

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 - AFTERNOON SESSION

VOLUME 18

PAGE 1880 through 1997

PROCEEDINGS: HEARING
BEFORE: CHAIRMAN JULIA L. JOHNSON
COMMISSIONER J. TERRY DEASON
COMMISSIONER SUSAN F. CLARK
COMMISSIONER DIANE K. KIESLING
COMMISSIONER JOE GARCIA
DATE: Friday, September 5, 1997
TIME: Commenced at 2:50 p.m.
PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida
REPORTED BY: NANCY S. METZKE, RPR, CCR

APPEARANCES:
(As heretofore noted.)

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

2 (Transcript continues in sequence from Volume 17)

3 JOSEPH GILLAN

4 Continues his testimony under oath from Volume:

5 CONTINUED CROSS EXAMINATION

6 BY MR. CARVER:

7 Q But in the Ameritech decision, the FCC's
8 interpretation, I guess you could say of its own rules, is
9 not necessarily binding on it in future 271 applications,
10 is it?

11 A Binding as a legal matter?

12 Q Yes.

13 A I don't know.

14 Q And do you have an opinion as to whether the
15 interpretations contained in the Ameritech act are legally
16 binding on this Commission?

17 A I don't know that any interpretation is legally
18 binding. It is obviously the interpretation of the agency
19 that wrote the rule and the standard that the agency that
20 wrote the rule will apply. The act structure on 271 is
21 that the FCC is looking to states to perform a consultative
22 role, and in the Ameritech decision it tells the states
23 that the amount of deference it will give the state's
24 opinion is going to be influenced in large measure by how
25 the state itself conducts itself in applying it. So I

1 don't believe that there is any legal obligation for the
2 Florida decision to apply any of the FCC's standard as a
3 legal matter, but the FCC has made clear that if the
4 Florida Commission wants to discharge the role that the
5 statute gave it and what the FCC would be looking for it to
6 do, certainly the expectation is it will apply those rules
7 to BellSouth's application.

8 Q Okay. Let me ask you a related question, and you
9 are going to have to accept this one too as a hypothetical,
10 I'm afraid, because I don't think you'll accept my
11 predicate otherwise, so this is a hypothetical. If the
12 Commission reached the opinion that, for example, they were
13 looking at a particular item of checklist compliance and
14 they believed that the Act required one thing and the
15 Ameritech decision conflicted with the Act, then they
16 should follow the Act, wouldn't you agree?

17 A It would depend on what it was. I think that the
18 reality is that the law tells the Commission it should
19 apply federal rules that are effective. Most of these
20 federal rules have been through an appeals process, and a
21 court has chosen which ones comply with the Act and which
22 ones don't. So it's not clear to me what subset of things
23 in the Ameritech order could be construed as not being
24 consistent with the Act.

25 Q So are you basically saying that you can't accept

1 my hypothetical that this Commission found the Act to
2 conflict with Ameritech? You just can't imagine that?

3 A I'm not aware of anything in the Ameritech order
4 that satisfies that hypothetical, but for the sake of a
5 hypothetical, I'll accept that it's possible I suppose.

6 Q Okay. And in that instance, the Act should be
7 followed, correct?

8 A I'm trying to put a context into this that would
9 allow me to answer the question, and I just can't seem to
10 have any sense of what would fall in this category that
11 would help me shed any light on the question.

12 Q Okay. Well, I'll take that then with your
13 permission as an I don't know, and I'll just move on, all
14 right?

15 Now in the annotated version of your testimony,
16 you provide 38 citations to the Ameritech order; is that
17 correct?

18 A That could be correct. I didn't check the
19 number.

20 Q Okay. You don't need to check them for purposes
21 of the question. Can we agree that there are a lot of
22 them?

23 A Yes, there are a lot of them.

24 Q Thank you. Now I believe that you contend that
25 each statement in your testimony that has a citation to the

1 Ameritech decision is supported by the Ameritech decision;
2 is that correct?

3 A I'm sorry, Mr. Carver, I didn't understand that
4 question.

5 Q Okay. Is it your contention that in every
6 instance in which you make a statement in your testimony
7 and then you cite to Ameritech that Ameritech supports what
8 is contained in your testimony?

9 A Not necessarily. I drew cites where they
10 addressed the same issue, generally they reached the same
11 conclusion.

12 Q So you're really just citing to them to sort of
13 say here is a discussion on what I'm talking about?

14 A Well, I said generally their conclusion matches
15 the conclusion in the testimony. There is an exception to
16 that. I think that the Commission defined what the word
17 "provide" means in a way that I wouldn't have defined it,
18 but in the cross referencing, since we were both, you know,
19 addressing the same issue, I put a cite to the Ameritech
20 order. I can't recall if there is anything else like that.

21 Q Okay. Should we assume that if your testimony at
22 any particular point doesn't have a citation to the
23 Ameritech order that your testimony is addressing something
24 that is not addressed by that order?

25 A No.

1 Q Okay. So in some instances you provided cites to
2 a discussion in Ameritech and others there may have been
3 discussions that you just didn't cite to?

4 A Correct.

5 Q How did you decide what to cite to and what not
6 to cite to?

7 A I tried to cite to what I considered to be the
8 major points in my testimony and the major points in the
9 Ameritech order, and since both the testimony is long and
10 the Ameritech order is long, there are still lots of things
11 that were discussed in my testimony that was discussed in
12 the Ameritech order that I could have -- I could have
13 continued the exercise for a longer period of time; it just
14 doesn't seem to me to be valuable.

15 Q Is there any instance where you have something in
16 your testimony and you decided not to cite to Ameritech
17 because Ameritech either conflicts with or doesn't support
18 your testimony?

19 A No, the only thing that I recall coming across
20 that I thought was, that I didn't feel comfortable with
21 what the commission at the FCC had raised but it seemed to
22 be on target in my testimony was this issue about what does
23 the word "provide" mean, and I put it in citation, the
24 cross citation. I don't recall anything else.

25 Q Okay. Well, then let me ask you this, is it your

1 position that the Ameritech order should be applied across
2 the board by this Commission?

3 A Yes.

4 Q In your opinion, if BellSouth did everything
5 required by Ameritech, would we meet the requirements of
6 Section 271?

7 A No. Section 271 -- I mean even the FCC didn't
8 say that this is a complete evaluation of all the things
9 that has to occur in order for a company to satisfy Section
10 271, so it would be necessary but not sufficient to comply
11 with the Ameritech order.

12 Q Well, what isn't covered in the Ameritech order
13 specifically that would be necessary for 271 compliance in
14 your opinion?

15 A The item that came, that comes to mind most
16 easily is the public interest portion of 271 isn't really
17 addressed in the Ameritech order, and then there are a
18 variety of other checklist items where the Commission
19 itself -- the FCC indicated that they were providing some
20 guidance but weren't really making any findings.

21 Q Well, Mr. Gillan, I don't want to dwell on this
22 because I know public interest is not an identified issue
23 in this docket, but doesn't the Ameritech order have a
24 section that begins specifically at Paragraph 381 that
25 deals with public interest?

1 A Yes, but my recollection was it was the FCC
2 drawing a very sketchy outline of it and basically saying
3 since we didn't reach this issue we are not putting much
4 analysis into it, and there were other places in the
5 competitive checklist, in my recollection, where they came
6 out with essentially the same type of order. We are
7 rejecting Ameritech because of the following set of clear
8 things, and then there are some other items here that cause
9 us trouble but we intend to address in future applications.

10 Q I'm just looking up for a reference here in your
11 testimony so when I ask you about something in the
12 Ameritech order. I believe you say in your testimony at
13 page 6, beginning at line 15, "Under the Act, the
14 fundamental role of a state commission is a fact consultant
15 to the FCC determining through a practical and quantitative
16 review of the conditions in its state whether BellSouth has
17 fully implemented each of the tools required by the
18 checklist." Now this is your testimony, correct?

19 A Yes, it's my -- that was my understanding.

20 Q And in the annotated version of your testimony,
21 you cite to Paragraph 30 of the Ameritech order; is that
22 correct?

23 A Yes.

24 Q Okay. Do you have a copy of the Ameritech order
25 with you?

1 A Yes.

2 Q Would you turn to Paragraph 30, please? Are you
3 there?

4 A Yes.

5 Q Okay. The second sentence, if you could just --
6 I'll just read it to you to begin. "In requiring the
7 Commission to consult with the states, congress afforded
8 the states an opportunity to present their views regarding
9 the opening of the BOC's local networks to competition. In
10 order to fulfill this role as effectively as possible,
11 state commissions must conduct proceedings to develop a
12 comprehensive factual record concerning BOC compliance with
13 the requirements of Section 271 and the status of local
14 competition in advance of the filing of Section 271
15 applications. We believe that the state commissions'
16 knowledge of local conditions and experience in resolving
17 factual disputes affords them a unique ability to develop a
18 comprehensive factual record regarding the opening of the
19 BOC's local networks to competition."

20 So I'm going to read you actually a couple of
21 things before I ask the question, but for now I read that
22 correctly?

23 A I believe so.

24 Q Okay. Let's go down to the end of the
25 paragraph. Does it also say there in the next to the last

1 line, "We will consider carefully state determinations of
2 fact that are supported by detail and extensive record and
3 believe that development of such a record to be of great
4 importance to our review of Section 271 applications?"
5 Does that language also appear?

6 A Yes.

7 Q And you would agree with me, wouldn't you, that
8 this particular portion of Ameritech should be followed
9 also, correct?

10 A That the Commission should develop a factual
11 record, yes.

12 Q Well, is there anything I read there that you
13 disagree with?

14 A No.

15 Q So then you would agree that this Commission is
16 in the best position to make an assessment of the local
17 conditions that pertain in Florida?

18 A They're in a close position. I don't know if the
19 word "best" is necessarily -- you know, that would depend,
20 obviously, on the commission. State commissions generally
21 are closer to local conditions, and they have procedures
22 that allow them to conduct factual investigations, that I
23 agree with.

24 Q And you also agree, don't you, that this
25 Commission should develop a comprehensive record of local

1 conditions that it considers to be important, correct?

2 A Yes.

3 Q And would you agree also that it's important in
4 this proceeding for this Commission to reach its own
5 conclusions based on its knowledge of the local market and
6 the other fact, facts that come before it?

7 A It's important for them to reach their own
8 conclusions as to the status, the factual status of these
9 things, yes.

10 Q Okay. Thank you.

11 Now let's talk about this issue that you raised a
12 little bit earlier about providing and what it means to
13 provide. Now in the Ameritech case, I believe certain IXEs
14 contended that the word "provide" as used in Track A meant
15 that the item had to be actually furnished; isn't that
16 correct?

17 A That's correct.

18 Q And I believe AT&T contended this, did they not?

19 A I believe it did, I'm not sure.

20 Q And the FCC rejected this position, did it not?

21 A Yes.

22 Q Okay. If you could --

23 A If it was their position. I just can't recall
24 that it was their position.

25 Q Okay.

1 A They rejected the position.

2 Q Now if you can turn to Paragraph 109, we are
3 going to read two portions here. The first one is the
4 second line in Paragraph 109. I'm sorry, the second
5 sentence in Paragraph in 109. Are you there? Are you with
6 me?

7 A The second sentence of Paragraph 109?

8 Q Yes, and it says --

9 A As opposed to PT 109? Yeah.

10 Q It says, "Ameritech and Bell Atlantic contend
11 that a BOC provides a given checklist item either by
12 actually furnishing the item to carriers that have ordered
13 it or by making the item available through an approved
14 interconnection agreement to carriers that may elect to
15 order it in the future."

16 I read that correctly, didn't I?

17 A Yes.

18 Q And at the beginning of Paragraph 110 the
19 Commission states, "We agree with Ameritech that
20 'provide' --" it's in quotes "-- is commonly understood to
21 mean both furnish and make available." Isn't that
22 correct? In other words, did I read that correctly?

23 A Oh, you've skipped down to the bottom of the next
24 paragraph?

25 Q No, I began at the beginning of Paragraph 110.

1 I'm just trying to get to --

2 A Okay, that's what --

3 Q -- their conclusion. Well, I'll read it again.
4 Beginning at Paragraph 110, "We agree with Ameritech that
5 'provide' is commonly understood to mean both furnish and
6 make available." Do you see that language?

7 A Yes.

8 Q Now in the Ameritech case, Ameritech did not have
9 an SGAT that had been approved by the State of Michigan,
10 did it?

11 A I don't know.

12 Q Okay. Well, let me ask you, in the discussion
13 that appears here, would you agree with me that the FCC
14 does not address the question of whether an SGAT that has
15 been approved by a state constitutes a concrete and
16 specific legal obligation to furnish the item upon request?

17 A No, I do not agree with that statement. I
18 believe that they did address it and rejected it.

19 Q And you base that on what?

20 A Paragraph 114, I believe.

21 Q Read me the language that you're relying on.

22 A Somewhere earlier in here they make the comment
23 that they agree with the Department of Justice that --
24 Okay, on Paragraph 110, the FCC -- and it's about four
25 sentences in. The FCC says, "Like the Department of

1 Justice, we emphasize that the mere fact that a BOC has
2 'offered' to provide checklist items will not suffice for a
3 BOC petitioning for entry under Track A to establish
4 checklist compliance."

5 So it seemed to me here they were saying offering
6 isn't enough, and then in Paragraph 114, in the middle
7 again, they make the statement that, "We think it is clear
8 that congress used the term 'provide' as a means of
9 referencing those instances in which a BOC furnishes or
10 makes interconnection and access available pursuant to a
11 state-approved interconnection agreement and the phrase
12 'generally offer' as a means of referencing those instances
13 in which a BOC makes interconnection and access available
14 pursuant to a statement of generally available terms and
15 conditions."

16 And I read those to mean that the Commission was
17 drawing a distinction between "provide" and "offer" and was
18 associating "offer" with SGATs and was rejecting SGATs as a
19 means to satisfy the requirement in Track A that an item be
20 provided.

21 Q Okay. In the actual language here though, when
22 it talks about an offer, it doesn't talk about an SGAT,
23 does it?

24 A In Paragraph 110, it does not use the SGAT word.

25 Q Okay. And I think you told me previously that

1 you don't know whether Ameritech had a state-approved SGAT,
2 correct?

3 A That's correct.

4 Q Would you accept subject to check that they did
5 not?

6 A All right.

7 Q Now if that's true, then this language can't be
8 applying to a state-approved SGAT, can it?

9 A That doesn't follow to me, no.

10 Q Okay. So to you they were opining about a
11 state-approved SGAT but rather than talking about a
12 state-approved SGAT, they just used the word "offer?"

13 A That's how I read it, yes.

14 Q Okay. And you read it that way without having
15 any knowledge as to whether or not an SGAT had actually
16 been approved?

17 A When I read this, that doesn't appear to me to be
18 relevant.

19 Q So the question of whether a state-approved SGAT
20 was before the Commission to you is not relevant to trying
21 to determine the standard that they are setting here in
22 specific reference to Ameritech's application?

23 A That's correct. I read these to be addressing
24 the distinction between "offer" and "provide," and it
25 appeared to me that the Commission established that

1 "provide" was associated with interconnection agreements
2 and Track A; "offer" was associated with SGATs.

3 Q And I just want to be clear on the first part of
4 what you said. You reached that conclusion that the
5 language applied to state-approved SGATs without knowing
6 whether there was even a state-approved SGAT before the
7 Commission; is that correct?

8 MS. KAUFMAN: Chairman Johnson, I think we have
9 had this question now at least four or five times, and
10 Mr. Gillan has answered it several times. I don't object
11 to him answering it again, but I think we have been over
12 this several times.

