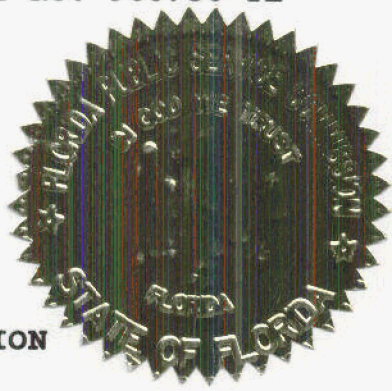


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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In the Matter of
Consideration of BellSouth
Telecommunications, Inc.'s
Entry into interLATA services
pursuant to Section 271 of the
Federal Telecommunications
Act of 1996.

DOCKET NO. 960786-TL



FIFTH DAY - MIDMORNING SESSION

VOLUME 20

Pages 2148 through 2230

PROCEEDINGS: **HEARING**

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

DATE: **September 8th, 1997**

TIME: Commenced at 9:15

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

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

APPEARANCES:

 (As heretofore noted.)

DOCUMENT NUMBER - DATE
09010 SEP-85
FPSC RECORDS/REPORTING

WITNESSES - VOLUME 20

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| NAME | PAGE NO. |
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EXHIBITS - VOLUME 20

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| 71 | CMP-3 | 2223 |

P R O C E E D I N G S

(Transcript follows in sequence from
Volume 19.)

- - - - -

C. MICHAEL PFAU

was called as a witness on behalf of AT&T
Communications of the Southern States and, having been
duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. RULE:

Q Could you state your name and address for
the record, please?

A My name is C. Michael Pfau. My address is
295 North Maple Avenue, Basking Ridge, New Jersey,
07920.

Q And how are you employed?

A I'm employed as a division manager for AT&T
Corp.

Q Did you prepare and cause to be filed direct
testimony in this case consisting of 22 pages of
testimony and Exhibits CMP-1 and CMP-2?

A Yes, I did.

MS. RULE: I'd like Exhibits CMP-1 and 2
identified as a composite exhibit, please.

CHAIRMAN JOHNSON: 1 and 2 will be

1 identified as Composite Exhibit 68.

2 MS. RULE: Pardon me?

3 CHAIRMAN JOHNSON: 68.

4 MS. RULE: 68. Thank you.

5 (Exhibit 68 marked for identification.)

6 Q (By Ms. Rule) Do you have any revisions or
7 corrections to make to this testimony?

8 A No, I do not.

9 MS. RULE: I would ask that Mr. Pfau's
10 direct testimony be inserted into the record as though
11 read.

12 CHAIRMAN JOHNSON: It will be inserted as
13 though read.

14 Q (By Ms. Rule) Did you also prepare and
15 cause to be filed rebuttal testimony in this case
16 consisting of 12 pages of testimony and Exhibit
17 CMP-R1?

18 A Yes, I did.

19 MS. RULE: I would like CMP-R1 to be
20 identified as Exhibit No. 69.

21 CHAIRMAN JOHNSON: It will be identified as
22 Exhibit 69.

23 (Exhibit 69 marked for identification.)

24 Q (By Ms. Rule) Do you have any revisions or
25 corrections to your rebuttal testimony?

1 **A** No, I do not.

2 **Q** If I asked you the same questions in your
3 rebuttal and direct today, would your answers be the
4 same?

5 **A** Yes, they would.

6 **MS. RULE:** I ask that Mr. Pfau's rebuttal
7 testimony be inserted into the record as though read.

8 **CHAIRMAN JOHNSON:** It will be so inserted.

9

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

| | | |
|----------------------------------|---|----------------------|
| In Re: Consideration of |) | DOCKET NO. 96-786-TL |
| BellSouth Telecommunications |) | FILED: July 17, 1997 |
| Inc.'s entry into InterLATA |) | |
| services pursuant to Section 271 |) | |
| of the Federal |) | |
| Telecommunications Act of 1996. |) | |

DIRECT TESTIMONY

OF

C. MICHAEL PFAU

ON BEHALF OF

AT&T COMMUNICATIONS OF

THE SOUTHERN STATES INC.

1 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2 A. My name is C. Michael Pfau. My business address is 295 North Maple
3 Avenue, Basking Ridge, New Jersey 07920.

4

5 **Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT POSITION?**

6 A. I am employed by AT&T Corp., and I serve as Division Manager, Local
7 Services Division Negotiations Support.

8

9 **Q. WHAT ARE YOUR DUTIES AND RESPONSIBILITIES IN THAT**
10 **CAPACITY?**

11 A. My responsibilities include helping to develop and communicate the business
12 requirements to the regional teams negotiating with the Incumbent Local
13 Exchange Carriers (ILECs). I also assist the regional teams in performing
14 feasibility assessment of business arrangements offered by the ILECs.

15

16 **Q. WHAT IS YOUR PROFESSIONAL EXPERIENCE?**

17 A. I began my career in Bell of Pennsylvania, where I had various assignments
18 in central office engineering, plant extension, circuit layout and regulatory
19 operations. Just prior to divestiture, I moved to AT&T General Departments,
20 where I was responsible for managing intrastate service cost models. My
21 next assignment was in an AT&T regional organization responsible for
22 regulatory implementation support of service and marketing plans within the
23 five Ameritech states. I then moved to a headquarters position responsible
24 for managing market research related to business communications services.

1 Immediately prior to my current assignment, I worked within the product
2 management organization, focusing upon private line data services.

3

4 **Q. WHAT IS YOUR EDUCATIONAL BACKGROUND?**

5 A. I have a Bachelor of Science Degree in Mechanical Engineering and a
6 Masters Degree in Business Administration, both from Drexel University. In
7 addition, I have a Professional Engineering License from the State of
8 Pennsylvania.

9

10 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

11 A. My testimony specifically addresses Issues 3(a) and 15(a) which this
12 Commission is examining. Issues 3(a) addresses performance measurements
13 for UNEs and Issue 15(a) addresses performance measurements and
14 standards applicable to services available for resale. I address both of these
15 issues concurrently below. Both issues involve two considerations: (1)
16 whether adequate performance measurements have been established to
17 monitor BellSouth's fulfillment of the nondiscrimination obligations woven
18 throughout the Telecommunications Act of 1996; and (2) whether BellSouth
19 has demonstrated that it is providing nondiscriminatory support for services
20 resale, use of Unbundled Network Elements ("UNEs"), and access to
21 operations support systems ("OSS").

22

23 Establishment of performance measures is a critical component in the
24 determination of BellSouth's provision of nondiscriminatory support as
25 established in both Sections 271 and 251 of the Federal Telecommunications

1 Act of 1996 ("the Act"). The FCC ordered all incumbent local exchange
2 carriers ("ILECs") to provide nondiscriminatory access to OSS functions.
3 FCC First Report and Order No. 96-325 ¶ 525 (Aug. 8, 1996). This
4 Commission similarly ordered such access following the BellSouth/AT&T
5 arbitration hearings; such provisions are now included in the
6 AT&T/BellSouth Agreement. There is no question that a well developed and
7 properly operating set of performance measures is necessary for this
8 Commission to make a determination regarding BellSouth's compliance with
9 the requirements of nondiscriminatory access and support.

10

11 I will outline the most fundamental structural characteristics of a performance
12 measurement plan necessary to carry out the pro-competitive objectives of
13 this Commission. Clearly laying out the desirable characteristics of a
14 measurement plan is necessary to evaluate the adequacy of the performance
15 standards and measurements proposed by BellSouth.

16

17 **Q. WHAT CHARACTERISTICS SHOULD BE PRESENT IN A**
18 **MEASUREMENT PLAN DESIGNED TO MONITOR DELIVERY OF**
19 **NONDISCRIMINATORY SUPPORT OF SERVICES RESALE,**
20 **UNBUNDLED NETWORK ELEMENTS, AND OSS ACCESS ?**

21 **A** Five key attributes must be evident in any measurement plan designed to
22 monitor nondiscrimination. The attributes constitute the "ground rules" that
23 should be applied when determining that the overall measurement plan is
24 functional and capable of monitoring on-going delivery of the

1 nondiscriminatory support necessary for CLECs to have a meaningful
2 opportunity to compete.

3 (1) Comparative (CLEC versus BellSouth) measures of performance
4 must exist to monitor the key attributes of nondiscriminatory support for
5 services resale, the use of UNEs and access to OSS functionality.

6 (2) Each performance monitoring measure must be fully documented.
7 This means the data elements required for computation must be defined and
8 any necessary calculations must be set forth clearly. In addition, all
9 conditions resulting in omission of any data from computation of the
10 performance measure must be completely disclosed.

11 (3) The comparison of performance results for CLECs to the results for
12 BellSouth's local service operations must be accomplished through generally
13 accepted and documented statistical tests of difference.

14 (4) The data collection and reporting of performance measures must
15 permit disaggregation of results according to key factors that may influence
16 the overall metric results, such as product mix, activity variation or
17 differences in the extent of manual intervention.

18 (5) The performance measurement system must capture and produce
19 results on a regular basis. The results produced must be stable and able to be
20 subjected to independent validation through an auditing procedure.

21

22 **Q. WHAT DOES AT&T ADVOCATE AS THE MINIMAL SET OF**
23 **PERFORMANCE MEASURES THAT WILL ASSIST THIS**
24 **COMMISSION IN ITS CONSIDERATION OF WHETHER OR NOT**

1 **BELLSOUTH CURRENTLY PROVIDES NONDISCRIMINATORY**
2 **SUPPORT AND ACCESS TO CLECS?**

3 A. AT&T supports the use of the Local Competition Users Group (LCUG)
4 metrics as a starting point for monitoring parity of performance. The LCUG
5 performance metrics are attached as Exhibit CMP-1 to my testimony. They
6 represent the "critical few" measures upon which a truly effective
7 measurement plan can be constructed.

8
9 Expansion beyond the minimal set of measures should be encouraged to the
10 extent the parties agree or this Commission identifies additional appropriate
11 measures. For example, Local Account Maintenance performance measures
12 are not part of the LCUG list but are, nevertheless, included in Attachment 12
13 to the AT&T/BellSouth Interconnection Agreement in Florida (hereafter
14 referred to Attachment 12). Likewise, as CLECs gain greater experience in
15 the use of individual UNEs and UNE combinations, existing measures may
16 need to be altered or new measures may need to be defined. Such changes
17 and additions to performance measures should not be precluded despite the
18 fact they may not now be fully described in CMP-1.

19

20 **Q. WHAT IS THE LOCAL COMPETITION USERS GROUP?**

21 A. The Local Competition Users Group ("LCUG") is a group of CLECs that
22 meets to discuss and seek workable solutions to common operational issues
23 related to local market entry. LCUG membership includes AT&T, MCI,
24 Sprint, WorldCom, LCI International, and the Competitive
25 Telecommunications Association ("CompTel"). AT&T worked internally

1 and with the LCUG to develop an appropriate set of performance measures
2 that would permit CLECs and regulators to assess whether or not incumbent
3 LECs are providing nondiscriminatory access to their services and systems.
4

5 **Q. CAN BELLSOUTH RELY ON ATTACHMENT 12 OF THE**
6 **BELLSOUTH-AT&T INTERCONNECTION AGREEMENT TO**
7 **DEMONSTRATE AND MONITOR BELLSOUTH'S OBLIGATION**
8 **TO PROVIDE NONDISCRIMINATORY ACCESS TO ITS**
9 **NETWORK?**

10 A. No. Although AT&T and BellSouth have reached agreement on some
11 performance measures, the simple fact is that the agreement still is evolving.
12 Paragraph 1.3 of Attachment 12 specifies that the DMOQs (Direct Measures
13 of Quality) specified in the agreement shall be reviewed quarterly "to
14 determine if any additions or changes to the measurements and the standard
15 shall be required or, if process improvements shall be required." Similarly,
16 paragraph 9.4 of Attachment 15 to the Interconnection Agreement states that
17 "[p]erformance measurements shall be established" as contemplated in
18 Section 12 of the Agreement.

