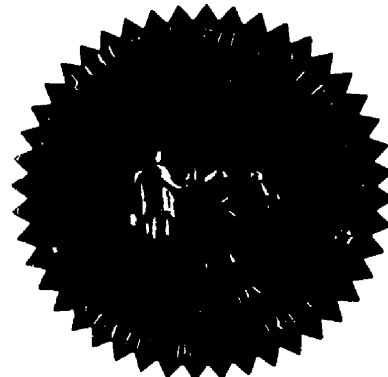


**BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION**

DOCKET NO. 960786-TL

In the Matter of

**CONSIDERATION OF BELL SOUTH
TELECOMMUNICATIONS, INC.'S
ENTRY INTO INTERLATA SERVICES
PURSUANT TO SECTION 271 OF
THE FEDERAL TELECOMMUNI-
CATIONS ACT OF 1966**



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PROCEEDINGS: EMERGENCY STATUS CONFERENCE

**BEFORE: COMMISSIONER J. TERRY DEASON
Prehearing Officer**

DATE: Wednesday, March 28, 2001

**TIME: Commenced at 1:00 p.m.
Concluded at 3:50 p.m.**

**PLACE: Betty Easley Conference Center
Room 152
4075 Esplanade Way
Tallahassee, Florida**

**REPORTED BY: KORETTA E. STANFORD, RPR
Official FPSC Reporter**

FLORIDA PUBLIC SERVICE COMMISSION

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

1 APPEARANCES:

2 NANCY B. WHITE and LISA FOSHEE, c/o Nancy
3 H. Sims, 150 South Monroe Street, Suite 400,
4 Tallahassee, Florida, appearing on behalf of
5 BellSouth Telecommunications, Inc.

6 MARSHA E. RULE and SHARON NORRIS, 101 N.
7 Monroe, Suite 700, Tallahassee, FL 32301, appearing
8 on behalf of AT&T Communications of the Southern
9 States, Inc.

10 VICKI GORDON KAUFMAN, McWhirter, Reeves Law
11 Firm, 117 S. Gadsden Street, Tallahassee, FL 32301,
12 appearing on behalf of Florida Competitive Carriers
13 Association.

14 DONNA McNULTY, 325 John Knox Road, Suite 105,
15 Tallahassee, FL 32303, appearing on behalf of MCI
16 Worldcom.

17 RICK MELSON, Hopping, Green, Sams & Smith, 123
18 South Calhoun Street, Post Office Box 6526, Tallahassee,
19 FL 32314, appearing on behalf of Worldcom, Intermedia,
20 and Rhythms.

21 MICHAEL GROSS, 246 E. 6th Avenue, Suite 100,
22 Tallahassee, FL 32303, appearing on behalf of the Florida
23 Cable Telecommunications Association, Inc.

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25

1 APPEARANCES CONTINUED:

2 SUSAN MASTERTON, P.O. Box 2214, Tallahassee, FL
3 32316, appearing on behalf of Sprint Communications
4 Company.

5 CATHERINE BOONE, 9600 Great Hills Trail, Suite 150,
6 Austin, TX 78759, appearing on behalf of Covad
7 Communications, participating telephonically.

8 MATT FEIL, 390 North Orange Avenue, Suite 2000,
9 Orlando, FL 32801, appearing on behalf of Florida
10 Digital, participating telephonically.

11 BETH KEATING, FPSC Division of Legal Services, 2540
12 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850,
13 appearing on behalf of the Commission Staff.

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PROCEEDINGS

COMMISSIONER DEASON: Do we have a notice?

MS. KEATING: Yes, we do.

COMMISSIONER DEASON: Please read it.

MS. KEATING: By notice issued March 14th, 2001, this time and place have been set for an emergency status conference in docket number 960786-TL. The purpose is as set forth in the notice.

COMMISSIONER DEASON: Thank you. Take appearances.

MS. WHITE: Nancy White and Lisa Foshee, F-o-s-h-e-e, for BellSouth Telecommunications.