13 CHAIRMAN JOHNSON: Mr. Carver.

14 MR. CARVER: Quite frankly, I'm having some
15 difficulty figuring out what Mr. Gillan has answered and
16 what he hasn't because I ask him a question, and he sort of
17 answers and then elaborates for a while, and so what I'm
18 doing from time to time is trying to go back and make sure
19 that we are really clear on what I asked him to begin with;
20 and in this instance I'm just trying to clarify that this
21 is, in fact, his position.

22 CHAIRMAN JOHNSON: I'll allow you to try it one
23 more time.

24 MR. CARVER: Okay. Thank you.

25 BY MR. CARVER:

1 Q And I just want to -- again, Mr. Gillan, I just
2 want to make sure that you answered the question as I
3 believe you did. You said that you assumed this portion of
4 the agreement referred to a state-approved SGAT but you
5 don't know whether Ameritech had a state-approved SGAT as
6 part of their application, correct?

7 A No. I didn't assume that this applied to a
8 state-approved SGAT. I said that I read this to be the FCC
9 contrasting the word "provide" with the word "offer" and
10 that they concluded that -- and they associated the word
11 "offer" with SGATs. That's all I read into this, and
12 that's all -- and that's I think all that can be read out
13 of it.

14 Q Well, then to go back to an earlier question,
15 would you agree with me that they did not specifically
16 address here the issue of whether a state-approved SGAT
17 constitutes a concrete and legally binding offer to make
18 particular items available?

19 A No, Mr. Carver. Assuming I have the tense of
20 your question correct, I believe that the Commission
21 addressed that issue and that they answered it in this
22 section.

23 Q Okay. Well, then we are going to have to
24 disagree and I'll move on.

25 On page 28 of your annotated testimony, you

1 provide a cite to Paragraph 138 of the order for the
2 proposition that the most probative evidence that OSS
3 functions are operationally ready is actual commercial
4 usage; is that correct?

5 A That's what the FCC said, yes.

6 Q Please read -- well, let me ask you, first of
7 all, can you find that in Paragraph 138 in your copy of the
8 order, that actual language?

9 A "We agree with the Department of Justice that the
10 most probative evidence that OSS functions are
11 operationally ready is actual commercial usage."

12 Q Now please read the next sentence.

13 A "Carrier-to-carrier testing, independent
14 third-party testing and internal testing also can provide
15 valuable evidence pertaining to operational readiness but
16 are less reliable indicators of actual performance than
17 commercial usage."

18 Q And then it goes on in the next sentence to say,
19 does it not, that we recognize that although a BOC has a
20 duty to provide items on the checklist to competing
21 carriers, this duty does not include the duty to ensure
22 that competing carriers are currently using each and every
23 OSS function; is that correct?

24 A Yes.

25 Q Now rather than reading the rest of the

1 paragraph, let me see if I can paraphrase it and if you'll
2 agree with my paraphrasing. If not, we'll go back and read
3 it. But doesn't it basically say that if the BOC can show
4 that competing carriers are not using OSS because of the
5 business plans of these competing carriers, then testing,
6 including internal testing, can be used to show commercial
7 readiness, rather than actual usage? Is that a fair
8 summary of what it says?

9 A I think it's a fair paraphrase, yes.

10 Q Now does the Ameritech order provide any guidance
11 that you could cite to as to how a BOC would show that new
12 entrants' business decisions are driving their behavior in
13 the local market?

14 A I'm sorry, Mr. Carver. That question I didn't
15 follow.

16 Q Okay. In the one we just talked about, the
17 language mentioned the fact that if competing carriers are
18 not using OSS systems because of their business plans, then
19 testing can be used to show commercial readiness.

20 A That was your paraphrase yes.

21 Q Yes, it was. Now my question is does the
22 Ameritech order provide any guidance that you can cite us
23 to as to how a BOC would go about showing that new
24 entrants' business decisions are driving their behavior to
25 enter or not enter the local market?

1 A I don't recall seeing anything in that
2 framework. There was some guidance to the reverse, that if
3 carriers are trying to buy something, then -- and in this
4 context, particularly the platform, then the fact that
5 there wasn't, you know, that mere -- there is a comment
6 that mere internal testing wouldn't suffice there because
7 we had the opposite situation of carriers wanting to obtain
8 something, but I don't recall anything that referred to its
9 reverse.

10 Q Okay. Well, in your opinion, what should be the
11 standard? I mean should the ALEC have to admit that they
12 are not trying to enter the market, or would their behavior
13 be sufficient to serve as evidence of their intentions?

14 A I haven't put any thought into that issue
15 because, in my experience, the problem isn't one of someone
16 doesn't want to buy an item. I've only been involved in
17 all the instances where there is an unmet demand. I don't
18 really know how prevalent the other situation is as to --
19 or the standards that you would apply in that circumstance.

20 Q So you have no opinion as to what would be an
21 indication that someone is not trying to enter the market;
22 is that correct?

23 A I've not confronted that situation anywhere.

24 Q And without actually confronting it, you are
25 unable to form an opinion?

1 A My time has been spent forming opinions about how
2 people are trying to get in the market.

3 Q I don't think I've ever had a situation where you
4 haven't been able to form an opinion. This is amazing. I
5 have to admit, I didn't anticipate this. Let me continue
6 nonetheless.

7 You are testifying on behalf FCCA; is that
8 correct?

9 A Yes.

10 Q Do you know what their business plans are?

11 A They are an association. Their business plan is
12 to have members.

13 Q That's a pretty good one. Do you know who their
14 members are?

15 A AT&T, MCI, WorldCom, Telecommunications Resellers
16 Association.

17 Q How many members are there?

18 A I don't know that I -- I would have to check the
19 current number. It's growing.

20 Q And do you know any of their business plans for
21 the local market?

22 A In general terms I know some -- I mean not the
23 specifics of them, but certainly I'm aware overall of
24 industry business plans and industry efforts.

25 Q But in particular instances, let's say, for

1 example, AT&T, do you know when they plan to enter the
2 Florida market and in what manner?

3 A Not the specifics.

4 Q And you don't know when they plan to enter the
5 market either, do you?

6 A I don't know the specifics of their individual
7 business plans. I know the problems that they and others
8 in the industry are experiencing but not their specific
9 business intentions.

10 Q And you don't know the business plans of MCI
11 either, do you?

12 A Not their specific business intentions.

13 Q And you don't know the specific business --
14 Well, let me just cut to the chase here. You don't know
15 the business plans specifically of any of the people on
16 whose behalf you are testifying or any of the members of
17 FCCA; is that correct?

18 A Not the specific individual plans of the members.

19 Q Have you inquired of any of them as to their
20 business plans?

21 A Only in general terms as to what are -- you know,
22 let me back up for a minute. I am very aware of the basic
23 strategies available to entrants to offer services in local
24 markets. I am, in fact, a consultant that is hired by
25 these businesses to advise them in that area. Now what

1 they do with this information in formulating their own
2 specific business plans, I'm not aware of, partially
3 because I am an industry consultant; and so members, you
4 know, individual companies like to keep that information
5 proprietary and confidential to themselves.

6 Q So then basically the way the process works is
7 they ask you for your opinion, you give it to them, you
8 don't ask them what their business plans are, you don't
9 know whether or not they take your advice, you don't know
10 what they are going to do; is that petty much it?

11 A No, I don't believe that's what I said.

12 Q Okay. What did I miss?

13 A Well, without going into detail as to how my
14 business operates, I am frequently brought into advise
15 consultants on what is the current state of knowledge in
16 the industry about how these mechanisms work, where are
17 they available, what are the fundamental economics. I
18 have discussions with them back and forth, so we have
19 detailed -- we have discussions that go into a certain
20 level of depth. Now when you get to the point of we -- you
21 know, a particular company intends to install a switch in a
22 particular city to roll out a particular product on a
23 particular day, that's not the level at which my services
24 are used.

25 Q So as a result of that, I guess the level at

1 which you counsel them, you don't know any details about
2 the specific business plans of anyone at FCCA or any of the
3 other parties sponsoring your testimony?

4 MS. KAUFMAN: Chairman Johnson, again, this has
5 to be the third or fourth time this question has been asked
6 and answered, and I'm going to object so we can move on.

7 CHAIRMAN JOHNSON: I'm going too sustain that
8 objection. If you could move on. It appeared clear to me
9 that he has answered it a couple of times too. Often times
10 he has been rather confusing, but that one didn't seem to
11 be one of those instances.

12 MR. CARVER: Well, I missed it. What was his
13 answer?

14 CHAIRMAN JOHNSON: I can't testify for him.

15 MR. CARVER: Okay.

16 CHAIRMAN JOHNSON: What don't you understand?

17 MR. CARVER: I want to -- well, he gave his
18 testimony, and it was a very long answer, and I tried to
19 come back and see if I could summarize it, and he said, no,
20 I had it wrong. So I'm just trying to make sure I
21 understand, and the question, which I don't think he has
22 really answered directly yet, is yes or no, does he know of
23 the specific business plans of any of these people?

24 CHAIRMAN JOHNSON: Mr. Gillan, did you -- In
25 one word.

1 WITNESS GILLAN: I thought I've said no three
2 times.

3 CHAIRMAN JOHNSON: I thought you did too.

4 MR. CARVER: Okay. I'm sorry. You know, maybe I
5 missed it.

6 CHAIRMAN JOHNSON: Okay.

7 MR. CARVER: Okay. So the answer is no, and I'll
8 ask my next question.

9 BY MR. CARVER:

10 Q So if you don't know their specific business
11 plans, then you personally don't know to what extent the
12 current business plans of any of these companies may be
13 affecting the timing of their entry into the local market;
14 is that correct?

15 A Not the level of timing, no.

16 Q Okay. Now Mr. Gillan, would you acknowledge that
17 there are some conflicts between the Ameritech order and
18 the eighth circuit's decision?

19 A No.

20 Q Okay. The eighth circuit determined, did it not,
21 that intrastate pricing was something that was solely
22 within the jurisdiction of state commissions; isn't that
23 correct?

24 A That the role of setting those prices was solely
25 in the jurisdiction of state commissions, yes.

1 Q And to the extent that the FCC had set TELRIC
2 pricing as the basis, the eighth circuit reached the
3 conclusion that the FCC did not have the jurisdiction to do
4 this; isn't that correct?

5 A That the FCC -- correct, that's my understanding,
6 that they couldn't establish for the state that that was
7 the standard required by the Act.

8 Q Now in the Ameritech rules, doesn't the FCC
9 basically say that even though the eighth circuit reached
10 that decision they are nevertheless going to require TELRIC
11 pricing of any --

12 A Well --

13 Q I'm not through with my question.

14 -- before they approve the 271 application of a
15 company?

16 A Yes.

17 Q Wouldn't you agree that that undermines the
18 states' authority that the eighth circuit has specifically
19 said that they have?

20 A No. There is a confusion here that I personally
21 can't reconcile, that the eighth circuit said that the
22 states would establish prices in the context of
23 arbitrations, yet the Act certainly says that the FCC's
24 role under 271 is to render its own judgment. So it seems
25 to me at least legally plausible, although I'll admit in

1 the real world it doesn't seem to me clear how this works
2 out, that the FCC has independent authority under 271 to
3 apply its standard in the same way that the states have
4 independent authority in 252 to apply their standard.
5 Somehow, obviously, the prices have to end up -- there is
6 only one standard in the Act, and I don't know how to, you
7 know, how to resolve this for the Commission, but I don't
8 believe that the FCC's finding conflicts with the eighth
9 circuit.

10 COMMISSIONER CLARK: Mr. Gillan, let me ask you
11 about that. If you don't know how it's going to exist in
12 the real world, doesn't that sound like a conflict to you?
13 I mean they are either going to follow our pricing order
14 and never get into the interexchange market, or they won't
15 follow our pricing order in order to get into the
16 interexchange market.

17 MR. GILLAN: Yes, there is a conflict. I
18 understood his question to be did the FCC create that
19 conflict? I don't see that the FCC created it as much as
20 the eighth circuit did. I do not understand -- Let me
21 back up just one level.

22 COMMISSIONER CLARK: I'm sure --

23 MR. GILLAN: I'm not a lawyer, but my
24 understanding of the law is that there is one pricing
25 standard in the Act that, therefore, has to mean the same

1 thing in every state, that it doesn't mean one thing in
2 Florida and another -- that a federal act wouldn't have one
3 meaning in Florida and a completely different meaning in
4 New York.

5 Now if that's true, and that's a conclusion that
6 I'm accepting from other, from my understanding of the law,
7 and I could be mistaken on it, but if that's true, that the
8 federal law has to have a single meaning in every state,
9 then the question becomes, what process did the law have to
10 arrive at that single meaning? Is it the FCC's rulemaking
11 authority, either exercised independently or exercised in
12 conjunction with these 271 applications, or is it a variety
13 of district court and appellate court reviews? Both of
14 these appear to me to be imperfect, but if you start with
15 the supposition that the Act means one thing, I don't know
16 how else -- I don't know how this gets resolved. That's my
17 only concern.

18 COMMISSIONER CLARK: Then it's your testimony
19 that the eighth circuit was wrong?

20 MR. GILLAN: They were either wrong, or they
21 somehow believed that 50 state commissions acting
22 completely independently would arrive at a consensus
23 understanding of what the cost standard meant in the Act.

24 MR. CARVER: I have no further questions. Thank
25 you, Mr. Gillan.

1 CHAIRMAN JOHNSON: Staff.

2 CROSS EXAMINATION

3 BY MS. CULPEPPER:

4 Q Good afternoon, Mr. Gillan. I've got just a few
5 questions for you, most of which are regarding your
6 understanding of the Act's requirements for the level of
7 competition and regarding the Ameritech order.

8 I'll begin by referring you to your direct
9 testimony at page 8, and what I'm looking at is Table 1,
10 which is page 8, and it's labeled, "Status of local entry
11 in BellSouth's territory as of June 1, 1997," and just as a
12 cross reference, I believe in your Exhibit 62 the page
13 number is page 6.

14 You state in your testimony that this table
15 summarizes the status of local competition in BellSouth's
16 territory and demonstrates how premature its claim is that
17 it complies with Section 271. Now I realize you've already
18 covered this a bit, but just to make sure that I
19 understand, so you believe that the Act does require a
20 certain threshold level of competition to enable BellSouth
21 to enter the long distance market; am I correct?

22 A Yes and no, and the reason I'm going to answer it
23 that way is because perhaps this wasn't worded as well as
24 it should have been. I believe that in order for BellSouth
25 to make, to demonstrate compliance with the checklist there

1 has to be enough commercial activity occurring in these
2 operational systems in the provision of these network
3 elements to be able to show that they can handle
4 competition. That I do believe is implicit in the Act, and
5 that's what this table really was intended to go to; that
6 there just isn't enough happening there to be able to test
7 the compliance of BellSouth.

8 I recognize and understand that the Act doesn't
9 require that BellSouth lose a specific level of market
10 share in order to comply with the checklist, and my point
11 didn't go to that second question. So in terms of showing
12 compliance with the checklist, I think they need to have
13 commercial activity of some reasonable volume to show that
14 their systems work, but that is not the same as saying that
15 the Act contained an explicit matrix that they had to
16 satisfy in order to satisfy the checklist.

17 Q Well, then make maybe you can explain this for
18 me. You say that you believe that BellSouth needs to
19 demonstrate some level of market activity is occurring.
20 What do you base that belief on?

21 A That that's how you -- in my view that's how you
22 show that the checklist has been fully implemented, that
23 it's impossible to make that demonstration by claiming you
24 can do something. You have to be able to show you can do
25 it, and that means that you would end up having some

1 commercial activity; that's how I arrive at that
2 conclusion.

3 Q But in arriving at that conclusion, how did you
4 get there?

5 A Well, I get there with the logic that when
6 BellSouth obtains its 271 authority, all the things they
7 need we know exist and work and, therefore, the only way
8 that this will be a fair process is if we have some
9 confidence that all the things that the entrants need
10 really are there and will work and that there is no way to
11 conclude that something actually can work until you see it
12 actually working. I mean it's really that simple a logic
13 that took me to that conclusion. We know the things they
14 need there and work because they have been working for ten
15 years. We need to see them working so that they are more
16 than a theory for local competition.