19
20 As contemplated in the Interconnection Agreement, measures addressing
21 transaction cycle time, interface availability and transaction accuracy need to
22 be established for all the major operational interfaces. Additionally,
23 performance measures addressing ordering, at a minimum, and preferably
24 also pre-ordering and maintenance, must be disaggregated to show whether or
25 not manual intervention is involved since manual "fall out" of BellSouth

1 support processes has a significant negative effect upon whether CLECs have
2 a meaningful opportunity to compete. Although such disaggregation has not
3 been addressed either in Attachment 12 or Attachment 15 of the
4 BellSouth/AT&T Interconnection Agreement, it is necessary in order to
5 determine whether BellSouth provides services to its competitors in
6 substantially the same time and manner in which it serves itself and its retail
7 customers.

8
9 Attachment 12 can provide a starting point for constructing a performance
10 measurement plan, but only if appropriate OSS related measures are
11 incorporated and measures are refined during implementation. In addition,
12 BellSouth must provide data in the form of actual comparative results
13 necessary to confirm its obligations of providing nondiscriminatory support
14 of service resale, UNEs and OSS functionality. To date, BellSouth has not
15 provided any such data, despite the fact that delivery of such data is
16 envisioned in Paragraph 1.3 of Attachment 12.

17
18 **Q. DO YOU HAVE ANY ADDITIONAL CONCERNS BEYOND THOSE**
19 **LISTED ABOVE?**

20 A. Yes. Beyond the issue of monitoring the impact of manual fall out, the
21 measurement plan needs to disaggregate measurement results sufficiently so
22 that differing mixes of services and major types of activities, between the
23 CLECs and BellSouth, do not result in mistaken conclusions regarding parity
24 and nondiscrimination. In other states, BellSouth has attempted to address
25 service mix, but BellSouth's proposed disaggregation does not go far

1 enough. Key high volume local service categories of services are not broken
2 out, such as Centrex/Centrex-like and PBX trunks. Furthermore, the special
3 services category is treated as a single "lump" despite the fact that
4 BellSouth's testimony recognizes the existence of differing treatment within
5 the special services environment based upon whether a class of service is
6 DS3, DS1, DDS, or voice grade private line.

7

8 Adequate product disaggregation must be incorporated into the measurement
9 plan ultimately adopted. The Michigan Public Service Commission
10 recognized the absence of product disaggregation by Ameritech as a
11 deficiency in its consultation provided to the FCC with regard to Ameritech's
12 current 271 application (CC Docket No. 97-137).

13

14 Measurements must be refined enough to permit meaningful parity
15 comparisons to be made. That is, if business orders are more complex and
16 handled differently by Ameritech's retail operations than are residential
17 orders, performance measures should distinguish these operations. Separate
18 measurements for different customer classes, geographic areas or service
19 products may be required.

20

21 Consultation of the Michigan Public Service Commission, at 31-32.

22

23 **Q. WHAT REFINEMENTS MUST BELLSOUTH MAKE IN ORDER TO**
24 **IMPROVE ITS ABILITY TO MONITOR DELIVERY OF**
25 **NONDISCRIMINATORY ACCESS?**

- 1 A. In addition to those minimal measures included in Attachment 12 , the
2 following performance measures must be addressed to create a functional
3 monitoring mechanism for nondiscrimination:
- 4 (1) Timeliness measures for the primary preordering and maintenance
5 activities must be incorporated. The time to complete a request for a
6 telephone number or the time required to log a trouble ticket are examples of
7 timeliness measures for preordering and maintenance, respectively.
- 8 (2) Timeliness measures for return of order completion information must
9 be established. Although some target intervals are provided, there is no
10 metric that measures the elapsed time between BellSouth's completion of a
11 work order and the forwarding of a valid completion notice by BellSouth to
12 the CLEC. Timely notification of work completion is critical because such
13 notification is the sole means by which a CLEC knows that service has been
14 "turned up" for its retail customer.
- 15 (3) System availability measures must be defined for each operational
16 interface. An availability measurement monitors the amount of time each
17 interface is usable by a CLEC compared to the total time each interface is
18 scheduled to be available. If a CLEC cannot utilize an interface to transact
19 business with BellSouth, then the CLEC's business operations are effectively
20 "shut down" for all practical purposes.
- 21 (4) Availability measures for network elements must be addressed. These
22 measures are similar in nature to the interface availability measures, but
23 address individual UNEs and combinations of UNEs. For example, an
24 availability measure for the local switching element could be speed of dial
25 tone. This Commission could assist this measurement definition process by

1 establishing, as a basic principle, that availability measures should be
2 established for each UNE and UNE combination.

3 (5) Performance measures for network elements must be addressed. This
4 category of measures addresses the quality of UNEs or UNE combinations.
5 For example, throughput capacity of an unbundled ISDN loop could be a
6 performance measure for the UNE loop combination. Again, the
7 Commission could assist the measurement definition process by establishing
8 an expectation that performance or quality measures will be defined for
9 UNEs and UNE combinations as they are requested by CLECs.

10 (6) Operator Service ("OS") and Directory Assistance ("DA") speed of
11 answer measures must be incorporated. This monitoring helps assure on-
12 going nondiscriminatory support for a service that is highly visible to CLEC
13 customers.

14 (7) Network Performance measures (e.g., transmission quality and
15 completion rates) must be addressed. Such measures allow the Commission
16 to monitor the relative quality of the local network delivered to CLECs.
17 Comprehensive monitoring of network performance may prove to be a
18 complex undertaking at the CLEC-specific level. Difficulty of measurement
19 does not invalidate the need for a measure. If BellSouth makes a compelling
20 case regarding cost or complexity, then this Commission could adopt a
21 comparative process based upon sampling of performance rather than
22 requiring ongoing tracking and reporting. By utilizing this approach, this
23 Commission could establish a clear expectation that network performance
24 must be nondiscriminatory and also identify the measures that would be
25 considered in testing for nondiscriminatory network performance. In

1 addition, the Commission could establish a mechanism for CLECs, based
2 upon the CLEC sampling of performance, to challenge expeditiously whether
3 BellSouth actually is delivering network performance at parity.

4 (8) Fallout to manual processing must be monitored. The ability to
5 monitor the impact of manual intervention upon the ordering-provisioning as
6 well as the pre-ordering and maintenance processes is crucial to ascertaining
7 that CLECs are afforded a meaningful opportunity to compete. Higher rates
8 of manual processing result in less the processing capacity, longer execution
9 times and higher error rates, all of which contribute to customer
10 dissatisfaction. Separately categorizing and "marking" data as it is gathered
11 to indicate whether manual processing was involved would help address this
12 issue.

13 (9) Capacity measurements must be developed. For example, a measure
14 that monitors the average delay (e.g., days) in the actual completion date
15 compared to the committed completion date helps detect developing
16 processing capacity problems (e.g., longer average delays) and assists in
17 monitoring whether or not nondiscriminatory support is provided when
18 capacity constraints develop.

19
20 Performance measurements must be established for order accuracy.
21 Attachment 12 identifies this measurement but fails to define the measure or
22 establish performance expectations.

23

24 **Q. CAN BELLSOUTH READILY ADDRESS THE PRECEDING ITEMS?**

1 A. Yes. The performance measurement items identified above, given a
2 concerted effort by BellSouth, are amenable to prompt refinement. Both
3 AT&T and BellSouth must continue to work together to refine the current
4 work on performance metrics. The need for further work was acknowledged
5 by BellSouth in testimony prefiled in Georgia on June 6, 1997: "BST
6 continues to believe that the Commission should allow the parties to work
7 through the negotiations process to define and implement performance
8 standards." (Georgia - Stacy Dir. at 25.)

9
10 **Q. DO THE MEASURES DEFINED IN ATTACHMENT 12 CLEARLY**
11 **DEFINE HOW THEY ARE COMPUTED AND WHAT IS INCLUDED**
12 **IN THE REPORTED RESULTS?**

13 A. No. The parties must provide additional clarity in implementing the
14 performance measures to avoid or minimize future disputes over BellSouth's
15 provision of nondiscriminatory access. BellSouth and AT&T must agree on
16 and document the data elements and computation method for each measure
17 and identify what, if any, operational situations will cause exclusion of data
18 from the reporting process.

19
20 The United States Department of Justice noted clarity of performance
21 measurements as an area of deficiency in the recent Ameritech 271 filings in
22 CC Docket No. 97-137.

23
24 The most complicating factor, discussed by the MPSC and by the
25 Department, below, is the lack of clarity in the performance results reported

1 by Ameritech and the absence of a common language of measures and
2 standards with which to gauge operations of these new processes.
3 Evaluation of the United States Department of Justice, Appendix A at A-11.
4

5 **Q. WOULD YOU PLEASE PROVIDE SOME EXAMPLES REGARDING**
6 **ADDITIONAL DETAIL THAT MUST BE ADDRESSED BY**
7 **BELLSOUTH?**

8 A. There are a number of examples of performance measurements for which
9 additional definitional detail is necessary, but I will only reference two as
10 examples: Paragraph 2.5 of Attachment 12 discusses the metric for
11 timeliness of notice or rejects of errors. Although the measure appears simple
12 enough on the surface, the document neither defines what constitutes an error
13 or a reject, nor does it discuss whether or not manual and electronic
14 notifications will be separately measured.

15
16 Paragraph 3.1 uses the term "Total Duration Time" without defining whether
17 the time is measured in terms of a 24-hour clock or a business hour clock
18 (e.g., only time between 8:00 and 5:00 is accumulated). Also, no
19 documentation covers whether the time stops when BellSouth declares the
20 trouble "resolved" or if the time stops when the CLEC considers the matter
21 closed.

22
23 I am further concerned that definitions are subject to change without
24 appropriate change control. For example, in the discussion of the metrics
25 related to Firm Order Confirmations (Paragraph 2.3) and Notice of Rejects of

1 Error Status (Paragraph 2.5), Attachment 12 makes no mention that the
2 measures are to be reported only when the ordering process is mechanized on
3 an end-to-end basis. However, BellSouth has added this additional
4 limitation.

5

6 **Q. WHAT DO YOU MEAN WHEN YOU SAY THERE MUST BE**
7 **CLARITY REGARDING WHAT, IF ANY, OPERATIONAL RESULTS**
8 **ARE EXCLUDED?**

9 A. At some point parties may agree how a metric is defined. Such agreements
10 must be documented. Following definitional agreement, the parties still must
11 reach agreement and document the computational procedures including
12 whether or not any operational results should or should not be excluded from
13 the results accumulation processes. AT&T and BellSouth did not provide in
14 Attachment 12 what, if any, specific operational results are excluded from
15 each metric's computation. I urge this Commission to establish, as a guiding
16 principle, that no results are excluded from reporting unless clearly
17 documented and supported by a factual showing of unique and restricted
18 operational conditions. Needless to say, without specific mutual agreement
19 as to what situations are "hidden" from the reporting process, there can be no
20 certainty regarding the validity of results.

21

22 **Q. DO THE ATTACHMENT 12 MEASURES SUBMITTED REFLECT**
23 **INDUSTRY CONSENSUS?**

1 A. No. BellSouth indicates it is negotiating measures similar to those provided
2 in the AT&T agreement with other ALECs, but no other agreements have
3 been finalized with respect to performance measures.