MS. RULE: Marcia Rule with AT&T. Also with me is Sharon Norris.

MS. KAUFMAN: Vicki Gordon Kaufman of the McWhirter, Reeves law firm on behalf of the Florida Competitive Carriers Association.

MS. McNULTY: Donna McNulty on behalf of Worldcom.

MR. MELSON: Rick Melson on behalf of Worldcom, Intermedia, and Rhythms.

MR. GROSS: Michael Gross on behalf of Florida Cable Telecommunications Association.

MS. MASTERTON: Susan Masterton on behalf of Sprint.

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1 **COMMISSIONER DEASON:** Is there anyone who wishes
2 to make an appearance via telephone?

3 **MS. BOONE:** Yes. This is Katherine Boone on
4 behalf of Covad Communications Company.

5 **COMMISSIONER DEASON:** Anyone else?

6 **MR. FEIL:** Commissioner Deason, this is Matt
7 Feil with Florida Digital Network.

8 **COMMISSIONER DEASON:** Okay. Anyone else?
9 Apparently not.

10 **MS. KEATING:** Beth Keating for Commission Staff.

11 **COMMISSIONER DEASON:** Yes. I was just going to
12 ask Ms. Boone and Mr. Feil are you able to hear us okay at
13 this point?

14 **MR. FEIL:** Yes, we are, Commissioner, but I
15 would ask if there is anybody else on the conference call
16 listening who is not on mute and is doing other office
17 work, if they could do it away from the phone.

18 **COMMISSIONER DEASON:** Okay. There's been a
19 request if you're on the phone to keep any peripheral
20 noise to a minimum.

21 **MR. FEIL:** Thank you.

22 **COMMISSIONER DEASON:** Okay. We are here
23 primarily as a result for a request for a status
24 conference. And we're going to get to that in just a
25 moment, but there is one matter of business I wish to

1 address before I forget it, and that has to do with
2 confidential information that's going to be processed in
3 this docket.

4 Staff has informed me that back when we had the
5 initial 271 proceeding back in 1997 that there was an
6 order issued by the then prehearing officer, and it
7 granted a joint motion for protective order. And there is
8 a question as to whether this order is still in effect or
9 not.

10 I've been advised by Staff counsel that we could
11 go ahead and issue another order, just in an abundance of
12 caution which would be essentially mirrored after the
13 order which was issued previously. I'm looking for
14 feedback from the parties as to how they wish to proceed
15 on this matter; if there's a problem with the way it was
16 done before, if there's something we need to do
17 differently. The matter is squarely in front of you at
18 this point to advise the prehearing officer as to how we
19 should proceed.

20 Ms. White?

21 MS. WHITE: BellSouth would have no objection to
22 that. I believe, it's a good idea to just reissue the
23 motion, because there may be parties to this round that
24 were not in existence during the last case. So, it
25 probably would be helpful to reissue to make sure all

1 parties are covered.

2 COMMISSIONER DEASON: So, reissue it, just
3 update it?

4 MS. WHITE: That's correct.

5 COMMISSIONER DEASON: Okay.

6 MS. RULE: This is Marcia Rule with AT&T.

7 As I recall, the arrangements that we made last
8 time that culminated in the order worked pretty well. I
9 would like a chance to go back and look at it to see if
10 it's still okay, but my recollection was it served
11 everybody's needs well.

12 MS. KAUFMAN: This is Vicki Kaufman. I would
13 agree, and I would also agree with Nancy that we probably
14 need to just reissue it to include -- there are several
15 new parties that weren't intervenors at that time. But as
16 I recall, it did work very well and there was a huge
17 volume of confidential information exchanged, and I'm not
18 aware that there were any problems with the procedure.

19 COMMISSIONER DEASON: Ms. McNulty.

20 MS. McNULTY: Worldcom agrees with all of these
21 previous comments, too.

22 COMMISSIONER DEASON: Mr. Melson also agrees?

23 MR. MELSON: We agree.

24 COMMISSIONER DEASON: Ms. Boone, do you have any
25 comment?

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1 MS. BOONE: No comments, fine with me.