17 Q So you're not really basing your conclusion on
18 any specific provision in the Act or the FCC rules or the
19 Ameritech order?

20 A Well, I think that the Act says that when it uses
21 the word "fully implemented," and I think the FCC's
22 Ameritech order has that theme throughout it. As Mr.
23 Carver pointed out, it recognizes that there may be some
24 checklist items for which there isn't sufficient demand to
25 apply that test; but in those instances where we know

1 people want to buy things, things like interconnection
2 trunks and loops and ports and loop/port combinations, the
3 only way to know that those things are available is to see
4 them in action operating and working.

5 Q Then if I could, I would like to direct your
6 attention to Paragraph 76 through 78 of the Ameritech
7 order. So you would not agree then with the FCC's
8 statement here that competing -- within that phrase,
9 unaffiliated competing provider, as found in Section
10 271(c)(1)(A) of the Act does not require any specified
11 level of geographic penetration or market share for a Track
12 A determination; am I correct?

13 A I would disagree to the extent that you would
14 have enough penetration to be able to make a finding that
15 the tools were there and operational.

16 COMMISSIONER CLARK: Mr. Gillan, then you would
17 disagree with Mr. Varner that it just takes one customer --
18 providing it to one end user in residential and one in
19 business?

20 MR. GILLAN: That's correct. Commissioner, you
21 know --

22 COMMISSIONER CLARK: That doesn't work though,
23 does it?

24 MR. GILLAN: No, because that things that work
25 for -- I can make almost anything work one time for one

1 thing. It's a completely different animal to be able to
2 make systems that can process hundreds of thousands of
3 orders a day; that's the difference. And the only way to
4 know that a system can really process a whole bunch of
5 orders is to have some orders starting to flow and, you
6 know, to me that's the fundamental difference between
7 making a claim that something is available and having
8 actual documented evidence.

9 BY MS. CULPEPPER:

10 Q Just to follow up on Commissioner Clark's
11 question, how many customers do you think it would take?

12 A There isn't a question -- there isn't an answer
13 to that in terms of how many customers. I really think you
14 have to look instead at how are these systems handling
15 orders at a rapid rate, and I'll just give you one example.
16 Ameritech, and I believe this number is correct, Ameritech
17 went to the FCC and asked for the ability to test its
18 systems to move its long distance customers. It asked to
19 perform that test because they expected 20 thousand a day.
20 Well, if you are designing systems that allow the local
21 telephone company to take long distance customers at 20
22 thousand a day, then there has to be systems that can move
23 local customers that are, you know, on some comparable
24 scale as well, or we know how the game will end when the
25 flag drops.

1 Q I'll refer you now to Paragraph 79 of the
2 Ameritech order. The FCC stated there that it may consider
3 competitive conditions or geographic penetration as part of
4 their inquiry under Section 271(d)(3)(C) which refers to
5 the public-interest test. Earlier you seemed to agree with
6 Mr. Carver that there was no public interest issue in this
7 docket; am I correct?

8 A In the Florida proceeding?

9 Q Yes.

10 A When you say this docket, that's my
11 understanding, that the Commission did not open the docket
12 for that purpose.

13 Q But do you believe that this Commission should
14 nevertheless somehow consider market share and geographic
15 penetration in making a determination on Track A?

16 A Yes.

17 Q And how would you propose the Commission do that?

18 A By collecting the data on the type, the level of
19 competitive activity, but again, primarily for the purpose
20 of looking at the operational systems to see if they are
21 capable of handling reasonable volumes.

22 Q I'll refer you now to Paragraph 82 of the
23 Ameritech order. There the FCC stated that when a BOC
24 relies upon more than one competing provider to satisfy
25 Track A, each such carrier need not provide service to both

1 residential and business customers. This aspect of Track A
2 may be satisfied if multiple carriers collectively serve
3 residential and business customers. Do you agree with
4 this?

5 A I think as an economist it makes sense. Whether
6 that's, in fact, what the law requires, I don't have an
7 opinion. But as an economist, the question should be, can
8 people serve customers, both residence and business, on a
9 basis equal to Bell? It is less relevant as to whether or
10 not some people focus on just residence and some people
11 focus just on business.

12 Q Then in your opinion do you believe that Section
13 271(c)(1)(A) is satisfied if a competing provider provides
14 local service to residential subscribers via resale as long
15 as it provides facilities-based service to business
16 subscribers?

17 A No, I don't believe that resale can -- my own
18 opinion as an economist, service resale shouldn't be used
19 to satisfy the requirements of Track A in either of those
20 regards.

21 Q Do you have any basis for your opinion?

22 A Well, my economic opinion is that service resale
23 does not really place an entrant on a footing comparable to
24 the local telephone company. Only network elements in
25 their own facilities do that, and what you are trying to

1 judge here is whether or not there is more than one --
2 there are multiple carriers both in the market and able to
3 enter the market on the same basis as the incumbent, and
4 service resale doesn't help you address that -- doesn't
5 ever count towards that objective.

6 Q And does your opinion have any additional basis
7 in the Ameritech order or the Act?

8 A It's an economic answer. It doesn't go to what
9 the law requires or whether or not the FCC agreed with it.

10 Q I'd like to refer you now to your rebuttal
11 testimony, to page 10. There you state that BellSouth
12 could not apply for interLATA authority under Track B;
13 however, BellSouth has indicated in prefiled and deposition
14 testimony that it can meet the requirements of Section
15 271(c)(1)(A) through agreements for interconnection and
16 access, and to the extent that these agreements may not
17 address particular checklist items, BellSouth may use its
18 statement to demonstrate the availability of these items.
19 Do you agree with BellSouth?

20 A Do I agree with the part of the question that
21 says that they can meet it with a statement or that they
22 can actually provide these checklist items just because --

23 Q That they can supplement Track A with the
24 statement.

25 A My understanding of the Ameritech order is that

1 the FCC has said you can't supplement Track A with Track B,
2 that you might be able to use other part -- use other
3 interconnection agreements but that once you are in Track A
4 the SGAT is no longer relevant; that's my understanding of
5 the structure that they have adopted.

6 COMMISSIONER CLARK: Mr. Gillan, I want to ask
7 you a question about that. That to me doesn't seem to make
8 sense in this regard. What if for some reason the
9 interconnection agreements you have just don't address one
10 of the elements?

11 MR. GILLAN: Commissioner, I agree with you.

12 COMMISSIONER CLARK: Shouldn't you be able to
13 say, well, they don't address it, but this is how we are
14 going to do it? And I guess I'm not suggesting that you --
15 I'm suggesting that's a way -- You can use the SGAT as a
16 way to say, you know, we have all these agreements, but
17 they don't address it. Here is how we intend to do it. We
18 have the capability of doing it, and there ought to be some
19 judgment call on the part of the FCC that can be done.

20 MR. GILLAN: I think I agree with you. It seems
21 to me that the relevant issue is are you providing the
22 stuff that the people want? And if there are things that
23 people don't want, can you make a good enough demonstration
24 that the only reason people aren't getting it is that they
25 don't want it, not because you are unable to provide it,

1 and whether or not you end up in that world because you
2 used a part of an interconnection agreement that wasn't
3 fully implemented or an SGAT, as an economist doesn't seem
4 to me to make a whole lot of difference.

5 COMMISSIONER CLARK: Okay.

6 MR. GILLAN: Now when I read the order, it seems
7 to me that for some reason as a legal matter they made the
8 separation. I don't actually know why because I go back to
9 pretty much what you laid out. The real goal here is to
10 make sure the tools are there, and that's why, you know, my
11 testimony goes to I think the most important tool not only
12 isn't there but is being withheld from the market and
13 that's why you should be rejecting this, whatever this is;
14 but your point I agree with.

15 COMMISSIONER CLARK: Okay.

16 BY MS. CULPEPPER:

17 Q One more question, Mr. Gillan, and this is just
18 to follow up on some questions Mr. Carver asked you earlier
19 regarding the provision of service through UNEs. I refer
20 you to Paragraph 101 of the Ameritech order. The FCC
21 states there that thus for the foregoing reasons we
22 interpret the phrase "own telephone exchange service
23 facilities" in Section 271(c)(1)(A) to include unbundled
24 network elements that a competing provider has obtained
25 from a BOC. From your responses to Mr. Carver, I assume

1 that you would disagree with that determination; am I
2 correct?

3 A No. The point I was trying to make with
4 Mr. Carver is that if you actually make network elements
5 available on a truly nondiscriminatory basis so that
6 entrants have the same ability to use the network to
7 provide services as BellSouth has to use the network to
8 provide services, then in my opinion -- and I'll warn you,
9 it's not necessarily the opinion of my clients -- it's
10 reasonable to view those as your own facilities for
11 purposes of Track A. I will drop one caveat to that,
12 however, if there is no facilities construction or no
13 facilities deployment going on, then I would be concerned,
14 and I would want to find out why is that not happening.
15 But everywhere I'm familiar with, people are out there
16 putting in networks as fast as people will loan them the
17 money, and that doesn't seem to be the constraint.

18 Q Thank you, Mr. Gillan.

19 MS. CULPEPPER: That's all of staff's questions.

20 CHAIRMAN JOHNSON: Commissioners, any questions?

21 COMMISSIONER CLARK: I just want to ask one
22 perhaps. In response to Mr. Carver, you indicated you
23 focus on three areas that you don't think are being met on
24 the 14-point checklist.

25 MR. GILLAN: Correct, those are the three areas

1 that I'm most familiar with.

2 COMMISSIONER CLARK: And you don't draw a
3 conclusion that the others are met or not, but it's up to
4 BellSouth to prove that?

5 MR. GILLAN: That's correct.

6 COMMISSIONER CLARK: I think somewhere else in
7 your testimony you suggest that -- let's assume we conclude
8 that they don't meet the checklist and we identify where
9 they don't meet it, and I think you say that they
10 shouldn't -- next time they come in and say, we think we
11 meet it, they should have to prove their case all over
12 again and it shouldn't be limited to those things we
13 identified as not being met. Have I read your testimony
14 wrong?

15 MR. GILLAN: Let me give you the context that I
16 wrote that in, and maybe your question -- the question
17 would be clearer to you. In Georgia BellSouth went in with
18 an SGAT filing, I guess is what it was, and the commission
19 issued a finding about where it was deficient. And then in
20 the follow-up proceeding they said, hey, you know, if
21 you've got new issues, you can't raise them because the
22 only things that are wrong are the things we identified way
23 back then.

24 The reality is that -- and I'll take network
25 element combinations as an example. I can't sit here today

1 and tell you all the reasons why people will be having
2 problems with this six months from now. BellSouth is
3 refusing to provision it. Eventually, I'm convinced, that
4 all of these -- they will be given enough direction that
5 they will start down the path of implementing it; and when
6 they do that, we are going to discover new problems. Some
7 of them will be intentional, many of them won't be. My
8 point really is, whatever you tell them this time,
9 recognize that the next one of these proceedings you have,
10 you are going to hear new problems because this truly is,
11 you know, peeling back an onion and you have -- I was
12 concerned after watching the Georgia experience that the
13 commission not cause anyone to believe that the next
14 hearing somehow is going to be limited to only those issues
15 that we know about today. That was the point of that
16 portion of my testimony because I thought it created
17 problems in Georgia where Bell's response to somebody was,
18 well, you didn't raise this then, so it's not fair to bring
19 it up now. The next round of applications we have to be
20 able to address all the issues that are relevant and live
21 and known then.

22 COMMISSIONER CLARK: So they have to prove all
23 over again they meet all the elements of the checklist?
24 It's all on the table every time they come in?

25 MR. GILLAN: I think so, both for the purpose I

1 just explained, and I also think that the FCC is really
2 looking for the state to be the only -- to be the primary
3 gatherer of fact. And for them to have a current record
4 you may have to go through some of it. I don't think
5 you'll end up in a position where you relitigate things.
6 As you move down this slope, things will fall to the back
7 as they get resolved, but I just don't think that you can
8 limit the things you are going to look at in the future.

9 COMMISSIONER CLARK: In the course of business,
10 things will legitimately be resolved and they won't be made
11 issues -- they can't legitimately be made issues by
12 opponents?

13 MR. GILLAN: I'm not sure I understand the
14 question.

15 COMMISSIONER CLARK: Well, what you are
16 suggesting is that as things go along and systems get
17 implemented that people who might oppose it will have a
18 difficult time proving their case because the empirical
19 evidence will demonstrate otherwise?

20 MR. GILLAN: I mean hopefully things will get
21 better, but I also believe that the next time you have this
22 hearing -- and obviously I believe there will be a next
23 time -- you'll have a different set of issues. You'll have
24 new issues in addition to wondering whether -- or
25 addressing whether the things you identified in this

1 hearing have actually been resolved.

2 COMMISSIONER CLARK: Okay.

3 CHAIRMAN JOHNSON: Any other questions,
4 Commissioners?

5 (No response)

6 CHAIRMAN JOHNSON: Redirect.

7 REDIRECT EXAMINATION

8 BY MS. KAUFMAN:

9 Q Mr. Gillan, I'm going to work backwards.

10 CHAIRMAN JOHNSON: Ms. Kaufman, do you know how
11 much you'll have?

12 MS. KAUFMAN: Maybe ten minutes.

13 CHAIRMAN JOHNSON: Okay.

14 BY MS. KAUFMAN:

15 Q You just had a discussion with Commissioner
16 Clark, and Mr. Carver asked you some questions as well
17 about using an SGAT to supplement the requirements under
18 Track A. Do you recall that?

19 A Yes.

20 Q Are you aware, Mr. Gillan, that in this
21 proceeding in response to MCI requests for admissions that
22 BellSouth has admitted that each of the items in the
23 checklist is addressed in at least one of the agreements
24 that the Commission has approved, one of the
25 interconnection agreements?

1 A No, I wasn't.

2 Q Well, if you would assume -- Would you assume
3 with me that that is the case, that they have admitted
4 that?

5 A Yes.

6 Q And if that's the case, this issue of whether we
7 have to supplement with the SGAT would not really be an
8 issue in this proceeding, would it?

9 A No, it would seem to be moot.

10 Q You had a lengthy exchange with Mr. Carver about
11 your knowledge about the business plans of different
12 companies that you consult with. Do you recall that?

13 A Yes.

14 Q And he also asked you, I think, how you would go
15 about proving that companies had decided not to enter the
16 local market, what kind of proof you would require. Do you
17 recall that?

18 A Yes.

19 Q In your experience in Florida working with these
20 companies, are we in a situation where in your view people
21 are not trying to enter the local market?

22 A No, everywhere I've been everybody is trying to
23 enter the local market.

24 Q We've had a lot of questions and discussion about
25 the Ameritech decision. Can you just tell us what emphasis

1 or in what regard you think the Commission should hold the
2 Ameritech decision? How should they use it as they
3 deliberate these proceedings?

4 A I guess the word I'd use is a touchstone. I mean
5 the role, the job, under the Act, was compare BellSouth's
6 compliance with federal rules; and the Ameritech decision
7 seems to me to be the best or the only document out there
8 that really goes through the process of explaining what
9 these rules mean and how the FCC intends to apply the
10 standards, and then that gives you insight into what kind
11 of facts the FCC needs to have to apply those rules.

12 Q In the beginning of Mr. Carver's cross
13 examination, he went over a hypothetical with you where he
14 said, I believe, that the new entrant is purchasing all the
15 UNES that it needs from BellSouth. Do you recall that?

16 A Yes.

17 Q And as he was describing that situation to you,
18 he used the phrase that the new competitor would have to
19 rebundle the elements. Do you remember that?

