competition to proceed. Local competition depends not
15 upon BellSouth's paper compliance with abstract concepts -- or, even more
16 speculatively, *promises* of future compliance -- but rather upon whether the
17 tools entrants actually needed are available in ways that support entry on
18 a commercial scale. In particular, the Commission must ensure that
19 network elements are fully operational in a manner which enables local
20 entrants to offer services as quickly and broadly as BellSouth will be able
21 to provide long distance services.

22

1 **A. Does BellSouth today have experience providing these necessary**
 2 **elements?**

3
 4 A. No. The following table summarizes the status of local competition in
 5 BellSouth's territory in Florida and documents just how premature its
 6 claim is that it complies with Section 271. I have presented the results
 7 both as a percentage and in scientific notation. Scientific notation is the
 8 accepted method of expressing very small values (the size of quarks, sub-
 9 atomic particles and the level of local competition in BellSouth's Florida
 10 territory). Table 1 demonstrates that local competition has not yet begun -
 11 - much less is irreversible as required under the Department of Justice's
 12 standard. (See DOJ Brief, dated May 16, 1997, in SBC
 13 Telecommunication's Application to the FCC for interLATA authority).

14 **TABLE 1: STATUS OF LOCAL ENTRY IN**
 15 **BELLSOUTH'S FLORIDA TERRITORY**
 16 **AS OF JUNE 1, 1997**

Measure	Entrant Quantity (1997)	BellSouth Quantity (1996)	Competitive Share	
			Percent	Scientific Notation
Interconnection Trunks	7,612	9,190,968	.0828%	8.3E-04
Unbundled Loops	1,085	6,614,273	.0164%	1.6E-04
Unbundled Switching	7	5,885,000	0001%	1.2E-06

1
2 **Table 1 Sources**

3
4 Interconnection Trunks: Interoffice Carrier Links, 1996 ARMIS 4307.

5 Unbundled loops: Working Channels, 1996.

6 Unbundled switching: Total Access Lines in Service, 1996 ARMIS 4307.

7 Entrant quantities based on BellSouth witness Milner prefiled direct
8 testimony in this docket.

9
10 As Table 1 shows, there is no measurable competition in the BellSouth's
11 Florida territory today. The *reason* is that BellSouth has not implemented
12 the tools necessary for widespread competition -- particularly, the operating
13 systems to support network element combinations -- and, as such, does not
14 satisfy the threshold requirements of Section 271.

15
16 **II. THE REQUIREMENTS OF SECTION 271**

17
18 **Q. What must BellSouth do in order to obtain authority to provide in-**
19 **region interLATA services pursuant to the Act?**

20
21 **A.** BellSouth bears the burden of proving that it has met *each* of the
22 conditions necessary for it to provide in-region interLATA services in
23 Florida. In order to receive authority under Track A to provide interLATA

1 services, BellSouth must prove: (1) that it has entered into one or more
2 binding agreements that have been approved by the Commission under
3 Section 252 of the Act specifying the conditions under which BellSouth is
4 providing access and interconnection to its network facilities for the
5 network facilities of one or more unaffiliated competing providers of
6 telephone exchange service to residential and business subscribers; and (2)
7 that the access and interconnection BellSouth is providing under such
8 agreements meets the requirements of the Act's 14-point Competitive
9 Checklist.

10
11 **Q. What does a determination of Sections 251 and 252(D) and Checklist**
12 **compliance entail?**

13
14 **A.** The Act requires that BellSouth provide the basic tools necessary for
15 commercial scale local competition to become a reality. Included among
16 Sections 251, 252(d) and the Checklist is the requirement that BellSouth's
17 carrier offerings comply with federal rules that are designed, in large part,
18 to assure that entrants have the same ability to use the preexisting network
19 to provide services as BellSouth does itself. For instance, 47 C.F.R. §
20 51.311 provides:

21
22 Nondiscriminatory access to unbundled network
23 elements
24

1 (b) Except as provided in paragraph (c) of this
2 Section, to the extent technically feasible, the quality
3 of an unbundled network element, as well as the
4 quality of the access to such unbundled network
5 element, that an incumbent LEC provides to a
6 requesting telecommunications carrier shall be at
7 least equal to that which the incumbent LEC
8 provides to itself.

9

10 I cite this particular passage to emphasize how very significant the changes
11 will be that must occur in order for BellSouth to satisfy the Competitive
12 Checklist and be authorized to provide interLATA services. It is not
13 enough for BellSouth to claim that it can accept an order and deliver an
14 unbundled element at some uncertain point in the future. Rather, it must
15 alter its systems to support an environment where network elements are
16 available to multiple providers on terms equivalent to BellSouth's use of
17 the network itself.

18

19 **Q. Why do your comments focus on the availability of network elements?**

20

21 **A.** Because entry using unbundled network elements is the option that most
22 closely parallels BellSouth's interLATA opportunity and is most likely to
23 achieve the potential benefits that are central to the Act's success. Of
24 course, I do not intend to imply by this emphasis that other entry
25 approaches, such as service-resale and facilities-construction are
26 unimportant. Rather, network elements (including, network element

1 combinations) provide a wide range of economic benefits and are the most
2 difficult to operationalize and support on a commercial scale.
3 Consequently, once network elements (including combinations) are
4 provisioned in a nondiscriminatory manner, the Commission should
5 anticipate that BellSouth can adequately support the remaining entry
6 techniques as well.

7
8 This conclusion is based on the following characteristics of entry using
9 network elements:

- 10
11 • The pricing of network elements is to be based on
12 cost and nondiscriminatory. If true, then the entrant
13 and the incumbent should face the same cost
14 structure for the underlying network they share. (If
15 not, then an artificial advantage will result that will
16 translate to a consumer loss.)
17
- 18
19 • Network elements pre-position the entrant for either
20 network construction of its own or, at the least, the
21 replacement of incumbent local exchange carrier-
22 provided network elements with components
23 obtained from third parties.
24
25
- 26
27 • Network elements establish the entrant as a complete
28 provider of local and exchange access services, an
29 economic predicate to full service competition.
30 Partial entry strategies -- such as service-resale --
31 will not drive retail prices (particularly toll prices)
32 to cost, since the incumbent LEC retains an access
33 monopoly to the service-resellers' customers.
34
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- Network elements enable the entrant to craft its own unique local services, varying calling boundaries and feature mixes to meet unique customer needs, thereby unleashing the creative energies of the competitive process.

Overall, fully implementing the requirements necessary to make network elements operationally available will be the step most likely to lead to alternative networks and full-scale facilities competition. Most importantly, network elements must be available in logical combination which rapidly permit wide-scale local competition if consumers are to broadly benefit under the Act as Congress intended. The Commission should carefully scrutinize BellSouth's claim that it is able to provide entrants with nondiscriminatory access to network elements, and network element combinations, as required by FCC rules.

III. UNBUNDLED LOCAL SWITCHING AND NETWORK ELEMENT COMBINATIONS

Q. What conditions must be satisfied for the rapid, wide-scale, local competition required by the Act to become a reality?

A. The threshold condition is that entrants have the ability to use the existing network to offer their own services. The local network is simply too vast

1 for any entrant to replicate this resource in the near term. Of course, this
2 principle -- nondiscriminatory access to the incumbent's network -- is the
3 cornerstone of the Act. See 47 CFR § 51.311.

4
5 The critical step is translating the principle of nondiscrimination into
6 practical tools that entrants can actually use to offer customers competitive
7 services. To give this principle meaningful effect, the incumbent's
8 network must be made available in ways which:

- 9
- 10 • enable the entrant to offer service to a broad,
11 geographic market;
 - 12
13
14
15 • permit the entrant to design its own service offerings
16 (such as, for example, deciding its local calling
17 scope and selecting which "optional" features it will
18 include in its basic service);
 - 19
20
21
22 • support customer migrations between carriers with
23 an ease and cost comparable to the ease with which
24 customers can change long distance carriers today.

25
26 **Q. What entry technique is capable of supporting the rapid, commercial**
27 **scale entry anticipated by Congress?**

28
29 **A. Commercial-scale entry demands that services can be mass-produced and**

1 customers can shift between carriers simply and inexpensively, where
2 customers experience the same convenience whether they choose the
3 services of the incumbent or those of an entrant for all their
4 telecommunications needs.

5
6 Achieving this vision requires that network elements be offered in logical
7 combinations, as well as in the form of individual components. Of course,
8 individual elements will continue to play a critical role, both to serve large
9 customers and as carriers substitute incumbent-provided facilities with
10 facilities of their own (or those obtained from third parties). Single-
11 element arrangements, however, narrow entrants geographically to selected
12 end-offices (where alternative facilities exist) or to selected customers
13 (those sufficiently large to offset the cost to reconfigure). Logical
14 combinations avoid these concerns which would otherwise, inevitably,
15 force entrants to focus on niche markets.

16
17 **Q. Doesn't service-resale satisfy the need for wide-scale entry?**

18
19 **A.** No. Service-resale establishes the entrant as the incumbent's faint echo
20 offering identical services, with little to no ability to offer lower prices.
21 If a carrier has no interest in designing unique services, has no reason to
22 offer both local exchange and exchange access service, has no desire to

1 compete aggressively with BellSouth's prices, and has no intention to
2 replace individual network components with the facilities of other carriers
3 (or its own) as they become available, then service-resale is the ideal
4 solution. While service-resale will provide carriers a *simple* entry option -
5 - and, for that reason, the Commission can expect that carriers will use this
6 approach, particularly at first -- robust local competition depends upon the
7 more challenging opportunities made possible by network element
8 combinations.

9
10 **Q. Which network element is most critical to achieving the benefits of**
11 **network combinations?**

12
13 **A.** The local switching network element is the key to widespread local
14 competition (and, not surprisingly, where BellSouth is far from compliance
15 with the Act's requirements). The switch lies at the heart of local
16 exchange service. It is here where services are created and most revenues
17 generated. The *only* way that entry will occur on a broad scale, and on an
18 economic basis comparable to BellSouth, is if multiple carriers can use the
19 existing switches (and, as explained below, loop/switch combinations) to
20 provide their own individual services.

21
22 **Q. Do the Act and FCC rules require an unbundled local switch (ULS)**

1 **network element that establishes its purchaser as a local carrier,**
2 **coequal to BellSouth?**

3

4 A. Yes. A multi-vendor switching element -- which provides entrants local
5 switching capacity with the same opportunities to provide their own
6 services as BellSouth -- is clearly a goal of the Act and applicable FCC
7 rules. The starting point for defining the ULS can be found in the
8 Competitive Checklist, § 271(c)(2)(B)(vi), which requires that BellSouth
9 must provide unbundled local switching prior to its offering of in-region
10 interLATA services:

11 (vi) Local switching unbundled from transport, local
12 loop transmission, or other services.

13 This provision requires that BellSouth offer a local switching element as
14 a generic functionality that can be used by entrants to offer their own
15 exchange services without any requirement that they purchase other
16 BellSouth network elements (loop or transport) or services (such as DA,
17 Operator Services, exchange access or, quite obviously, BellSouth's local
18 service itself).

19

20 **Q. Has the FCC provided additional detail concerning the ULS element**
21 **that BellSouth must offer?**

22

23 A. Yes. Under the Act, the FCC is responsible for defining the *minimum set*

1 of network elements that incumbent LECs (like BellSouth) must offer to
2 comply with Section 251 of the Act. Section 251(d) charges the FCC with
3 establishing regulations implementing Section 251 of the Act. I realize
4 that there is a legal controversy concerning the FCC's authority to address
5 *pricing* within these rules and the FCC's pricing regulations are currently
6 stayed. The FCC's rules *defining* network elements, while under appeal,
7 have not been stayed.

8
9 The unbundled switching element required by federal rules is the lease of
10 switching capacity on a per-line basis to an entrant that then becomes the
11 subscriber's local telephone carrier with respect to local exchange
12 (including vertical features) and exchange access services:

13
14 . . . a carrier that purchases the unbundled
15 local switching element to serve an end user
16 effectively obtains *the exclusive right* to provide all
17 features, functions, and capabilities of the switch,
18 including switching for exchange access and local
19 exchange service, for that end user.
20

21
22 Order on Reconsideration, Federal Communications Commission, CC
23 Docket No. 96-98, Released September 27, 1996.

24
25 More specifically, the ULS must include all features, functions and
26 capabilities of the switch, including:
27

- 1 • basic switching connecting lines and trunks, §
2 51.319(c)(1)(i)(C)(1),
3
4
5
- 6 • any capability available to incumbent LEC
7 customers, including telephone number, white page
8 listing and dial tone, § 51.319(c)(1)(i)(C)(1),
9
10
- 11 • every feature the switch is capable of providing,
12 including custom calling, CLASS functionality, and
13 Centrex, § 51.319(c)(1)(i)(C)(2),
14
15
16
17
- 18 • software-controlled systems which transfer end-users
19 to a new exchange carrier in the same interval as the
20 LEC transfers customers between interexchange
21 carriers, § 51.319(c)(1)(ii) (a software-controlled
22 transfer would occur where the entrant purchases the
23 preexisting loop/switch combination serving an end-
24 user. In such an instance, it would not be necessary
25 to physically reconfigure the end-user's loop to
26 change its service provider),
27
28
- 29 • establishes the ULS purchaser as the provider of
30 local exchange and exchange access service, §
31 51.307(c) (obligates BellSouth to provide a network
32 element in a manner that permits its purchaser to
33 offer any service made possible by the element), §
34 51.309(a) (prohibits BellSouth from imposing any
35 restriction that would limit an entrant's ability to use
36 an element to offer any service the entrant desires),
37 and § 51.309(b) (specifies that an entrant may use
38 an element to provide exchange access),
39
40
41
- 42 • use of the incumbent's signalling and call-related
43 data base systems in the same manner as the LECs
44

1 use such systems themselves, ¶ 51.319(e)(1)(ii) and
2 ¶ 51.319(c)(2)(iii),

- 3
4
5
6 • access to the *entrant's* operator services by dialing
7 "0" or "0 plus," the desired telephone number,

8
9 (FCC Second Report and Order, Docket 96-98, ¶¶ 112, 114, 116.)

- 10
11
12
13 • access to directory services using the 411 and 555-
14 1212 dialing patterns,

15
16 (FCC Second Report and Order, CC Docket 96-98, ¶ 151).

- 17
18
19
20 • routing to the entrant's repair functions (611) and
21 business office (811).

22
23 (FCC First Report and Order, CC Docket 92-105, ¶ 46.)