4

5 **Q. HAS BELLSOUTH SUBMITTED ANY RESULTS FOR THE**
6 **MEASURES CONTAINED IN ATTACHMENT 12?**

7 A. No. BellSouth has not submitted comprehensive results that demonstrate
8 delivery of nondiscriminatory access and support to AT&T even for the
9 partially completed set of measures documented in Attachment 12. Because
10 BellSouth and AT&T did not agree to even the partial set of metrics until
11 May 9, 1997, and because BellSouth has not yet provided data to AT&T as it
12 agreed to in Attachment 12, this Commission lacks crucial information
13 necessary to draw conclusions whether or not BellSouth is satisfying its
14 obligation to deliver nondiscriminatory access and support.

15

16 **Q. WHAT OTHER ISSUES MUST BE ADDRESSED IN ORDER FOR**
17 **THE MEASUREMENT PLAN TO BE CONSIDERED**
18 **OPERATIONALLY READY?**

19 A. At least three additional operational considerations must be established and
20 fully documented: (1) the means for assessing whether BellSouth is
21 delivering nondiscriminatory support (*i.e.*, what statistical tests for difference
22 should apply) must be defined; (2) an auditing process must be defined; and
23 (3) a formalized process and expectation for reporting results must be
24 established and put into operation.

1 **Q. WHAT MUST BE ESTABLISHED REGARDING THE MEANS TO**
2 **ASSESS WHETHER OR NOT BELLSOUTH IS DELIVERING**
3 **NONDISCRIMINATORY SUPPORT?**

4 **A.** Regardless of the measure under consideration, there must be a pre-
5 established comparison process to assure that the level of performance for an
6 individual CLEC, and the CLECs as a group, are equal in quality to that
7 delivered by BellSouth to its own retail local service operation. This
8 comparative process should incorporate well-recognized and documented
9 statistical testing procedures.

10

11 BellSouth should be required to identify, document and incorporate clearly
12 defined statistical tests to establish nondiscrimination into any measurement
13 plan it institutes. Control Charts will not satisfy this requirement.
14 Appropriately defined and structured statistical tests will permit relevant
15 assessment of differences in both the average (mean) result for CLECs
16 compared to BellSouth, as well as for differences in variability of
17 performance. By establishing a requirement for statistical testing of
18 differences in both mean performance and performance variability, this
19 Commission will be in a position to draw fact-based conclusions, at a
20 specified level of confidence (*e.g.*, 95%), regarding whether the performance
21 CLECs experience is of equal quality to the performance BellSouth delivers
22 to its own local operations.

23

1 Q. ARE THE PERFORMANCE MONITORING METRICS IN
2 ATTACHMENT 12 SUFFICIENT TO DETERMINE
3 NONDISCRIMINATION?

4 A. No; these performance metrics generally monitor performance only
5 against specific threshold values. For example, Attachment 12 includes the
6 measure “percentage desired due dates met.” Measures oriented toward
7 percentages of cases exceeding a target do not allow monitoring of
8 nondiscrimination because the measure only tracks the frequency that a
9 potentially arbitrary threshold is exceeded rather than monitoring and
10 comparing actual performance experienced. Moreover, it is not clear that a
11 simple statistical test can be applied to determine whether or not a
12 percentage-based result for a CLECs is equal to that BellSouth experiences.
13 The Department of Justice rejected such a percentage-based standard in the
14 Ameritech 271 filing for Michigan, as did the Michigan Public Service
15 Commission. (CC Docket No. 97-137). Ameritech relied almost exclusively
16 upon percentage-based measures in its proposed plan for monitoring
17 nondiscrimination. The Department of Justice rejected this standard because
18 it did not permit direct comparison of performance.

19

20 The trouble with this position [not monitoring actual installation intervals], as
21 the MPSC has recognized, is that ‘[m]easuring rates of completion within a
22 target period of time rather than determining actual average time to complete
23 a task does not permit direct comparison to Ameritech’s retail performance.’
24 MPSC Consultation at 31.

25 Evaluation of the United States Department of Justice, Appendix A at A-25.

1

2 **Q. WHY IS AN AUDIT MECHANISM IMPORTANT TO THIS**
3 **COMMISSION'S CONSIDERATION OF PARITY,**
4 **NONDISCRIMINATORY SUPPORT, AND ACCESS BY**
5 **BELLSOUTH?**

6 A. The competitive marketplace must have the protection of auditing to ensure
7 that BellSouth's reported measures are based upon properly designed data
8 collection processes, that results are computed based upon precisely defined
9 and agreed upon methodologies, and that the results can be independently
10 corroborated. The precise definition of each measure is critical and cannot be
11 subject to unilateral change by BellSouth. The discipline of auditing will
12 help ensure that data is retained according to specific guidelines and
13 structured to allow an interested and authorized party to verify independently
14 that a CLEC is receiving nondiscriminatory access and support from
15 BellSouth. Without such mechanisms, the CLECs, this Commission and
16 Florida consumers will be entirely dependent upon BellSouth for the
17 production, accuracy and conclusions related to performance measures
18 crucial to assessing the development of competition in Florida.

19

20 **Q. HAS BELLSOUTH AGREED TO PROVIDE ALL DATA**
21 **NECESSARY TO PERFORM AUDITING OF PERFORMANCE**
22 **NECESSARY TO ESTABLISH NONDISCRIMINATION?**

23 A. No. In Attachment 12, BellSouth commits to make available "the raw data
24 used to calculate each measurement for AT&T as reasonably requested by
25 AT&T." Agreement, Att. 12 § 1.2. BellSouth has not yet fulfilled this

1 commitment. Moreover, this commitment standing alone is insufficient to
2 permit monitoring of nondiscriminatory treatment by BellSouth. Two
3 additional commitments are crucial to this process, and BellSouth has failed
4 to provide them. First, BellSouth is silent regarding the extent to which it
5 will make its own data available for audit by a CLEC (or other parties
6 authorized by this Commission). Second, BellSouth makes no
7 recommendation regarding the process that should apply in the event that a
8 CLEC believes that BellSouth is failing to adhere to its obligation to deliver
9 nondiscriminatory support.

10

11 Safeguards must be established beyond mere promises by BellSouth, to
12 ensure BellSouth is collecting necessary data properly, that the measures are
13 computed properly, and that appropriate and consistent comparative analyses
14 are made. Such a process cannot and should not be constructed “on the fly”
15 when the first complaint or allegation of discrimination arises.

16

17 **Q. HOW SHOULD PERFORMANCE METRICS BE REPORTED?**

18 A. Because the primary purpose of such reporting is to demonstrate the existence
19 (or detect the lack of) parity, the reports submitted should clearly show an
20 individual CLEC experience in comparison to the analogous BellSouth
21 performance experience. Likewise, a comparison should be provided of
22 aggregate CLEC experience to the experience of BellSouth. As part of the
23 display of such comparisons, a clear indication should be made whether or
24 not a statistically significant difference exists in either mean performance or
25 performance variations. Finally, the display should make it simple to

1 determine whether or not there are wide month-to-month variations in
2 performance as well as whether performance trends are either slipping or
3 improving.

4

5 **Q. WHAT ROLE SHOULD BENCHMARKS PLAY IN THE**
6 **PERFORMANCE MEASUREMENT PROCESS?**

7 A. The delivery of nondiscriminatory support is demonstrated best by comparing
8 performance delivered to CLECs directly to the performance BellSouth
9 delivers to its own retail operations in the same or reasonably analogous
10 situations. Benchmarks can, however, be used to establish minimum levels
11 of performance on an interim basis, pending development of performance
12 measures. The performance benchmarks in Exhibit CMP-2 represent the
13 minimum levels of performance necessary to establish that BellSouth will be
14 affording CLECs at least a reasonable opportunity to compete. The
15 benchmarks outlined in Exhibit CMP-2 were developed by LCUG out of
16 frustration over the ILECs' unwillingness to disclose their actual performance
17 levels for the same or analogous activities carried out in support of local
18 services. The levels are based on the participating CLECs' experience in the
19 long distance market combined with their expectations for the provision of
20 local services. As stated above, however, nondiscriminatory support is best
21 demonstrated by actual performance measurement.

22

23 **Q. WOULD YOU SUMMARIZE YOUR TESTIMONY?**

24 A. I urge this Commission to reject BellSouth's petition. The current
25 inadequacies of BellSouth's performance measurements alone are sufficient

1 to demonstrate that BellSouth's request for long distance authority is
2 premature whether considered from the perspective of either UNEs (Issue
3 3(a)) or services available for resale (Issue 15(a)). No factual evidence has
4 been delivered to this Commission showing that BellSouth is now delivering
5 comprehensive and nondiscriminatory support to CLECs through
6 performance standards and measures adequate to establish nondiscriminatory
7 support. Nondiscriminatory support of access to OSS functionality, support
8 of services resale and the support of UNEs cannot be established solely by
9 declaration. Nondiscrimination can be demonstrated only by showing actual
10 results that, when subjected to generally accepted statistical procedures for
11 testing of differences in results, confirms that BellSouth's support of CLEC
12 operations are no less in quality than the support BellSouth delivers in its
13 own local operations. Beyond that, submission of complete results, stability
14 of performance, and the capability to monitor performance on an on-going
15 basis are necessary to assure that CLECs have a meaningful opportunity to
16 compete.

17

18 I urge this Commission to find that BellSouth has not proven that it provides
19 nondiscriminatory services to CLECs.

20

21 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

22 **A. Yes.**

1 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2 A. My name is C. Michael Pfau. My business address is 295 North Maple
3 Avenue, Basking Ridge, New Jersey 07920.

4

5 **Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT POSITION?**

6 A. I am employed by AT&T Corp., and I serve as Division Manager, Local
7 Services Division Negotiations Support.

8

9 **Q. ARE YOU THE SAME INDIVIDUAL WHO PREVIOUSLY**
10 **SUBMITTED DIRECT TESTIMONY IN THIS DOCKET?**

11 A. Yes.

12

13 **Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?**

14 A. My rebuttal testimony responds to the direct testimony of BellSouth
15 witness Stacy in order to clarify certain issues essential to this
16 Commission's consideration of performance metrics, especially in the
17 context of Issues 3a and 15a. First, I will address statements by Mr. Stacy
18 regarding the status and significance of performance measures agreed
19 upon in Attachment 12 to the Florida BellSouth/AT&T Interconnection
20 Agreement. Mr. Stacy's testimony mischaracterizes the purpose of
21 Attachment 12 as well as its adequacy for monitoring nondiscrimination
22 and parity. Second, I will address BellSouth's proposal to employ

1 Statistical Process Control (SPC) procedures for comparing CLEC and
2 BellSouth performance results. This use of SPC, which was never
3 discussed nor agreed to by AT&T as part of any Interconnection
4 Agreement negotiations within Florida or any of BellSouth's operating
5 territory, will fall woefully short of promptly identifying discriminatory
6 performance on the part of BellSouth. The performance agreement is a
7 good start but simply is not sufficient to allow the Commission to
8 determine that BellSouth is offering or can provide nondiscriminatory
9 interconnection or access.