20 A Yes.

21 Q Can you tell us what significance, if any, the
22 term "rebundle" has?

23 A Yes, and this goes to the difficulty I had with
24 the hypothetical, particularly after the eighth circuit
25 decision. The word "rebundle" almost has no meaning

1 because an entrant has the right to buy things that are
2 already combined, in which case BellSouth isn't permitted
3 to break them apart, or the entrant has the right to buy
4 things individually; and when they buy them individually,
5 they bear the obligation to put them together themselves.

6 Now the eighth circuit made clear that they have
7 the right to access the Bell network to put them together.
8 There is no such -- there is no scenario where BellSouth is
9 permitted to break apart and then put back together, and
10 the word rebundling always, it seems in my ear, implies
11 that it's associated with an act of breaking and replacing
12 together.

13 Q I think at the beginning of Mr. Carver's
14 questions to you he asked you if you were aware, if you had
15 any information about entrants that had purchased unbundle
16 switching from BellSouth, and I think your answer was you
17 didn't have any information but it was your view that their
18 offering of that item was not checklist compliant; is that
19 right?

20 A That's correct.

21 Q Can you explain why it is not checklist
22 compliant?

23 A Well, the first reason is the fact that the
24 unbundled switch element establishes the person who
25 purchases it as the access provider, and as we've heard

1 earlier, if Bell does have the ability to bill it, they
2 only recently developed or discovered it, and they have
3 never used it. We don't have any information whatsoever
4 that they do have the capability to provide a carrier the
5 information they need to bill access. I know carriers have
6 been seeking that information, and they certainly have not
7 been informed that they will be getting it. In the other
8 regions where companies are further along in introducing
9 this network element, there are problems associated with
10 making sure you can collect the usage data and give it to
11 the entrant in a way that the entrant knows who to bill
12 access charges; and so BellSouth's testimony that they
13 don't, either have had none of those problems or have
14 solved them takes me -- certainly isn't consistent with
15 what the testimony had been. But nowhere are these
16 elements being provisioned in a way that gives that entrant
17 that billing information, and that is a key requirement of
18 the network element under the Act.

19 Q Mr. Carver also asked you if you had reviewed
20 some of the approximately 50 interconnection agreements
21 that have been entered into by BellSouth in order to
22 formulate your opinions and your testimony, and I think
23 your response was that you had not reviewed all the
24 agreements but that it was not necessary for you to do so
25 to come to your conclusions. Can you tell us why that

1 would be?

2 A Well, most of the agreements were following a
3 standard form, first of all. Second of all, the dispute
4 over this access information has been part of this
5 proceeding and other proceedings. Their own testimony --
6 up until this latest round, Mr. Varner was testifying in
7 his testimony that we weren't entitled to the access
8 revenue because they were providing the access service. So
9 it was the basis of their testimony and the positions in
10 other proceedings, and my experience in dealing with
11 carriers who are trying to order it, get it and be able to
12 bill access charges.

13 Q I think during your summary Commissioner Deason
14 asked you some questions in regard to how to weigh -- when
15 to let Bell into the long distance business. Do you recall
16 that?

17 A Yes.

18 Q And I think he asked you some questions about the
19 need for all the competitors to start at the same time when
20 the starting gun goes off. Do you recall that?

21 A Yes.

22 Q Can you tell us, Mr. Gillan, how AT&T was
23 regulated in the 1994 time frame?

24 A You must mean 1984 time frame.

25 Q '84. What did I say? Yes, I do mean 1984.

1 A They were heavily regulated at both the federal
2 and state level in most states. I think Virginia was an
3 exception.

4 Q At that time were certain regulatory requirements
5 imposed by this Commission on AT&T that were not imposed on
6 its competitors?

7 A Yes.

8 Q And was AT&T required to pay higher levels of
9 access charges than its competitors?

10 A Yes.

11 Q Did some of these restrictions remain in place
12 until AT&T's market share dropped significantly?

13 A Some of them did, yes.

14 Q Did that what we might call asymmetrical
15 regulation of AT&T as a dominant provider ultimately result
16 in the development of robust competition in the
17 interexchange carrier market?

18 A Robust competition resulted. I don't know if
19 that was the cause.

20 Q Do you think that that competition would have
21 developed if AT&T had not been subjected to these
22 requirements in the early years of interexchange
23 competition?

24 A Your question encompasses a wide range of things.
25 Some of them were significant, and some of them were not.

1 Q I guess the point is, in the early days of
2 interexchange competition, the dominant carrier was more
3 heavily regulated than the other competitors; is that
4 correct?

5 A Yes.

6 Q And do you think that contributed to the
7 development of the level of competition that we see today
8 in the interexchange carrier market?

9 A Some of them, some of them didn't.

10 Q Do you have any idea what percentage of the local
11 exchange market Bell has today?

12 A It would have to be close to 99 percent.

13 Q Do you see any correlation or relationship
14 between the regulation of AT&T in that early period of
15 interexchange competition and the interLATA restrictions
16 that are imposed on BellSouth today?

17 A I'm sorry, I don't understand the question.

18 Q Okay. Do you see any comparison between the
19 regulation of AT&T during the early days of the
20 interexchange market and the interLATA restrictions that
21 are imposed on BellSouth today?

22 A It's always embarrassing when you don't
23 understand a redirect question, but I still don't
24 understand it.

25 Q Okay. That's all I have, Mr. Gillan.

1 MS. KAUFMAN: Thank you.

2 CHAIRMAN JOHNSON: Exhibits.

3 MS. KAUFMAN: The Association would move 60, 61
4 and 62.

5 MS. CULPEPPER: Staff moves 63.

6 CHAIRMAN JOHNSON: Show them all admitted without
7 objection.

8 Mr. Gillan, thank you very much. You're excused.

9 MS. WILSON: Chairman Johnson, I've had a chance
10 to review Late-filed Exhibit 35 and would move that into
11 the record.

12 CHAIRMAN JOHNSON: We'll show 35 then admitted
13 without objection. We also had 38, 39 and 40, the
14 late-fileds.

15 MS. BARONE: Yes, I would like to move 38 and 39
16 if there are no objections.

17 CHAIRMAN JOHNSON: Show those two admitted
18 without objection. And 40 was --

19 MS. WHITE: Madam Chairman, we are still working
20 on obtaining an answer to Number 40. Hopefully by Monday.

21 CHAIRMAN JOHNSON: Okay. Mr. Melson, any
22 suggestions since you were the one that said we would be
23 finished by four?

24 MR. MELSON: I did consult with Ms. White, and we
25 both determined that our chances of winning this pool are

1 increasingly unlikely. Their best estimate is 15 minutes
2 of cross if they get fairly direct answers. Having had
3 experience throughout this hearing, I would expect we are
4 looking at least 30 minutes. If that is not possible this
5 afternoon -- I recognize it may not be -- Mr. Wood is not
6 available Monday. He is not available either Tuesday or
7 Wednesday, but he doesn't know which. He is going to be on
8 the witness stand in a cost proceeding in Louisiana, and he
9 is the lead-off witness.

10 CHAIRMAN JOHNSON: Okay. Let's go back to how
11 much time it will take today. You're saying 30 minutes.

12 MR. RANKIN: Probably about 15 minutes of cross
13 from BellSouth.

14 CHAIRMAN JOHNSON: And Staff?

15 MR. PELLEGRINI: Staff has no questions.

16 CHAIRMAN JOHNSON: Staff has no questions. And
17 how long is his presentation?

18 MR. MELSON: How long is your summary?

19 WITNESS WOOD: Whatever the chairman tells me.

20 MR. MELSON: Five minutes.

21 CHAIRMAN JOHNSON: Okay. Let's give it a try.

22 MR. MELSON: Thank you. MCI calls Mr. Wood.

23 Thank you. Mr. Wood has not been sworn.

24 CHAIRMAN JOHNSON: Mr. Wood, if you could raise
25 your right hand.

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Whereupon,

DON J. WOOD

was called as a witness on behalf of MCI and, having been
duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MELSON:

Q Mr. Wood, would you state your name and business
address for the record, please?

A Yes, my name is Don J. Wood. My business address
is 914 Stream Valley Trail, Alpharetta,
A-l-p-h-a-r-e-t-t-a, Georgia.

Q On whose behalf are you testifying in this
proceeding?

A AT&T of the Southern States Inc. and MCI
Telecommunications.

Q Have you -- And you probably need to get that
microphone about a half inch closer, if you can.

A I'm sorry.

Q Have you prefiled direct testimony in this docket
consisting of 36 pages?

A Yes, sir, I have.

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

1 A No, sir, I do not.

2 Q And if I were to ask you the same questions
3 today, would your answers be the same?

4 A Yes, they would.

5 MR. MELSON: Madam Chairman, I'd ask that
6 Mr. Wood's prefiled direct testimony be inserted in the
7 record as though read.

8 CHAIRMAN JOHNSON: It will be so inserted.

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1 **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

2 **DIRECT TESTIMONY OF DON J. WOOD**

3 **ON BEHALF OF AT&T AND MCI**

4 **DOCKET NO. 960786-TL**

5 **July 17, 1997**

6
7 Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

8 A. My name is Don J. Wood, and my business address is 914 Stream
9 Valley Trail, Alpharetta, Georgia 30202. I provide consulting services
10 to the ratepayers and regulators of telecommunications utilities.

11
12 Q. PLEASE DESCRIBE YOUR BACKGROUND AND EXPERIENCE.

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

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

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

9
10 Q. HAVE YOU PREVIOUSLY PRESENTED TESTIMONY BEFORE
11 STATE REGULATORY COMMISSIONS?

12 A. Yes. I have testified on telecommunications issues before the regulatory
13 commissions of twenty-five states, the District of Columbia, state
14 courts, and have presented comments to the FCC. A listing of my
15 previous testimony is attached as Exhibit ___ (DJW-1). I have
16 presented testimony to this Commission on costing and pricing issues on
17 a number of occasions.

18
19 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

20 A. I have been asked by AT&T Communications of the Southern States,
21 Inc. ("AT&T") and MCI Telecommunications Corporation ("MCI") to
22 respond to BellSouth Telecommunications, Inc.'s ("BellSouth's")

1 application to provide in-region interLATA services pursuant to the
2 provisions of section 271 of the Telecommunications Act of 1996
3 ("Act"). Specifically, I will explain why the requirements for
4 compliance with item (ii) of the competitive checklist described in
5 section 271 (c) (2) (B) of the Act has not been met (this requirement
6 relates to access by competitors to unbundled network elements at cost-
7 based prices). Because pursuant to sections 271 (c) (2) (A) and (B) all
8 requirements of the competitive checklist must be met before
9 BellSouth's application can be approved, failure to meet this single
10 requirement precludes the approval of BellSouth's application at this
11 time. In the context of this proceeding, BellSouth's failure to meet
12 requirement (ii) of the checklist means that this Commission cannot
13 verify BellSouth's compliance with each requirement of 271 (c) (2) (B)
14 when consulted by the FCC as required by section 271 (d) (2) (b) of the
15 Act. In short, it is premature for either this Commission or the FCC to
16 conclude that BellSouth has met the conditions imposed by the Act for it
17 to begin to offer in-region interLATA toll services.

18
19 Q. DO YOUR CONCLUSIONS DEPEND ON WHETHER BELLSOUTH
20 PROCEEDS WITH ITS APPLICATION UNDER TRACK A OR
21 TRACK B (AS DESCRIBED IN SECTION 271 (c) (1) (A) AND (B))?

22 A. No. Section 271 (c) (2) (A) (ii) makes that clear that whether BellSouth

1 proceeds based on either Track A or Track B, it must be providing (if
2 Track A) or offering (if Track B) access to unbundled network elements
3 pursuant to each of the requirements of the competitive checklist. While
4 a determination of whether BellSouth must proceed according to Track
5 A or Track B has certain implications for the decision and
6 recommendation that the Commission must make in this proceeding,
7 such a determination does not affect the standard that must be applied
8 with regard to cost-based pricing for unbundled network elements.
9 Under either scenario, BellSouth must comply with item (ii), which
10 requires nondiscriminatory access to unbundled network elements in
11 accordance with the requirements of sections 251 (c) (3) and 252 (d)
12 (1). If the Commission determines that BellSouth should proceed
13 according to Track A (i. e. that BellSouth has received qualifying
14 requests for access and interconnection to its network facilities from one
15 or more unaffiliated competing providers), BellSouth must demonstrate
16 that all rates associated with such access and interconnection comply
17 with section 252 (d) (1). If the Commission determines that BellSouth
18 may proceed under Track B, then all rates in BellSouth's proposed
19 Statement of Generally Available Terms and Conditions for
20 Interconnection, Unbundling, and Resale ("SGAT") must comply with
21 section 252 (d) (1).

22 As I will explain in detail in section 2 of my testimony, the

1 requirement that access to unbundled network elements be available at
2 the cost-based rates described in section 252 (d) (1) has not yet been
3 met for several reasons. First, in spite of clear direction by this
4 Commission, BellSouth has refused to permit new entrants to purchase
5 combinations of unbundled network elements at the rates ordered by this
6 Commission. Second, a number of rates for unbundled network
7 elements ordered by the Commission in arbitration proceedings (and
8 incorporated into the Interconnection Agreements entered into by the
9 carriers) are interim rates that are not based on cost (and therefore
10 which do not comply with the requirements of section 252 (d) (1)). In
11 addition, because of limitations in the cost information available to this
12 Commission in the BellSouth arbitration proceeding with AT&T and
13 MCI, many of the permanent rates adopted by the Commission in that
14 proceeding are not cost based as required by section 252 (d) (1). Any
15 one of these reasons is sufficient to render BellSouth's current pricing
16 non-compliant with section 252 (d) (1) and therefore with item (ii) of
17 the section 271 competitive checklist. Taken together, these reasons
18 serve as a clear demonstration that BellSouth's application is premature
19 and its approval should not be recommended by this Commission.

20
21 Q. HOW IS YOUR TESTIMONY ORGANIZED?

22 A. The remainder of my testimony is divided into three sections. Section 1

1 describes the role of the section 271 competitive checklist and describes
2 the logical context within which the checklist should be interpreted.
3 Section 2 evaluates the facts relevant to whether requirement (ii) of the
4 competitive checklist has been met in the state of Florida. Section 3
5 summarizes my testimony and presents my conclusions and
6 recommendations to the Commission.

7

8 **Section 1: The Role of the Section 271 Competitive Checklist and the**
9 **Importance of Timing to the Successful Implementation of the Act**

10 Q. WHAT IS THE PURPOSE OF THE SECTION 271 COMPETITIVE
11 CHECKLIST?

12 A. Section 271 of the Act generally, and competitive checklist specifically,
13 requires a demonstration that there is meaningful competition in the
14 market for local exchange services in the area served by the Bell
15 Operating Company and that all 14 items of the competitive checklist
16 have been provided. This fundamental objective should be kept in mind
17 in evaluating the satisfaction of each item of the competitive checklist.

18

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22

1 Q. THE REQUIREMENTS OF SECTION 271 DETERMINE THE
2 TIMING OF IN-REGION INTERLATA ENTRY BY BELLSOUTH.
3 WHY IS THE TIMING OF MARKET ENTRY SO IMPORTANT?

4 A. Both the development of full and robust competition for local
5 telecommunications services and the preservation of competition for
6 long distance services will provide benefits to end users, and the Act
7 contemplates each of these outcomes. Because of fundamental
8 differences in the local and long distance markets, including the level of
9 monopoly power currently exercised by the incumbent providers of local
10 services and the significant disparity in the level of investment needed to
11 enter each market, the Act appropriately mandates a sequence of events:
12 local competition must have the opportunity to develop first, then BOC
13 entry into the interLATA long distance market may be permitted. If
14 this order of events is followed, consumers of both local and long
15 distance services can benefit. If BellSouth is permitted to enter the
16 interLATA market before effective competition can develop in the
17 markets for local exchange services, however, it is likely that local
18 competition will never develop and that long distance competition will
19 be reduced or eliminated.