24
25 The collective effect of these provisions is to define an ULS element that
26 establishes the purchaser as its subscribers' local telephone company in
27 every material respect. The ULS element provides the entrant the ability
28 to: (1) decide the features applicable to each of its subscribers' lines
29 (constrained by the features resident in the switch or accessible through
30 AIN); (2) direct its operator and directory traffic to its own services or
31 those provided by the LEC or a third party; (3) complete local calls using
32 the transport network of the LEC, its own network or the network of a
33 third party; and (4) provide exchange access services to itself or other

1 carriers.

2

3 **Q. Is the introduction of an unbundled switch element sufficient for wide-**
4 **scale competition?**

5

6 A. No. Unbundled switching, by itself, would provide the heart of local
7 competition without a body to sustain it. Local competition also requires
8 that entrants be able to obtain logical combinations of network elements,
9 including combinations where each network element is purchased from
10 BellSouth.

11

12 **Q. What combination of network elements do you expect competitors will**
13 **require to enter the market initially?**

14

15 A. As a practical matter, because no alternative exchange networks yet exist,
16 I expect that entrants will need to purchase most (if not all) network
17 elements from BellSouth. At the least, I expect entrants to obtain both
18 loop and switch capacity as a combination of network elements (frequently
19 with transport and signalling) to form their basic exchange-serving
20 arrangement. This combination of network elements is known as the
21 "platform configuration."

22

1 With an ability to obtain the full combination of network elements,
2 competition will not be limited to those areas, and those few customers,
3 that will first attract alternative networks. Any number of entrants will be
4 able to approach the market with new services and competitive choices
5 because each will be able to use however much (or little) of the exchange
6 network they need to offer their services.

7

8 **Q. Does the Commission require BellSouth to provision network element**
9 **combinations?**

10

11 A. Yes. The Florida Commission has consistently maintained that BellSouth
12 must support network element combinations as required under the Act and
13 the FCC's implementing regulations. The FCC rules clearly spell out
14 BellSouth's obligation to honor entrant requests for network element
15 combinations:

16

17

47 CFR § 51.315(a):

18

19

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26

47 CFR § 51.315(b):

27

28

29

Except upon request, an incumbent LEC shall not
separate requested network elements that the

1 incumbent LEC currently combines.

2

3 The FCC further emphasized its commitment to network element

4 combinations, noting that:

5 Under our [the FCC] method, incumbents must
6 provide, as a single, combined element, facilities
7 that could comprise more than one element.

8

9 First Report and Order, CC Docket 96-98, ¶ 295.

10

11 **Q. Why are network combinations so important to local competition?**

12

13 A. For three reasons. First, effecting a large number of customer requests to
14 change local carriers will require that the customer's decision can be
15 implemented in an automated fashion. Using the unbundled loop by itself
16 means that a physical change in the network will be necessary -- i.e., the
17 actual loop to the customer must be reconfigured from BellSouth's local
18 switch to a competitor's every time a customer changes its local service
19 provider. As a result, unbundled loops (by themselves) cannot satisfy the
20 fundamental condition for local competition that customers can be moved
21 to a new local provider in a service interval equal to the interval that
22 customers will be able to choose BellSouth for long distance services.

23

24 Second, there are over 23,000 local switches in the local exchange

1 networks of the incumbent local exchange carriers today. No competitor
2 can replicate, any time soon, this vast switching matrix on which virtually
3 all customer loops now terminate. Importantly, the economic cost of local
4 switching is closely aligned with that of the loops that it connects. To the
5 extent that loop plant is a natural monopoly, a similar (although not
6 identical) conclusion must apply to the local switches that connect them.

7
8 Moreover, even where competitive switches are installed, the fact remains
9 that the cost to reconfigure loops, particularly to connect to a
10 geographically distant or different switch, will likely limit the utility of this
11 form of entry to large customers. The only way that entry will occur on
12 a broad scale, and on an economic basis comparable to BellSouth, is if
13 multiple carriers can use the existing switches (and loop/switch
14 combinations) to provide service.

15
16 **Q. Does the Department of Justice recognize the availability of network**
17 **element combinations (i.e., the platform) as a necessary precondition**
18 **to Checklist compliance?**

19
20 **A.** Yes. The Department of Justice recently completed its review of
21 Ameritech's application for interLATA authority in the State of Michigan.
22 In its comments to the FCC, the Department recommended rejection of the

1 application because Ameritech does not satisfy the Checklist, including its
2 requirements to offer network element combinations:

3

4 This [the FCC's Local Competition Order] requires BOCs to provide what
5 has often been referred to as the "network platform."

6 Thus . . . Ameritech cannot receive Section 271
7 authority unless it makes common transport
8 available, in conjunction with both unbundled
9 switching and the 'network platform,' as both a
10 legal and a practical matter.

11

12 (Evaluation of the U.S. Department of Justice, Ameritech-Michigan, June
13 25, 1997, pages 14-15.)

14

15 Furthermore, the Department noted the importance of the "network
16 platform" to achieving the competitive environment envisioned by the Act.

17

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(Id. at 34.)

32

1 Consequently, the Department of Justice both recognizes that the platform
2 is necessary to satisfy the stated requirements of the Competitive Checklist
3 as well as its competitive importance to consumers.

4

5 **Q. Has the FCC recently reaffirmed its decision to require BellSouth (and**
6 **other incumbents) to provide network element combinations in the**
7 **manner you have described?**

8

9 A. Yes. The FCC has reemphasized the importance of network element
10 combinations in its recent access reform decision. The FCC has
11 specifically rejected applying access charges to purchasers of network
12 elements (who, in effect, become the access provider for their customers),
13 including BellSouth's argument that resale treatment should apply:

14

15

16 We [the FCC] are also unpersuaded by
17 suggestions that access charges should be imposed
18 on unbundled elements because provision of
19 competitive service by rebundling the same network
20 elements used by the incumbent LEC to provide
21 access is equivalent to resale of a retail service.

22

23 (FCC First Report and Order, Docket 96-262, Released May 16, 1997, ¶

24

340.)

25

26 As a result, the FCC reaffirmed the decision in its Interconnection Order
27 that the loop and switch network elements establish their purchaser as the

1 provider of both local exchange and exchange access service:

2

3

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7

As we noted in the *Local Competition Order*, payment of cost-based rates represents full compensation to the incumbent LEC for use of the network elements that carriers purchase.

8

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Allowing incumbent LECs to recover access charges in addition to the reasonable cost of such facilities would constitute double recovery because the ability to provide access services is already included in the cost of the access facilities themselves.

(Id. at ¶ 337.)

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In fact, the FCC emphasized that it would have taken a more prescriptive approach to access charge reform if new entrants could not use network elements, including combinations, to enter the exchange market.

Q. Has the appeals court upheld the FCC's decision concerning the application of access charges?

A. Yes, in a decision dated June 27, 1997, the Court of Appeals for the 8th Circuit upheld the FCC's decision to permit the *temporary* application of interstate access charges ". . . even though such charges on their face appear to violate the statute. . . ." The practical effect of this decision is

1 to uphold the FCC's temporary exception -- an exception which has now
2 expired -- and affirm the FCC's authority to require that the ILEC is no
3 longer the access provider for the ULS purchaser's customers.

4

5 **Q. Does BellSouth have the operational systems to support unbundled**
6 **local switches and combination of network elements?**

7

8 A. No. BellSouth has not yet operationalized an unbundled local switching
9 network element that satisfies the above-cited requirements. BellSouth has
10 recently informed AT&T that its systems do not have the ability to render
11 accurate bills for this arrangement. BellSouth has admitted this to the
12 Commission. (BellSouth's Response and Memorandum in Opposition to
13 AT&T's Motion to Compel, Florida Dockets 960833-TP/960846-TP, filed
14 June 23, 1997, page 8).

15

16 Importantly, creating the systems needed for unbundled local switching to
17 be practically available -- systems to place the purchaser in control of the
18 features on its subscribers' lines, systems to support carrier-access billing
19 by the entrant (and, just as importantly, to cease the access billing by
20 BellSouth), and the software and systems necessary to ultimately provide
21 the entrant control over the routing of its subscribers' traffic -- will take
22 some time to develop.

1 **IV. THE COMPETITIVE IMPLICATIONS OF FULL SERVICE**
2 **COMPETITION AND THE NEED FOR RAPID LOCAL ENTRY**

3
4 **Q. Why did Congress require state regulators to verify complete**
5 **implementation of the Competitive Checklist?**

6
7 A. BellSouth's interLATA opportunity is immediate and ubiquitous. There
8 must be a similarly rapid opportunity for entrants to offer local services
9 broadly in the market or competition will fail. The speed and ease by
10 which BellSouth can provide long distance services ~~(discussed in Section~~
11 ~~IV)~~ means that the Commission must be absolutely convinced that local
12 exchange markets are competitive and that the Checklist is operational
13 *before* BellSouth is allowed to enter the long distance market. It will
14 simply be too late to try and establish local competition *after* BellSouth as
15 entered the long distance market.

16
17 **Q. Will BellSouth's ability to offer interLATA services alter the**
18 **telecommunications industry?**

19
20 A. Yes. It is important to recognize that the removal of the interLATA
21 restriction on BellSouth will forever change the telecommunications
22 industry and has implications for both local and long distance competition.
23 This expectation underscores not only the need for local competition, but

1 the need for local competition *now*.

2

3 The most likely consequence of the removal of BellSouth's interLATA
4 restriction is the reintegration of the local and long distance markets.
5 BellSouth will *never* operate as a conventional interexchange carrier,
6 providing long distance services to a customer that obtains local service
7 from another provider. Rather, BellSouth will operate as a full service
8 provider, offering both local and long distance services.

9

10 I recognize that Bellsouth will use a different *legal* entity to offer
11 interLATA service. The relevant issue, however, is whether BellSouth will
12 offer its interLATA services through an entity that is perceived as a
13 separate provider by Florida consumers. If not, then BellSouth is
14 essentially operating as an integrated full service provider and the future
15 of competition depends on the ability of others to do the same.

16

17 **Q. What will be the effect of BellSouth's offering interLATA services?**

18

19 **A.** As I discuss in more detail below, the combined effect of a market
20 preference for "one-stop" shopping and BellSouth's full participation as a
21 one-stop provider will have a dramatic effect on the structure of the
22 telecommunications industry. BellSouth will not "enter" the long distance

1 market so much as its interLATA authority will effectively eliminate long
2 distance service as a separate market. If consumers prefer one-stop
3 shopping -- and available evidence suggests this is the case -- then there
4 must be competition for each service in the "one-stop package" or
5 competition in all telecommunications markets will suffer. The single most
6 important piece of any package -- indeed, the compulsory element of the
7 package -- is local phone service.

8
9 **Q. Are you implying that the future of all competition depends on local**
10 **competition succeeding?**

11
12 **A. Yes. Local service must become competitive or full service competition**
13 **will never be a reality. BellSouth cannot be permitted to offer interLATA**
14 **long distance services (and thus become a full service provider) until others**
15 **can just as easily offer local services and compete.**

16
17 As shown below, BellSouth's ability to offer interLATA services will be
18 rapid and complete. It will quickly be able to offer long distance services
19 to every customer within its territory as soon as it has obtained its legal
20 authority. Sections 251 and 252(D) and the Competitive Checklist (and the
21 federal rules which it includes) are intended to assure that others have a
22 comparable ability to approach these same customers and offer a choice of

1 full service provider.

2

3 **Q. Will it be simple for BellSouth to offer long distance services once it**
4 **obtains the legal authority to do so?**

5

6 A. Yes. There is no question that BellSouth will be able easily to offer long
7 distance service -- after all, thousands of firms since divestiture have
8 entered this market without any of the advantages of being an incumbent
9 local exchange carrier. The reason that BellSouth will be able to enter the
10 long distance market so quickly, however, is that the actions needed to
11 reduce (indeed, eliminate) long distance entry barriers began more than 15
12 years ago and are now fully implemented.

13

14 Divestiture, and the FCC rules which followed it, fundamentally
15 restructured the industry to enable long distance competition. Fifteen years
16 later, these changes are all fully implemented and operational. In 1995,
17 more than 42 million customers changed their long distance carrier, many
18 within 24 hours of making the decision. (Peter K. Pitsch, The Long
19 Distance Market is Competitive, PITSCH COMMUNICATIONS,
20 September 3, 1996, page 2).

21

22 In direct contrast to the uncertainty surrounding local competition, the

- 1 prerequisites to BellSouth offering long distance service are trivial:
- 2
- 3 • BellSouth must be able to *market* long distance
- 4 services. Of course, BellSouth already markets
- 5 intraLATA long distance services, and it has a
- 6 preexisting relationship with each and every
- 7 subscriber in its territory.
- 8
- 9
- 10
- 11 • BellSouth must be able to *convert* a customer to its
- 12 long distance service. The process used to transfer
- 13 a customer between long distance carriers -- the
- 14 PIC-change process -- is now fully automated,
- 15 software-executed, and inexpensive. (PIC refers to
- 16 a customer's Presubscribed Interexchange Carrier,
- 17 that is, the carrier to which the customer's 1+
- 18 calling is directed.)
- 19
- 20
- 21
- 22 • BellSouth must be able to *provision* its long distance
- 23 service. For all practical purposes, BellSouth
- 24 already supports the long distance traffic in its
- 25 region, switching nearly every interLATA call on its
- 26 way to a long distance carrier, and switching many
- 27 of these calls again as they terminate within its
- 28 region.
- 29
- 30
- 31
- 32 • BellSouth must be able to obtain *interLATA network*
- 33 *elements* for the long distance switching and
- 34 transmission of calls that terminate beyond its
- 35 region. Long distance transmission and switching is
- 36 competitively available from at least four national
- 37 networks.
- 38
- 39
- 40
- 41 • BellSouth must be able to *bill and collect* for its
- 42 long distance services. Again, BellSouth already
- 43 bills each of its subscribers and continues to bill on

1 behalf of some interexchange carriers.

2

3 Overall, BellSouth already performs (or possesses the capabilities to
4 perform) most of the functions necessary to provide interLATA service
5 and, for those functions that it does not, it can easily out-source these
6 functions in a competitive environment.

7

8 **Q. What is the practical consequence of the observation that long distance**
9 **entry is now easy?**

10

11 A. The practical effect is that BellSouth can become a full service provider
12 overnight once the legal restriction is removed. BellSouth has already
13 contracted for the long distance "network elements" it will need to provide
14 service. (BellSouth has chosen AT&T as its interLATA network vendor.
15 See Merrill Lynch, BellSouth/AT&T Contract Reinforces the RBOC/GTE
16 Investment Case, June 20, 1996, reprinted as Appendix 5 to Telecom
17 Services Bulletin, August 9, 1996.)