10
11 **Q. HOW MIGHT THE TESTIMONY OF BELLSOUTH MISLEAD**
12 **THIS COMMISSION WITH RESPECT TO THE STATUS AND**
13 **INTENDED PURPOSE OF ATTACHMENT 12?**

14 A. BellSouth completely mistakes the significance of Attachment 12 to the
15 Interconnection Agreement. The testimony of BellSouth's witness Stacy
16 relating to performance measures, due to the almost exclusive reliance
17 upon Attachment 12, gives the mistaken impression that the Attachment
18 is a comprehensive and complete set of measurements that can be
19 implemented now for the purposes of monitoring nondiscrimination.
20 Quite the contrary is true. Attachment 12 is only a starting point for
21 creating a measurement plan that will satisfy the stringent requirement
22 that BellSouth deliver support for Services Resale, use of Unbundled
23 Network Elements, and access to OSS functionality that is

1 nondiscriminatory, and, at no less than parity, with that delivered to
2 BellSouth's own operations. (See 47 U.S.C § 251(c); First Report and
3 Order, Implementation of the Local Competition Provisions in the
4 Telecommunications Act of 1996, CC Docket No. 96-98 (released August
5 8, 1996) @ ¶ 517, 518, 523, 525; Second Order on Reconsideration,
6 Implementation of the Local Competition Provisions in the
7 Telecommunication Act of 1996, CC Docket No. 96-98 (released
8 December 13, 1996) @ ¶ 2, 9.

9
10 In other testimony, Mr. Stacy recognized that the measures set forth in
11 Attachment 12 are only a starting point, and that further negotiations are
12 necessary. In his direct testimony and cross examination in Georgia in
13 July of this year relating to proposed SGAT performance measures, Mr.
14 Stacy recognized that some performance measures would be discarded
15 and others would be added. The testimony to which I am referring is
16 included as Exhibit CMPR-1 to my rebuttal testimony. The modification
17 process must continue, along the lines I identified in my direct testimony,
18 before the performance measurement plan can be considered adequate to
19 monitor BellSouth's parity and nondiscrimination obligations.

20

21 **Q. GIVEN BELLSOUTH'S RECOGNITION THAT ATTACHMENT**
22 **12 IS STILL SUBJECT TO CHANGES, WHAT ARE YOUR**
23 **CONCERNS REGARDING CONSIDERATION OF THE**

1 **ATTACHMENT 12 MEASUREMENTS AS PART OF THIS**
2 **PROCEEDING?**

3 A. As I stated in my direct testimony, my first concern is that Attachment 12
4 currently represents only a subset of measures necessary to monitor the
5 quality of support delivered by BellSouth. In many cases, the measures
6 set forth in Attachment 12 do not permit a meaningful comparison of
7 performance, the definition of measures and computation methodologies
8 contained in Attachment 12 leave much to interpretation, and the
9 proposed statistical tool for comparison of results is inadequate. Beyond
10 that, I am concerned that as this case proceeds, BellSouth continues
11 building a measurement collection and reporting system that reflects
12 neither the industry's input nor decisions by this Commission regarding
13 what measures should be monitored, how they should be defined and how
14 they should be compared and reported. Certainly, when determining the
15 appropriate measures necessary to monitor nondiscrimination, this
16 Commission should disregard any claimed system development costs
17 resulting from BellSouth's unilateral assessment of what is required to
18 monitor nondiscrimination.

19

20 **Q. IF BELLSOUTH AND AT&T NEGOTIATED AND AGREED TO**
21 **ATTACHMENT 12, WHY DO YOU OBJECT TO ITS USE FOR**
22 **MONITORING COMPLIANCE WITH NONDISCRIMINATION**
23 **AND PARITY OBLIGATIONS?**

1 A. AT&T negotiated the interconnection agreement with the understanding
2 that further evolution of the measurements would occur and occur
3 promptly. One of the overriding principles contained within the
4 agreement was that BellSouth would provide parity performance for all
5 measures, that parity would be determined by comparing AT&T's results
6 to the results for BellSouth's own operations, and that data validating this
7 parity performance would be delivered to AT&T on a regular basis.

8
9 Review of the performance measures contained in Attachment 12 will
10 very clearly show that many of the measures only provide a comparison
11 of performance results to a negotiated target. Negotiated targets represent
12 simply what the parties agreed BellSouth would be obligated to deliver in
13 the absence of actual comparative data of BellSouth. Meeting or
14 surpassing a "negotiated" target does not establish parity or
15 nondiscrimination. Accordingly, measures incorporated in Attachment
16 12 reflecting only whether a target is met or exceeded were obviously
17 destined for modification and redefinition to permit parity and
18 nondiscrimination to be directly monitored.

19

20 **Q. WHY WOULD AT&T AGREE TO THE CONTENT OF**
21 **ATTACHMENT 12 IF IT WAS INADEQUATE TO MONITOR**
22 **PARITY AND NONDISCRIMINATION?**

1 A. As I said earlier, AT&T accepted that Attachment 12 would evolve over
2 time and, perhaps naively, anticipated this evolution would be
3 substantially completed before SGAT filings were pursued. As a
4 practical matter, incorporation of negotiated targets allowed AT&T to
5 complete a regionwide interconnection agreement template and begin the
6 process of entering BellSouth's local markets with knowledge of expected
7 minimum levels of performance by BellSouth. Market entry could,
8 therefore, proceed while negotiations continued to refine the measures
9 and procedures appropriate to attaining the longer term goal of
10 monitoring parity and nondiscrimination.

11

12 **Q. THE SECOND PURPOSE OF YOUR REBUTTAL TESTIMONY**
13 **WAS TO ADDRESS BELLSOUTH'S PROPOSAL TO UTILIZE**
14 **STATISTICAL PROCESS CONTROL (SPC) FOR COMPARING**
15 **CLEC AND BELLSOUTH RESULTS. WHAT IS BELLSOUTH'S**
16 **PROPOSAL FOR MONITORING NONDISCRIMINATION AND**
17 **PARITY?**

18 A. BellSouth witness Stacy proposes the use of statistical process control
19 charts that contain upper and lower control levels for performance where
20 BellSouth currently is collecting performance data. (See Stacy Dir. at 17-
21 19.) Unfortunately, the proposed direct comparison to BellSouth's actual
22 results is promised for only eight of the measures. (See Stacy Dir. at 18
23 and Exhibit WNS-B.) From a purely technical standpoint, I do not

1 disagree that process control charts reflect a form of statistical
2 comparison. Mr. Stacy's approach, however, needs clarification and, on
3 the surface, appears inadequate to protect the development of competition
4 in the State of Florida.

5

6 **Q. WHY DO YOU SAY THAT SPC PROCEDURES WILL BE**
7 **INADEQUATE FOR MONITORING PARITY AND**
8 **NONDISCRIMINATION?**

9 A. The SPC approach is inadequate for three primary reasons: (1) The use of
10 SPC in a traditional quality control application presumes a number of key
11 conditions which are not present within the local market situation under
12 consideration here; (2) Even if SPC were appropriate to employ, which I
13 do not believe it is, the defined upper and lower control limits do not
14 adequately detect non-parity or discriminatory performance; and (3) The
15 apparent trigger for investigating potentially discriminatory performance
16 does not promptly initiate action nor does resolution occur with sufficient
17 haste.

18

19 **Q. WHAT SPECIFIC CONDITIONS DO YOU BELIEVE ARE**
20 **PROBLEMATIC WERE SPC TO BE UTILIZED TO MONITOR**
21 **FOR NONDISCRIMINATION?**

22 A. There are a number of basic constructs which, while fundamental to SPC,
23 are problematic to its use as envisioned by BellSouth. SPC is intended to

1 monitor whether or not a specific process is operating within expected
2 boundaries. The acceptable boundaries of performance are computed
3 using generally accepted statistical analysis techniques reflecting
4 previously observed variations in the performance of a process that is
5 operating in a stable manner. The control limits are established using
6 data generally collected through a sampling process that gathers a fixed
7 number of sample points each month so that the upper and lower control
8 limits can remain static for the comparison.

9
10 The first problem with BellSouth employing traditional SPC techniques is
11 that a single process is not likely to exist. Rather, one process for
12 BellSouth will be monitored and compared to what potentially may be a
13 very different process for the CLECs. For example, BellSouth offers
14 LENS to CLECs for ordering while it utilizes RNS or DOE for its own
15 ordering process. The very real potential exists that the CLEC's and
16 BellSouth's processes will operate differently. Why else would BellSouth
17 create a new ordering system that it does not use for its own operations?

18
19 The second problem with employing SPC is that the processes are not
20 likely to be stable, or in control. At least for CLECs, the systems
21 supporting the processes being monitored are only recently deployed and
22 only partially tested. There is certainly abundant reason to believe that
23 the current operations do not reflect the stability of operation presumed by
24 the SPC technique.

1

2 Third, in order to maintain stable upper and lower control limits and
3 comparability of variance in the CLEC results, BellSouth would need to
4 sample its own operation at the same rate as that of the smallest volume
5 CLEC. Unfortunately, tailoring the sample to conform to the volume of
6 the smallest CLEC is a problem. But, small sample sizes generally are
7 correlated with higher variability in the mean result. Accordingly, no
8 result would be likely to fall outside the control limits unless, of course,
9 the data is collected over such a lengthy period that sufficient data points
10 could be collected for all parties. On the other hand, extending the data
11 collection over a lengthy period will interject delay in determining
12 whether or not discriminatory performance results are evident.

13

14 Bottom line, plotting a CLEC's results on a control chart that solely
15 represents BellSouth's performance and BellSouth's expected deviations
16 in performance is not a mechanism likely to provide timely and
17 meaningful comparisons of results.

18

19 **Q. WHY ARE TRADITIONAL UPPER AND LOWER CONTROL**
20 **LIMITS ASSOCIATED WITH SPC INADEQUATE TO DETECT**
21 **POTENTIALLY DISCRIMINATORY OR NON-PARITY**
22 **OPERATING RESULTS?**

1 A. It appears the data provided by BellSouth Witness Stacy is only
2 illustrative and fails to identify the parameters that will be used to
3 establish control limits. (See Stacy Dir. at 18.) My concern is that the
4 definition of the upper and lower control limits could be so limiting that
5 only the most blatantly discriminatory performance will fall outside the
6 control limit. (This, of course, assumes that SPC could be adapted to
7 operate in a satisfactory manner for the purpose of monitoring results,
8 which it cannot.) I understand that SPC control limits typically are set so
9 broadly that only a 0.27% probability exists that a data point outside the
10 control limits would erroneously identify unsatisfactory behavior. This
11 means there would be less than a 3 in 1,000 chance that a “false alarm”
12 would occur indicating that BellSouth was operating in a discriminatory
13 manner. In other words, such control limits would “catch” only the most
14 obviously discriminatory behavior, while failing to identify less obvious –
15 but equally objectionable – discriminatory action.

16

17 BellSouth cannot be permitted to stack the deck in its favor through the
18 advantageous and selective use of the statistical tests for difference in
19 results.

20

21 **Q. WHAT IS YOUR CONCERN REGARDING BELL SOUTH'S**
22 **PROPOSED TRIGGER FOR INVESTIGATING POTENTIALLY**
23 **DISCRIMINATORY OR NON-PARITY PERFORMANCE?**

1 A. BellSouth indicates that investigation of non-parity results will be
2 undertaken following three consecutive months of a CLEC's result being
3 either higher or lower than the results for BellSouth. This proposal
4 simply is insufficient to ensure parity. Under the BellSouth approach,
5 unless a single month's result is so exceptionally bad that it falls outside
6 the liberal control limits, CLECs and their customers must receive non-
7 parity performance for three consecutive months before an investigation
8 is undertaken. Even then the CLEC must wait an additional, unspecified
9 amount of time and participate in an undefined joint investigation process
10 before steps are initiated to correct non-parity performance. During this
11 entire period, the CLECs cannot offer services at parity with BellSouth.
12 Few customers have this kind of patience.