2 COMMISSIONER DEASON: Mr. Feil?

3 MR. FEIL: No, sir, no comment.

4 COMMISSIONER DEASON: Okay. I guess, Ms.
5 Keating, you have adequate direction, then, in this
6 matter?

7 MS. KEATING: Certainly. I'll draft something
8 for your signature.

9 COMMISSIONER DEASON: All right. That kind of
10 housekeeping matter out of the way, at this point, as I
11 indicated we're here today primarily as a result of a
12 request for a motion hearing that was filed on behalf of
13 BellSouth. Ms. White, here is your opportunity.

14 MS. WHITE: Yes, sir. Thank you, Commissioner
15 Deason.

16 BellSouth believes it is ready to file for 271
17 relief in Florida. We're ready to file our testimony and
18 exhibits by the end of this week. We believe there are
19 large portions of the process –

20 COMMISSIONER DEASON: Excuse me, just a moment.
21 I wanna be pretty liberal with my interruptions.

22 MS. WHITE: Sure.

23 COMMISSIONER DEASON: I'm trying to educate
24 myself. Hopefully, it'll help everyone here today.

25 You've indicated you're prepared to file your testimony,

1 if necessary, within a week.

2 MS. WHITE: That's correct.

3 COMMISSIONER DEASON: Okay. I guess, my
4 question is we've not even been to an issues ID
5 conference. How is it that you can file testimony? Do
6 you anticipate what the issues are?

7 MS. WHITE: Well, we do, based on the issues in
8 the last case. You also gave us direction in your
9 original order, which was – excuse me – and I can get
10 the exact number. It was order 97-1459 issued on November
11 19th, 1997. That was the previous 271 order.

12 COMMISSIONER DEASON: Could you give me that
13 order number again, please?

14 MS. WHITE: Yes, 97-1459. And you told us in
15 that order that when BellSouth refiles its 271 case with
16 us, it must provide all documentation that it intends to
17 file with the FCC in support of its application.

18 Now, there are a couple of questions in that; in
19 other words, since we've got third-party testing going on,
20 we took it to mean that we would file everything with you
21 that we were going to file at the FCC with regard – with
22 the exception of the third-party testing results and
23 information and performance data. But we are prepared to
24 make that filing within a week.

25 COMMISSIONER DEASON: Okay.

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1 **MS. WHITE: So, that's what I --**

2 **COMMISSIONER DEASON: You may proceed.**

3 **MS. WHITE: We believe that the process needs to**
4 **begin and begin soon. BellSouth will be filing proof of**
5 **competition in Florida, both facilities-based and resale,**
6 **both business and residential.**

7 **We are prepared to make a filing that we can**
8 **meet the checklist items that the Commission found we had**
9 **not met last time. We are prepared to file updates on the**
10 **checklist items that we did meet last time to prove that**
11 **nothing has changed.**

12 **Now, our opponents are going to make a number of**
13 **arguments, and their arguments all come down to delay,**
14 **delay, delay the process. They'll argue that BellSouth**
15 **isn't ready for 271. Well, that's an issue for the**
16 **hearing, for the 271 hearing.**

17 **They'll argue that the new unbundled network**
18 **element rates have to be implemented. BellSouth is**
19 **prepared to do that as soon as the Commission renders an**
20 **order. And I believe that docket goes to agenda on April**
21 **18th.**

22 **Our opponents will argue that there are certain**
23 **things that aren't being tested in the third-party test.**

24 **Well, as the FCC has recognized, there are always going to**
25 **be new product offerings, always going to be revisions to**

1 interfaces, but you have to draw the line in the sand and
2 start somewhere. They'll argue that they'll still have
3 provisioning issues.