20 Primary sponsors of the Senate and conference bills have made
21 clear the importance of this sequence of events for both the development
22 of competition and protection of consumers:

1 The basic thrust of the bill is clear: competition is
2 the best regulator of the marketplace. Until that
3 competition exists, monopoly providers of services
4 must not be able to exploit their monopoly power
5 to the consumer's disadvantage. . . telecommuni-
6 cations services should be deregulated after, not
7 before, markets become competitive.

8 (Statement of Senator Hollings, 142 Cong. Rec. S688 (Feb 1,
9 1996))

10
11 Senator Kerry also noted that only the conference bill "had
12 sufficient provisions to ensure that the local telephone market was open
13 to competitors before the RBOCs entered long distance."(Statement of
14 Senator Kerry, 142 Cong. Rec. S697 (Feb. 1, 1996)) Members of the
15 House of Representatives have stated the same intent and understanding:
16 "Before any regional Bell company enters the long distance market,
17 there must be competition in its local market. That is what fair
18 competition is all about," (Statement of Rep. Forbes, 142 Cong Rec.
19 E204 (Feb 23, 1996)) and "We should not allow the regional Bells into
20 the long distance market until there is real competition in the local
21 business and residential markets."(Statement of Rep. Bunning, 141
22 Cong. Rec. H8458 (Aug. 4, 1995))

1 As the language of the Act and the statements of its proponents
2 make clear, the development of effective competition for both business
3 and residential local services is contemplated before BellSouth begins to
4 offer in-region interLATA services. If this approach is used by the
5 Commission, compliance with the requirements of the section 271 (c)
6 (2) (B) competitive checklist will be a necessary but not a sufficient
7 condition for BellSouth to enter the long distance market. If the
8 objectives of the Act are to be successfully met and consumers are to be
9 protected throughout the process, it is essential that competition actually
10 develop for local services before BellSouth is granted interLATA entry.
11 The requirements of the section 271 competitive checklist are necessary
12 to make such competition possible, but they are not sufficient to create
13 such competition overnight. Of course, if BellSouth's fails to comply
14 with any of the requirements of the competitive checklist, then neither
15 standard will be met: actual competition will not be present, and the
16 potential for the development of such competition will have been
17 restricted or eliminated.

18 In a similar section 271 proceeding, the Staff of the Tennessee
19 Regulatory Authority has reached this conclusion. Specifically, the Staff
20 noted that

21 Opening the local telephone market to competition
22 is what the new federal and state

1 telecommunications laws are all about. Evidence
2 to date has been that this will be "slow going."
3 Technology may have opened the doors, but there
4 are a lot of "real world" business problems to deal
5 with in entering the local telephone market. . .
6 There is still work to be done on costs and rates
7 before BellSouth can be said to have complied
8 with the technical requirements of the law.
9 "(Report by the Staff of the Tennessee Regulatory
10 Authority, January 31, 1997, p. 7)

11
12 The Tennessee Consumer Advocate reached the same conclusion:
13 "BellSouth has signed interconnection and unbundling agreements with
14 companies that intend to provide local service, but the agreements alone
15 do not qualify as competition in fact or as protection for the consumer
16 in fact. The agreements must still be *successfully and materially*
17 *implemented*. (Consumer Advocate's Comments: How a BellSouth
18 Application for Authorization to Provide In-Tennessee InterLATA
19 Service Would Bear on the Public Interest, January 23, 1997, p.2,
20 emphasis added).

21 As I will explain in section 2 of my testimony, the concerns
22 articulated by the Tennessee Staff and Consumer Advocate are not

1 hypothetical; BellSouth's documented refusal to provide combinations of
2 unbundled network elements at the rates ordered by the Commission
3 (and incorporated into the Interconnection Agreements with AT&T and
4 MCI) illustrates the importance of such successful and material
5 implementation of the Interconnection Agreements. An agreement on
6 paper that is not being implemented simply cannot, as the Tennessee
7 Consumer Advocate points out, qualify "as competition in fact or as
8 protection for the consumer in fact."

9

10 Q. YOU REFERRED TO THE LEVEL OF MONOPOLY POWER
11 CURRENTLY EXERCISED BY THE INCUMBENT PROVIDERS OF
12 LOCAL SERVICES AND THE SIGNIFICANT DISPARITY IN THE
13 LEVEL OF INVESTMENT NEEDED TO ENTER EACH MARKET
14 AS INDICATORS OF THE IMPORTANCE OF APPROPRIATE
15 TIMING OF MARKET ENTRY. PLEASE EXPLAIN.

16 A. As the framers of the Act realized, the characteristics of the local
17 exchange and long distance markets are very different, making entry
18 into the local market by a long distance provider a much more daunting
19 task than long distance entry by a local company. It is for this reason
20 that the Act requires that all barriers be eliminated and that local
21 competition have the opportunity to develop before entry by the
22 incumbent Bell Operating Company into in-region interLATA long

1 distance.

2 There are two fundamental differences between the local and
3 long distance markets that make this timing of events essential. First,
4 the Bell Operating Companies and other incumbent LECs retain
5 monopoly control of essential local facilities. The nature of these
6 bottleneck monopoly facilities arises because they are essential inputs to
7 the services offered by long distance carriers and other potential
8 providers of competitive local services. Until effective competition
9 exists for these facilities, BellSouth retains the ability to leverage this
10 monopoly control into competitive long distance markets. Concern
11 about such a danger is not hypothetical: documented anticompetitive
12 behavior of this type resulted in the long distance restriction imposed by
13 the consent decree. As the court noted, divestiture and the interLATA
14 long distance prohibition were necessary in order to achieve "the
15 decree's objective of sharply limiting the ability of businesses with
16 bottleneck control of local telephone service to utilize their monopoly
17 advantages to affect competition in competitive markets (United States
18 v. Western Electric Co., 797 F.2d 1082, 1088 (D.C. Cir. 1986)). This
19 danger has not diminished merely with the passage of time; if BellSouth
20 is granted interLATA entry before local competition develops --
21 including the presence of alternative suppliers of local facilities -- it will
22 have both the incentive and the opportunity to use its control of these

1 local bottleneck facilities to again gain an advantage in the interLATA
2 market.

3 Second, the investment required by a company seeking to enter
4 long distance is dwarfed by the investment necessary by a company
5 attempting to enter the local market. If BellSouth were granted its
6 request to enter the interLATA market today, it would be able to do so
7 with little additional investment of its own. Numerous long distance
8 carriers have capacity to sell or lease (some carriers, in fact, specialize
9 as "carrier's carriers), so BellSouth would be able to acquire the
10 necessary facilities in a competitive marketplace and at competitive
11 prices. In addition, there is substantial evidence that BellSouth's
12 interLATA "administrative" network has sufficient capacity to allow the
13 company to offer in-region interLATA services immediately with no
14 additional investment. In direct contrast, companies seeking to enter the
15 local markets face a very different environment. These companies have
16 a choice of investing the billions necessary to duplicate the local
17 network (ultimately not a feasible choice at all) or attempting to
18 purchase or lease the necessary facilities from a monopoly supplier that
19 is hardly a motivated seller and faces no competitive constraints on the
20 rates it seeks to charge. Unlike BellSouth's entry into the long distance
21 market, the entry of other companies into the local market cannot take
22 place overnight. Because of this disparity, the Act correctly established

1 a sequence of events that will allow local competition to develop before
2 BellSouth is permitted to offer in-region interLATA services.

3

4 Q. ARE THERE OTHER CONSEQUENCES OF PERMITTING
5 BELL SOUTH TO OFFER IN-REGION INTERLATA SERVICES
6 PREMATURELY?

7 A. Yes. In order for local competition to become a reality, it is necessary
8 for BellSouth to fully cooperate in this Commission's efforts to lay the
9 groundwork for such competition, including the production of the
10 required cost studies and participation in upcoming investigations of cost
11 information so that cost-based rates can replace the current interim rates
12 for a number of unbundled network elements. Potential competing
13 providers of local services need BellSouth's continued cooperation in
14 attempts to resolve technical and operational issues. BellSouth, of
15 course, has no self-interest in such cooperation. Some means of
16 motivation is necessary, therefore, in order for the most basic
17 prerequisites of local competition to become a reality. To encourage
18 this, the Act offers a carrot: BellSouth's entry into in-region interLATA
19 long distance. If this carrot is given away too soon, both the
20 Commission and new entrants may find it difficult or impossible to
21 inspire BellSouth to continue in these efforts.

22

Such a concern has been stated by both the framers of the Act

1 and those responsible for its implementation. For example, Rep. Bliley
2 stated that "the key to this bill is the creation of an incentive for the
3 current monopolies to open their markets to competition. (Statement of
4 Rep. Bliley, 141 Cong. Rec. H8282 (Aug. 2, 1995)). The Staff of the
5 Tennessee Regulatory Authority also recently concluded that "The price
6 for BellSouth entry into long distance is the opening of their local
7 markets. If such entry is permitted before local markets are truly open
8 to competition, BellSouth's motivation for complying with competitors'
9 interconnection requests diminishes. This is why special consideration
10 must be given to the timing of BellSouth's entry into the long distance
11 market" (Report by the Staff of the Tennessee Regulatory Authority,
12 January 31, 1997, p. 5). In order to ensure that BellSouth has sufficient
13 motivation to engage in meaningful efforts to permit local competition to
14 develop, the Commission should withhold the single carrot it possesses
15 until such a reward is actually earned.

16
17 **Section 2: Requirement (ii) of the Competitive Checklist Has Not Been**
18 **Satisfied in Florida**

19 Q. PLEASE DESCRIBE THE SPECIFIC REQUIREMENT OF THE ACT
20 RELATED TO COST-BASED PRICING TO BE DISCUSSED IN
21 YOUR TESTIMONY.

22 A. Section 271 (c) (2) (B) (ii) requires that the access and interconnection

1 provided or generally offered by BellSouth include "non discriminatory
2 access to network elements in accordance with the requirements of
3 sections 251 (c) (3) and 252 (d) (1)." Such compliance with section 252
4 (d) (1) requires:

5 Determinations by a State commission of the just
6 and reasonable rate for the interconnection of
7 facilities and equipment for purposes of subsection
8 (c) (2) of section 251, and the just and reasonable
9 rate for network elements for purposes of
10 subsection (c) (3) of such section,

11 (A) shall be

12 (i) based on the cost (determined without
13 reference to a rate-of-return or other rate-
14 based proceeding) of providing the
15 interconnection or network element
16 (whichever is applicable), and

17 (ii) nondiscriminatory, and

18 (B) may include a reasonable profit.

19
20 Q. HAVE THE REQUIREMENTS OF SECTION 271 (c) (2) (B) (ii),
21 INCLUDING THE ABOVE-STATED REQUIREMENT FOR THE
22 DETERMINATION OF COST-BASED RATES PURSUANT TO 252

1 (d) (1), BEEN SATISFIED IN FLORIDA?

2 A. No. At a minimum, compliance with item (ii) of the competitive
3 checklist requires 1) that BellSouth be currently providing (if proceeding
4 under Track A) or be willing to and capable of providing (if proceeding
5 under Track B) unbundled network elements -- when purchased
6 separately or in combination -- at the cost-based rates determined by the
7 Commission and reflected in the Interconnection Agreements between
8 BellSouth and other carriers, and 2) that these cost-based rates (both
9 recurring and nonrecurring, if applicable) be determined by the
10 Commission for each of the unbundled network elements (and
11 combinations of elements) requested by carriers seeking to compete with
12 BellSouth's local exchange services. To date, neither of these two
13 requirements has been met.

14 First, BellSouth has made it clear to AT&T and MCI that it
15 neither currently provides unbundled network elements at the rates
16 which were ordered by this Commission (and which appear in
17 BellSouth's Interconnection Agreements with AT&T and MCI), nor
18 stands ready to provide unbundled network elements at the rates which
19 appear in its draft SGAT, if certain unbundled network elements are
20 purchased in combination.

21 Second, a number of the prices for unbundled network elements
22 in the Commission's Order No. PSC-96-1579-FOF-TP (these rates also

1 appear in the Interconnection Agreements and in BellSouth's draft
2 SGAT) are interim rates which are not rates that have been determined
3 by the Commission to be cost-based as required by section 252 (d) (1).
4 In addition, limitations in the cost data available to the Commission in
5 the arbitration proceedings appears to have resulted in the establishment
6 of a number of permanent rates for unbundled network elements that are
7 not cost-based and which therefore cannot be used to demonstrate
8 compliance with item (ii) of the competitive checklist.

9
10 Q. WHAT IS THE BASIS FOR YOUR CONCLUSION THAT
11 BELL SOUTH IS NOT PROVIDING UNBUNDLED NETWORK
12 ELEMENTS AT THE RATES ORDERED BY THIS COMMISSION
13 OR STANDING WILLING TO PROVIDE THOSE UNBUNDLED
14 NETWORK ELEMENTS AT THE RATES INCLUDED IN THE
15 DRAFT SGAT?

16 A. As described in AT&T's Motion to Compel Compliance in Docket No.
17 960833-TP and Docket No. 960846-TP filed June 9, 1997, BellSouth
18 has refused to comply with the Commission's orders to provide
19 unbundled network elements, at the prices ordered by the Commission,
20 without restrictions on the ways in which those network elements are
21 combined to form the competing carrier's service. According to the
22 AT&T Motion, it was only during final planning for a test of

1 BellSouth's ability to deliver network elements together with the
2 associated billing and usage information that it became clear that
3 BellSouth is unwilling to comply with the Commission's Order and the
4 resulting Interconnection Agreements.

5 In its Response and Memorandum in opposition to AT&T's
6 Motion to Compel Compliance, BellSouth contends that the Commission
7 has not made it sufficiently clear that combinations of network elements
8 can be purchased for -- at most -- the sum of the rates established for
9 each of the individual elements. A review of Orders PSC-96-1579-
10 FOF-TP ("Arbitration Order") and PSC-97-0298-FOF-TP ("Order on
11 Reconsideration") indicates that BellSouth's argument is unsupported.
12 The Commission discusses in detail the so-called "rebundling" issue at
13 pages 34-38 of the Arbitration Order, concluding at page 38 that since
14 "the FCC's Rules and order permit AT&T and MCI to combine
15 unbundled network elements in any manner they choose, including
16 recreating existing BellSouth services, that they may do so for now." In
17 its Order on Reconsideration, the Commission again provides a detailed
18 discussion of the issues (pages 3-7) and decides at page 7 not to
19 reconsider the "rebundling issue."

20 When considering BellSouth's argument, it is important not to
21 confuse two distinct yet superficially related issues. BellSouth has
22 argued that competitors should not be able to purchase multiple network

1 elements and combine them to form a service that is (at least in
2 BellSouth's view) equivalent to a BellSouth retail service. On this
3 issue, the Commission has made it clear that rates have been
4 established: the competitor should pay the sum of the rates for each
5 individual element, and should not be required to pay BellSouth the
6 retail rate (minus the applicable discount) for the service that BellSouth
7 argues is equivalent. At page 27 of its Order on Reconsideration, the
8 Commission also responded to a separate and distinct issue: AT&T's
9 assertions that when certain combinations of network elements are
10 purchased, BellSouth will double-recover certain costs unless a rate
11 adjustment is made. Regarding this issue, the Commission instructed
12 the parties to work together to identify the costs that would be recovered
13 twice under the existing rate structure and to agree, if possible, on rates
14 for combinations of network elements. These are two separate issues,
15 however; there is nothing in this section of the Order on
16 Reconsideration (pages 27-29) that suggests that the Commission's
17 previous decision (upheld previously on page 7 of the same order) has
18 been rendered moot. In fact, the Orders quite clearly state the contrary.