13

14 The BellSouth process offers no definitive steps or time limits for
15 correcting non-parity performance. The process also creates incentives to
16 manage to a pattern of "two bad months--one good month" with respect to
17 results delivered to CLECs. This Commission cannot expect robust
18 competition to develop when BellSouth has literally months to identify
19 and correct non-parity performance. The Act does not say that
20 discrimination exists only after three consecutive months of non-parity
21 performance – immediate identification, investigation, and remediation
22 are necessary when the quality of support delivered to a CLEC is less than
23 that delivered to BellSouth.

24

1 **Q. PLEASE SUMMARIZE YOUR REBUTTAL TESTIMONY.**

2 A. In response to Issues 3(a) and 15(a), the Commission should find that
3 BellSouth has failed to develop performance standards and measurements
4 capable of reliably measuring whether it can provide nondiscriminatory
5 access to network elements or services for resale. Without reliable
6 performance standards and measurements, this Commission is left with
7 only BellSouth's unverifiable promise that it intends to provide
8 nondiscriminatory access and interconnection. The direct testimony filed
9 by BellSouth with respect to performance measures demonstrates that too
10 many questions are yet unanswered and too many details are yet to be
11 documented for this Commission to move forward with confidence that
12 the development of competition will be adequately protected.

13

14 **Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

15 A. Yes.

1 Q (By Ms. Rule) Have you prepared a summary
2 of testimony?

3 A Yes, I have.

4 Q Could you please give that summary?

5 A Yes. Today I hope my testimony --

6 **COMMISSIONER CLARK:** Can I interrupt for
7 just a minute? Would you look at the direct testimony
8 on Page 9, Line 21. Is that supposed to be taken out,
9 or do I have a wrong copy maybe?

10 **WITNESS PFAU:** Excuse me. I didn't hear the
11 question.

12 **COMMISSIONER CLARK:** Page 9, Line 21.

13 **WITNESS PFAU:** That line refers to the
14 footnote, or a reference to the Lines 14 through 19,
15 which are a direct quotation of the Michigan Public
16 Service Commission's consultation.

17 **COMMISSIONER KIESLING:** Then I'm confused.
18 There should be quote marks beginning on Line 14 and
19 ending on Line 19? And then this is the citation to
20 what that's quoted from?

21 **WITNESS PFAU:** Yes, that would be correct.
22 And whether it would be done with an indent or a
23 quote, I'm not sure what the normal protocol is, but
24 that is the quotation; Lines 14 through 19.

25 **COMMISSIONER CLARK:** That's not your words,

1 that comes out of the Michigan order apparently?

2 **WITNESS PFAU:** Right; the consultation to
3 the FCC.

4 **COMMISSIONER CLARK:** What document are you
5 citing to when you say "consultation of the Michigan
6 Public Service Commission at 31 and 32"? Is that in
7 the Ameritech order or is it in the Michigan order?

8 **WITNESS PFAU:** Well, actually it's in both.
9 The Michigan Commission provides a consultation to the
10 FCC, and the quote from Lines 14 through 19 is on
11 Pages 31 and 32 of that consultation.

12 **COMMISSIONER CLARK:** Of the Michigan
13 document?

14 **WITNESS PFAU:** Of the Michigan document, but
15 I also believe it's contained directly within the FCC
16 Ameritech order as well.

17 **COMMISSIONER CLARK:** Thanks.

18 **WITNESS PFAU:** Let me return, then, to my
19 summary. Today I hope my testimony makes two things
20 clear without either being painfully proficient or
21 excruciating.

22 First, I would like to make clear that
23 demonstration of nondiscrimination requires a direct
24 comparison of actual results between BellSouth and
25 competitive local exchange carriers, and such results

1 are not yet in the record.

2 And, second, my testimony is, and I'd like
3 to make clear, that the performance measures, as
4 BellSouth proposes them, are in many cases inadequate
5 to protect the interests of Florida consumers by
6 allowing or monitoring the development of competition.

7 This Commission is faced with complex issues
8 and difficult decisions as it acknowledged earlier
9 this morning. Operation support issues are highly
10 technical, and the topic of measurements, as I will
11 freely admit, is rather dry. But the simple fact is
12 that BellSouth has not given you the information you
13 need to evaluate the customer impact of their 271
14 application.

15 You have already heard extensive debate
16 regarding whether or not BellSouth OSS is operational.
17 BellSouth says it works. CLECs say that it doesn't.
18 How do you decide who is right?

19 If a measurement system was in place and the
20 OSS was functioning properly, then you could decide
21 based on factual data, but rather than supporting
22 factual data, you have been given days and weeks of
23 testimony, mountains of documentation, and only a
24 controlled prototype demonstration. Such showings
25 cannot conclusively prove that the OSS works in a

1 nondiscriminatory manner.

2 BellSouth, by only making unsupported
3 declarations that its OSS is nondiscriminatory, is
4 much like a patient who walks into the physician's
5 office and make a self-diagnosis and then expects the
6 doctor to just write a prescription without further
7 examination. A prudent physician would not do this.

8 This Commission should, likewise, expect to
9 see its own proof in the form of meaningful
10 performance measures and actual results before
11 accepting BellSouth's assertion of nondiscrimination.

12 Before the FCC rejected the Ameritech 271
13 application, it gathered input from the Michigan
14 Commission and the Department of Justice. This input
15 included comments on the adequacy of the proposed
16 performance measures and the extent to which
17 nondiscrimination was demonstrated.

18 The FCC and this Commission will likely
19 partner in a similar manner whenever BellSouth's 271
20 application moves forward. Therefore, what the FCC
21 said when it rejected Ameritech will be useful
22 information to these instant proceedings. Learning
23 from the Ameritech application will assist this
24 Commission to construct a quality consultation.

25 I was the affiant with respect to

1 performance measures both to the Michigan Commission
2 and to the FCC when they each considered the Ameritech
3 Michigan 271 application. I have also met with the
4 Department of Justice on the same topic.

5 I, therefore, have a deep understanding of
6 both the Ameritech and the BellSouth performance
7 measure proposals, and I can say without reservation
8 that BellSouth's proposed measures and their
9 measurement plan as they stand today will be found
10 faulty. They're not even close to acceptable.

11 I will summarize the deficiencies, but
12 they're more fully described in my testimony that I
13 prefiled where I also identify possible corrective
14 actions.

15 First and foremost, BellSouth does not
16 employ measures that allow direct comparisons. You
17 won't see the time it actually takes BellSouth to
18 provide residential POT service compared to how long
19 it actually takes when a CLEC provides service.

20 You won't see how long it actually takes for
21 a BellSouth service representative to see an order has
22 been accepted by the BellSouth OSS compared to how
23 long it takes for a CLEC to get an order confirmation.
24 You won't see the accuracy of usage records that
25 BellSouth actually delivers to its own billing centers

1 compared to what it delivers to the CLECs. Yet there
2 are other comparisons that are too numerous to list,
3 but these comparisons are basic to a nondiscrimination
4 finding.

5 The Michigan Commission was faced with a
6 similar lack of direct comparison when it reviewed the
7 Ameritech 271 filing. The Michigan Commission
8 unequivocally said in its consultation to the FCC that
9 it did not have sufficient data to make a finding of
10 nondiscrimination.

11 This Commission should demand comparative
12 results from BellSouth so that it may prepare a
13 fact-based consultation to the FCC if and when this
14 application ultimately moves forward.

15 BellSouth has and will likely claim that it
16 has supplied the necessary data. Certainly mountains
17 of paper have been produced, but the burden of proof
18 of nondiscrimination is not satisfied by quantity of
19 paper, but by the quality of the data.

20 The Commission needs to see results from
21 measurements specifically designed to monitor
22 performance and detect discrimination. Many of
23 BellSouth measurements cannot detect discrimination
24 and may actually hide it.

25 BellSouth employs many target-based

1 measures. A target-based measure monitors and
2 compares performance to a fixed level or objective
3 performance.

4 For example, percent due dates met is a
5 target-based measure, the due date in this case being
6 the target. The problem with these measures is they
7 can mask discrimination. If two companies both
8 experience 95% due dates met, it does not mean parity
9 exists.

10 One company could experience an average
11 service delivery interval of one day and the other
12 could experience a four-day service delivery interval.
13 BellSouth would say if both had the same percent due
14 date met, then parity exists. Customers would not.

15 Ameritech proposed the same target-based
16 metrics and the concept of the defining parity based
17 on these measures in its 271 application. The FCC,
18 the Department of Justice, and the Michigan Commission
19 unanimously found such measures fatally flawed.

20 I state in my testimony that the
21 measurements as BellSouth has submitted them are
22 inadequately defined. If measures are not clearly
23 defined and documented, then this Commission will be
24 faced with the same type of confusing and ongoing
25 debate that is now underway with respect to OSS.

1 Conflicting interpretations and arguments
2 will arise, resulting calculations and interpretations
3 will be unclear, and comparison of performance will
4 frustrate a determination of whether or not parity
5 exists.

6 The FCC, the DOJ and the Michigan
7 Commission, again, all recognized the value of clearly
8 defined metrics and their notable lack in the
9 Ameritech filing.

10 This Commission is likewise hampered by the
11 imprecision of BellSouth's proposed measures. I
12 testify that BellSouth does not yet disaggregate its
13 proposed results so that useful comparisons can be
14 made. Disaggregation is a foreign term to most
15 people, but simply means apples must be compared to
16 apples.

17 If it routinely takes four weeks to install
18 one type of service while it routinely takes five days
19 to install a second type, then the results for these
20 two types of services should not be averaged together
21 and reported as a single result. Material differences
22 exist, and the service results should be separately
23 displayed for comparison.

24 BellSouth does not consistently propose to
25 do this type of disaggregation. Ameritech likewise

1 proposed only minimal results of disaggregation. Both
2 the Michigan Commission and the FCC said that the
3 combining of dissimilar results made a conclusive
4 nondiscrimination finding impossible.

5 This Commission has the same issue to
6 confront with BellSouth's proposal. BellSouth is
7 asking for blind acceptance that its OSS access is
8 nondiscriminatory.

9 My testimony clearly shows that BellSouth
10 has neither proposed adequate performance measures nor
11 satisfied its burden of proof. The burden of proof
12 clearly lies with BellSouth, and as the FCC noted,
13 paper promises do not and cannot satisfy a BOC burden
14 of proof. Because of the lack of data and the
15 infirmity of the measures, this Commission should find
16 with regards to issues 3A and 15A that BellSouth's
17 filing is currently deficient.

18 I recognize it's always easier to be
19 critical than constructive. Therefore, beyond
20 identifying the shortfalls in the BellSouth
21 measurement plan, my testimony also sets forth many
22 reasonable corrective actions. One of these is the
23 listing of 19 measures that could be used to monitor
24 for nondiscrimination.

25 Virtually all of these 19 measures have been

1 validated in comments by the FCC, either in its 271
2 order rejecting Ameritech or in the Bell
3 Atlantic/NYNEX merger order both issued in the early
4 part of August.

5 As you may know, the FCC is on the verge of
6 initiating an issue to the rulemaking on the topic of
7 performance measures. Other states, such as Georgia,
8 Michigan and Connecticut, have or may soon undertake
9 similar investigations.

10 This Commission may likewise want to
11 consider a separate proceeding to investigate what
12 performance measures it will use to establish and
13 monitor nondiscriminatory performance on the part of
14 BellSouth.

15 Whatever course is chosen, compelling
16 factual evidence should first be delivered by
17 BellSouth as proof that it's met the precise statutory
18 requirement of nondiscrimination before this
19 Commission concurs that the OSS operates as intended.

20 Q Does that conclude your summary?

21 A Yes, it does.

22 MS. RULE: The witness is available for
23 cross-examination.

24 CHAIRMAN JOHNSON: Ms. Canzano.

25

CROSS EXAMINATION1
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25**BY MS. CANZANO:**

Q Good morning, Mr. Pfau. I'm Donna Canzano for Intermedia. I just have a few questions based on your summary. In your summary you stated that the FCC validated your 19 performance measures in the Ameritech order and the Bell Atlantic/NYNEX; is that correct?