4 As the Commission recognized in the last 271
5 case, this isn't the forum for complaints. And the FCC
6 has said that isolated provisioning problems are not
7 sufficient to fail 271. The bottom line is that our
8 opponents will always have an excuse as to why we should
9 not go forward, but this is BellSouth's case to prove and
10 to file, and we're ready to move forward.

11 It's BellSouth's goal and the goal of the Staff
12 to have the 271 hearings and the third-party test
13 completion meet fairly close to each other, but that
14 doesn't mean that the timing of the 271 hearings must
15 hinge on or be simultaneous with the end of the
16 third-party test.

17 We believe the third-party test will finish in
18 August. The staff, from what I understood Monday,
19 believes it will finish in September. If hearings are
20 held in August on the 271 issues, then we probably would
21 not have an order out of this Commission until September
22 and October, so the timing would still be correct.

23 BellSouth has substantial competition in the
24 business market. We have growing competition in the
25 residential market. We believe we can meet the checklist

1 items. We believe we will pass third-party testing. We
2 want to bring the benefits of 271 to Florida as quickly as
3 possible and, therefore, we would urge you to set the
4 hearings in August.

5 Thank you.

6 COMMISSIONER DEASON: Let me ask a few
7 questions, and then I'll hear from everyone that wants to
8 address it.

9 Just for the sake of argument, if we were to
10 move the hearings from the current schedule, which is
11 October to August, as you have suggested – obviously,
12 that's a difference of two months, does that in any way
13 speed up the time period in which we would make an
14 ultimate decision, our decision being a recommendation,
15 not a decision per se, because it's not for us to say,
16 it's the FCC. We would be making a recommendation. Would
17 it in any way speed up that process?

18 MS. WHITE: I think, yes, in part, because the
19 earlier you take on these checklist items, the earlier you
20 render a decision on those. The earlier you take on the
21 issue of whether competition exists in Florida, the
22 earlier you'll make the decision on that issue.

23 I think that if you move this up, then what
24 you'd be waiting for strictly would be a decision on
25 third-party testing. I guess, we view this as it'll be

1 really kind of two decisions that we take to the FCC;
2 hopefully, a decision from this Commission that says
3 BellSouth has met the checklist items, there is
4 competition of the sort required by 271 in Florida, and
5 then a decision that says we accept the third-party test
6 report that has to do with BellSouth's –

7 COMMISSIONER DEASON: Wait just a second.

8 MS. WHITE: Sure.

9 COMMISSIONER DEASON: The decision to accept the
10 third-party testing report, how do you envision that
11 meshing with the time period that we will process under
12 271 the checklist and the competition and those type
13 issues?

14 MS. WHITE: Well, depending on when the test is
15 through, it's my understanding that Staff is going to do a
16 recommendation that either says the test was correct, we
17 agree with it, it looked at the right things. The
18 Commission's already said that –

19 COMMISSIONER DEASON: And that's currently
20 scheduled for December the 6th for Staff to file their
21 recommendation on the third-party –

22 MS. WHITE: But that's based on the fact that
23 Staff believes, I think, or believed at the time that CASR
24 was drafted that the third-party test would finish even
25 later, I think, than what we definitely believe, what

1 **BellSouth definitely believes and, I think, what the Staff**
2 **believes now.**

3 **I don't have that right in front of me, but I**
4 **believe they – I know the Staff believes it's going to**
5 **finish in September now. We believe it'll finish in**
6 **August. And the Commission has said that if we – I**
7 **think, KPMG's latest date is it'll finish in July. So, I**
8 **think, that CASR is based on pretty much a really, really**
9 **bad case, bad scenario, worst-case scenario.**

10 **COMMISSIONER DEASON: Well, for the sake of**
11 **argument, I don't mean to be pessimistic, let's just say**
12 **that the worst-case scenario plays out and that it's**
13 **September the 30th when KPMG is finished with the**
14 **third-party testing.**

15 **MS. WHITE: But you still have –**

16 **COMMISSIONER DEASON: Does that present a**
17 **problem?**

18 **MS. WHITE: I don't think so, because you still**
19 **have to have hearings on the competition issue and the**
20 **checklist items issue, with the exception of what's being**
21 **looked at in third-party testing. And we might as well go**
22 **on and get started on that and get a decision on those so**
23 **that once third-party testing is finished, you don't have**
24 **to go back and relook at those aspects.**

25 **COMMISSIONER DEASON: So, you're saying we gain**

1 time, if you're more optimistic.