18

19 BellSouth is free to mix and match interLATA network elements in any
20 combination it chooses to create any service it desires. Unlike the
21 restrictions that BellSouth wants to impose on local competitors, there are
22 no requirements that BellSouth provide some interLATA network elements

1 before it may purchase others, nor is BellSouth limited to the resale of the
2 retail services designed by its competitors.

3
4 Further, BellSouth will be able to immediately convert customers to its full
5 service package with little incremental effort or cost. The cost to move
6 customers to its long distance services is nominal. BellSouth charges
7 \$1.49 to implement such a change and its true cost (i.e., its economic cost)
8 is far less.

9
10 BellSouth's entry barriers are insignificant because it has the equivalent of
11 cost-based network elements; it can combine any network element of its
12 choice without restriction; it has complete control of the services it offers;
13 it enjoys the benefit of incurring only the economic cost of its local
14 network facilities; and, each of the operational systems necessary to
15 support its entry are fully implemented and routine.

16

17 **Q. Does this anticipated demand for one-stop shopping imply that**
18 **BellSouth would be disadvantaged if the Commission first assures that**
19 **the conditions for local competition are actually available and working**
20 **before BellSouth is authorized to provide interLATA services?**

21

22 **A. No. BellSouth will no doubt claim that any approach which does not**

1 guarantee it immediate entry will provide its competitors a "head start."
2 This claim is a complete illusion -- as much an illusion as the "head start"
3 enjoyed by the outside runner of a race. The runner in the outside lane
4 requires a "head start" because that runner has farther to run. Similarly,
5 entrants to the local market -- where each and every aspect of local
6 competition is new and untested -- require actual market experience before
7 the Commission can determine whether the tools are actually being
8 provided in the manner necessary for local competition to be commercially
9 viable.

10

11 **Q. Are today's barriers to entry in the local market comparable to those**
12 **that once existed in long distance?**

13

14 **A.** No. By contrast to entry into the long distance market, the barriers to
15 entry into the local service market are high. As a starting point, the
16 Commission should understand that long distance networks exhibit
17 significantly different economic characteristics than local networks.
18 Intercity long distance networks are high-usage facilities, requiring
19 relatively little switching investment, with more flexibility in right-of-way
20 selection between distant points. As a result, the nation's experience
21 establishing long distance networks was relatively rapid (i.e., *only* 20
22 years) and successful.

1 These attributes, however, do not apply to local networks. Local networks
2 are constructed to specific premises for individual consumers, not general
3 areas. Switches are located closer to customers, loop investment sits idle
4 much of the day, and local calling volumes far exceed those of long
5 distance. These characteristics make entry into this market significantly
6 more difficult and costly than entry into the long distance market.

7

8 For comparison, consider,

9

- 10 • AT&T serves the entire nation with just over 130
11 switches (MCI, Sprint and WorldCom use fewer);
12 the LECs have 23,000. (In the Matter of
13 Implementation of the Local Completion Provision
14 of the Telecommunications Act of 1996, CC Docket
15 96-98 (FCC First Report and Order), ¶ 411 (August
16 8, 1996).) In Florida alone, BellSouth has 218
17 switches.
- 18
- 19
- 20
- 21 • In 1995, long distance carriers serving BOC
22 territories switched 54.6 billion interLATA calls; the
23 BOCs switched 482.7 billion calls, nearly 9 times
24 more. (Table 2.10, 1995 Statistics of
25 Communications Common Carriers, All Reporting
26 RBOCs.)
- 27
- 28
- 29
- 30 • Each long distance switch typically routes the traffic
31 of multiple cities (sometimes states); local switches,
32 on average, handle the routing of 6,200 customers.
33 (Table 2.10, 1995 Statistics of Communications
34 Common Carriers, All Reporting LECs.)

1 Local networks are more difficult to replicate because their ubiquity and
2 scale give rise to substantial declining costs. Further, BellSouth acquired
3 the local rights-of-way necessary to establish the basic network footprint
4 of loops and local switches over the past 115 years.

5
6 Because of the local exchange carriers' economies of connectivity, density
7 and scale, competition will not develop in local markets unless the
8 incumbents share these economies with other service providers. This, in
9 turn, requires the complete implementation of the unbundling and
10 interconnection requirements of the Act, including the modification of
11 operational and billing systems to make these tools real.

12
13 **Q. Should the Commission rely on the Act's requirement that BellSouth**
14 **offer long distance services through an affiliate as justification to**
15 **weaken its review of BellSouth's Checklist compliance?**

16
17 **A.** No. Even after the requirements of Sections 251 and 271 are fully
18 satisfied, the Act recognizes that BellSouth will retain an incentive to
19 discriminate in favor of its affiliated long distance services. As such, the
20 Act imposes minimal protections in Section 272 intended to lessen (but
21 which do not eliminate) BellSouth's ability to exploit this incentive by
22 favoring its own competitive services.

1 The requirements of Section 272, and the FCC rules which implement
2 them, however, do not diminish the Commission's obligation to fully
3 assure that BellSouth has complied with the Checklist. These rules are not
4 a substitute for the competition expected by Section 271's full compliance.
5 For instance, neither "imputation" requirements, nor transactional rules are
6 a substitute for cost-based rates. The true economic consequences of
7 BellSouth's affiliate structure is relevant only when BellSouth reports to
8 its shareholders. The performance of its subsidiary operations individually
9 are irrelevant -- where two subsidiaries are providing service, all that
10 matters is the *net* effect, not isolated performance. When you own the
11 pants, it does not matter in which pocket you keep your money.

12

13

V. CONCLUSION

14

15 **Q. Please summarize your testimony.**

16

17 A. Section 271 establishes this Commission as a fact-consultant to the FCC.
18 To discharge this role, the Commission must critically examine BellSouth's
19 claimed satisfaction of the requirements of Sections 251 and 252(d) of the
20 Act and the Competitive Checklist, it must verify that BellSouth complies
21 with all applicable federal rules, and it should report to the FCC on the
22 quantitative status of local competition in Florida. The Commission should

1 remember that BellSouth must prove that it has satisfied each of these
2 conditions. It is not the responsibility of other parties, the Staff, or the
3 Commission to prove BellSouth's non-compliance.

4
5 The Act holds the promise of a fully competitive telecommunications
6 industry, but achieving this vision requires the full implementation of
7 BellSouth's obligations. A competitive *one-stop* market depends upon a
8 competitive *local* market as an initial, essential condition. Barriers to long
9 distance entry -- including, importantly, operational barriers -- have all
10 fallen as a result of the nation's decades-long commitment to competition.
11 Local barriers must fall to this same low level for the next stage of the
12 industry's evolution to succeed. My testimony has demonstrated that
13 BellSouth does not provide a local switching network element, nor can it
14 support network element combinations, as required by the Act, the FCC,
15 and this Commission's arbitration decisions.

16
17 **Q. Does this conclude your direct testimony?**

18

19 **A. Yes.**

1 **Q. Please state your name and business address.**

2

3 **A. My name is Joseph Gillan. My business address is P.O. Box 541038,**
4 **Orlando, Florida 32854.**

5

6 **Q. What is the purpose of your rebuttal testimony?**

7

8 **A. The purpose of my rebuttal testimony is to respond to BellSouth's claim**
9 **that it complies with each requirement of Section 271 of the Act and**
10 **should, therefore, be provided authority to enter the interLATA market.**

11 **In my rebuttal testimony, I make the following points:**

12

13 **First, I address BellSouth's admitted inability to provide the unbundled**
14 **local switching network element that is specifically required by the**
15 **Competitive Checklist. This network element is critical to bringing**
16 **competitive benefits to Florida consumers, particularly as part of the pre-**
17 **existing combination with the local loop. Consequently, the status of this**
18 **element should figure prominently in the Commission's review of**
19 **BellSouth's claimed compliance, and just as prominently in the**
20 **Commission's recommendation to reject BellSouth's application and**
21 **proposed SGAT.**

22

1 Second, I respond to BellSouth's claim that both Track A and Track B are
2 available under Section 271 of the Act. Congress established a framework
3 that would permit BellSouth to provide interLATA service, but only after
4 BellSouth has taken the actions necessary to open the market to
5 competition. BellSouth inappropriately characterizes considering market
6 conditions as imposing a "metrics test" on its entry, but this perspective
7 ignores the importance of actual entry and competition to the ability to
8 judge BellSouth's claim that it can provide network elements on a scale
9 that will support competition.

10

11 Third, I respond to BellSouth's characterization that BellSouth's ability to
12 comply is in the hands of its competitors. This proposition assumes that
13 *every* potential entrant to the local market -- including, importantly, the
14 other Bell Operating Companies -- are part of an international conspiracy
15 to keep BellSouth from providing long distance services. It is simply
16 unreasonable to conclude that any one entrant has this power, much less
17 that all potential entrants have conspired to achieve such a result. There
18 is only one carrier whose management's actions (and inactions) stand
19 between BellSouth and interLATA authority -- and that carrier's name is
20 BellSouth.

21

22 Fourth, I rebut BellSouth's vague claim that Florida consumers would

1 benefit from the Commission supporting its premature entry. BellSouth's
2 chief economic witness has acknowledged in similar proceedings in other
3 states that consumers *will not* benefit from BellSouth's interLATA entry
4 until other carriers are similarly positioned to offer packages of local and
5 long distance services using network elements (and their own facilities) to
6 provide service.

7
8 Finally, although the Commission should clearly identify the reasons why
9 this application should be rejected, it should also make clear to BellSouth
10 that the Commission will not limit its review in future applications to only
11 the issues addressed here. Time and experience will expose additional
12 problems that must be corrected in order for competition to proceed. This
13 premature application should not become BellSouth's stepping stone to
14 interLATA relief through repetition, rather than compliance.

15
16 **Q. Has BellSouth demonstrated that it has taken the steps necessary to**
17 **open the local market to competition?**

18
19 A. No. Attached to my testimony is a basic matrix that illustrates, in
20 relatively simple terms, the core steps necessary to fully satisfy the
21 requirements of Section 271 of the Act. BellSouth may emphasize the
22 number of certificates the Commission has issued, or the number of

1 "agreements" that have been signed (or the number of binders it filed with
2 its petition). These measures of *administrative* activity, however, do not
3 bring Florida consumers actual choice -- only the full implementation of
4 the Act can accomplish what Congress intended.

5

6 **Q. Does your testimony focus on a particular area of this matrix?**

7

8 A. Yes. My testimony (both direct and rebuttal) focuses on a particular
9 Checklist requirement -- BellSouth's inability/refusal to provide the local
10 switching network element as required by the Act, effective federal rules,
11 and this Commission's arbitration decisions. I focus on this element
12 because of its potential to bring widespread local choice to residential and
13 smaller business customers in Florida.

14

15 Because of the competitive significance of this approach, it is not
16 surprising that BellSouth chooses to ignore it -- pretending instead that
17 only service-resale and facilities-based entry are required by the Act
18 (Varner direct, p. 36). The Competitive Checklist, however, is not a "2 out
19 of 3" proposition -- BellSouth must implement and provide each of the
20 Act's tools and fully support each with non-discriminatory operational
21 support systems.

22

1 **Q. How important are operational support systems to each of the entry**
2 **methods?**

3
4 A. Operational support systems translate theory to reality. Importantly, the
5 operational support systems that BellSouth will use to provide its long
6 distance services -- most notably, the PIC-change process -- are fully
7 automated, inexpensive and routine. For consumers to gain the maximum
8 benefit from local competition, it must become as simple to move to new
9 local providers as it is to today change long distance companies.

10

11 The importance of operational systems increases with the potential
12 application of the entry tool. Service-resale and network-element
13 combinations are the most dependent upon working operational systems
14 because their potential broad application requires systems which can
15 accommodate very large volumes of interaction. Although the *volume*
16 requirements for other entry strategies may be less, the *efficiency* of the
17 systems is no less important. Operational systems will either bring
18 competitive choice or provide an insurmountable barrier to commercial
19 operation.

20

21 In part, my focus on unbundled switching and network-element
22 combinations reflects the potential of this approach to bringing choice

1 broadly to the market; but it also reflects my belief that creating the non-
2 discriminatory operational systems to support this approach will accelerate
3 the implementation of parallel systems used by service-resale and other
4 network elements. Only when BellSouth can fully support *each* method
5 of entry contemplated by the Act, however, will BellSouth comply with the
6 requirements of Section 271.

7
8 **Q. Does BellSouth acknowledge that it cannot provide the unbundled**
9 **local switching network element?**

10
11 A. Yes. BellSouth describes its "ability" to bill the local switching network
12 element with the following sentence (Milner direct, p. 21):

13
14 *If an ALEC purchases unbundled switching from BellSouth,*
15 *BellSouth will either render a manually calculated bill or*
16 *retain the usage bill until a system generated bill is*
17 *available, whichever the ALEC elects.*

18
19 **Q. Why do you believe BellSouth is unprepared to issue bills for this**
20 **network element?**

21
22 A. As I explained in my direct testimony, unbundled local switching raises
23 unique operational requirements, including issues related to billing. These
24 billing issues take two forms. First, an entrant providing service using

1 unbundled local switching becomes the provider of exchange access service
2 to its customers. As such, the unbundled local switching element must
3 record the usage that the entrant will need to accurately apply access
4 charges. Second, if the entrant does not request customized routing, then
5 the switch's existing routing tables will be used to terminate local calls
6 using the common transport network element. Consequently, BellSouth
7 must record local usage to bill for these elements and, if applicable, for use
8 of the switch itself.

9
10 **Q. What does this imply for the design of the OSS systems to support the**
11 **local switching network element?**

12
13 **A.** These attributes of the unbundled local switching network element mean
14 that billing records must be established which:

- 15
16 • Accurately record and bill for local traffic,
17
18 • Accurately record the switched access traffic
19 (originating and terminating) of the entrant's
20 subscribers so that the *entrant* can issue exchange
21 access bills to other interexchange carriers, and
22
23 • Accurately record the switched access traffic
24 (originating and terminating) of the entrant's
25 subscribers so that *BellSouth* can cease billing
26 interexchange carriers for the access traffic of end-
27

1 users for whom it is no longer the local telephone
2 company.

3
4
5 **Q. What problems are created by BellSouth's inability to issue an**
6 **automated bill for the local switching network element?**

7
8 A. There are a number of reasons why a manual billing process for this
9 critical network element is unsatisfactory and thus requires a Commission
10 finding that BellSouth does not provide this element as required by the
11 Checklist.