19 As a result, BellSouth has no basis for refusing to provide the
20 network elements that comprise the so-called "platform" at the rates
21 determined by the Commission in the Arbitration Order. In fact, when
22 considered carefully, BellSouth's position on this issue is inconsistent

1 with its 271 application. If BellSouth is correct that these rates have not
2 been established by the Commission, then the requirements of section
3 252 (d) (1) and item (ii) of the competitive checklist have not been met,
4 and the application should be rejected for that reason. If BellSouth is
5 incorrect and these rates have been established, its refusal to provide
6 these network elements to competitors at the rates determined by the
7 Commission creates a *per se* violation of both the Track A and Track B
8 requirements.

9
10 Q. YOU STATED THAT THE INTERIM RATES ADOPTED BY THE
11 COMMISSION FOR A NUMBER OF UNBUNDLED NETWORK
12 ELEMENTS CANNOT BE USED TO SATISFY THE
13 REQUIREMENTS OF SECTION 252 (d) (1). WHAT IS THE BASIS
14 FOR YOUR CONCLUSION?

15 A. Section 252 (d) (1) requires a determination by a state commission of
16 just and reasonable rates for unbundled network elements based on the
17 cost of providing those elements. Item (ii) of the competitive checklist
18 requires that nondiscriminatory access to these unbundled network
19 elements be available at these rates. Neither of these requirements is
20 anticipatory in any way; in other words, compliance with section 252
21 (d) (1) is not created by the *expectation* that the Commission will
22 determine cost-based rates for unbundled network elements in the future,

1 and item (ii) of the competitive checklist likewise cannot be met by the
2 expectation that cost-based rates pursuant to 252 (d) (1) will be
3 determined. The required rates must be in place -- and BellSouth must
4 be willing to provide unbundled network elements (including
5 combinations of elements) at these rates -- in order for this checklist
6 item to be met.

7 In addition, item (ii) of the checklist and the requirements of
8 section 252 (d) (1) apply to all technically feasible unbundled network
9 elements requested by competing carriers. Section 252 (d) (1) requires
10 that the Commission determine cost-based rates for all such network
11 elements requested, and item (ii) of the competitive checklist cannot be
12 met if some, but not all, of the requested network elements have been
13 priced in accordance with section 252 (d) (1). The absence of
14 Commission-determined cost-based rates for certain unbundled network
15 elements means that item (ii) of the competitive checklist has not been
16 met, and for this reason alone BellSouth's application for in-region
17 interLATA authority is premature.

18

19 Q. WHICH NETWORK ELEMENTS CURRENTLY HAVE NON COST-
20 BASED, INTERIM RATES?

21 A. According to Attachment A to Order No. PSC-96-1579-FOF-TP, the
22 following rates are interim and subject to true-up: the Network

1 Interface Device, or NID (recurring only); access to the NID
2 (nonrecurring only); loop distribution for both 2-wire and 4-wire circuits
3 (recurring and nonrecurring); 4-wire analog ports (recurring and
4 nonrecurring); DA transport switched local channel, dedicated DS-1
5 transport per mile and per termination (recurring and nonrecurring);
6 dedicated transport per termination (nonrecurring only); virtual
7 collocation (recurring and nonrecurring); and physical collocation
8 (recurring and nonrecurring).

9

10 Q. PLEASE EXPLAIN WHY THE INTERIM RATES SET FOR THESE
11 NETWORK ELEMENTS DO NOT MEET THE REQUIREMENTS OF
12 252 (d) (1).

13 A. As established, the rates for the network elements listed above do not
14 meet the requirements of section 252 (d) (1) for the establishment of
15 cost-based rates for two primary reasons: 1) They are not cost-based,
16 and 2) they are not rates. I will explain each of these reasons in more
17 detail below.

18 **The interim rates are not cost-based.** At page 33 of the
19 Arbitration Order, the Commission points out that it is establishing
20 interim rates based on BellSouth's tariffed rates (or, in some cases, on
21 based on modifications to the results of the Hatfield Study presented by
22 AT&T and MCI). In doing so, the Commission made clear in the

1 Arbitration Order and in the Order on Reconsideration (page 14) that
2 "tariffed rates are not an appropriate basis for pricing unbundled
3 network elements." In order to determine cost-based rates for these
4 elements, the Commission required BellSouth to provide cost studies
5 within 60 days of the Arbitration Order (this requirement was upheld at
6 page 20 of the Order on Reconsideration). It is my understanding that
7 BellSouth has produced these studies, but that the Commission has not
8 had the opportunity to conduct an investigation of the merits of these
9 studies in order to determine the costs of providing the elements. Until
10 this process is complete and cost-based rates are developed, the
11 requirements of section 252 (d) (1) will not be met.

12 **Interim rates, especially those subject to true-up mechanisms,**
13 **are not "rates" pursuant to the requirements of 252 (d) (1).** Interim
14 rates, whether or not cost-based, simply cannot be used to meet the
15 requirements of the Act; in other words, interim rates are not "rates"
16 for purpose of permitting competition for local exchange services to
17 develop. In order to begin to assemble the resources necessary to enter
18 the markets for local exchange services, potential competitors will need
19 to be able to determine, with a reasonable degree of accuracy, the costs
20 of doing so. The capital budgeting process simply cannot be conducted
21 if significant costs remain unknown. With interim rates for a number of
22 important network elements, new entrants do not know what they will

1 be paying to BellSouth for these elements.

2 This uncertainty extends beyond the unbundled network elements
3 listed above. As described at pages 27-29 of the Commission's Order
4 on Reconsideration, the double-recovery of certain costs is possible (in
5 both recurring and nonrecurring rates) if network elements are
6 purchased in combination. While acknowledging this possibility, the
7 Commission elected not to determine rates for each possible
8 combination of network elements, but instead to direct the parties to
9 work together to establish the applicable rates in those cases in which
10 multiple network elements are being purchased. If the parties cannot
11 agree on the applicable charges, the Commission will settle the dispute.
12 Of course, in order to conduct meaningful capital budgeting and to make
13 informed decisions regarding market entry, potential competitors will
14 need to know what they will be paying to BellSouth for network
15 elements when purchased individually and if purchased in conjunction
16 with other elements. For those combinations of elements requested by
17 competing carriers, compliance with section 252 (d) (1) requires that
18 either 1) agreement between BellSouth and competing carriers is
19 reached, the agreed-upon rate for element combinations is included in an
20 Interconnection Agreement approved by the Commission, and the
21 Commission determine that such rates are cost-based within the meaning
22 of the Act, or 2) the Commission must resolve the dispute and establish

1 cost-based rates for the requested combinations that avoid double-
2 recovery of costs. One of these two possible outcomes must be reached
3 before the uncertainty for new entrants will be eliminated and the
4 requirements of 252 (d) (1) will be met.

5 In summary, it is simply unreasonable to expect potential
6 competitors to commit substantial resources to entering the markets for
7 local exchange services before they know what they will be required to
8 pay BellSouth for network elements (purchased separately and in
9 combination). To be clear, interim rates serve an important purpose:
10 they permit potential competitors to begin testing their market
11 assumptions, training their employees, and testing the reasonableness
12 and effectiveness of the processes established for interconnecting with
13 BellSouth (as described in the AT&T Motion to Compel Compliance,
14 such testing has proven to be both useful and revealing). A new entrant
15 would hardly be exhibiting sound decision making skills (and from the
16 point of view of its shareholders, would be acting irresponsibly),
17 however, if it decided to commit substantial resources to local market
18 entry without knowing with a reasonable degree of certainty what its
19 costs of doing business will be. Interim rates, therefore, while useful
20 for some limited purposes, represent a very real barrier to entry that
21 must be removed before local competition can develop.

22 This Commission has put into place a reasonable process for the

1 determination of the remaining cost-based rates for network elements
2 purchased both individually and in combination. BellSouth is now
3 asking that this process be circumvented, and that the Commission
4 conclude that cost-based rates have been established before the
5 determination of costs has taken place. Such a request is both
6 unreasonable and inconsistent with the requirements of the Act.

7

8 Q. HAVE OTHER STATE COMMISSIONS REACHED SIMILAR
9 CONCLUSIONS?

10 A. Yes. In a recent proceeding established to review BellSouth's proposed
11 SGAT and section 271 application, the Georgia Commission reached
12 such a conclusion. Specifically, the Georgia Commission noted that it
13 had adopted interim rates subject to true-up in the arbitration
14 proceedings and had established a separate docket for establishing cost-
15 based rates. It then concluded that it is "unreasonable" to expect the
16 Commission to approve these prices as "cost based as required by the
17 Act, when the determinations as to a reasonable cost basis have yet to
18 be made." With regard to BellSouth's proposed SGAT (BellSouth was
19 attempting to proceed under Track B in Georgia), the Georgia
20 Commission concluded that "until the Commission has established the
21 cost-based rates for interconnection including collocation, for unbundled
22 network elements, for reciprocal compensation, and for access to poles

1 ducts, conduits, and rights of way, pursuant to sections 251 and 252 (d)
2 which can be used for BellSouth's SGAT, the Commission must reject
3 the SGAT." (Georgia Public Service Commission, Order Regarding
4 Statement, Docket 7253-U, Issued March 21, 1997, p. 17.

5 In Louisiana, BellSouth also produced an SGAT to support its
6 application. A full hearing on the merits of BellSouth's application was
7 conducted before an Administrative Law Judge, and the ALJ's
8 recommendation to the Commission was issued on July 9, 1997. In that
9 proceeding, the Commission Staff asserted that "it is unreasonable for
10 BellSouth to ask the Commission to approve the SGAT's rates under
11 section 252 (d) of the Act when the docket initiated for that purpose has
12 not been concluded" (ALJ Recommendation, p. 12). The ALJ went on
13 to note at p. 18 of her recommendation that "section 252 (f) and 252 (d)
14 mandate a determination *by the Commission* that the rates for
15 interconnection and unbundled network elements are based on the cost
16 of providing the interconnection and unbundled network elements. As
17 yet, the Commission has not made such a determination" (emphasis in
18 original). The ALJ stated at page 21 that each rate in BellSouth's
19 proposed SGAT must conform to "each and every federal requirement"
20 before the SGAT can be approved, and went on to conclude that "The
21 Act's implicit directive to the Commission through its 'may not approve
22 - unless' language, is to *reject* the SGAT, *unless* it complies with each

1 and every requirement of section 251 and section 252 (d). As the
2 Commission has not yet made a determination that the SGAT's rates for
3 interconnection and unbundled network elements meet the requirements
4 of section 252 (d), the Commission *must reject* BellSouth's SGAT at
5 this time" (emphasis in original). As described previously in my
6 testimony, the cost-based pricing standard of 252 (d) (1) is the same
7 under Track A and Track B; if BellSouth proceeds under Track A in
8 Florida, it must offer to competitors unbundled network elements at
9 rates that likewise meet "each and every federal requirement," and the
10 Commission must reject BellSouth's application if BellSouth is not
11 currently offering requested network elements (and combination of
12 elements) at rates that have been determined by the Commission to
13 comply with section 252 (d) (1).

14

15 Q. YOU HAVE MENTIONED CONCERN ABOUT THE RATES THAT
16 THE COMMISSION SET ON A PERMANENT BASIS IN THE
17 BELLSOUTH ARBITRATION DOCKETS. PLEASE DESCRIBE THE
18 NATURE OF YOUR CONCERN THAT THESE RATES MAY NOT
19 BE COST-BASED PURSUANT TO SECTION 252 (d) (1).

20 A. At page 23 of the Arbitration Order, the Commission stated that its
21 decisions were driven in part because "the record does not contain
22 sufficient cost evidence." Specifically, the Commission stated that it did

1 not implement geographically deaveraged rates for this reason.
2 Similarly, the Commission concluded that the costs for unbundled
3 network elements should be developed using a methodology based on
4 the premise that BellSouth's existing network should be assumed to exist
5 going forward, and rejected the methodology proposed by the FCC
6 which is based on an efficient network (constrained only by BellSouth's
7 existing central office locations). The order indicates at page 24 that
8 this decision was based, at least in part, on the Commission's
9 assumption that there would not be a substantial difference between
10 costs for network elements developed using these different
11 methodologies. In each of these cases, currently available information
12 compels a different conclusion.

13

14 Q. PLEASE EXPLAIN WHY THE RATES FOR SOME NETWORK
15 ELEMENTS MUST BE GEOGRAPHICALLY DEAVERAGED IN
16 ORDER TO BE COST-BASED AS REQUIRED BY SECTION 252 (d)
17 (1) OF THE ACT.

18 A. In the arbitration proceedings and in subsequent cost investigations in
19 other states, it has become clear that there is little dispute among the
20 parties that the cost of providing some unbundled network elements
21 varies, potentially significantly, based on the geographic area being
22 studied. The cost of loop facilities, for example, has been shown to be

1 geographically sensitive because the primary drivers of the cost of these
2 facilities -- loop length and line density -- vary depending on the area
3 being studied.

4 In order for the rates for unbundled network elements to be cost-
5 based, it is necessary for those rates to reflect any significant geographic
6 cost differences that may exist (BellSouth has often attempted to confuse
7 this issue by suggesting that it is the deaveraging of retail rates -- rather
8 than the wholesale rates for unbundled network elements -- that is at
9 issue; of course, it is both possible and appropriate for the rates for
10 unbundled network elements to be geographically deaveraged while
11 maintaining statewide average retail rates for end users). The results of
12 the Hatfield Model present by AT&T and MCI in the arbitration
13 proceedings illustrate the geographic cost differences for a 2-wire local
14 loop. While the Commission chose not to rely on the results of this
15 model when establishing rate levels (in part because the results of the
16 model do not produce costs which are representative of the costs of
17 BellSouth's existing network in Florida), it can and should rely on the
18 results of model as a clear demonstration of the significant variations in
19 the cost of providing a 2-wire loop in different geographic areas.
20 BellSouth apparently agrees: in the cost proceeding established by the
21 Georgia Commission to determine the cost of network elements,
22 BellSouth has presented the results of the Benchmark Cost Proxy Model

1 ("BCPM"), which is conceptually similar to the Hatfield Model.
2 BellSouth has used BCPM results to illustrate the cost differences
3 associated with providing local loops in different geographic areas, and
4 has used the results of the model to support its geographically
5 deaveraged pricing proposal for local loops in Georgia.

6 In summary, cost information which is apparently not in dispute
7 indicates that the cost of providing some unbundled network elements,
8 specifically local loops, varies significantly across different geographic
9 areas. Cost-based rates, established pursuant to section 252 (d) (1), can
10 and must reflect this demonstrated cost variability.

11

12 Q. YOU INDICATED THAT THE COMMISSION ADOPTED A
13 COSTING METHODOLOGY THAT IS BASED ON BELLSOUTH'S
14 EXISTING NETWORK. WHY DO YOU BELIEVE THAT THIS
15 METHODOLOGY CANNOT BE USED TO DEVELOP COST-BASED
16 RATES PURSUANT TO SECTION 252 (d) (1)?

17 A. As I described previously, the Arbitration Order indicates that the
18 Commission's decision was based, at least in part, on the assumption
19 that there would not be a substantial difference between costs for
20 network elements developed using these different methodologies.
21 Currently available information, however, strongly suggests otherwise.
22 In the Georgia cost proceeding described above, BellSouth has presented

1 cost studies for network elements based on what it refers to as
2 "TELRIC," but which calculates costs in a way that is constrained by
3 the characteristics of BellSouth's embedded network and therefore is
4 consistent (at least in this specific regard) with the Commission's
5 definition of TSLRIC. These costs are substantially higher than the
6 costs calculated using a methodology which is constrained only by the
7 location of BellSouth's switches (the so-called "scorched node"
8 approach). BellSouth's own Georgia cost studies reveal the magnitude
9 of the differences in costs calculated using these different
10 methodologies.