2 MS. WHITE: I think, you gain time and you don't
3 waste time. You don't make everything hinge on the
4 third-party test. You don't start things once the
5 third-party test is finished. You're ahead of the game so
6 that all you're waiting for is third-party test.

7 COMMISSIONER DEASON: Okay. Let me ask you
8 this: What do you envision happening after the report is
9 issued?

10 MS. WHITE: Well, it's my understanding that
11 after the report is issued Staff will file a
12 recommendation on that report, and it will be brought to a
13 Commission agenda.

14 COMMISSIONER DEASON: And how long do you think
15 it will require for the report – after the report is
16 issued for Staff to file a recommendation?

17 MS. WHITE: Well, now you're really going to put
18 me in a bind with Staff. I would urge the Staff to file a
19 recommendation very quickly after issuance for third-party
20 report. Staff has been extremely, extremely closely
21 involved with third-party testing ever since it began. I
22 don't think that it would – it should take that long for
23 them to put together a recommendation on the report. I
24 think, they will have the report to attach to the
25 recommendation, so I don't think they have to repeat

1 everything that's in the report. So, I would hope no more
2 than two weeks tops. The Commission could have a special
3 agenda or could put it on a regular agenda to vote on it.

4 COMMISSIONER DEASON: So, you don't anticipate
5 there being any party participation after the report is
6 filed. Once the report is filed it's –

7 MS. WHITE: Well, I take that back. I do
8 apologize, I'm sorry. I forgot about something that Staff
9 brought up on Monday, and I don't know if this is the
10 correct time to discuss that or not. Staff had some
11 additions to the third-party testing process that they did
12 talk to us about on Monday. And I apologize, that totally
13 skipped my mind.

14 So, what they had suggested adding was two weeks
15 after the report was issued for a workshop for the parties
16 to ask questions of KPMG, two weeks after that workshop
17 would be a comment filing cycle. So, I would think two
18 weeks after the comments are filed we could have a
19 recommendation or I would hope there'd be a
20 recommendation. I know I'm getting some wonderful looks,
21 but I'm trying to be optimistic here. But I would think
22 within two weeks after the filing of the comments.

23 COMMISSIONER DEASON: So, you're looking at six
24 weeks, then, from the time the report is issued, under
25 this optimistic schedule, to get a rec filed.

1 **MS. WHITE: Yes.**

2 **COMMISSIONER DEASON: And then once the rec is**
3 **filed, it's normally 11 days before a decision date.**

4 **MS. WHITE: But I mean, what BellSouth is**
5 **looking for is for that to be the total end of it, that**
6 **the third-party testing order would be the last thing**
7 **required from the Commission before we go forward to the**
8 **FCC.**

9 **COMMISSIONER DEASON: So, you envision that all**
10 **of 271, other than third-party test, we could do, and we**
11 **can then be in a position of awaiting the report, the**
12 **comments and the rec.**

13 **MS. WHITE: Absolutely, so that you'd have**
14 **everything done before the third-party test is done, if**
15 **that's the way it is or done simultaneously, if we're**
16 **optimistic and it does finish in July or August. But even**
17 **at worst-case scenario, everything else would be done, you**
18 **would only have your third-party test order to go, and**
19 **then we'd head for the FCC.**

20 **COMMISSIONER DEASON: Okay. Staff, do you have**
21 **questions for Ms. White?**

22 **MS. WHITE: I know that if you want some more**
23 **discussion on the proposal, I don't know whether you had**
24 **anticipated making that part of the same process or**
25 **separately.**