12
13 First. Manual billing violates the requirement that network elements,
14 including operational support systems such as billing, be provided in a
15 non-discriminatory manner. BellSouth cannot plausibly claim that it
16 satisfies this standard when it cannot even issue a bill except through a
17 manual process.

18
19 Second. The most important attribute of the local switching network
20 element (correctly defined) is its ability (properly provisioned) to support
21 wide-spread competition for even residential and smaller business
22 customers. Yet, for the network element most likely to be required on a
23 commercial scale, BellSouth declares that it will *manually* issue bills. It
24 is important to understand that this is not a question of one or two bills a

1 month. If entry using local switching is to achieve its potential, BellSouth
2 will be issuing hundreds of thousands of bills each month -- an
3 environment that absolutely requires automated billing.

4
5 Third. It is impractical for carriers to enter now and then wait for
6 BellSouth to develop the ability to issue bills in the future -- even
7 assuming that BellSouth's future billing would be *reliable* despite its
8 complete inability to issue bills today. Wall Street would never accept
9 such uncertainty in the entrant's costs and financial reports.

10
11 Fourth. There is no reason to believe that every interexchange carrier that
12 terminates toll traffic to the entrant's customers will agree to wait for an
13 access bill (and then pay it when it arrives), even if this condition were
14 acceptable to the entrant. Such a system would cast a cloud of uncertainty
15 over both local and long distance markets.

16
17 Finally, Mr. Milner's statement makes no reference to the necessary
18 adjustments to *BellSouth's* access bills to make sure that BellSouth does
19 not inadvertently bill for access traffic that rightfully belongs to the
20 entrant. I cannot believe that BellSouth intends to manually process its
21 carrier-access bills, but just such an arrangement is implied by Mr.
22 Milner's testimony.

1 **Q. Can BellSouth comply with the Competitive Checklist -- under either**
2 **Track A or Track B -- without substantial changes in its operational**
3 **support for unbundled local switching?**

4
5 A. No. First, although I am not a lawyer, it seems clear that BellSouth may
6 only proceed under Track A. Nevertheless, even if one assumes that
7 BellSouth could proceed under Track B, it would still be required to offer
8 (and be able to provide) this critical network element. With no ability to
9 bill for the local switching network element -- which, in effect, means that
10 BellSouth cannot accurately bill its own switched access service wherever
11 entry using the local switching network element occurred -- BellSouth
12 cannot plausibly claim that it can provide this network element at this time.
13 This deficiency is all the more important when considered in the context
14 of the importance of unbundled local switching to competitors being able
15 to offer services in competition with BellSouth.

16
17 **Q. Please explain why you believe that BellSouth cannot apply for**
18 **interLATA authority under Track B.**

19
20 A. Although BellSouth acknowledges that the FCC will ultimately decide this
21 question (Varner direct, p. 5), BellSouth apparently attaches no particular
22 significance to the FCC's prior deliberations on the issue. The FCC's

1 recent rejection of SBC's comparable claim that it could proceed under
2 Track B in Oklahoma should foreclose any further discussion of this
3 alternative for BellSouth. In fact, in its Order, the FCC explicitly stated
4 that decision applied equally to BellSouth (Memorandum, Opinion and
5 Order, CC Docket No. 97-121, footnote 92):

6
7 We note that when we refer to SBC's position, we
8 are also referring to the positions advanced by
9 Ameritech, Bell Atlantic, and BellSouth.

10
11 **Q. Mr. Varner defines "fully implemented" to mean that either the items**
12 **are actually in service or are functionally available. How do you**
13 **respond?**

14
15 **A.** I disagree with Mr. Varner on two levels. First, his distinction would only
16 be plausibly relevant for a Checklist item for which no entrant seeks
17 implementation. Mr. Varner identifies no such item and, as such, the
18 discussion has no significance.

19
20 Second, I believe it is clear that, in the case of an RBOC to which Track
21 A applies, BellSouth's approach of implementing the items only "on paper"
22 does not pass muster. I will use unbundled switching again to illustrate the
23 point. BellSouth *hasn't* provided it, and in fact *can't* provide it.

1 BellSouth's solution is to "address" it in an SGAT, and then declare "full
2 implementation." This example demonstrates the inherent danger of
3 substituting promises for compliance.

4

5 **Q. Do you have an overall observation concerning BellSouth's efforts to**
6 **avoid a Track A review of its application?**

7

8 A. Yes. Track A fundamentally requires that BellSouth's claims can be tested
9 by practical experience, a test which BellSouth appears intent on avoiding
10 by rushing its application for interLATA authority before most entrants
11 have an opportunity to use the tools it claims are available. BellSouth's
12 testimony in this proceeding reflects a single-minded strategy to obtain
13 interLATA authority before the conditions necessary for local competition
14 are understood. Components of this strategy include:

15

16 • Avoiding the requirements of Track A, in particular the
17 requirement that BellSouth be able to demonstrate, through
18 actual market experience, that it is providing required
19 Checklist items.
20

21 • Blaming the absence of local competition on potential
22 entrants by arguing that such entrants are conspiring to keep
23 BellSouth from complying with the Checklist.
24

25 • Characterizing the FCC as creating a "Black Hole" by
26 requiring that BellSouth fully comply with Track A.
27

1 The fundamental problem is that local competition is a difficult
2 undertaking that can only be evaluated by an informed review of actual
3 results.

4
5 **Q. Do you believe that BellSouth's perspective on the availability of Track**
6 **B is reasonable?**

7
8 A. No. BellSouth's perspective on the two Tracks in Section 271 is founded
9 on a *different* premise than my own. BellSouth apparently believes that
10 Congress intended the Telecommunications Act to provide entrants a
11 narrow window (10 months) to become full fledged local providers, after
12 which BellSouth would be authorized to provide interLATA services
13 whether or not it had fully implemented the tools necessary for local
14 competition to become a reality.

15
16 My testimony begins with the premise that Congress -- which has actively
17 debated telecommunications reform for nearly two decades -- has a far
18 better appreciation for the ambitious promise of this legislation than
19 BellSouth attributes to it. BellSouth's local network and presence
20 represents the cumulative efforts of over *100 years* of commercial
21 operation. And, as I explained in my direct testimony, BellSouth's
22 interLATA entry will benefit from *15 years* of concerted industry effort to

1 reduce each barrier to offering interexchange service. It is simply
2 unreasonable to believe (as BellSouth apparently does) that Congress
3 would impose on local entrants a *10 month* window to offset these
4 advantages, especially considering that entrants are almost entirely
5 dependent upon BellSouth for the basic tools they will need to compete.

6
7 **Q. BellSouth argues that by requiring BellSouth to comply with Track A,**
8 **the FCC has created a "black hole" where BellSouth's interLATA**
9 **entry is now dependent upon its competitors (Varner, p. 4). Do you**
10 **agree?**

11
12 **A. No. BellSouth's "theory" necessarily assumes a conspiracy among all**
13 **potential entrants to the Florida market.**

14
15 **Q. Is it reasonable to assume that such a conspiracy is possible?**

16
17 **A. No. For such a conspiracy to make economic sense, each potential entrant**
18 **would have to trust that its fellow conspirators would "honor the vow" to**
19 **remain outside the market. Yet, each potential entrant would have the**
20 **incentive to enter early and gain the advantage over the others. For the**
21 **conspiracy to succeed, therefore, it would need to include every potential**
22 **entrant to BellSouth's region, including United, GTE, NYNEX, Bell**

1 Atlantic, Ameritech, Southwestern Bell and US West. And, of course, in
2 the other RBOC regions, the conspiracy would have to include BellSouth
3 itself.

4
5 The simple fact remains that there is underway a large-scale effort to offer
6 local exchange services, both within BellSouth's region and beyond. The
7 fact that competition is coming so slowly to BellSouth can be explained by
8 its strategy to *claim* the market is open, while *denying* entrants the tools
9 they will need to offer competitive service. Only *demonstrated* compliance
10 -- documented by actual competition and experience -- can bring Florida
11 consumers lower prices and more choices.

12

13 **Q. Would Florida consumers benefit from BellSouth's premature entry**
14 **to the interLATA market -- that is, entry before BellSouth has**
15 **implemented each of the tools that its competitors will need to offer**
16 **local services?**

17

18 A. No. BellSouth witness Varner encourages the Commission to accelerate
19 its interLATA entry with vague claims regarding the benefits that
20 BellSouth will offer Florida consumers. (Varner direct, p. 7). Yet,
21 BellSouth's own behavior and testimony in other states acknowledges that
22 BellSouth's entry would only bring consumers lower prices if there are

1 *other* providers with the ability to compete with BellSouth, offering
2 packages of local and long distance service broadly across the market, and
3 in a manner which drives prices towards cost.

4

5 **Q. Why do you state that BellSouth's interLATA entry would only**
6 **benefit consumers if meaningful local competition is underway?**

7

8 A. BellSouth's own behavior demonstrates that the *conventional* long distance
9 market is already competitive and, as such, its entry would do nothing to
10 bring more choices or lower prices to consumers. BellSouth is today (and
11 has been since February of last year) authorized to enter the long distance
12 market like any other provider in 41 states. If conventional long distance
13 carriers -- that is, long distance companies that are not also a customer's
14 local telephone company -- were charging prices that are too high, then
15 BellSouth would be entering and competing for those profits in every
16 market outside of the Southeast. The fact that BellSouth has chosen to
17 ignore this opportunity demonstrates that its management recognizes the
18 inherent competitiveness of the interexchange market, even if its regulatory
19 witnesses do not.

20

21 BellSouth has deliberately limited its entry plans to its own region where,
22 as a provider of local and long distance service, it would have an

1 advantage over conventional interexchange carriers (that can provide only
2 long distance service). BellSouth's own economist admits that it would
3 use this advantage as a full-service provider to increase its profits unless
4 others can compete with packages of their own. Consider the following
5 discussion by BellSouth witness Dr. Taylor in a similar proceeding in
6 Louisiana (Docket U-22252, Tr. 1063-1064):

7

8 Dr. Taylor: ...[in Louisiana] when BellSouth comes in at
9 even a small discount below what AT&T
10 and MCI charge today, people will flock to
11 them in droves simply because they know
12 who they are. They have dealt with them
13 before, and its easier to have people value
14 one-stop shopping.

15
16 MCI: If consumers flock to BellSouth in droves at
17 something less than a 25 percent discount,
18 then what incentive does BellSouth have to
19 reduce rates by 25 percent?

20
21 Dr. Taylor: Oh, it has none whatsoever, but
22 AT&T and MCI do. I mean what
23 happens is BellSouth comes in at
24 what they think the most profitable
25 price for them is going to be.

26 I don't know what that is.

27 They will, in my view, take away
28 enough customers from MCI and from
29 AT&T that AT&T and MCI will respond.

30

31 This exchange proves two telling points. First, if BellSouth is granted
32 interLATA entry prematurely, prices *will not* fall and consumers *will not*
33 benefit because it can attract customers as a one-stop provider without

1 lowering prices. Consumers will only benefit if other carriers (MCI and
2 AT&T included) have the ability to compete by responding as one-stop
3 competitors with lower prices themselves. This second point is critical,
4 because as I explained in my direct testimony, the *only* entry method that
5 will enable entrants to offer local service and drive prices toward cost is
6 the use of network element combinations that include the local switching
7 network element.

8
9 **Q. Should the Commission provide BellSouth a blueprint to Checklist**
10 **compliance at the conclusion of this proceeding?**

11
12 A. No. BellSouth asks that this Commission detail with specificity each
13 deficiency in its application. I also support detailed findings concerning
14 BellSouth's deficiencies. What the Commission must expressly avoid,
15 however, is any finding which limits its review of future applications. I
16 raise this issue because BellSouth has argued in Georgia that the only
17 issues which are relevant to its second effort are those which the
18 Commission identified when it rejected the first application.

19
20 This proceeding is not about identifying the "blemishes" in BellSouth's
21 compliance. BellSouth is *far* from compliance and the complicated process
22 of detailed implementation is only just beginning. The Commission should

1 expect that BellSouth's next application will answer some issues, but it
2 should also expect that it will raise others.

3

4 It is impossible to predict at this time each of the problems that will be
5 created by BellSouth's next level of strategic decisions. This is, in fact,
6 one of the key reasons why Track A's focus on actual competitive activity
7 and the full implementation of interconnection agreements is so important.
8 BellSouth's ultimate compliance with the Checklist and all that it requires
9 can, in the final analysis, only be judged by its results.

10

11 **Q. Does this conclude your rebuttal testimony?**

12

13 **A. Yes.**

14

1 Q Thank you. Now do you have a prepared summary
2 to deliver?

3 A Yes.

4 Q Would you do that, please?

5 A Yes. Good afternoon, on what I'm sure seems
6 to have been a very long week for you.

7 Before I begin, what I would like to do is
8 just start out by reminding us why we are here. If you
9 accept BellSouth's theory of the case, we are here to
10 approve a statement that according to BellSouth will
11 fully implement its obligations under the competitive
12 checklist.

13 Without addressing the legal question, and in
14 the policy question as to whether or not a statement can
15 be used for that purpose, my testimony really goes
16 beyond that to the question of is BellSouth actually in
17 a position of complying with the requirements of the
18 competitive checklist in a way that gives entrants in
19 BellSouth the same opportunity to provide service over
20 the network with systems and network elements that
21 provide entrants access to that network that is
22 comparable and non-discriminatory to that of BellSouth.

23 Now, a starting point of that review of the
24 statement really goes back to what standards you are
25 going to apply. And I think it's useful to remember

1 that when Congress passed this act, they pretty much
2 laid out for state commissions the role in evaluating
3 the statement would include not only compliance against
4 Section 251 of the Act, which sort of defines the
5 different entry techniques, and Section 252 of the Act,
6 but also made it clear that state commissions were to
7 evaluate compliance against the federal -- the rules
8 implementing the Act adopted by the FCC.

9 So one of the things that the Commission has
10 to consider, because Congress told you to, is to compare
11 BellSouth's offers and BellSouth's systems and
12 BellSouth's positions against not only the Act, but
13 against effective federal rules. It is not a question
14 of the FCC telling you that this is their opinion and
15 that you must follow it. It's Congress laying out a
16 system that charges you with the responsibility -- a
17 somewhat unusual responsibility -- to evaluate
18 BellSouth's claims against those rules.