11

12 Q. WHAT ARE THE IMPLICATIONS OF ESTABLISHING RATES
13 BASED ON EACH OF THESE TWO COSTING METHODOLOGIES?

14 A. If rates for unbundled network elements are based on the inefficiencies
15 inherent in BellSouth's embedded network, the cost of these
16 inefficiencies will be passed on to competitors and ultimately to end
17 users. Such an approach serves to limit the benefits to consumers (both
18 residential and business) of local exchange competition by creating an
19 artificially high price floor for these services and removing BellSouth's
20 incentives to increase efficiency. In contrast, rates for network elements
21 set to recover costs that are calculated based on an efficient network
22 with the capability of serving the same geographic area will permit

1 consumers to fully benefit (rates can fall to competitive levels) and will
2 provide incentives to BellSouth to become as efficient as its competitors.

3

4 Q. PLEASE SUMMARIZE YOUR TESTIMONY.

5 A. My testimony addresses item (ii) of the section 271 competitive
6 checklist. This checklist item cannot be met until cost-based rates for
7 unbundled network elements (including the rates for combinations of
8 elements) are determined by the Commission pursuant to section 252 (d)
9 (1) of the Act. This requirement applies to either a Track A or a
10 Track B application by BST. Depending on the track taken, BST must
11 then demonstrate that it is providing, or is willing to and capable of
12 providing, the requested elements at these rates.

13 To date, these requirements have not been met. BST has refused
14 to provide network elements to AT&T at the rates ordered by the
15 Commission and contained in the Interconnection Agreement. As a
16 result, it cannot proceed under either Track A or Track B. In addition,
17 the rates adopted in the Commission's Arbitration Order do not meet the
18 cost standard of section 252 (d) (1). A number of these rates are
19 interim and not based on cost, and therefore do not meet the
20 requirements of the Act. Others were adopted by the Commission based
21 on conclusions that it reached in the absence of the necessary cost data.
22 When all available information is considered, it is clear that many of the

1 permanent rates adopted by the Commission also do not comply with
2 252 (d) (1). For these reasons alone, BST's application -- whether
3 pursued as Track A or Track B -- is premature.

4 Concerns regarding the timing of BST's entry into the market for
5 in-region interLATA services is not academic. Both the language of the
6 Act and the legislative history indicate that Congress envisioned a clear
7 sequence of events: local competition must have the opportunity to
8 develop first, then BOC entry into interLATA long distance may be
9 permitted. Fundamental differences in the local and long distance
10 markets make such a sequence essential. If BellSouth is granted in-
11 region interLATA authority too soon, it will lose all incentives to
12 continue to make the basic prerequisites of local competition possible
13 and gain the ability to leverage its existing monopoly power into the
14 market for interLATA long distance services. In order for the
15 objectives of the Act to be met and for Florida consumers to be
16 protected, it is essential that BellSouth not be granted premature
17 interLATA entry.

18 In the Separate Statement of Chairman Reed E. Hundt in the
19 FCC's recent Oklahoma 271 Order, Chairman Hundt remarked that:
20 (T)he power to enter the long distance market lies
21 in the hands of the Bell Companies -- if they have
22 the will, the law makes clear the way.

1 If BellSouth develops the will to comply with the qualifying
2 requests that it has received for access to unbundled network elements
3 and interconnection, it may earn its admittance to the interLATA
4 market. In the absence of a clear demonstration of such will, the
5 Commission should not recommend approval of BST's application.
6

7 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

8 A. Yes.
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1 BY MR. MELSON:

2 Q Mr. Wood, you had one exhibit attached to your
3 direct testimony, DJW-1, which was a copy of your
4 professional resume?

5 A Yes, sir, that's right.

6 Q Other than the fact that you may have testified
7 in some additional proceedings since your testimony was
8 filed on July 17th, is that resume true and correct?

9 A Yes, it is.

10 MR. MELSON: I'd ask that that be identified as
11 64.

12 CHAIRMAN JOHNSON: It will be identified as
13 Exhibit 64.

14 BY MR. WOOD:

15 Q And Mr. Wood, would you give a summary of your
16 testimony consistent with the hour in the afternoon?

17 A Yes, sir. Good afternoon. My testimony is in
18 two parts. Part one discusses the importance of timing to
19 successful implementation of the Act. Given the hour and
20 the discussion that Mr. Gillan has already had with that,
21 I'll move on to section 2 which focuses specifically on
22 Item 2 of the competitive checklist. And Item 2 is the
23 requirement that there be a determination by the Commission
24 of cost-based rates for unbundled network elements.

25 Of all of the requirements of the Act, this one

1 is probably most clear. 271(c)(2)(A)(ii) states that
2 whether BellSouth is attempting to proceed under Track A or
3 Track B, it must be providing if Track A, or standing ready
4 to provide if Track B, unbundled network elements pursuant
5 to each of the requirements of the competitive checklist,
6 including Requirement Number 2. And Requirement Number 2
7 is equally clear that there be pursuant to Section
8 252(d)(1) a determination by the Commission that the
9 applicable unbundled network element rates are based on
10 cost.

11 So where are we in Florida on this requirement?
12 I think the most accurate way to phrase it is that we have
13 started this process but we haven't finished it yet. The
14 requirement of the Act in this regard though is not
15 anticipatory. It's very clear that we are talking about
16 rates that have been determined, rates that have been
17 implemented, an offer by -- an offer by BellSouth or a
18 provision by BellSouth of unbundled network elements at
19 these rates. A contemplation that in the near future or at
20 some other point in time we are going to have a
21 determination on the cost of these rates or some other
22 anticipatory requirement is not sufficient to meet Item 2
23 of the checklist. So item 2 can only be checked off if the
24 Commission makes a determination for each and every
25 unbundled network element, and if for elements and for

1 combinations of elements BellSouth is actually making those
2 elements available at the rates determined by the
3 Commission.

4 According to Mr. Scheye, the proposal on the
5 table in this proceeding, rates have really three different
6 sources. One is the result of arbitration proceedings held
7 between BellSouth, and at least in this context, between
8 AT&T and MCI, negotiated agreements between carriers, and
9 then a third category of rates that were developed by
10 BellSouth.

11 Now Mr. Varner argues in his testimony that all
12 of these different types of rates and all these rates are
13 cost based because they are based on some measure of cost.
14 Now they all may be based on different definitions of cost,
15 widely varying definitions of cost; but in his mind, as
16 long as it is some plausible definition of cost, you can
17 call them cost based, comply with 252(d)(1) and comply with
18 Item 2 of the checklist, and I very strenuously disagree
19 with that position. If this requirement in the Act is
20 going to have any meaning at all we've got to have rates
21 based on some consistent definition of cost, not a picking
22 and choosing method according to what BellSouth might want
23 to include in its price list.

24 Now of those three categories, clearly rates
25 developed by BellSouth are not rates that have been

1 determined by this Commission to be cost based, and
2 similarly, for negotiated agreements that would be the
3 case. In the arbitration decisions and the rates that came
4 from those cases, and I was here for both the AT&T and MCI
5 arbitrations, we've got two categories of rates. We've got
6 rates that were set by the Commission as interim rates and
7 explicitly interim rates because BellSouth had not provided
8 cost studies, and I understand that they have now provided
9 those, but we haven't had a proceeding to evaluate them.
10 We don't have a conclusion by you as to the merits of those
11 cost studies and what cost-based rates would look like for
12 what I count are 19 specific rate elements.

13 The same problem has occurred in Georgia and
14 Louisiana. Both the Georgia commission and the
15 administrative law judge in Louisiana concluded, I think
16 very reasonably, that it's not reasonable for BellSouth to
17 come to you and say, Make a decision that these rates are
18 cost based, when you haven't had the opportunity to
19 evaluate the cost basis for doing that. It wasn't
20 reasonable in Georgia and Louisiana, and it's not
21 reasonable here.

22 The short answer to why interim rates are not
23 cost based --

24 COMMISSIONER CLARK: Mr. Wood, did the Louisiana
25 commission agree with that?

1 MR. WOOD: The Louisiana commission, essentially
2 what the ALJ said was we get to item --

3 COMMISSIONER CLARK: No, no, not the ALJ, what
4 did the commission say? I thought they disagreed with the
5 ALJ.

6 MR. WOOD: And that's what I'm saying, I don't
7 think they disagreed with her on the merits. What she said
8 was we get to item -- You have to comply with all items of
9 the checklist, all 13 or 14. You don't comply with section
10 2, with requirement 2, therefore, we don't get to the rest
11 of the checklist. And what the commission said, was, no,
12 wait, we want to provide more guidance to the companies
13 than that. Go back and provide a list of what they do and
14 do not comply with for each and every checklist item beyond
15 these. She took a very narrow legal approach, you have to
16 do all 14. You didn't do number 2 and number 13, so we
17 stop there. The commission said, no, don't stop there, go
18 back, basically on a remand, and flesh this out.

19 So if you've got interim rates, they don't meet
20 the cost-based requirement for two reasons. One is they
21 are not cost based, and the other is they are not rates.
22 These interim rates came from tariffed offerings which you
23 said in your order, I think quite correctly, are not a cost
24 basis, and they are also not rates in terms of what new
25 entrants and competitors are to rely on in terms of what

1 they are going to be paying in the future. So for those
2 reasons, interim rates simply cannot be cost-based rates
3 pursuant to 252(d)(1).

4 The other category of rates from the arbitration
5 are what you set as permanent rates, and I have two areas
6 of concern about those, at least in 271 context. Not
7 intending to enter the fray over whether the eighth circuit
8 or the FCC is right, but clearly you made some decisions in
9 the arbitration proceedings based on what you said was a
10 lack of information, and information has come to light
11 since that time about the cost studies that you relied on
12 that would certainly give me pause, and I would hope would
13 give you pause, about the accuracy of those studies; and,
14 therefore, it may be that those permanent rates may
15 similarly fail the cost-based rate test.

16 And finally, for combinations of network
17 elements, AT&T raised the issue, and I think you agreed
18 with them, that for some combinations the way BellSouth has
19 done their cost studies there may be a double recovery of
20 certain costs or there may be a recovery of costs that
21 aren't necessary. You basically instructed the parties to
22 go back and negotiate those and come back if they couldn't
23 reach an agreement. It's my understanding that the efforts
24 at negotiations have been made for some time, and it may be
25 another issue that you are going to have to render a

1 decision on and make a determination on what the cost of
2 combinations will be in terms -- in cases where that should
3 be less than the sum of the cost of the individual
4 elements.

5 That concludes the short version of my summary.

6 MR. MELSON: Glad I asked for the short version.

7 He is tendered for cross.

8 MR. PELLEGRINI: Chairman Johnson --

9 MR. BOYD: Chairman Johnson, I have two brief
10 questions, please.

11 CHAIRMAN JOHNSON: Mr. Pellegrini, did you have
12 another point to make?

13 MR. PELLEGRINI: No, I just wanted to proffer an
14 exhibit for identification.

15 CHAIRMAN JOHNSON: Okay. Let's go ahead.

16 MR. PELLEGRINI: Exhibit DJW-2, staff would ask
17 that it be identified, be marked for identification
18 purposes at this time, consisting of the August 6th, 1997
19 deposition transcript of Mr. Wood.

20 CHAIRMAN JOHNSON: Okay. We will identify that
21 as Exhibit 65.

22 Now Mr. Boyd.

23 CROSS EXAMINATION

24 BY MR. BOYD:

25 Q Mr. Wood, at page 5 of your direct testimony and

1 then again this afternoon, you've referred to the fact that
2 in your opinion some of the rates for the unbundled network
3 elements are not based on costs as required by the Act.

4 Does that include the unbundled loop element?

5 A Well, it does, and this goes to the same concern
6 I was just describing. We are finding out in the context
7 of some generic cost proceedings things about the BellSouth
8 loop study that no one knew, not the parties, not the
9 Commission, at the time that you relied on it, that clearly
10 indicate that they have selectively sampled loops in a way
11 that overstates the costs. That gives me considerable
12 concern about whether those rates are then cost based. I
13 would hope it would also give the Commission some concern.

14 Q And Mr. Wood, have you had an opportunity to
15 review what has been entered into the record as Exhibit 26
16 in this docket, the audit report of the Commission of
17 February 16, 1996?

18 A I'm sorry, can I -- I think the answer is yes,
19 but I want to make sure I have the same document.

20 (Document tendered to the witness)

21 A Yes.

22 Q And will you explain for the Commission what
23 impact, if any, this has on your conclusion with regard to
24 the costs associated with the unbundled loop network
25 element as proposed by BellSouth?

1 A Well, I think you can draw one conclusion based
2 on this. On page 5 there is an ESSX cost per line that is
3 reported for the loop of 5.68. I understand -- well, I
4 would propose this as having, as being information that
5 would be of value to the Commission in determining what the
6 unbundled loop rates ought to be. I understand that
7 Mr. Scheye said, no, these are ESSX loops, there are things
8 about them that cause them to cost less so you shouldn't
9 consider them. Well, that can be true, or the BellSouth
10 sampling in its loop study can be right, but not both.

11 If this is, in fact, correct and ESSX loops cost
12 something different, but these are loops -- you know, a new
13 entrant could buy loops with this characteristic. What you
14 find is that in the BellSouth loop study, they have sampled
15 loops and then gone back and excluded all the ESSX loops,
16 which means if ESSX loops do, in fact, have characteristics
17 that cause them to cost less, BellSouth has overstated the
18 cost in its loop study because they have eliminated these
19 low cost loops. If, on the other hand, they haven't
20 tainted the sample and that ESSX loops cost about the same
21 as another loop, then the Commission ought to look at this
22 5.68 as an indicator of what loop costs are. Both of those
23 things can't be true at the same time. I think this is
24 probably a good ESSX number and BellSouth has
25 systematically overstated the cost in its loop study by

1 excluding all of these loops.

2 MR. BOYD: Thank you.

3 COMMISSIONER DEASON: BellSouth.

4 MR. RANKIN: Thank you.

5 CROSS EXAMINATION

6 BY MR. RANKIN:

7 Q Mr. Wood, you and I are in the unenviable
8 position of standing between this proceeding and the
9 weekend, so with your cooperation, I'll try to make this
10 relatively brief.

11 A I will do so too.

12 Q Let's start with the Louisiana decision on
13 BellSouth's statement that Commissioner Clark asked you
14 about. Did you testify in Louisiana?

15 A Yes, I did.

16 Q And is it your view now that the full Louisiana
17 commission has, in fact, approved the BellSouth statement?

18 A I don't know if they have approved your
19 statement. The order -- the one-page order that I saw that
20 came out after the ALJ recommendation was basically the
21 remand to go consider the other items on the checklist.

22 Q Okay. Do you know whether the rates in
23 BellSouth's statement in Louisiana were all interim rates?

24 A Were all interim rates? Well, we haven't had --
25 I don't know about your statement, but we are actually

1 beginning the generic cost proceeding next week in
2 Louisiana that the commission is going to use to
3 determine -- to make its determination pursuant to
4 252(d) (1) of what the cost of those elements are.

5 Q Okay.

6 A So I don't know how we could have anything but
7 interim rates because the commission hasn't held its cost
8 proceeding yet.

9 Q Okay. So the answer is yes, those rates were
10 interim rates that the commission considered in BellSouth's
11 statement?

12 A In terms of what you have included in your
13 statement, I think you have included a lot of things. Some
14 of those rates in your statement come from the arbitration
15 decision, and those rates were declared explicitly interim.

16 Q Okay. That is not my question. Is it your
17 understanding, or do you know whether or not there were any
18 permanent rates in the statement, or is it your
19 understanding whether they were all interim in Louisiana?