1 **COMMISSIONER DEASON: What proposal is that?**

2 **MS. WHITE: The proposal that Staff had made on**
3 **Monday about process, which is the two weeks for the**
4 **workshop after the report, the two weeks after that for**
5 **the comments.**

6 **COMMISSIONER DEASON: Well, Staff, since we're**
7 **kind of into that subject matter, why don't you enlighten**
8 **me and others who may need enlightenment on your vision as**
9 **to how the process would proceed after a report is filed.**

10 **MS. KEATING: Okay. We have Ms. Harvey here**
11 **with us, and she can address that.**

12 **COMMISSIONER DEASON: Very well.**

13 **MS. HARVEY: Commissioner, actually, there are**
14 **three proposals that Staff is considering. The first is**
15 **that in order to remain in compliance with the order that**
16 **approved the master test plan, we are asking that KPMG**
17 **provide an overall evaluation of commercial performance**
18 **data in comparison to the benchmarks and analogs that have**
19 **been previously established by this Commission. This**
20 **evaluation by KPMG will determine whether or not BellSouth**
21 **is actually providing parity service.**

22 **COMMISSIONER DEASON: Let me interrupt.**
23 **Ms. White, your August time period for the report, does**
24 **that include evaluation of performance data?**

25 **MS. WHITE: Yes.**

1 COMMISSIONER DEASON: How much performance data?

2 MS. WHITE: Well, I believe, that when we talked
3 – when we discussed this, and I may have to give it over
4 to Ms. Foshee to discuss the Staff's proposal, but I know
5 that when we talked on Monday the Staff was thinking one
6 month before the end of the report. We could file more
7 data prior to the report or, you know, nearing the end of
8 the test more than one month, but I'll let Ms. Foshee
9 address that.

10 MS. FOSHEE: I think, what was discussed on
11 Monday, sir, was that KPMG would look at the one-month of
12 data preceding the final report, as Ms. White indicated.
13 And I believe, Mr. Weeks indicated that they could do that
14 concurrent with the other testing, so I did not envision--

15 MS. BOONE: I'm sorry. This is Kathy Boone with
16 Covad. I cannot hear who is talking at all.

17 MS. FOSHEE: Sorry, Kathy, it's Lisa Foshee.
18 And, I think, he indicated that could be done concurrently
19 and would not need to be added on to the end of the test.

20 COMMISSIONER DEASON: So, KPMG has indicated
21 they can have one-month's performance data included with
22 the report filed simultaneously.

23 MS. FOSHEE: That was my understanding of
24 Mr. Weeks' comments on Monday, yes, sir.

25 COMMISSIONER DEASON: Okay. Would there be any

1 other performance data that would be filed subsequent to
2 the report?

3 MS. FOSHEE: BellSouth is prepared, sir, to file
4 performance data at the Commission's request starting in
5 -- we can file as early as March data, if that's something
6 the Commission will be interested in.

7 I would also like to note with respect to the
8 Staff's proposal with the comment period, what we envision
9 that entailing is the opportunity for parties to file
10 comments on the performance data, including the date
11 that's looked at by KPMG and the opportunity, if need be,
12 to file any other data, such as preceding months, that
13 have an impact on the data that KPMG looked at. So, if
14 our understanding of what that comment period entails is
15 correct, then we are in support of the Staff's
16 recommendations.

17 COMMISSIONER DEASON: Okay. Ms. Harvey, I'm
18 sorry for the interruption, but --

19 MS. HARVEY: That's okay.

20 COMMISSIONER DEASON: -- please proceed.

21 MS. HARVEY: Secondly, Commissioner, Staff plans
22 to hold a workshop at the conclusion of the third-party
23 test, approximately two weeks after KPMG's report is
24 published. The workshop would enable CLECs to ask
25 questions and obtain information regarding the third-party

1 test that may not be explicitly spelled out in the report.
2 This is very similar of the procedure that was followed in
3 New York.