19 Now the focus of my testimony is not going to
20 be on every network element and every entry technique.
21 Rather I focused in exclusively on the ability for
22 entrants to provide service using combinations of
23 network elements, specifically the ability to buy the
24 preexisting loop and port switch capacity, if you will,
25 used to serve a customer. The shorthand for this

1 arrangement is just called the platform. The idea that
2 you can buy the network arrangement that serves an end
3 user to become your -- to form your basic exchange
4 platform to provide service.

5 And my testimony goes through, and I will go
6 through in my summary, where BellSouth's obligation to
7 provide this stems from. I will discuss why it is so
8 critical for this to be made available if the Act is to
9 have any promise of succeeding, and then I'll compare
10 that to where BellSouth isn't complying with it.

11 The starting point in terms of the federal
12 rules, or I guess the core rule that applies here is
13 known as Rule 315(b), and it appears here on this chart
14 as the second rule. The first rule repeats the --
15 essentially repeats the statutory language. And the
16 second rule is Rule 315(b), which states that, "Except
17 upon request, an incumbent LEC" -- BellSouth -- "shall
18 not separate requested network elements that the
19 incumbent LEC currently combines."

20 This rule was initially adopted by the FCC in
21 August of last year. It was not stayed by the 8th
22 Circuit. It was not vacated by the 8th Circuit, despite
23 requests from the local telephone companies that it be
24 vacated. And so throughout this entire process, one of
25 BellSouth's obligations has been to provide network

1 element combinations in a manner that prevents those
2 network elements from being separated. They are not
3 authorized to separate, to disrupt the network, to
4 disrupt service to a customer.

5 Now, in the Commission's -- the FCC, excuse
6 me, in their Ameritech order, they reemphasized, for
7 those who had some doubt, that this was going to be an
8 important part of the overall program to open the
9 network to competition. They said, and I'll quote, that
10 "Ameritech must also be able to provide combinations of
11 network elements, including the combination of all
12 network elements which some parties refer to as the UNE
13 platform, or the platform. Deploying the necessary OSS
14 functions that allow competing carriers to order network
15 elements and combinations of network elements and
16 receive the associated billing information is critical
17 to provisioning those unbundled network elements."

18 So right away the Ameritech order lays out as
19 clear as it can that BellSouth's obligations to create
20 OSS systems include not only just individual network
21 elements, but also the ability to provide them as
22 combinations, particularly combinations where they
23 cannot be separated.

24 Furthermore, the FCC places a -- such a
25 premium on this method, recognizing how important it's

1 going to be to foster competition, that in the Ameritech
2 order, they indicated, look, we are not even going to
3 accept from you claims that you can support this. We're
4 not going to accept just mere testing. We want to see
5 commercial application, because we want to make sure
6 that you're capable of doing this.

7 And I'll give you one more cite. It's
8 paragraph 161 of the Ameritech order that states:
9 "Given the demand by competing carriers to purchase
10 combinations of network elements, we would expect to
11 examine evidence other than mere internal testing
12 results in any future Section 271 application."

13 So we know that one of the things that
14 BellSouth is going to have to demonstrate at the FCC,
15 and what the Commission is going to have to rule on in a
16 271 framework, is whether or not BellSouth has created
17 operational support systems that enable entrants to get
18 these things.

19 Now, why has the FCC placed so much importance
20 on this --

21 COMMISSIONER CLARK: Let me interrupt you for
22 a minute. I want to ask you about that -- you refer to
23 commercial -- it has to be commercially available. Is
24 that what you said?

25 WITNESS GILLAN: I may have said that, and

1 that probably was an overstatement. What we're really
2 looking at here is there's a couple ways you can prove
3 that you have operational support systems.

4 In the Ameritech order the FCC did not
5 require, as a general matter, as I remember the order,
6 that everything has to be subject to a test in the
7 marketplace. They would accept some internal testing,
8 some carrier-to-carrier testing, as ways to show.

9 And one thing we know that they're not going
10 to accept is a statement that, oh, we can do that.
11 There's going to have to be some sort of documented
12 evidence. But when it came to the platform, they
13 basically said, look, this thing -- because of the
14 demand for this that we expect from competing carriers,
15 we're not going to accept mere internal testing of your
16 ability to provision it. You're going to have to go
17 further than that in showing that you're capable of
18 doing it.

19 And quite frankly, I think one of the lessons
20 of this proceeding is we're still way back here at the
21 level of it's enough to say I can do it, much less going
22 down the steps of higher documentation that would take
23 us to satisfying this standard for this network
24 arrangement. Did that answer your question?

25 COMMISSIONER CLARK: I guess I was getting it

1 confused with the notion that it has to be available in
2 commercially -- to -- I forget what the phrase is,
3 commercially --

4 WITNESS GILLAN: The phrase "commercially," I
5 guess, is a phrase that I use in my testimony to just
6 try and describe the notion that this stuff has to be
7 available, not as a theory, but in a level that can
8 really handle the types of demands that it's going to be
9 put on when the flag drops and when people can actually
10 use this stuff to provide services.

11 The FCC tends to quote it in a more -- using a
12 style saying reasonable -- you know, projections of
13 demand, foreseeable levels of demand. And when they get
14 to the discussions about the platform, they tend to
15 indicate, look, we know carriers are out there trying to
16 get this, we know they want it. We think it's going to
17 be a very important entry technique, so we want to see
18 more than internal testing of your systems to be able to
19 provide it. That's how I interpret the order.

20 Now why is it so important, which is really
21 the next portion of my summary. And I think the easiest
22 way to think about this is in the context of a 271
23 proceeding. When BellSouth obtains its legal license to
24 provide long distance services, it will be able to go
25 into the market and become what I characterize as a full

1 service provider, somebody that can offer both local and
2 long distance services.

3 And there doesn't appear, actually, to be much
4 disagreement between myself and BellSouth that -- or
5 most other participants in this industry that there's a
6 lot of demand in the marketplace to be able to go to a
7 one stop shop and get both local and long distance
8 service.

9 Now, when BellSouth comes into the long
10 distance business, it basically has three
11 characteristics that are -- that are very important to
12 recognize.

13 First, it will be able to go to every
14 customer. They're not going to have the -- be limited
15 geographically to only subsets of customers. They'll be
16 able to go and offer long distance service to every one
17 of their subscribers.

18 Two, all the tools that are necessary to
19 produce long distance service sort of in a mass
20 application mode, a commercial quantity, and to be able
21 to move customers between long distance carriers, they
22 already exist. We have created an industry where it's
23 very easy for a consumer to say, I've had it with you as
24 a long distance carrier, I'm going to go to this other
25 company. So all the things they need to be able to go

1 into the marketplace and get the things they need to
2 become a long distance carrier and then to be able to
3 move customers very rapidly are in place throughout the
4 geography.

5 And third, they'll have the ability when they
6 buy their long distance network elements, if you will,
7 to get them in a competitive marketplace where they'll
8 essentially be getting a cost-based rate, free of
9 restriction, easy to use. So they're going to get the
10 things they need to be able to go in, go to every one of
11 their customers and say, it's easy for you to come to me
12 as your local and long distance provider, and I have the
13 ability because I can buy this long distance capacity,
14 if you will, at rates effectively -- at their TELRIC to
15 bring the process of bringing prices down lower, because
16 as a combined local and long distance company, I'll have
17 some cost savings.

18 Now significantly, these elements are the
19 source of BellSouth's entire argument that it's a good
20 thing for them to come into the long distance business,
21 but they've also -- their own economists in other
22 states -- and this is in my rebuttal, it's pointed
23 out -- that BellSouth has no reason whatsoever, once it
24 gains long distance authority, to offer consumers lower
25 prices because as the only carrier with the ability to

1 provide local and long distance, it will be able to
2 attract customers without passing on the savings.

3 The only way consumers will get a benefit is
4 if there are other companies there fighting it out with
5 BellSouth also offering packages of local and long
6 distance, and bringing customer -- and so that
7 collectively prices get bid down.

8 Now that whole model presupposes that there's
9 a way for somebody to, again, meet these three
10 criteria: Go broadly to the market so that you can
11 actually hold yourself out to customer anywhere; with
12 the ability to mass produce on a commercial scale local
13 services; and importantly, be able to migrate customers
14 over to your local exchange service; and have an ability
15 to drive prices to cost.

16 COMMISSIONER DEASON: Mr. Gillan, I hate to
17 interrupt your summary, but I've got a question. Your
18 third point there about BellSouth being able to get
19 capacity at a TELRIC price and then would be under no
20 pressure to pass along those cost savings; am I
21 understanding that correctly?

22 WITNESS GILLAN: Yes.

23 COMMISSIONER DEASON: Well, analogize or
24 compare that then to the situation of AT&T who's already
25 in the long distance, they're getting local service

1 capacity at TELRIC. What is the incentive then for them
2 to pass along the cost savings of them getting into the
3 local business and being able to combine local and toll,
4 since they're already in the toll business?

5 WITNESS GILLAN: Let me back up to something
6 about the long distance prices, and then I'll talk about
7 when they're offered together. There is really little
8 or no room for price reductions in the conventional long
9 distance market today. Long distance prices are about
10 as low as they can get for companies that can only
11 operate as a long distance company. And I'll use as
12 proof of that argument that BellSouth can today go into
13 41 states as a conventional long distance carrier, NYNEX
14 can come here. All the RBOCs have the opportunity today
15 to participate in the market, like everybody else, and
16 by and large, none of them are doing it.

17 The reason is, as a conventional long distance
18 carrier, prices are pretty much at equilibrium in
19 relationship to cost. Now, is there a potential for
20 lower prices? And I would say yes, but that potential
21 comes from if a company provides both local and long
22 distance service, there will be these cost savings and
23 so prices overall can come down.

24 BellSouth has -- no company that can become a
25 full service provider and be the only full service

1 provider in the marketplace has really an incentive to
2 lower their prices, no single company. That would be
3 true if AT&T could become a full service provider and be
4 the only one. That would be true if MCI became the only
5 one. That would be true if you and I could do it and be
6 the only one. If you can get to that position and be
7 the only carrier that can do this, you've got no real
8 reason to pass on cost benefits.

9 The difference is is that it's not really
10 possible for AT&T, or MCI, or anybody else other than
11 Bell to get there all by themselves because whatever it
12 is that allowed them to get there, namely the use of the
13 BellSouth network, is going to be available to other
14 people.

15 The only person who we know can get cost-based
16 use of the BellSouth network today is BellSouth. They
17 don't need to -- they're not dependent upon themselves
18 to treat themselves in a non-discriminatory fashion.
19 This is -- that was an unarticulate way of saying that
20 because it's their network, if they can get long
21 distance authority, they can become a packager of local
22 and long distance, but nobody else has the ability to
23 show up there by themselves. We know that when AT&T can
24 get there, when MCI can get there, when Sprint can get
25 there, they all can pretty much get there. And to tell

1 you the truth, that's the main reason why BellSouth's
2 argument that somehow all these carriers were sitting
3 off in the sidelines not entering the market so that
4 they'll keep BellSouth out doesn't make any sense.
5 Because everybody knows that the first one there is
6 going to have an advantage. So even though it might be
7 in AT&T's, quote, "best interests" to not enter the
8 local market, and therefore keep BellSouth out of long
9 distance, on the other hand they've got to be looking
10 over their shoulder at MCI and at Sprint, and at
11 WorldCom and at ICG, and all those other people trying
12 to get into the local market, and that they know that
13 they got to get there too. So each and every single one
14 of these entrants is trying as hard as they can to get
15 into the local market because they can never trust the
16 rest of them to stay out.

17 COMMISSIONER DEASON: So you're saying
18 there's -- whoever can get to the market first and be
19 the first full service provider is going to have a
20 tremendous advantage over any potential competitors?

21 WITNESS GILLAN: I think that would be true,
22 but I also don't want to ever divorce that concept from
23 the view that so far the only people that we have any
24 evidence of that could ever do that is Bell, because we
25 know that they can become -- you can become a long

1 distance company in this country. A lot of people have
2 done it and it's a whole lot easier today than it was 15
3 years ago when it started. If you and I wanted to go
4 out and become a long distance company today, we can go
5 out and buy long distance network elements, we can go
6 sign a contract with the billing company, we can go sign
7 a contract marketing company, we can go sign a contract
8 for access service. We can do all the things we need to
9 do to make it work.

10 We still don't have in this country yet a
11 working model of what it takes to go the other way, for
12 someone to really be able to go in and buy the things
13 they need from a local telephone company to become a
14 competitor for that local company.

15 COMMISSIONER DEASON: Isn't that what we're
16 here for? I mean, we're kind of like the starter at a
17 track meet, and we want to know if we can fire pistol
18 yet, and we don't want to fire the pistol until we know
19 that all the competitors have an equal opportunity. And
20 what you're telling me is that it's too early, it's
21 premature for BellSouth to be able to become a full
22 service provider because the elements are not in place
23 for the AT&T and the MCIs of the world to compete
24 effectively.

25 WITNESS GILLAN: That's -- well, compete at

1 all. And the reason is that BellSouth, quite frankly,
2 is in flat out non-compliance with effective federal
3 rules, has been since those rules have been adopted,
4 doesn't appear to be getting any closer to complying
5 with them, and this sort of stalemate doesn't appear to
6 me to be particularly closer to resolution.

7 And as I go through this, I'll show you the
8 rules they're not in compliance with, and I think their
9 own testimony, as I've sat here, has been, no, we don't
10 have operational support systems for network element
11 combinations; no, we don't have service intervals, and
12 I'll show you the rules that this relate to. They don't
13 appear to me to be very far down the path of
14 acknowledging that they have to make these tools
15 available, much less implementing these tools.

16 COMMISSIONER DEASON: And I agree that's what
17 we're here for to try to determine. But don't we run
18 the risk that if we err on the other side and we tell
19 BellSouth, no, things are not yet ready, we want you to
20 do whatever it is, the list, the 14-point checklist or
21 whatever, go and do more, do more, do more, do we run
22 the risk then of letting AT&T then be the first one out
23 of the block and let them have a secure and safe foot
24 hold in providing local competition and then an
25 advantage in providing becoming the dominant full

1 service provider before BellSouth is ever let out of the
2 starting block?

3 WITNESS GILLAN: That would only be true if --
4 that would only be a risk if: A, you were close; B,
5 that once AT&T or any major provider had the tools they
6 needed and were in the marketplace and operating and you
7 could see them working, you still chose not to take any
8 action.

9 I mean from the time that an RBOC files an
10 application and goes through and gets this completed is
11 at the outside -- you know, depending on what your
12 notice requirements are, six months at the outside, at
13 the outside. That's the maximum delay. And it would
14 involve that you turned a blind eye to seeing things in
15 the marketplace working and decided that in spite of the
16 fact that all this was happening, you were still going
17 to delay.