A Yes, that's correct.

Q Those orders were issued after you filed your prefiled testimony; is that correct?

A That's correct.

Q What I'd like to do is ask for a late-filed exhibit comparing those orders with your testimony.

MS. CANZANO: Chairman Johnson, I would like to ask for a late-filed exhibit. I believe that would be Number 70.

CHAIRMAN JOHNSON: I'll identify that, but what are you asking for again?

MS. CANZANO: I would like him to compare and cross-reference his testimony with the FCC's Ameritech order as well as the FCC's Bell Atlantic/NYNEX order which he mentioned in his summary.

COMMISSIONER KIESLING: That wasn't a short

1 title, so could you repeat it? Comparing and
2 cross-reference his testimony with?

3 MS. CANZANO: The FCC's Ameritech order and
4 the Bell Atlantic/NYNEX merger order.

5 MR. ELLENBERG: Chairman Johnson, William
6 Ellenberg for BSC. We do object to this. I think
7 we've gone even beyond friendly cross now to preparing
8 and filing exhibits later to support this witness, and
9 obviously the counsel and the party that Mr. Pfau
10 represents have identical interests in this
11 proceeding.

12 Mr. Gillan did something similar to this,
13 but the difference is we had that before the
14 cross-examination so that we could work from that. I
15 don't think it's appropriate in this case for the
16 late-filed exhibit to come in.

17 The Commission earlier determined that
18 parties could address the Ameritech order and its
19 impact as a part of their summaries, and Mr. Pfau has
20 had that opportunity, but this goes well beyond that
21 point, and BellSouth objects.

22 MS. CANZANO: I'd like to respond. As you
23 mentioned, Mr. Gillan did enter a similar exhibit. I
24 think it would be useful to this Commission, and as
25 well as the parties, to put on its case.

1 Also, I would like to mention that I crossed
2 Mr. Stacy on this very subject on performance
3 measures, and I'm entitled to develop the record.

4 **MS. RULE:** Commissioners, come to think of
5 it, I believe BellSouth asked its own witness for a
6 late-filed exhibit. I think it's relevant. I think
7 it's the sort of information that the Commission may
8 find helpful, and Mr. Gillan put it in himself.

9 **CHAIRMAN JOHNSON:** You said that BellSouth
10 asked for a similar late filed exhibit where --

11 **MS. RULE:** BellSouth asked its own witness
12 for a late-filed exhibit and --

13 **CHAIRMAN JOHNSON:** That has the same
14 thing -- that analyzes the --

15 **MS. RULE:** I'm sorry. I don't recall the
16 topic of it, but certainly the same objection could be
17 applied to asking your own witness for a late-filed
18 exhibit.

19 **COMMISSIONER CLARK:** Did you object to it?

20 **MS. RULE:** No, because it's not
21 objectionable. It's relevant. It's the type of
22 information the Commission said could be submitted.
23 And, in fact, I'd like to ask the Commission to take
24 initial notice of the Bell Atlantic/NYNEX merger
25 order, and I'll supply copies to the parties.

1 **CHAIRMAN JOHNSON:** We're going to take one
2 at a time, though. We're in the middle of an
3 objection. Staff?

4 **MR. PELLEGRINI:** Staff doesn't necessarily
5 see a great value in that cross-referencing.

6 **CHAIRMAN JOHNSON:** Any other arguments on
7 the point? My concern is the notice on this
8 particular request. I know that, Ms. Rule, when you
9 provided the information with Mr. Gillan, you did give
10 it to the parties a day before, and --

11 **COMMISSIONER KIESLING:** Chairman Johnson,
12 Ms. Barone is trying to add something that may be of
13 assistance. I don't know.

14 **MS. BARONE:** Yes, Madam Chairman. Two
15 things: Number one, it's true that the Bell/NYNEX
16 merger order has not been granted official
17 recognition. First, we would need to find out if
18 there are any objections to that, and then if so,
19 we'll deal with that, and if not, a cross-reference to
20 a cross-referencing your summary may or may not be
21 beneficial, and I don't see the harm in actually
22 having that as an exhibit. It's really up to your
23 discretion. If it will aid you, then fine.

24 **CHAIRMAN JOHNSON:** We're going to handle the
25 other motion, or the request that we take official

1 recognition of the Bell Atlantic document separately.
2 But the issue of what's being requested here is that
3 he take his testimony and that he cross-references?

4 MS. CANZANO: Yes, just like Mr. Gillan did
5 at his exhibit where he takes -- he references the
6 Ameritech order as well as the Bell Atlantic/NYNEX
7 order, and just reference where those orders are --
8 support his testimony or not, as the case may be.

9 CHAIRMAN JOHNSON: Okay.

10 COMMISSIONER KIESLING: So, essentially, if
11 I understand it, you want to supplement his testimony
12 with something that isn't filed yet and isn't
13 available to any of the parties for their use in
14 cross.

15 MS. CANZANO: I don't think I'd characterize
16 it as supplementing it. I would just call it
17 cross-referencing.

18 CHAIRMAN JOHNSON: I'm not going to admit
19 that particular document for several reasons; one, I
20 am concerned about not allowing the adequate notice.
21 And we did with Mr. Gillan. We did at least have that
22 information beforehand. He walked through it for us
23 as a part of this process.

24 Yeah. I'm not going to admit that at this
25 time. But are you asking us to take official

1 recognition -- was that -- who was --

2 MS. CANZANO: I believe Ms. Rule asked for
3 that.

4 MS. RULE: Yes, I am. The witness testified
5 that his performance measures that are contained in
6 his prefiled testimony were validated in that order,
7 and I believe it's appropriate for the Commission to
8 take official recognition of it.

9 MR. ELLENBERG: I'm not sure how we got into
10 the Bell Atlantic/NYNEX merger order, if that's what's
11 being referred to. I'm not sure that's what the
12 witness was referring to, Chairman Johnson. I
13 think --

14 CHAIRMAN JOHNSON: Was that in his direct
15 testimony?

16 MS. CANZANO: It was mentioned in his
17 summary, his opening statement.

18 CHAIRMAN JOHNSON: But was it in his direct
19 or rebuttal?

20 MS. CANZANO: I don't think it could have
21 been. It was issued after he prefiled his testimony.

22 CHAIRMAN JOHNSON: Oh, yeah; that's right.
23 I guess it's more difficult for me to understand the
24 relevance of taking the official recognition.
25 Certainly orders are the type things we could take

1 official recognition of, but how is that relevant to
2 this --

3 MS. RULE: Mr. Pfau's testimony is that
4 subsequent actions of the FCC, both in the Ameritech
5 order and the Bell Atlantic/NYNEX merger order, have
6 validated the very performance measures that he's
7 urged you to accept, and I believe that makes it
8 relevant and appropriate.

9 CHAIRMAN JOHNSON: I'm going to go ahead and
10 take official recognition of the document.

11 MS. RULE: Thank you.

12 MS. CANZANO: Well, thank you. I have no
13 further questions.

14 CHAIRMAN JOHNSON: BellSouth?

15 MR. ELLENBERG: Chairman Johnson, no other
16 parties have cross other than BellSouth?

17 CHAIRMAN JOHNSON: They don't.

18 CROSS EXAMINATION

19 BY MR. ELLENBERG:

20 Q Mr. Pfau, good morning. I'm William
21 Ellenberg. I represent BellSouth Telecommunications.

22 A Good morning.

23 Q I have just a few questions about your
24 prefiled testimony, but to clarify one thing from your
25 summary that may make this go a lot more quickly than

1 I had thought, I heard you talk about the need for
2 additional performance measures with respect to
3 BellSouth's OSS during your summary, but I didn't hear
4 many, if any, of the specific references to the need
5 for other measures.

6 Is it your testimony this morning that with
7 the exception of measures for operational support
8 system access, that the other measures being proposed
9 by BellSouth are adequate?

10 A No, it's not.

11 Q I rather suspected that that was the answer,
12 but I thought I'd give it a shot anyway. As I
13 understand your testimony, you're appearing this
14 morning on behalf of AT&T of the Southern States; is
15 that correct?

16 A That's correct.

17 Q And that's a subsidiary of AT&T that
18 coincides happily with the BellSouth region; is that
19 correct?

20 A I believe so, but I'm not versed on the
21 legal constructs of the corporation.

22 Q Are you versed enough to know that you work
23 for AT&T Corp, the parent corporation?

24 A Yes, I know that part.

25 Q And your office is in New Jersey; is that

1 correct?

2 A That's correct.

3 Q And you're here to talk generally about the
4 need for performance measures to test
5 nondiscriminatory treatment; is that correct?

6 A That's correct.

7 Q And you're proposing a set of measures that
8 are attached, measures and benchmarks that are
9 attached to your prefiled testimony; is that correct?

10 A Yes, there are measures attached to that
11 testimony that I advocate.

12 Q And although you did not mention in your
13 summary, I believe from your prefiled direct
14 testimony, I have learned that you are aware of an
15 agreement that BellSouth and AT&T have entered into on
16 a set of performance measures; isn't that correct?

17 A Are you referring to the Attachment 12 of
18 the interconnection agreement?

19 Q Yes, I am.

20 A Yes. I'm aware of that agreement, but it
21 really is not necessarily relevant to the proceedings
22 we're undertaking here, because that agreement was
23 constructed for the purposes of monitoring contract
24 compliance and allowing market entry by AT&T, not
25 necessarily to detect or monitor discrimination.

1 The FCC specifically recognized in its order
2 that reliance on the interconnection agreements of
3 filing BOCs could only be made after the FCC made a
4 determination that the measures indeed showed that
5 nondiscrimination could be detected. My testimony is,
6 is that those measures in Attachment 12 are not
7 adequate to make that kind of demonstration.

8 Q My question, to make sure that I got an
9 answer, was that you were aware of the agreement that
10 AT&T and BellSouth entered into, correct?

11 A I think that's a safe statement.

12 Q Thank you. Now, as to the applicability, I
13 have some questions about that. Do you have a copy of
14 Attachment 12 to the interconnection agreement in
15 front of you?

16 A I don't have it with me, no.

17 Q I believe this has been entered into the
18 record as an attachment to Mr. Stacy's testimony, and
19 according to my note, it's Exhibit 51. The copy that
20 we're handing out now I don't think we need to mark
21 separately unless we end up with some discrepancies.
22 But this is the copy that was filed by counsel for
23 AT&T with the Commission on June 10th this year.

24 Mr. Pfau, you will see a number of things in
25 this document. There are some additional provisions

1 that the parties agreed to, as I understand from the
2 cover letter, but if you would turn to the portion
3 that is Attachment 12 to the interconnection
4 agreement, please.

5 A This is what you have just handed out?

6 Q Yes.

7 A Because it's not exactly the same as what
8 Mr. Stacy has in his testimony.

9 Q Well, then perhaps we better mark this.

10 MR. ELLENBERG: If we could have the next
11 exhibit number, Chairman Johnson.

12 CHAIRMAN JOHNSON: 70 -- or 71.

13 MS. WHITE: Madam Chairman, I hate to
14 interrupt, but I think it would be No. 70, because the
15 previous No. 70 did not get moved into the record.

16 MR. PELLEGRINI: I have 70 as well.

17 CHAIRMAN JOHNSON: Okay. I had it written
18 here. Exhibit 70.

19 (Exhibit 70 marked for identification.)