4 The third addition that Staff is proposing is
5 that approximately two weeks after the workshop, the CLECs
6 would have the opportunity to file formal comments on the
7 report. These comments would be considered when Staff
8 prepares its recommendation on the third-party test, and
9 that comment period would include the performance data as
10 well.

11 COMMISSIONER DEASON: And do you agree with
12 Ms. White, then, that you could file a rec in two weeks
13 after that?

14 MS. HARVEY: No, sir, I do not. I believe,
15 Staff would need approximately four weeks to file that
16 Staff recommendation.

17 COMMISSIONER DEASON: But with Ms. White's
18 August time period, we would be looking at about, say at
19 the end of August, you're looking at -- and giving you
20 four weeks for your recommendation, you're looking at
21 eight weeks, approximately two months, end of August, end
22 of October, then, for a rec to be filed and with a
23 decision, I assume, by the Commission in mid November.

24 MS. HARVEY: Assuming that the KPMG report was
25 released in August, that would be correct.

1 **COMMISSIONER DEASON:** Okay. And right now we're
2 looking at a decision date by the Commission in early
3 January. You're talking about two months.

4 **MS. WHITE:** Right, that's correct.

5 **COMMISSIONER DEASON:** Okay. Is there anything
6 else you wanted to add on the procedures following the
7 report?

8 **MS. HARVEY:** No, Commissioner.

9 **COMMISSIONER DEASON:** All right. What I propose
10 to do is I'm just going to simply take comments. First,
11 we'll receive comments from those parties who have made an
12 appearance that are present here today, and then anyone
13 that wishes to make comments via telephone, we'll also
14 hear those.

15 **MS. WHITE:** May I ask Ms. Harvey one question on
16 her proposal, just so I make sure I didn't mishear.

17 When you said that the comments would be able to
18 be filed by everybody, not just ALECs, that's correct,
19 right?

20 **MS. HARVEY:** That's correct.

21 **MS. WHITE:** Okay. Thank you.

22 **COMMISSIONER DEASON:** Ms. Rule?

23 **MS. RULE:** Thank you.

24 I'm troubled by one thing that Ms. White brought
25 out. And what BellSouth is really here asking you for is

1 very preferential treatment. If I filed a docket today,
2 and other people have filing petitions, it would come up
3 for a hearing in the normal course of affairs in probably
4 January, February or March. In fact, it usually wouldn't,
5 because you'd go through a PAA process. And, I think,
6 Staff has been very accommodating, and the parties, the
7 ALECs, have been accommodating and trying to find earlier
8 dates, and BellSouth still wants earlier dates.

9 And you have a number of dockets waiting for
10 hearing dates, a number of complaints against BellSouth, a
11 number of commercial disputes that need to be heard, and I
12 don't think BellSouth has come up with any reason why it
13 should bump other cases out of the way, put the Commission
14 out of its usual process, and get a preferential hearing
15 date. If preferential hearing dates are to be had, I
16 would submit that those involving commercial disputes
17 should come before you first.

18 COMMISSIONER DEASON: Maybe we should do like
19 the FCC does with their spectrum and we start auctioning
20 off hearing dates.

21 MS. RULE: I think, you would probably have a
22 lot of interest in that until everybody ran out of money,
23 and in the CLEC community, that would be between 10 and 15
24 minutes.

25 In any event, that aside, there are other issues

1 that we'd like to bring up. And first of all, we'd like
2 to congratulate and thank Staff. I think, they have tried
3 very hard to work with the CLEC community as well as
4 BellSouth to come up with a schedule that tries to meet
5 everyone's needs.

6 And, I think, the hearing date that Staff has
7 put on the table is already a fast hearing date,
8 considering that no case has been filed. But the ALECs
9 would like to propose a hearing schedule, and Rhonda
10 Merritt can hand out some copies of it that we think would
11 allow the Commission to consider all critical evidence in
12 the most efficient and orderly and timely manner. And
13 incidentally, it does have a hearing date in January. And
14 that is still, I think, for a case that has not yet been
15 filed, a preferential hearing date.