18 And, you know, maybe a case will come up
19 sometime in my lifetime like that, but I don't see it.
20 I sure don't see anywhere in this country where the
21 danger is, my gosh, there's too much local competition
22 happening too fast and the RBOC is not having a chance
23 to respond.

24 That's -- and I can tell you that from the
25 perspective of looking around and moving around the

1 country, looking on these topics in a variety of RBOCs.
2 It isn't going to happen in this region for -- wrong
3 beginning. There are other regional RBOCs that are far
4 closer to accepting the rules that they're going to have
5 to comply with and making the changes needed to comply
6 with them than BellSouth. You are a regulator in a
7 region where the RBOC, I would guess, is ranked
8 somewhere in a race for last with US West and GTE.

9 This is a company, quite frankly,
10 Commissioner, where you don't even have a close call
11 here because this company isn't even accepting its
12 responsibilities under the Act, much less how far along
13 are they in implementing them. And I realize that's a
14 strong statement, but that's because that is the
15 situation you're confronting.

16 Going back to my summary, because where I was
17 is we had talked a little bit about the -- that in order
18 to compete against BellSouth, entrants are going to
19 require a tool that really meets, in my mind, three key
20 objectives, a tool that you can offer service broadly, a
21 tool that works at commercial scale and can be created
22 with systems that move customers rapidly, because that
23 is how the systems work to move customers away from long
24 distance carriers, and the ability to drive prices to
25 cost.

1 And the answer to that isn't going out and
2 buying little pieces of the network individually and
3 trying to create services out of the box of Tinker
4 Toys. It requires that commercial application you would
5 buy things in some more logical combined form.

6 Now, the first thing is that if you had the
7 ability to buy, and you do have the legal opportunity to
8 buy a loop and port combination, obviously if you could
9 do it one place you could do it everywhere. So it
10 satisfies the geographic requirement for geographic
11 ubiquity.

12 Secondly, and perhaps most importantly, when
13 you as a customer decide you want to change long
14 distance carriers, you call up whoever it is you want to
15 change to and the process is used to electronically
16 shift you from long distance carrier A to long distance
17 carrier B. That's the PIC change process that BellSouth
18 is going to use to take customers away from long
19 distance carriers.

20 In order for this to have any kind of
21 comparability, there has to be an ability to have
22 systems in place that move customers with equal rapidity
23 going the other way. The FCC recognized this, and
24 again, in August of last year adopted a rule that
25 appears in the section on local switching that states

1 that if -- that recognizes that if multiple carriers can
2 provide service out of the same switch and use the
3 existing loop that's there, then physical
4 reconfigurations in the network aren't a predicate to
5 provide service. And so you can satisfy this rule,
6 which states, effectively, that the incumbent LEC has to
7 create OSS systems here that allow it to move customers
8 between itself, as the local telephone company, to the
9 entrant as local telephone company, using network
10 elements in the same interval that they'll be able to
11 move them between long distance carriers.

12 This rule applies, however, only when it can
13 be done through software, because that's the capability
14 that makes it possible, and only -- which therefore
15 means only where a physical network reconfiguration
16 isn't required. The minute you tell people -- if
17 companies don't have the ability to buy this as a
18 combination, it will be almost impossible to create a
19 system where it is just -- it takes as long to change
20 local carriers as to change long distance carriers.

21 And if you open up the market where Bell can
22 go to you as a customer and say, choose me as your long
23 distance carrier, I can change you tonight, there will
24 be no service disruption, and oh, by the way, there's no
25 nonrecurring charge associated with it, yet at the same

1 time anyone else has to go to you as a customer and say,
2 well, choose me for local and long distance, but, well,
3 it's going to take maybe one to five days to convert
4 you, there's going to be a service outage, we'll try to
5 keep it short --

6 COMMISSIONER CLARK: Mr. Gillan, hang on a
7 minute. Were you here when we had that demonstration?

8 WITNESS GILLAN: Yes.

9 COMMISSIONER CLARK: Are we talking about
10 resale here, or everything?

11 WITNESS GILLAN: No, the use of network
12 elements. Because the third criteria --

13 COMMISSIONER CLARK: Let me ask you. And it's
14 your position that they still don't meet that?

15 WITNESS GILLAN: They have already testified
16 that they don't even have a service interval associated
17 with buying the combination.

18 COMMISSIONER CLARK: Where is --

19 WITNESS GILLAN: They might be able to pull
20 this off with a resale order, but a resale order never
21 allows the entrant to have the ability to drive prices
22 towards cost, which is what they'll have in the long
23 distance.

24 COMMISSIONER CLARK: Hang on. Sometimes you
25 give me an explanation that I don't understand relates

1 to my question. Let me just ask you: It's your
2 position that they do not meet that requirement right
3 there?

4 WITNESS GILLAN: That is correct, because this
5 requirement applies to a carrier that is providing
6 service using the local switch network element in
7 combination with a local loop. They may be able to
8 convert you to a resale product, but they are not able
9 to comply with this rule which applies in the context of
10 network elements.

11 CHAIRMAN CLARK: And it's your position it
12 takes more than five days to accomplish that?

13 WITNESS GILLAN: My understanding was that
14 their service interval for a loop was one to five days,
15 and that they don't have an interval associated with
16 buying the combination at all. They don't even have an
17 operational support system yet that would allow you to
18 buy a loop and a port, the preexisting combination, in a
19 manner that would prevent it from being disrupted.

20 I mean their testimony is that if I buy those
21 two things, they're going to break them apart and put
22 them back together again. They do not have a system in
23 place that would give an entrant the ability to order it
24 to prevent that outcome from occurring and get this
25 implemented.

1 COMMISSIONER CLARK: Let me ask you this. If
2 they're told they can't break it apart --

3 WITNESS GILLAN: If they're told they can't
4 break it apart?

5 COMMISSIONER CLARK: -- will that comply?

6 WITNESS GILLAN: They've been told they can't
7 break it apart for over a year, and yet they still
8 haven't designed a system that would prevent that from
9 occurring. If you tell them again, and I'm sure that
10 the FCC -- and the Ameritech order, and I'll cite it
11 here in a moment, makes it absolutely clear that they
12 cannot break it apart, then, yes, they will ultimately
13 comply, but they will have to go back and they will have
14 to create an operational system that allows that to
15 occur.

16 My understanding, from everything I've heard
17 them say, is that since their policy is that they can
18 break it apart, they have not begun creating a system
19 that would prevent them from breaking it apart.

20 COMMISSIONER DEASON: Now this language is out
21 of the Ameritech order, or where is this? Is this the
22 FCC rule?

23 WITNESS GILLAN: This is in the rule that
24 defines the local switching network element from the
25 original interconnection order which was adopted in

1 August of last year. And when you read the supporting
2 text, it relates this language about software to point
3 out that they're doing this to limit it -- to limit its
4 application to situations where you don't have to
5 physically reconfigure the loop.

6 So it goes back -- ties back into the notion
7 that if you can buy the loop and the switch as a
8 combination, then you don't need to disrupt the network
9 to implement the change, and if you don't need to
10 disrupt the network to implement the change, you can
11 create operating systems where there's parity between
12 how fast a customer can move between the local and long
13 distance carrier and how local -- change your long
14 distance carrier and change your local carrier in the
15 environment where you're using network elements and
16 therefore are becoming a complete local telephone
17 company.

18 COMMISSIONER DEASON: But obviously we have no
19 similar situation when a customer chooses to change from
20 one IXC to another. They're not -- one IXC is not
21 trying then to purchase unbundled network elements from
22 either a local company or a competing IXC. Isn't the
23 comparison -- isn't it an unfair comparison to make to
24 say they have to be treated the same?

25 WITNESS GILLAN: No, I think it's the absolute

1 truest comparison. A network element, in effect, is the
2 ability to buy a generic network functionality, an
3 ingredient to make your own services.

4 If you and I want to go into the long distance
5 business today, we would go to -- there's basically four
6 national vendors: AT&T, MCI, Sprint, and realistically,
7 the one who is focused most on this market is a company
8 called WilTel. It's now the subsidiary of WorldCom.

9 We would go to them, and what they would be
10 selling us is raw long distance transmission and
11 switching capacity. We would decide whether we call our
12 service MTS or WATS, or whether we use it to provide
13 Megacom, or however we do it. What they sell us is the
14 ability to move minutes around the country. It's a raw
15 network element. That's basically what BellSouth is
16 going to buy when they obtain it.

17 When you go and you change a customer between
18 long distance carriers today, when you change between
19 long distance carriers, there may never be actually a
20 change in the network anywhere. Actually, what is
21 likely to just happen is that you are now assigned to a
22 new carrier, they're offering you the service and now
23 they are buying the network components used to provide
24 it. Maybe MCI, so they supply their own, maybe AT&T, or
25 maybe a number of carriers, including when BellSouth

1 enters the market, somebody who just went out and bought
2 this stuff from other carriers in order to provision its
3 service.

4 So in my view what this whole system is about
5 is creating a parallel universe in the local market
6 where you can have multiple carriers go in, be able to
7 buy this stuff as a generic ingredient, but it's
8 important to make sure that you don't have to go in and
9 keep physically rearranging the network all the time,
10 because if you do that, your ability to really approach
11 average consumers goes away.

12 In this instance in Florida, I think the
13 number was -- the nonrecurring charge just to get a loop
14 and a port, if you allow them to break it apart and put
15 it back together, is like \$170. For me, as an entrant
16 to serve you as a regular, residential customer, if I
17 got to charge you -- if I have to pay BellSouth \$170 up
18 front just to get you? Basically I got two choices, I
19 either don't approach you as a customer because the
20 length of time it will take me to recover the \$170 is
21 phenomenal, or I have to come to you and tell you the
22 only way I'll sell you service is if you sign a long
23 term contract with me. I don't think that's how regular
24 customers want to buy phone service. So you really have
25 to make sure this stuff gets graded in a way that meets

1 large scale commercial needs. And that's what the
2 network element combination is designed and intended to
3 accomplish.

4 Now, where are we in this implementation
5 scheme? Well first, as I indicated, the BellSouth
6 position is that they intend to separate, break it
7 apart, put it back together and charge you a GLUE
8 charge.

9 The FCC has given us some guidance on how they
10 intend to view that, and I'll read a provision from a --
11 that the Ameritech order basically put everyone on
12 notice, put all the RBOCs on notice, that this is going
13 to need to be complied with in future applications.
14 Referring to this paragraph 51.315(b), it says, in
15 addition to violating this rule, such dismantling of
16 network elements, absent an affirmative request, would
17 increase the cost of requesting carriers and delay their
18 entry into the local exchange market without serving any
19 apparent public benefit. We believe" -- the FCC --
20 "that such actions by an incumbent LEC would impose
21 costs" -- no, that should just stay up. I was just
22 pointing at it, I'm sorry.

23 Anyway, "We believe that such actions by an
24 incumbent LEC would impose costs on competitive carriers
25 that incumbent LECs would not incur and thus would

1 violate the requirement under Section 251(c)(3) that
2 incumbent LECs provide non-discriminatory access."

3 So what we have is a situation where the FCC
4 has made clear that they find their legal authority to
5 prohibit the LECs from dismantling the network instead
6 of providing them in combined form, both in the rule
7 that they've adopted, that traces back to some of the
8 language in 251(c)(3), but also that if the LECs were to
9 do it, it would absolutely violate the
10 non-discrimination provisions of the Act because it
11 would simply impose a cost on rivals for no reason.

12 So we know that that portion of the Bell view
13 of the world does not comply with the FCC rules, and the
14 FCC has told us so. We have the problem with the rule
15 about the interval, which their -- BellSouth cannot
16 meet.

17 And then we have the problem with the
18 billing. The billing problem, which appears to change
19 daily, basically is this. When I'm providing service
20 out of the local switch that I bought from BellSouth,
21 two things need to occur. That switch needs to
22 accumulate the usage information for my end users. It
23 needs to do it so that Bell can issue me a bill for
24 usage components and it needs to do it -- give me that
25 information so that I have the ability now as the

1 entrant to charge interexchange carriers access charges,
2 obviously an important part of being a local telephone
3 company.

4 Now, you heard BellSouth testify today,
5 evidently, that they now not only have the ability to
6 issue a bill to the entrant for -- so that they can
7 issue the bill to the entrant for purchasing the
8 unbundled switching element, but Mr. Scheye testified
9 that they have this ability to give --

10 MR. CARVER: Excuse me, I would like to raise
11 an objection. I think at this point Mr. Gillan is well
12 beyond the scope of his direct and rebuttal testimony.

13 MS. KAUFMAN: Chairman Johnson, Mr. Gillan
14 does address the necessity to be able to receive these
15 usage components in his testimony, and I don't think
16 that he is beyond the scope.

17 MR. CARVER: At this point Mr. Gillan is
18 rebutting Mr. Scheye's testimony from the stand. And I
19 don't believe the purpose of a summary of prefiled
20 testimony is to rebut live testimony that the witness
21 hears when he's in the hearing room.

22 CHAIRMAN JOHNSON: Ms. Kaufman.

23 MS. KAUFMAN: Chairman Johnson, I believe that
24 Mr. Gillan is still within the area that he discussed in
25 his prefiled testimony, which is central to this billing

1 question and the ability to get usage information and
2 minutes to bill access to interexchange carriers.

3 CHAIRMAN JOHNSON: Mr. Gillan, I'm going to
4 allow you a little latitude in answering the question.

5 WITNESS GILLAN: The -- well, my problem stems
6 only from the fact that the testimony was that they
7 couldn't perform the billing. And my point to you is
8 the same either way. It is absolutely critical for us
9 to know that when BellSouth sells an entrant the
10 unbundled switch element, and assuming we get over their
11 other objections to providing combinations, that the
12 entrant will be able to get the access billing -- the
13 usage data in a form to bill interexchange carriers,
14 absolutely critical. It's undisputed that the entrant
15 has the right to do it.

16 It's also without question, and has been true
17 since September of last year, that the entrant has got
18 the right to bill for that access, and that BellSouth
19 has an obligation under the definition of a network
20 element to provide that data to.

21 The Ameritech order made clear that this was
22 an issue that the FCC was going to look carefully at to
23 make sure that this could happen. And I guess my
24 fundamental message, and I'll conclude my summary with
25 it is, you have to make sure this stuff works.