20 Q (By Mr. Ellenberg) Have you found
21 Attachment 12 in this document, Mr. Pfau?

22 A I have what you handed out, yes, I do.

23 Q Paragraph Number 1 is captioned "Performance
24 Measurement." Do you see that?

25 A I see a paragraph 1 in Mr. Stacy's exhibit,

1 but are you talking about 12.1 on what you just handed
2 out?

3 Q Well, that's what I was explaining. If you
4 look at the cover letter, there's more in this package
5 than simply Attachment 12 to the interconnection
6 agreement. There are some additional provisions to
7 the contract itself. And I have asked you to turn to
8 that part which is Attachment 12, and it's Page 13. I
9 didn't anticipate marking this, so I haven't numbered
10 the pages. I guess I messed up.

11 A I'm sorry. You've got me totally confused.
12 Which is Page 13?

13 MR. ELLENBERG: Chairman Johnson, may I
14 approach the witness?

15 CHAIRMAN JOHNSON: Sure.

16 WITNESS PFAU: Attachment 12, Page 1.
17 That's what you want me to look at. Okay.

18 Q (By Mr. Ellenberg) Now, on the top right
19 corner of this page, do you see Attachment 12, Page 1?

20 A Yes, I do.

21 Q And paragraph 1 on this page is captioned
22 "Performance Measurement"; correct?

23 A That's correct.

24 Q And if you would look at the first sentence
25 in paragraph 1.1, I believe it reads "BellSouth, in

1 providing services and elements to AT&T pursuant to
2 this agreement, shall provide AT&T the same quality of
3 service that BellSouth provides itself and its end
4 users." Do you see that?

5 A Yes, I do.

6 Q Wouldn't you agree that from a layman's
7 point of view, that that's a standard for
8 nondiscrimination?

9 A No, I wouldn't. I would agree that that's a
10 statement of an objective. It does not demonstrate
11 that you provided it. It's merely an assertion.

12 Q No, sir. I didn't ask you if it proved one
13 way or the other that BellSouth was providing that. I
14 asked you if the same quality of service that
15 BellSouth provides itself and its end users is a test
16 of nondiscrimination.

17 A Yes. I think I had stated earlier that if
18 you directly compare results for two parties and the
19 results are the same in all material aspects, then
20 that is a demonstration of parity or
21 nondiscrimination.

22 Q In light of that statement and your
23 agreement that that's a measure, a test of
24 nondiscrimination, you would agree, then, that this
25 document is relevant to the inquiry of whether

1 BellSouth is providing nondiscriminatory access,
2 wouldn't you?

3 A I think it's only relevant to the extent
4 this Commission should be looking at it because
5 BellSouth proposed it in making a determination of
6 whether or not those measures can indeed show
7 nondiscrimination.

8 I think the Commission would also then have
9 to look further to see whether those measures are
10 applicable to the entire CLEC industry. And then
11 finally the Commission would have to see whether any
12 actual results support that the objectives stated in
13 paragraph 1.1 is actually being attained for anyone.

14 Q Let's back up. I understood you in response
15 to an earlier question to say that this document, that
16 these performance measurements, were only for the
17 purpose of proving contract compliance between AT&T
18 and BellSouth. And all I'm trying to get you to agree
19 to now is that the standards proposed in paragraph 1.1
20 does go to the issue of a discriminatory versus
21 nondiscriminatory provision of service and elements
22 between AT&T and BellSouth. You would agree with
23 that, wouldn't you?

24 A I'm not sure that I would agree with that
25 the way it was stated. Let me try to set forth my

1 understanding of Attachment 12.

2 Attachment 12 was established to set up a
3 number of measures for monitoring the operation of the
4 interconnection agreement between AT&T and BellSouth.
5 At that time that that was agreed to, and in
6 subsequent testimony by Mr. Stacy, there have been a
7 number of acknowledgements, at least seven times in
8 the record in the Georgia proceedings, that this
9 interconnection agreement set of measures was intended
10 to evolve.

11 One of the failings that's quite obvious in
12 this, even if one were to accept that this could be
13 used as a standard for nondiscrimination, is the fact
14 that none of the interface measurements are
15 incorporated. Mr. Stacy does not file Attachment 15,
16 which covers the OSS, which explicitly states that
17 measures have to be created to measure that aspect.

18 MR. ELLENBERG: Chairman Johnson, I want to
19 object to the responsiveness of the answer. We
20 haven't even gotten into the merits of the
21 measurements and what they are and are they adequate.

22 I'm simply trying to establish now that this
23 document goes to more than just contract compliance,
24 that the test in that very first paragraph goes to
25 nondiscrimination. That's all I have asked the

1 witness. We're going to get into these other issues,
2 but that's all I've asked the witness at this point.

3 MS. RULE: Commissioners, I believe the
4 witness was asked a question that required him to
5 explain his point of view. What he said was he could
6 not agree with the statement proposed, and he then
7 proceeded to explain his understanding.

8 MR. ELLENBERG: I'll try to rephrase the
9 question if that would help.

10 CHAIRMAN JOHNSON: Thank you.

11 Q (By Mr. Ellenberg) Mr. Pfau, you would
12 agree, based on the first sentence of paragraph 1.1,
13 that there's more at issue in this document than mere
14 contract compliance, wouldn't you?

15 A No, I would not.

16 Q But you --

17 COMMISSIONER CLARK: I don't have that --
18 would you read the sentence to me?

19 MR. ELLENBERG: BellSouth in providing --
20 I'm reading from paragraph 1.1, Page 1 of
21 Attachment 12 to the AT&T/BellSouth interconnection
22 agreement. "BellSouth, in providing services and
23 elements to AT&T pursuant to this agreement, shall
24 provide AT&T the same quality of service that
25 BellSouth provides itself and its end users."

1 **COMMISSIONER CLARK:** What was your question
2 again?

3 **MR. ELLENBERG:** I was -- my question was
4 if -- I had asked earlier if this was a test for
5 nondiscriminatory access, and I think the witness
6 agreed with that; and I was simply asking him to agree
7 that there was more in this document than mere
8 contract compliance issues.

9 **COMMISSIONER CLARK:** Okay.

10 **MR. ELLENBERG:** Between AT&T and BellSouth.

11 **Q** **(By Mr. Ellenberg)** And I believe you have
12 said you would not agree with that?

13 **A** I would not agree with that, because this is
14 simply a contract.

15 **Q** Well, we did agree earlier that the language
16 in that sentence is a test for nondiscrimination,
17 correct?

18 **A** I think we agreed that that was an objective
19 of the contract and that a test for nondiscrimination
20 was a comparison of performance.

21 **Q** Now, as I understand your role with AT&T
22 Corporation, you provide support to the groups that
23 are negotiating interconnection arrangements with
24 incumbent local exchange companies around the country;
25 is that correct?

1 A That's correct.

2 Q You were not a direct participant in the
3 negotiations between BellSouth and AT&T that resulted
4 in Attachment 12; isn't that correct?

5 A Well, no, I would not agree with that
6 characterization. I didn't sit across the table from
7 BellSouth, but, likewise, Mr. Stacy did not sit across
8 the table from AT&T. I directly supported the team
9 that was engaged in the face-to-face negotiations.

10 Q Did you attend any of the negotiation
11 sessions that took place between AT&T and BellSouth in
12 this matter?

13 A No, I did not.

14 Q Now, let's talk a bit about the history of
15 this document. As I understand it, you -- correct me
16 if I'm wrong, or tell me if you don't know -- but this
17 document came about as a result of the directive from
18 the Georgia Public Service Commission that AT&T and
19 BellSouth negotiate performance measurements; is that
20 correct?

21 A Could I hear the question again? I'm not
22 sure I got the beginning part of it.

23 Q Attachment 12 to the interconnection
24 agreement between AT&T and BellSouth came about
25 because the Georgia PSC directed the parties to

1 negotiate; correct?

2 A My understanding is that in approximately
3 the March time frame, that the Georgia Commission was
4 asked to consider the interconnection agreement and
5 approve the interconnection agreement with AT&T and
6 BellSouth, and at that time the Commission reviewed
7 the document, I believe it gave contingent approval
8 provided that within 45 days, AT&T and BellSouth would
9 come to an agreement on measures that could be used
10 for enforcing the contract.

11 I think, in fact, it took about 60 days,
12 because this document was filed sometime in the early
13 part of May.

14 Q Can I take that as a long yes?

15 A I think so.

16 Q So just to put a point on it, this document,
17 the measurements contained in the document were
18 voluntarily negotiated between BellSouth and AT&T,
19 correct?

20 A I would say voluntarily only to the extent
21 that we recognized in order to get into the market we
22 would have to make some concessions that we might not
23 ordinarily make had we an unbounded amount of time to
24 negotiate with BellSouth.

25 Q Well, for several months representatives for

1 AT&T and BellSouth sat across a table from each other
2 and talked about the performance measures, and at some
3 point got up, shook hands, signed this document and
4 filed it with the Georgia Commission as a mutually
5 negotiated agreement; isn't that correct?

6 A I don't know that I would characterize it
7 the way you did. I think what the reality of it is,
8 is BellSouth would only agree to certain types of
9 measures, and AT&T either had the choice of accepting
10 those measures, if it wanted to get into the Georgia
11 market in any timely manner, and then subsequently
12 negotiate further ones which are envisioned in this
13 document, or else they had to continue to negotiate
14 and enter the Georgia market who knows when.

15 COMMISSIONER CLARK: Mr. Pfau, can I ask you
16 a question on that? If you felt that they were not
17 negotiating fairly, could you not have gone back to
18 the Georgia Commission and complained?

19 WITNESS PFAU: Certainly that would be a
20 last resort, and I think we were somewhat relying on
21 the fact that BellSouth, as Mr. Stacy said in his
22 testimony in Georgia, was willing to undertake
23 subsequent revisions to that document.

24 In fact, they explicitly said that within 90
25 days they would revisit the measures and consider

1 additional modifications.

2 What we didn't envision would be that that
3 attachment would be immediately taken and used for
4 SGAT filings throughout the region.

5 Q (By Mr. Ellenberg) I want to talk to you a
6 moment about the additional modifications language
7 that you made reference to. But would you just look
8 at the first page of what's been marked as Exhibit 70,
9 and that's the cover letter from Ms. Rule?

10 A Okay.

11 Q If you would look at the first sentence,
12 doesn't that sentence say that the parties mutually
13 agree to the attached provisions?

14 A That's what it says.

15 Q Does it say anything about duress or having
16 a gun held to anyone's head or anything like that?

17 A No. But, likewise, it doesn't say that it's
18 appropriate for a 271 demonstration of
19 nondiscrimination either.

20 Q I think that's in paragraph 1.1, but that's
21 another issue.

22 Now, you made reference to testimony from
23 Mr. Stacy and provisions in the agreement that over
24 the course of the next 90 days after this agreement
25 there would be modifications to the performance

1 measures in it; isn't that correct?

2 A That's correct.

3 Q And didn't that provision -- again, just in
4 lay terms. I don't want to get fouled up in
5 legalese -- but didn't that provision contemplate that
6 based on these measures in this attachment, AT&T would
7 enter the local market, gain some operational
8 experience, and then the parties would reconvene to
9 see if these measures needed to be tweaked to relate
10 more appropriately to that entry?

11 A I am not sure that tweaking would be the
12 right word. But I think what was envisioned there,
13 given at the point in time that that language was
14 created -- it was created in the context of a
15 two-party interconnection agreement -- your
16 characterization would be right.

17 I think given that now BellSouth has filed
18 this attachment without making any advanced
19 communication to AT&T that it intended to make such
20 use, it filed in a numerous 271 proceedings our
21 perspective on what has to be changed within that
22 attachment has changed.