20 A In the arbitration decision in Louisiana, I
21 believe the rates were all interim. You have included
22 things in your statement beyond that which are not cost
23 based for other reasons.

24 Q Do you recall how the commission, the full
25 commission handled the issue of those rates in BellSouth's

1 statement in their ruling?

2 A No, I don't.

3 Q Do you know whether or not they put, they
4 subjected the rates to a one-way true up?

5 A They may very well have. Other commissions have.

6 Q Okay. So you don't know yes or no?

7 A In the arbitration decision, yes. If you're
8 asking about a subsequent 271 decision, I don't know if
9 they did something different.

10 Q Okay. So you don't know whether they put a, they
11 capped the interim rates or not in the 271 decision?

12 A I don't know. It wouldn't matter in terms of
13 compliance with 252.

14 Q Okay. You testified in South Carolina, correct?

15 A Yes, I did.

16 Q Okay. Do you know whether the rates in
17 BellSouth's statement there were considered to be interim
18 rates?

19 A I believe the answer is some were and some were
20 not in terms of what was included in your statement.

21 Q Do you know how the South Carolina commission
22 ruled on BellSouth's statement in that proceeding?

23 A The South Carolina commission ruled that while
24 they had not had the opportunity to examine BellSouth's
25 cost studies, they were nevertheless willing to make the

1 determination that rates, proposed rates were cost based.

2 Q Thank you. Let's turn to page 6 of your direct
3 testimony for just a moment, line 12.

4 A Yes.

5 Q And I'll just read this briefly. "Section 271 of
6 the Act generally and the competitive checklist
7 specifically requires a demonstration that there is
8 meaningful competition in the market for local exchange
9 services in the area served by the Bell operating company
10 and that all 14 items of the competitive checklist have
11 been provided."

12 A Yes.

13 Q Do you see that sentence?

14 A Yes.

15 Q Are the words "effective competition" or
16 "meaningful competition" found anywhere in the competitive
17 checklist?

18 A They are not in the checklist. Those phrases
19 encompass all the things actually that Mr. Gillan was
20 talking about in terms of what has got to be in place. I
21 intend them here to mean that we've got to go clearly
22 beyond paper promises on making a lot of those systems
23 available and other things that would need to be available
24 in order to meet all the checklist items.

25 Q Tell this Commission how it will know when

1 effective competition exists in Florida as local exchange
2 markets.

3 A When no local exchange carrier, BellSouth or a
4 new entrant, can raise rates and fail -- and not lose
5 market share, then you will have effective competition.
6 That's why facilities-based competition is the only way you
7 can do that. If you do it with pure resale, BellSouth
8 could unilaterally increase rates. Other carriers would
9 get a percentage counter but would have to follow BellSouth
10 up the scale. Facilities-based competition allows
11 competitive market forces to actually constrain local
12 rates, which is the type of consumer protection we are
13 looking for.

14 Q And how much local competition would that be?
15 What would that translate into in order to meet your
16 criteria?

17 A Well, I'm not sure what you mean by translate
18 into. It's a fairly straightforward test that's fairly
19 noncontroversial in its application.

20 Q Well, do you have any objective standards that
21 the Commission should look at in determining when effective
22 competition is in BellSouth's local markets?

23 A Well, I think what I just gave you is an
24 objective standard. The other would be what Mr. Gillan
25 described, and that is, for all of these requirements that

1 we have test procedures not just for one item or two at a
2 time but for the proper volumes of service that we are
3 going to be talking about.

4 Q You're not advocating a market share test,
5 correct?

6 A I am not advocating -- Mr. Varner responded in
7 his rebuttal that I was; that's not the case. I don't
8 think there is any magic market share number, but certainly
9 one or two is not going to be sufficient.

10 Q But you don't have a recommendation on what that
11 number would be?

12 A No, I don't think -- I'll try it again to do it
13 the quick way. I don't think it would be appropriate to
14 recommend a market share number. I think it's very
15 appropriate to recommend the test, which is applied
16 broadly, not just in this industry but others, that if a
17 carrier can unilaterally increase rates and not lose market
18 share, then there is not effective competition; and there
19 are a lot of ways to test that.

20 COMMISSIONER CLARK: How long does it take to
21 figure that out? I mean how long between the time it
22 happens and the time you can have the data to know that
23 that has happened?

24 MR. WOOD: I think you can find out very quickly
25 because I think BellSouth knows in its systems -- in

1 fact they've demonstrated that they know in their systems
2 when a customer leaves them, so they --

3 COMMISSIONER CLARK: How many customers have to
4 leave them?

5 MR. WOOD: How many have to in pure numbers? I
6 guess I'd go back to what Mr. Gillan said about sufficient
7 volumes to properly test the system, so there is no magic
8 number of customers; but it's -- you should be able to test
9 actually on pretty much a real time basis. The data would
10 be available to find out, yes, they've changed a rate and
11 here is the inflow and outflow of customers --

12 COMMISSIONER CLARK: So they could change
13 their --

14 MR. WOOD: -- because they track that in real
15 time.

16 COMMISSIONER CLARK: They could change their
17 rates on Monday, they'd lose the customers on Tuesday, and
18 we'd know by Wednesday?

19 MR. WOOD: If you ask them to provide you the
20 information, they will certainly know by Wednesday; and if
21 they give you the data, you will know.

22 COMMISSIONER CLARK: But you don't have an
23 estimate as to how many customers that has to be?

24 MR. WOOD: Over time, no. I mean I think,
25 obviously, you are in the best position to make your

1 judgment of whether that's a significant number.

2 COMMISSIONER CLARK: Okay.

3 MR. WOOD: But as far as the data being
4 available, it's readily available and can be provided to
5 you if they are willing to provide it.

6 BY MR. RANKIN:

7 Q Mr. Wood, could the local market entry strategies
8 of firms like your clients, AT&T and MCI, be expected to
9 have an impact on when effective or meaningful competition
10 will develop in Florida?

11 A Obviously they could. They don't tell me the
12 details of their strategy other than that they are trying
13 to do what they can when they can and in particular they
14 are going to need to buy unbundled elements, and that is
15 what I'm focusing on, is the rates for those. Clearly the
16 timing of this is going to be impacted by how quickly
17 systems are developed by BellSouth, how quickly rates and
18 costs -- cost studies are being provided by BellSouth that
19 the Commission can rely on. So a lot of this is in your
20 hands rather than the new entrants.

21 Q Well, if the Commission were to find that
22 effective competition exists primarily in urban areas of
23 the state and not in rural areas, would that meet your
24 effective competition test?

25 A Well, I can't give you -- I'm not giving you a

1 legal interpretation of what meets a test. That would meet
2 a test. I think that would be an unfortunate circumstance
3 if that were to happen. I think avoiding that particular
4 outcome is one of the reasons why some deaveraging of rates
5 where costs are clearly different in different areas needs
6 to be done, particularly loop rates. I think if the
7 Commission does that type of deaveraging, the scenario that
8 you are describing is very, very unlikely to occur.

9 Q Where do you expect the greatest level of
10 competition in BellSouth's local markets to develop first,
11 Mr. Wood, urban areas or more rural areas?

12 A If loop rates are set in a way, in a deaveraged
13 way that reflects the underlying cost, and from a universal
14 service standpoint, any carrier can go on and recover the
15 difference between the revenue and the cost of that area,
16 the forward-looking economic cost of the area, then they
17 would have an equal incentive to serve every customer and I
18 would expect competition to develop uniformly across the
19 state.

20 Q Let's look for a moment at the checklist. With
21 respect to the 14-point checklist, your testimony, I
22 believe, only concerns Checklist Item Number 2; is that
23 right?

24 A That's right.

25 Q And is it your testimony that none of the

1 permanent and interim rates that the Commission established
2 in the AT&T, MCI and BellSouth arbitration meet the pricing
3 requirements of the Act?

4 A No, that's not my testimony.

5 Q Okay. Which ones meet the pricing requirements?

6 A I can tell you which ones do not. Clearly,
7 interim rates do not, and for certain of the permanent
8 rates where we now have information that we didn't have in
9 the arbitrations, it indicates that the studies the
10 Commission relied on were flawed in a fundamental way that
11 distorts the cost upward, clearly those would not. Are
12 there any left over? I honestly don't know.

13 Q Okay. So you say none of the interim rates
14 comply with the pricing standards?

15 A By their very nature, an interim rate is simply
16 not a rate.

17 Q Can you point us to any language in Section
18 252(d)(1) that states that a rate established by a state
19 commission must be in existence for a certain period of
20 time before it can be considered cost based by the
21 Commission?

22 A No, 252(d)(1) says a determination by the
23 commission of a rate that is cost based. An interim rate,
24 certainly as set by this Commission, this Commission was
25 very clear I think in its order it was setting interim

1 rates because of a lack of cost data. It was taking some
2 adjustments to the AT&T/MCI model. It was taking some
3 BellSouth tariffed rates, and the order was equally clear
4 that the Commission didn't believe that tariffed rates,
5 while acceptable as an interim basis were representative of
6 what cost based needed to be to comply with 252.

7 Q Mr. Wood, did the words "permanent" or "interim"
8 exist in Section 252(d)(1) of the Act?

9 A No, in 252(d)(1) is a rate, and an interim rate
10 is not a rate that can be relied on by a new entrant; so in
11 that context, it's not a rate as contemplated in 252(d)(1).

12 Q Okay. So the answer to my question is, no, the
13 words "permanent" or "interim" do not appear in 252(d)(1)?

14 A The answer to your question is, no, they are not
15 necessary because the intent of 252(d)(1) is fairly clear
16 and it's a rate.

17 Q So they don't appear, Mr. Wood?

18 A That's right.

19 Q In the arbitration proceeding that you were part
20 of last fall with AT&T, MCI and BellSouth, the Commission
21 concluded that the TSLRIC methodology met the pricing
22 standards of the Act, did it not?

23 A Yes.

24 Q And, in fact, the Commission set permanent rates
25 using that methodology, did it not?

1 A Yeah, let me be clear. The Commission did two
2 things. It set rates based on its definition of TSLRIC,
3 which is certainly its prerogative to do. It also included
4 some language that says that it recognized that its
5 methodology and the FCC's methodology were different, and
6 the language of the order, as I recall, is that it was not
7 concerned about reconciling those because it is unlikely
8 that the two methodologies would yield significantly
9 different results. What we found in these generic cost
10 proceedings, even if we just lay the results of BellSouth
11 models that do this different ways side by side, those
12 results are very significant.

13 Q The Commission considered the Hatfield model you
14 sponsored and rejected it as a methodology for setting
15 permanent rates, did it not?

16 A It rejected it specifically that it did not
17 represent the cost of BellSouth's current network, and
18 that's a fact that is absolutely correct and without
19 dispute.

20 Q Did it not specifically say that the Commission
21 would not set permanent rates based on the Hatfield model
22 in its order, or do you need to see the order to --

23 A I've got a part of the order, and I can find the
24 sentence I'm looking for, but my recollection is that the
25 specific reason was that the Commission's methodology

1 starts with BellSouth's current network as a given and goes
2 forward and that the Hatfield model did not do that. And
3 the Commission was factually correct, the Hatfield model
4 does not do that; it doesn't purport to do that. It's what
5 the Commission referred to as a pure forward-looking model
6 versus a model that starts with the existing network.

7 Q So the answer to my question is, yes, the
8 Commission did not set permanent rates based on the
9 Hatfield model?

10 A For what I understand from the order was a very
11 specific reason.

12 Q Thank you. Let's talk about deaveraged rates for
13 a minute. You testify in your prefiled that in order for
14 unbundled network element rates to be cost based they must
15 reflect geographic cost differences?

16 A Yes.

17 Q Does the Act specifically require rates for UNES
18 to be deaveraged?

19 A It requires them specifically to be based on
20 cost.

21 Q Well, do they require them to be deaveraged?

22 A Actually, yes, since they put every state
23 commission with the task of determining the cost in each
24 state, they are at least deaveraged by state. Beyond that,
25 based on cost for UNES that vary -- whose cost vary

1 significantly from one geographic area to the other, I
2 think a reasonable reading of the Act is that those rates
3 also reflect those differences.

4 Q Did this Commission make a specific finding in
5 its order that the Act could not be interpreted to require
6 geographic deaveraging of UNEs?

7 A My recollection of the Commission's language in
8 the order was that the FCC suggested but did not require
9 it, they did not have the information in front of them to
10 make the determination and for that reason did not. What
11 is now available are results from not just AT&T and MCI's
12 cost studies but from BellSouth's cost studies that show
13 that these costs do vary significantly from one area to
14 another. So in light of that, I think cost-based rates
15 must mean geographic deaveraged rates, at least for loops.

16 Q Let's talk about what the Commission found and
17 not what you think for just a moment, Mr. Wood. Let me
18 refer you to page 23 of the arbitration order, if you have
19 it out.

20 A Yes.

21 Q The first paragraph, the first full paragraph
22 there on page 23, could you read that, please?

23 A Yes. This is just the one I was just referring
24 to. "We also find that the Act can be interpreted to allow
25 geographic deaveraging of unbundled elements, but we do not

1 believe that it can be interpreted to require geographic
2 deaveraging. We further find that the record in this
3 proceeding does not support a decision to geographically
4 deaverage the price for unbundled elements because the
5 record does not contain sufficient cost evidence." And
6 that's exactly the reasoning that I was just referring to.

7 Q I believe that's all I have. Thank you.

8 COMMISSIONER DEASON: Staff, you indicated you
9 have no questions?

10 MR. PELLEGRINI: We have no questions.

11 COMMISSIONER DEASON: Very well. Redirect? I'm
12 sorry. Commissioners?

13 (NO RESPONSE)

14 COMMISSIONER DEASON: Redirect?

15 MR. MELSON: No redirect.

16 COMMISSIONER DEASON: Exhibits.

17 MR. MELSON: Move Exhibit 64.

18 MR. PELLEGRINI: Staff will move 65.

19 COMMISSIONER DEASON: Without objection 64 is
20 admitted. Without objection 65 is admitted.

21 Mr. Wood, you may be excused.

22 WITNESS WOOD: Thank you, sir.

23 COMMISSIONER DEASON: Thank you. I have been
24 asked by the chairman to inform everyone that we will
25 recess until 9 a.m. Monday. Be prepared to go late on

1 Monday. We cannot yet say whether we will be reconvening
2 Tuesday after agenda. That announcement will be made
3 Monday. Any other business?

4 MS. BARONE: Yes, Commissioner Deason, just to
5 put the parties on notice who the witnesses will be on
6 Monday because several have been set date certain for
7 Monday. Those are Mr. Pfau, Mr. Falvey, Ms. Strow and
8 Ms. Closz, and also there is a reminder that oral argument
9 will be presented on the motion to strike on Monday as
10 well.

11 COMMISSIONER KIESLING: Could you repeat those
12 witnesses for me? Mr. Pfau, Mr. Falvey --

13 MS. BARONE: Ms. Strow.

14 COMMISSIONER KIESLING: Ms. Strow.

15 MS. BARONE: Ms. Strow and Ms. Closz. Those are
16 set for Monday, but then we can continue on with Mr. Hamman
17 if we can get to Mr. Hamman, and then we'll continue on the
18 list.

19 MR. BOYD: Monica, are you proposing those
20 witnesses in that order?

21 MS. BARONE: No, they will be in the order on the
22 list. Those are just the four that need to testify on
23 Monday. So it would be Mr. Pfau, Mr. Falvey, Ms. Strow and
24 then Ms. Closz.

25 COMMISSIONER DEASON: Any other matters?

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(NO RESPONSE)

COMMISSIONER DEASON: Everyone have a nice weekend and be prepared to start again Monday. We are in recess until Monday.

(Thereupon, the hearing adjourned at 4:50 p.m. to reconvene at 9:00 a.m., Monday, September 8, 1997 at the same location)

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