1 BellSouth, to the extent that they say they
2 can do it now, it's an allusion to a system that's yet
3 to issue its first bill. That does not meet the
4 standards set out in Ameritech to be able -- for the
5 Commission to be able to conclude that BellSouth is able
6 to meet its obligations. You really have no decision in
7 this proceeding other than to find that BellSouth is not
8 in compliance with the checklist because they're not in
9 a position to provide all the tools that it requires.
10 Thank you.

11 Q (By Ms. Kaufman) Does that conclude your
12 summary, Mr. Gillan?

13 A Yes.

14 MS. KAUFMAN: Mr. Gillan is available for
15 cross examination.

16 MS. CULPEPPER: Chairman Johnson, Staff asks
17 that his exhibits be marked at this time. Staff asks
18 that Exhibit JPG-2, which is FIXCA's Responses to
19 Staff's First Set of Interrogatories, FCCA's Responses
20 to Staff's Second Set of Interrogatories, and FCCA's
21 Response to Staff's Third Set of Interrogatories be
22 marked as Composite Exhibit 63.

23 CHAIRMAN JOHNSON: We've already -- and I
24 guess maybe I didn't know it was Staff exhibit, but we
25 identified JPG-2 as exhibit -- Composite Exhibit 60,

1 along with the handout.

2 MS. KAUFMAN: I think the confusion is just
3 that Mr. Gillan's rebuttal exhibit, I believe, it was
4 labeled JPG-1 and he only has one exhibit attached to
5 his prefiled testimony.

6 CHAIRMAN JOHNSON: The composite exhibit that
7 I identified as 60?

8 MS. KAUFMAN: No, I believe the composite
9 exhibit was the slides, I'm sorry.

10 CHAIRMAN JOHNSON: That is confusion because
11 actually I had both these.

12 MS. KAUFMAN: So 60 is --

13 CHAIRMAN JOHNSON: Sixty should have just been
14 this, this document, the slides?

15 MS. KAUFMAN: And 61, I believe, was the
16 Road Map to Competition, the single page exhibit to his
17 rebuttal.

18 CHAIRMAN JOHNSON: Then let me go back.
19 Exhibit 60 is not a composite exhibit. It's just
20 Gillan's slides of the Telecommunications Act of '96.

21 MS. KAUFMAN: Right. I thought when you said
22 composite that there was more than one sheet. But
23 that's right.

24 CHAIRMAN JOHNSON: And we will identify JPG-2
25 as Exhibit 63.

1 (Exhibit No. 63 marked for identification.)

2 MS. WHITE: I'm sorry, Madam Chairman, but 61
3 is the one page? Maybe I could get an extra copy.

4 CHAIRMAN JOHNSON: 61 is the road map that is
5 attached to the rebuttal.

6 MS. WHITE: Oh okay, thank you.

7 CHAIRMAN JOHNSON: Let me make sure I have
8 these right. Sixty is the slides, 61 is the road map,
9 62 --

10 MS. KAUFMAN: Sixty-two was the Annotation to
11 the Ameritech order that we distributed last night.

12 CHAIRMAN JOHNSON: Ameritech Comparison. And
13 63 is the Staff exhibit.

14 MS. CULPEPPER: Thank you.

15 CHAIRMAN JOHNSON: BellSouth?

16 MR. CARVER: Thank you. Chairman Johnson, I
17 would like to ask sort of a procedural question. I
18 think pretty much every party who is represented here at
19 the table is adverse to BellSouth in this proceeding and
20 I think maybe all except one or two of them sponsored
21 Mr. Gillan's testimony. So is fair for me to assume
22 that no one else will have any cross examination of
23 him?

24 CHAIRMAN JOHNSON: Is there any other cross
25 examination for Mr. Gillan? I was assuming that there

1 was not.

2 MR. WIGGINS: None.

3 MR. CARVER: Thank you.

4 CROSS EXAMINATION

5 BY MR. CARVER:

6 Q Good afternoon, Mr. Gillan.

7 A Good afternoon, Mr. Carver.

8 Q I have to confess right up front, I've been
9 calling you Gillan during the 15 or 20 times I've cross
10 examined you. So I apologize for getting it wrong and I
11 hope you'll forgive me if I lapse into old habits and
12 pronounce your name wrong.

13 A I figured that was better than the
14 alternatives.

15 Q I think you expressed that better than I
16 could, so I'll just leave that right there.

17 Let me begin by asking a few preliminary
18 questions so that we can understand the basis of your
19 testimony. Now you're an economist; is that correct?

20 A Yes.

21 Q And you don't claim to have any specific
22 technical expertise that's pertinent to BellSouth to
23 offerings, do you?

24 A That's a pretty broad question. I would say
25 that the answer to that is, no, I do have technical

1 expertise in a number of areas that's pertinent.

2 Q Well, you're not an engineer, are you?

3 A Not by formal training.

4 Q And you're not an expert in OSS systems, are
5 you?

6 A No, I am not.

7 Q And you're not an expert in performance
8 measurements, correct?

9 A That's correct.

10 Q And you're not an expert in billing systems,
11 correct?

12 A I wouldn't consider myself an expert, but I am
13 familiar with all of these areas.

14 Q Okay, and so you're familiar with these areas
15 but you don't consider yourself an expert. Would you
16 agree with me that there are other witnesses in this
17 case who are experts in those areas?

18 A Some of them, yes.

19 Q Now in terms of the actual checklist items
20 that you address, I believe you state in your testimony
21 that you address only three of the 14 checklist items;
22 is that correct?

23 MS. KAUFMAN: Do you have a reference,
24 Mr. Carver?

25 MR. CARVER: Well, is there some question as

1 to whether or not he only addresses three? I can look
2 it up if she wants me to, but I would assume that would
3 be fairly uncontroversial.

4 MS. KAUFMAN: I thought you were attempting to
5 point him to somewhere in his testimony where he said
6 that.

7 MR. CARVER: No, I'm just -- I'm asking him a
8 general question about the scope of his testimony, but
9 I'll be happy to look it up in his direct if he needs me
10 to do it before he can answer.

11 WITNESS GILLAN: That's generally correct.

12 Q (By Mr. Carver) Thank you. So as to the
13 other 11, you don't express my opinion, correct?

14 A I haven't done an exhaustive review, no.

15 Q Thank you. Let me ask you, I know you reached
16 the conclusion as to these three that you look at that
17 BellSouth is not checklist compliant. Now I assume to
18 do that you had to analyze in some fashion BellSouth's
19 actual offerings, correct?

20 A Correct.

21 Q Now did you do that by reviewing BellSouth's
22 SGAT?

23 A I looked at their SGAT, I was aware of their
24 testimony, their pleadings, their positions, familiar
25 with some of the requests the carriers have made to you.

1 Q So to start with, at least in part, the
2 testimony that you've given is based on what you gleaned
3 from reviewing the SGAT as the basis of BellSouth's
4 service offerings, correct?

5 A Yes, and your testimony and your presentations
6 on OSS systems basically -- you know, the past five
7 months of this process.

8 Q And I wasn't trying to limit what you relied
9 on, I just wanted to see if that was one of the things.

10 A Okay.

11 Q Was your analysis also based on these
12 offerings as they're reflected in any particular
13 interconnection agreements?

14 A Well, part of the problem is that there
15 isn't -- my testimony goes to the absence of an offer.
16 So it's very difficult to trace the non-existence of a
17 network -- of the combination to particular agreements.
18 It's not in most of them.

19 Q Okay, well --

20 A In the form that it would have to be to comply
21 with these rules.

22 Q I think you may be getting ahead of me.
23 Before we talk about the complexity of tracing it
24 through the agreements, let me just ask you, did you
25 actually look at any agreements?

1 A I've looked at the MCI -- or the arbitration
2 decision for MCI, AT&T, the SGAT.

3 Q And by the decision, are you talking about
4 this Commission's order, or are you talking about the
5 agreement that was entered into after the arbitration
6 and approved by the Commission?

7 A I looked at the arbitration decisions and the
8 decisions on reconsideration. I don't recall whether I
9 looked at how those decisions were reflected in the
10 actual contract language.

11 Q So you didn't actually look at, for example,
12 the AT&T agreement, correct?

13 A I can't recall if I looked at the contract
14 itself. I may have. I may not have.

15 Q Same with MCI, you may have and may not have?

16 A That's correct.

17 Q As to the -- and I could be wrong on this
18 number, but I believe we have about 50 agreements that
19 have been entered into and approved. Did you look at
20 any of the others?

21 A Over the past -- course of the past year I've
22 looked at dozens of them.

23 Q But did you look at any of them specifically
24 for the purpose of rendering the analysis that's
25 reflected in your testimony?

1 A No, I mean I didn't have to review them to
2 know what wasn't in them with respect to this issue, no.

3 Q So that's a no? No, you did not look at them?

4 A I think your question was did I review them
5 for purposes of this testimony. I didn't review them in
6 preparation for the testimony, but I'm aware that this
7 problem exists from the times I have looked at them over
8 the past -- well since the bill was passed.

9 Q Okay. Well is it safe to say that you can't
10 point me to a particular agreement from anyone and say,
11 this is what I analyzed and this is what I base my
12 conclusion on about what BellSouth is offering?

13 A There was a half dozen to a dozen of these
14 things over the past year that have all had the similar
15 problem, and it's not an issue in dispute. So I
16 haven't -- I don't know that I could point you to
17 specific contract language.

18 Q Now you said you were generally familiar with
19 the interconnection agreement?

20 COMMISSIONER CLARK: Can I ask a question?
21 What's not an issue in dispute?

22 WITNESS GILLAN: I'm sorry. That BellSouth
23 has been opposing providing elements as a combination
24 that would enable the purchaser to become the access
25 provider and have the billing records to do this. This

1 has been -- their position on this has been known from
2 the first round of arbitrations and has been consistent
3 through all the arbitration proceedings I've been
4 through. It's been reflected in all the discussions
5 I've had with carriers. So what I meant was that what
6 their position is on these hasn't been in dispute.

7 COMMISSIONER CLARK: Well, and their
8 position -- what is their position, to your knowledge?

9 WITNESS GILLAN: BellSouth's position has
10 been, A, initially, that network element combinations
11 are resale and therefore there is no such thing as a
12 combination of network elements. When you buy all the
13 network elements from BellSouth, we are giving you a
14 resale product and therefore you're not the access
15 provider. That was their first set of positions.

16 COMMISSIONER CLARK: Let me ask you about
17 that. I thought we -- in the arbitration agreements, we
18 arbitrated what unbundled elements they had to provide
19 in the price, according to what the parties needed
20 arbitrated.

21 WITNESS GILLAN: I thought you did too.
22 And -- but if you look at BellSouth's position -- as I
23 understand what happened, is that you set the price of
24 network elements. You also told BellSouth that carriers
25 had the right to buy a combination. At some point in

1 the process an issue is raised regarding the
2 nonrecurring charge that applies, because the \$170
3 nonrecurring charge that applies, if you buy a loop by
4 itself or if you buy a port by itself, shouldn't apply,
5 or some carriers would argue, I would argue, shouldn't
6 apply when you buy them as a combination because the
7 costs that that \$170 was supposed to recover aren't
8 incurred.

9 CHAIRMAN CLARK: And you're saying that wasn't
10 covered by the arbitration and settled in the
11 arbitration?

12 WITNESS GILLAN: Correct. My understanding
13 was that you didn't set that nonrecurring charge in the
14 arbitration. Instead, you issued an order that
15 indicated that that price should be arrived at
16 elsewhere. My understanding is then BellSouth's
17 position was --

18 COMMISSIONER CLARK: Hang on a minute. What
19 do you mean elsewhere?

20 WITNESS GILLAN: I believe you told the
21 parties to go out and negotiate. But the important
22 point is that you issued an order that indicated, in my
23 opinion, that that price for the nonrecurring activity
24 hadn't been resolved in the arbitration.

25 My understanding of BellSouth's position is

1 that that order that you issued basically said that
2 price of combinations hadn't been established and that
3 therefore since they say you should pay the resale
4 price, you as a commission didn't actually say that this
5 wasn't a resale service, and that created a flurry of
6 activity between AT&T and BellSouth where AT&T has asked
7 you for motions to compel.

8 And at this point I'm off a little -- I'm off
9 of the specifics, but the point is: My view is you
10 settled this; BellSouth's view is that you didn't really
11 settle it. And as a result, you end up with the
12 situation you have today, where instead of it being
13 available, people are still debating about what "it" is
14 and how it should be treated.

15 COMMISSIONER CLARK: Let me ask you this. To
16 your knowledge, are the other parties to the
17 arbitrations in here telling us that there's been a
18 misunderstanding in the arbitrations?

19 WITNESS GILLAN: I believe MCI has filed a
20 complaint, or at least a petition fee to establish the
21 nonrecurring charge as recently as last week.

22 And AT&T has several motions pending asking
23 you to resolve this. It's the -- it was actually how
24 AT&T first learned that BellSouth didn't have the
25 ability to bill usage for network elements because

1 Mr. Scheye, when he was up here, kept referring to the
2 idea that the AT&T experiment was some unusual, unique
3 billing arrangement. Well, in the BellSouth view of the
4 world, my understanding is -- and I feel a little bit
5 uncomfortable describing their view of the world, but my
6 understanding is their view of the world is that AT&T
7 didn't really get a combination of network elements. It
8 was resale that therefore they didn't have to create a
9 billing system that would be able to bill it as network
10 elements, and therefore the entire set of bills was an
11 unusual arrangement. So what you have here is a
12 situation where BellSouth says they didn't have to do
13 it, and everybody else has been waiting for them to do
14 it. And I hope I made that clear.

15 COMMISSIONER CLARK: If we resolve it in the
16 arbitration, does that resolve it? I mean, if we make a
17 decision, and let's suppose we decide it's resale.

18 WITNESS GILLAN: Commissioner, at this point I
19 don't believe that -- I don't believe that was ever a
20 possible outcome. But the reality is that network
21 elements establish -- you pay a cost-based rate and you
22 become the provider of access. That -- even if the
23 Commission wanted to treat it as resale, the fact that
24 the FCC has made absolutely clear that they're the
25 provider of access means that you can never get these

1 things to back fit together.

2 The -- I think that -- I think that you have
3 to recognize that because you establish something in an
4 arbitration doesn't make it so in the real world. And
5 in the -- and that's really the problem that -- part of
6 the problem that I was trying to illustrate in my
7 testimony. The fact that Mr. Scheye says they can now
8 do all this billing and can give everybody this
9 information doesn't mean it happens that way in the real
10 world. You have to have a real world test.

11 Nobody in the arbitration could have predicted
12 for you that you would be sitting here at this point in
13 time really with still fundamental disagreements between
14 the parties as to what BellSouth must sell and what
15 entrants are entitled to buy. And that problem is not
16 going to get less as you go forward in time.