23 And, in fact, we have communicated to
24 BellSouth as early as June the -- our expectation that
25 the measures that I list in my attachment, the 19

1 measures, should be reflected in Attachment 12 if
2 BellSouth is going to persist in using Attachment 12
3 as its demonstration for 271 relief purposes.

4 Q But, again, you were not a participant at
5 the table in the negotiations between BellSouth and
6 AT&T, correct?

7 A No. And I think the explanation I gave is I
8 supported those negotiations, but my primary role is a
9 national resource and also working on 271
10 applications. Because I'm primarily focused on 271
11 applications, I was not involved in the face-to-face
12 negotiations, and obviously that shows the natural
13 distinction we've made.

14 Q Well, if you weren't at the table, you would
15 agree you can't tell us everything that was said or
16 not said during the course of the negotiations of
17 Attachment 12; isn't that right?

18 A No, I certainly would not say that.

19 COMMISSIONER CLARK: Let me make sure I'm
20 clear. If I understand your position correctly, that
21 the Attachment 12 was adequate for purposes of AT&T
22 getting into the local market, they were willing to
23 agree to these terms and conditions, and for purposes
24 of -- but they do not rise to the level of complying
25 with 271 in terms of them being nondiscriminatory.

1 They're okay for you getting into the market, but they
2 aren't okay to use as the basis to show
3 nondiscrimination of interconnection?

4 WITNESS PFAU: That's correct. And let me
5 give you an example of why I think that. And
6 unfortunately I'm not that conversant with the
7 material that's been laid before me, but I think
8 within that Exhibit 70, the page labeled
9 Attachment 12, Page 2 has a table in there that says,
10 as a for instance, "Business services with one to
11 three lines, BellSouth is committing to an interval of
12 installing service within two days."

13 Now, for market entry purposes, AT&T
14 concluded that a commitment like that was probably
15 sufficient to be used for purposes of market entry.
16 We had something we could quote to customers. But the
17 standard for 271 is when BellSouth provides business
18 service, it has to be in the same interval as it
19 allows CLECs to provide business services.

20 You can't tell from this exhibit how long
21 it's actually taking BellSouth to provide that
22 service, and that's the primary flaw of what BellSouth
23 has put out here. They have lots of things in
24 Attachment 12 that compare to a target, but no
25 demonstration that that target has any relevance to

1 what BellSouth is actually achieving.

2 COMMISSIONER CLARK: Okay.

3 Q (By Mr. Ellenberg) I understand from your
4 summary, you're familiar with the Ameritech order?

5 A Yes, I am.

6 Q And I assume, then, you're aware that in
7 that proceeding Ameritech was relying on
8 interconnection agreements to establish that it had
9 met the competitive checklist; is that correct?

10 A I believe that's correct.

11 Q And there is an interconnection agreement
12 between BellSouth and AT&T, correct?

13 A That's correct.

14 Q And this document is a part of that
15 interconnection agreement, correct?

16 A Which document? This Exhibit 70 --

17 Q Attachment 12.

18 A Yes, it is.

19 Q So if, as I believe it to be AT&T's position
20 BellSouth must file under Track A of the Federal Act,
21 Section 271, and as I think it's AT&T's position it
22 must rely on interconnection agreements, it would be
23 relying on this provision; isn't that correct?

24 A I'm not sure I followed what you asked me to
25 agree to, because it was kind of more of a legal

1 interpretation than what I'm normally involved with,
2 so if you can rephrase it, maybe I can answer it.

3 Q That's all right. I withdraw the question.
4 Now, again during your summary you talked at length
5 about what you perceive to be inadequacies in the
6 measures for operational support system access,
7 correct?

8 A That's correct.

9 Q Were you present in this hearing room last
10 week when BellSouth's witness Gloria Calhoun
11 demonstrated some of the interfaces that BellSouth is
12 offering to CLECs in Florida?

13 A I understood that she demonstrated --

14 Q If you could answer my question yes or no.
15 Were you here, first?

16 A No, I was not here.

17 Q And were you present in Florida several
18 weeks ago when BellSouth attended an informal
19 technical conference and Mr. Stacy demonstrated some
20 of the interfaces that BellSouth is providing to CLECs
21 in Florida?

22 A No, I was not.

23 Q Have you attended a single demonstration of
24 interfaces that BellSouth is -- has developed and is
25 providing to CLECs in Florida?

1 **A** No, because I'm not here to testify
2 regarding the operation of their interfaces. I'm here
3 to testify whether or not they've provided adequate
4 measures to monitor the operation of those interfaces.

5 **Q** And I'm just questioning about your
6 opportunity to even observe those interfaces and what
7 those interfaces are capable of doing. And as I
8 understand it, you have not attended a single
9 demonstration of those interfaces, correct?

10 **A** No, I have not.

11 **MR. ELLENBERG:** That's all I have. Thank
12 you.

13 **CHAIRMAN JOHNSON:** Staff?

14 **MR. PELLEGRINI:** Chairman Johnson, at this
15 time Staff would proffer Exhibit CMP-3 for
16 identification purposes.

17 **CHAIRMAN JOHNSON:** It will be identified as
18 Exhibit 71.

19 (Exhibit 71 marked for identification.)

20 **CROSS EXAMINATION**

21 **BY MR. PELLEGRINI:**

22 **Q** Mr. Pfau, Charles Pellegrini on behalf of
23 Commission Staff.

24 **A** Good afternoon.

25 **Q** To begin with, I think I understood you to

1 say in your summary that you have proposed some 19
2 corrective actions?

3 A No. What I think I said was I have an
4 attachment to my direct testimony that lists 19
5 proposed measures that would be adequate to monitor
6 nondiscrimination or parity on the part of BellSouth.

7 Q Can you be more specific in identifying that
8 attachment? Is it the LCUG?

9 A That's what's referred to as the LCUG or
10 local competition users groups metrics. I just have
11 to take a look and see if my exhibit was labeled that
12 way or not. I think it's just labeled "Performance
13 Measures," although the heading of it in the upper
14 right does say "LCUG Performance Measures." It's
15 CMP-1.

16 Q Let me direct your attention to your
17 deposition transcript at Page 10 initially.

18 A Did you say 10?

19 Q 10, Lines 15 through 16. Are you there?

20 A Yes.

21 Q There I believe you make the point, in
22 talking about monitoring performance, that the primary
23 thing to determine is whether the basis for comparison
24 of performance measurements is nondiscrimination; is
25 that correct?

1 A Right.

2 Q And I think you've stated earlier that you
3 do not believe that the target intervals as proposed
4 by BellSouth form an adequate basis for determining
5 nondiscrimination?

6 A That's correct.

7 Q And that is for the reasons, I think, that
8 you give beginning at Page 10, Line 22 through Page
9 11?

10 A Primarily it's an issue of masking
11 discrimination if you use the target-based measures,
12 and on that page I give an example of how that occurs.

13 Q Do you have the Ameritech order at hand?

14 A I don't have it in front of me.

15 Q Well, let me read you a short passage from
16 paragraph 166, the last sentence in that paragraph:
17 "The FCC concludes, therefore, that in order to
18 demonstrate nondiscriminatory access to OSS functions,
19 Ameritech must demonstrate that it is provisioning
20 resale orders with the same average installation
21 interval as that achieved by its retail operation."
22 Are you familiar with that statement?

23 A Yes, I am.

24 Q Do you believe that average intervals, as
25 suggested in the Ameritech order, are an appropriate

1 or an adequate basis for determining nondiscrimination
2 in performance measurements?

3 A It's one of the means. There's a multitude
4 of other measures that need to be considered. The
5 other 18 for practical purposes. And as long as you
6 use something like an average completion interval and
7 you compare services on an equivalent basis, yes, that
8 would be an excellent basis for comparison.

9 Q Could you identify an example of an average
10 installation interval and contrast it with a target
11 interval?

12 A Well, a target interval -- and let's just
13 use a single order. You may say, "I want this order;
14 I commit that this order will be completed in three
15 days." Okay. The due date is three days from now.

16 The actual completion interval would mean if
17 I submitted the order today, and it would be completed
18 in four days, the completion interval is four days.
19 And the measurement that BellSouth would be using is
20 saying you missed the committed due date, or you would
21 have 100% due dates missed. 100% due dates missed
22 does not tell you how long it takes to complete that
23 order.

24 And what we're looking for is how long did
25 it take to complete that order? What did the customer

1 see? Because what the customer sees is going to
2 determine what the customer does in the future in a
3 competitive market, so you have to be able to make
4 those direct comparisons.

5 Q Turn now to Page 12 of your deposition
6 transcript, Lines 7 through 10.

7 A Okay.

8 Q There you're critical of BellSouth's
9 proposal to use SPC as a means for comparing two sets
10 of performance measurements; is that correct?

11 A That's correct.

12 Q What do you understand to be the basic
13 assumptions of SPC?

14 A Well, my understanding of statistical
15 process control is that you're trying to monitor a
16 single process, and as a result, you have the ability
17 to track it over time, take very structured samples of
18 performance, and thereby establish an upper and lower
19 control limit.

20 The objective of statistical process control
21 is to have a business decision criteria that when you
22 see performance that's obviously out of control, you
23 take action on that performance.

24 My criticism on statistical process control
25 as it's used for the comparisons of measures for

1 nondiscrimination is, first, it's needlessly complex.
2 You can just take statistical tests to compare
3 averages. And, secondly, the way BellSouth has
4 constructed it, it will be slow to detect a
5 discriminatory performance situation, and it will only
6 be in the most absurdly flagrant cases that it will
7 actually detect or raise the flag that discrimination
8 exists. So those are my basic concerns.

9 Q I want to come back in a moment to revisit
10 some of those, a couple of those points, but let me
11 move you on at this point to Page 63.

12 A Okay.

13 Q At Lines 1 through 5 where you state that
14 BellSouth is proposing to use a single process quality
15 control procedure to monitor multiple processes. Do
16 you follow me?

17 In using the term "multiprocesses," are you
18 referring to the observed elements or subelements
19 required to provision to service this?

20 A I'm not sure I understand the question, so
21 let me try to explain what I was referring to, and
22 I'll see whether I answer your question in the
23 process.

24 My concern is that when you look at
25 statistical process control, you are measuring a

1 process. When you try to use statistical process
2 control in the specifics of the market here in
3 Florida, you don't necessarily have a single process.
4 It's clear that there's different interfaces being
5 used.

6 I think in this case that Mr. Bradbury is
7 probably better able to testify the CLECs use LENS or
8 an EDI interface while BellSouth goes directly -- I
9 think their system is called DOE. So by the mere fact
10 that you have different means of getting some sort of
11 services, you have different processes or potentially
12 different processes. So you can't use the assumption
13 that they're the same and that statistical process
14 control would be useful.

15 Q These are differences that are likely to
16 this index or are they capable of being resolved?

17 A I guess if BellSouth used the same
18 interfaces to access its own systems that the CLECs
19 do, then it would remove that concern; but I think on
20 a going-forward basis, until they did something like
21 that, it would have been an ongoing concern.

22 Q If I understand your answer correctly, you
23 are not making the comment at the top of Page 63 with
24 reference to the provisioning of elements as opposed
25 to the provisioning of components or subelements?

1 A No. No, I'm talking in general that when
2 you try to achieve a business purpose, unless it's
3 being done with precisely the same approach,
4 statistical process control will not allow to you make
5 comparisons between two results.

6 Q So the multiple processes refer to the
7 systems which BellSouth uses as well as the systems
8 which ALECs use in accessing BellSouth's databases?

9 A Right. It relates to your using different
10 approaches to achieve the same end.

11 - - - - -

12 (Transcript continues in sequence in
13 Volume 21.)

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