17 COMMISSIONER CLARK: Thank you.

18 MR. CARVER: I would just like the record to
19 reflect that BellSouth doesn't agree with Mr. Gillan's
20 characterization of our legal position. I think if I
21 tried to clarify the position by crossing him, we would
22 be here for a long time. So I'm just going to skip over
23 that and go back to the other questions I had.

24 COMMISSIONER CLARK: I understand that and I
25 won't take his representation of your position as being

1 what it is.

2 MR. CARVER: Thank you. I appreciate that.

3 Q (By Mr. Carver) Mr. Gillan, I believe you
4 said that you're familiar with the interconnection
5 agreement between BellSouth and AT&T, correct?

6 A I said I was familiar with the arbitration
7 decision. I really don't recall that I reviewed the
8 actual contract that came from it.

9 Q Then you may not be able to answer my next
10 question, but let me just ask if you have an opinion.
11 If the -- by the way, when I say "agreement," I'm
12 talking about the agreement that was entered into after
13 the arbitration.

14 If the agreement between AT&T and BellSouth
15 were fully implemented, in whatever way you want to
16 describe fully implemented, in your opinion would
17 BellSouth then be checklist compliant?

18 A I don't know.

19 Q And I take it with reference to the MCI
20 agreement that you don't know about that one either,
21 correct?

22 A That's correct.

23 Q Do you know who has to date purchased the
24 seven units of unbundled switching from BellSouth in
25 Florida?

1 A No.

2 Q So then is it fair to say that you have no
3 personal knowledge of their experience in purchasing
4 those from BellSouth?

5 A I have no personal knowledge, but I also would
6 point out that I don't consider your unbundled switch
7 element to be checklist compliant. So even if they
8 obtained it without any difficulty, since it isn't the
9 element that you are required to provide in order to
10 comply with the checklist, then it wouldn't be
11 dispositive towards your 271 status.

12 Q But -- let me make sure I understand this.
13 You have no knowledge whatsoever as to whether or not,
14 to use your words, they obtained it without any
15 difficulty; is that correct?

16 A That's correct. And it wouldn't make any
17 difference because the element that you call unbundled
18 switching doesn't comply with the requirements of that
19 element.

20 Q Let me move to a slightly different area. I'm
21 interested in your opinion on something else. Let's
22 assume that an ALEC is serving customers exclusively by
23 the use of recombined UNEs. In other words the ALEC is
24 buying every element that makes up the BellSouth service
25 and is simply selling that to their customer, but

1 they're not paying the resale price, they're paying the
2 unbundled network element price. And they're not adding
3 anything at all from their own network. In other words
4 they've built nothing. Do you understand the predicate?

5 A I would have used the words differently,
6 mostly because it's -- when I buy an element, I buy the
7 functionality that underlies a number of services. And
8 so it's really never true to say that I got a single
9 BellSouth service from the elements that I bought
10 because I don't -- that never really occurs. You
11 always -- when I buy network elements, I always at
12 least become a local telephone company and am providing
13 local exchange and exchange access services which are,
14 you know, two different services. There's no
15 one-for-one here the way your question asks, but with
16 that observation, that caveat, I think we can go
17 forward.

18 Q So you understand I'm talking about a
19 situation where the ALEC has had added no facilities
20 whatsoever, that what they're using to provide service
21 is the rebundled elements that make up the local
22 service, correct?

23 A Your scenario is that I bought all the things
24 to become the local telephone company from BellSouth.
25 That I agree.

1 Q Okay. My question is, in that scenario, in
2 your opinion, is that ALEC a facilities-based provider
3 as contemplated by Track A?

4 A Under the right set of circumstances, I can
5 see where that would be a reasonable conclusion.

6 Q Well, I'm not quite sure why you're qualifying
7 it Mr. Gillan. Haven't you said repeatedly, in this
8 proceeding and others, that when the ALEC buys from
9 BellSouth, all of the UNEs that constitute the service
10 and put them back together, then they become the
11 provider? Isn't that your position?

12 A Yes. That wasn't the question you asked me, I
13 don't believe.

14 Q But you can't say unequivocally that they
15 would be a facilities-based provider even though they
16 are the provider and even though you believe that those
17 are their elements?

18 A No. You asked me if they would become a
19 facilities-based provider for purposes of Track A. Now
20 that's a different question than did they become a
21 provider. My answer to you, and it's probably not the
22 answer of my clients -- I'll put the Commission on
23 notice that my clients may have a completely different
24 "legal" opinion about this, and that's why they don't
25 hire me to be their lawyer, but in my view that if you

1 create network elements in the way they should be
2 created, in a way that establishes their purchaser as
3 having the same -- virtually the same degree of control
4 and operation on them as if they had made the investment
5 directly, then it would seem to me to be a reasonable
6 conclusion that you would treat them, for purposes of
7 Track A, as your own facilities. And that's the
8 decision that the FCC reached with respect to network
9 elements.

10 On the other hand, if you define network
11 elements the way you, Southwestern -- or BellSouth
12 define them, with the types of systems that you believe
13 and roles they handle, then the answer would be no.
14 So --

15 Q But if you got the UNES the way that you think
16 they should be provided, and you put them together and
17 reconstituted the service -- and I understand you don't
18 accept my words -- but if you got the UNES the way that
19 you wanted and put them back together, then the ALEC who
20 does that is a facilities-based provider in your
21 personal view, correct?

22 A Well, again, for purposes of Track A, I cannot
23 quarrel with the FCC's conclusion on that. It's a legal
24 conclusion that they reach. It doesn't mean that
25 because you've done this that --

1 CHAIRMAN JOHNSON: Is the answer -- could you
2 start off -- because you're starting to confuse me a
3 little bit -- with a yes and no, and then go ahead and
4 follow up because I was having a hard time figuring out
5 what your last answer was.

6 WITNESS GILLAN: To tell you the truth, I'm
7 having a hard time following the questions, which seem
8 to have double negatives in them. So I've been trying
9 to make the statement clear. The statement is that I do
10 not have a quarrel with the conclusion that the FCC
11 reached that network elements can be considered your own
12 facilities for purposes of Track A, given that the
13 network elements were provisioned in a way that are
14 truly non-discriminatory as required by the Act.

15 Q (By Mr. Carver) I never did hear a yes or no,
16 so I'm going to try the question one more time. And
17 please feel free to rearrange the negatives and the
18 grammar in any way you need to to give me a straight
19 answer to the question, okay?

20 Here's the question again. If you get
21 unbundled network elements the way that you think that
22 they should be provided, and you put them back together
23 and you've got a service, and the ALEC provides no
24 facilities of its own, you're only using UNEs you
25 purchase from BellSouth, is that ALEC a facilities-based

1 provider under Track A? Please begin your answer with
2 yes or no.

3 A That question I'm not sure can be answered yes
4 or no. If it can be, the answer is no because of all
5 the different suppositions that you put into the
6 question.

7 COMMISSIONER KIESLING: Mr. Gillan, I don't
8 find that answer acceptable, and the reason I don't is
9 they have the ability to provide you with a hypothetical
10 and ask you a yes or no question under that
11 hypothetical. You can answer the question and then tell
12 why you disagree with the hypothetical, or why it's not
13 a realistic one, but I mean we are going to be here for
14 hours if you cannot answer what I think are basic
15 questions.

16 WITNESS GILLAN: Commissioner --

17 COMMISSIONER KIESLING: I don't want to hear
18 any argument. I just told you what I think. I don't
19 care what you think. I want you to answer the
20 question.

21 WITNESS GILLAN: Commissioner, my answer is
22 no, and the explanation was that the hypothetical
23 included one provision that changed my opinion. The
24 hypothetical, as I heard him ask it was, you buy these
25 all as unbundled network elements and you put them back

1 together again.

2 And in my opinion, that criteria -- that part
3 of the hypothetical that I -- that the entrant had to
4 purchase things and put them back together again by
5 itself made it discriminatory, which by itself meant
6 that it was not the type of arrangement for the
7 provision of network elements that I would consider
8 equivalent to your own facilities. And that was the
9 answer to -- that was why the answer had to be no.

10 Q (By Mr. Carver) I'm going to try one more
11 time, and I apologize if I'm belaboring this, but I
12 would really like an answer.

13 Let me use one of your words, Mr. Gillan.
14 Let's say that the ALEC purchases from BellSouth a UNE
15 platform, and that UNE platform consists of all of the
16 unbundled elements which when put together constitute a
17 1FR. You put them back together, the phone will ring,
18 you can have service. Okay? That's what the ALEC has
19 purchased from BellSouth, the UNEs it needs to put
20 together to make the phone ring. And it's provided no
21 facilities of its own. In your opinion, is that ALEC a
22 facilities-based provider under Track A, yes or no?

23 A No, not under that scenario because you are --
24 in the way you are asking it, you are implying that you
25 had the right to break them apart and then the right to

1 put them back and make the process of putting them back
2 together occur. If you take that part out of your
3 question so that you're talking about buying a
4 combination that BellSouth hasn't disrupted, then the
5 answer would be yes.

6 Q Okay, so --

7 COMMISSIONER CLARK: Mr. Gillan, I'm sorry, I
8 don't understand. I thought the notion of the
9 disruption had to do with providing it in the same
10 manner and on the same timeliness as the LEC. I don't
11 see where that notion has an effect on whether or not it
12 is a facilities-based carrier under Track A. I thought
13 you initially said if they purchase all the UNEs from
14 BellSouth, and whether they combine it or BellSouth
15 combines it, it is a facilities-based carrier under
16 Track A.

17 WITNESS GILLAN: My answer was trying to
18 emphasize, Commissioner, that what I -- what I caught --
19 as an economist and not a lawyer, what caused me to
20 conclude that it would be reasonable to consider them a
21 facilities-based provider is if they got true
22 non-discriminatory access to the network elements,
23 including when they get them all. That's the criteria.

24 Now, what constitutes non-discriminatory
25 access? In my world non-discriminatory access

1 absolutely means that if the elements are already
2 combined, I can buy them as a combination and not have
3 them disrupted. If the world that -- the hypothetical
4 that Mr. Carver is creating always assumes that
5 BellSouth has the right to go in and disrupt the
6 elements and then force either the entrant or themselves
7 to go through the process of recombining them, then to
8 me that is discriminatory access and therefore it
9 wouldn't meet the requirements of Track A. So that was
10 what was causing me the problem with his hypothetical.

11 COMMISSIONER CLARK: I guess -- I see that as
12 the notion of speaking to discriminatory access. I
13 don't see it as speaking to the notion of what's
14 facilities-based and what's not.

15 WITNESS GILLAN: And Commissioner, at that
16 level, I think the tension only comes from the fact that
17 I approach the problem as an economist and not a
18 lawyer. So when he's asking me these questions, I'm
19 thinking: What is a reasonable economic policy with
20 respect to how Track A should be interpreted? Which may
21 not be a reasonable legal position as to whether or not
22 these things can be considered someone's own
23 facilities. And it's to that latter part that I really
24 don't feel very comfortable on.

25 Q (By Mr. Carver) Okay, thank you. So an ALEC

1 buys UNEs -- and I'm not assuming any disruption or
2 taking apart or putting together -- an ALEC buys UNEs in
3 any way you want them to buy them, and it serves
4 customers with them, and it doesn't provide its own
5 network, any piece of its own network. In your view,
6 are they a facilities-based provider under Track A?

7 A Yes, with the caveat that that all occurred in
8 a non-discriminatory fashion with fully
9 non-discriminatory operational systems. I think that
10 that's a reasonable conclusion.

11 Q Okay. Thank you. Moving to a different area,
12 is it fair to say that you believe it will be a long
13 time before competitors in the local market begin to
14 build their own local networks?

15 A No.

16 Q You believe that competitors will begin to
17 build their local networks quickly?

18 A Yes, I believe the competitors have begun to
19 build their local networks already.

20 Q Well, then let me ask you for a clarification,
21 because in your testimony -- let me ask you a different
22 question. In your testimony you say that it's taken 15
23 years for the long distance market to evolve to where it
24 is currently, correct?

25 A Between 15 and 20 years, yes.

1 Q And I believe on Page 36 of your testimony you
2 say, "The nation's experience establishing long distance
3 service was relatively rapid, (i.e., only 20 years.)"

4 A I'm sorry, what page did you say you found
5 that on?

6 Q It was Page 36.

7 A Oh, okay, you're correct. I found it.

8 Q And I got that quote right, didn't I, that
9 relatively rapid is 20 years?

10 A Yes.

11 Q And don't you express the viewpoint in your
12 testimony that it's going to be harder for new entrants
13 in the local market to build their networks than it was
14 for new entrants in the long distance market to build
15 their networks?

16 A Yes.

17 Q So before there's full blown competition, it's
18 going to be some period of time longer than 20 years?
19 Is that what you're driving at?

20 A For facilities competition? Yes.

21 Q Okay, thank you.

22 Mr. Gillan, let me, before I ask you this next
23 line of questions, ask you, would it be fair to say that
24 your testimony contains a pretty good deal of analysis
25 of the federal act and of FCC orders and of FCC rules?

1 A Yes.

2 Q Now, let me ask you a couple more questions
3 along those lines that may require some similar analysis
4 from you. The Ameritech decision was not the product of
5 a rulemaking proceeding, was it?

6 A It's a double negative. The Ameritech
7 decision is, in my view, the product of a rulemaking
8 decision because it applies rules to Ameritech. So in
9 my view it is an extension of a rulemaking proceeding.

10 Q Now are you expressing -- I understand you're
11 not a lawyer, so if I'm asking you something you don't
12 know, that's fine. But are you saying that in rendering
13 that decision the FCC went through all the procedural
14 requirements necessary to have rulemaking -- to have a
15 rulemaking proceeding under their rules?

16 A No.

17 Q So you're saying, what, that it has the effect
18 of a rulemaking, even though it's not really
19 procedurally a rulemaking?

20 A No.

21 Q Then what are you saying?

22 A I'm saying that the Commission had a
23 rulemaking proceeding and established a set of rules.
24 Ameritech filed an application that embodied Ameritech's
25 interpretation of some of those rules. The Commission

1 had a proceeding where it compared Ameritech's
2 interpretation of those rules to its own and issued a
3 document that gives further description of what its
4 rules mean. So it didn't, in effect, adopt new rules,
5 but what it did do was provide additional clarity as to
6 what the FCC's interpretation of those rules means.

7 (Transcript continues in sequence in
8 Volume 18.)

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