16 Although the Staff schedule, as I said, is a
17 step in the right direction and it recognizes the need for
18 a review of commercial data, we appreciate the additional
19 process around the third-party test, the proposal that I'm
20 showing you which has the current dates and our proposed
21 dates, basically moved from a two-track process to a
22 one-track process and allows the Commission to consider
23 all of the evidence at one time.

24 We think that's not only more efficient for the
25 Commission, but allows the Commission to take a look

1 across the board at the checklist as it did last time and
2 as, I think, will allow a more efficient and orderly
3 presentation of information to the Commission.

4 This schedule incorporates a review of the OSS
5 test, it incorporates a review of commercial data. And
6 I'd like to remind you that the FCC has said over and over
7 again that while third-party testing can be a very
8 important component of checklist compliance, that
9 commercial data is the most important, the most favored.
10 And we'd like to bring that data to you, and we'd like to
11 bring it to you at the same time you review the OSS test.
12 The ability to review one month; that is, one data point
13 of commercial data is helpful and useful, but it doesn't
14 provide the Commission much information to go on.

15 COMMISSIONER DEASON: What do you -- when you
16 say review of commercial data, what do you mean by that?
17 How do you envision that review taking place?

18 MS. RULE: The parties who have commercial data
19 to bring you would file that data as part of their
20 testimony and would provide testimony on whether or not
21 BellSouth is meeting the interim performance metrics,
22 whether it's meeting the needs and, indeed, whether it has
23 a beneficial or detrimental effect on ALEC business
24 operations. I think that's well within the 271 review
25 that the Commission envisioned and that the Commission's

1 1997 271 order set forth.

2 COMMISSIONER DEASON: So, your schedule
3 envisions that there would be testimony filed on
4 commercial data using the interim performance standards?

5 MS. RULE: Well, ideally, the Commission will by
6 that time have had its permanent performance standards in
7 place. And those are the standards that ALECs will
8 actually be living under and that BellSouth will actually
9 be providing, and those will go in place – I think, it's
10 in – the Commission's vote will take place in June.

11 So, assuming an order comes out shortly
12 thereafter, BellSouth has said in other jurisdictions it
13 usually requires, I think, 30 to 45 days to gear up for
14 that, then those are the performance metrics that will
15 actually be in place and that BellSouth will be using at
16 the time that the Commission has its hearing.

17 COMMISSIONER DEASON: So, you're saying that the
18 decision on 271 should be based upon the permanent, as
19 opposed to interim.

20 MS. RULE: Yes, sir, because those are the
21 actual metrics that will be in place. And there's another
22 issue, too, connected with this. The ALECs agreed that
23 interim performance measures were important for testing,
24 but as you may recall, we agreed that they would be useful
25 for testing only, and the Commission assured us that there

1 would be a permanent performance measures docket and,
2 indeed, that's already in place, there's a hearing
3 scheduled, and testimony has been filed.

4 So, if those are to have any meaning whatsoever
5 in terms of providing a competitive environment, we'd like
6 you to look at them in the context of 271. We think
7 that's important, and they will be in place by then.
8 We're not asking the Commission to wait until it makes
9 that decision. That decision will be in place by the time
10 of the hearing. We do think it would be useful to wait
11 another month or so to get more data, because one data
12 point doesn't provide you any ability to compare or look
13 at BellSouth's ability to meet the metrics on a
14 longer-term basis.

15 COMMISSIONER DEASON: Well, let me ask you a
16 fundamental question. At some point, we're going to have
17 to address 271. And I'm not sure that 271, that it was
18 envisioned as part of that checklist and approval process
19 that we have a whole array of data points using commercial
20 data to satisfy 271.

21 I mean, at some point, we'll have to make a
22 decision, and we can always, if we wanted to, we could
23 say, well, it would be better if we had this data or we
24 had more data or we have different data or we need data on
25 a new service that's been introduced that didn't exist

1 before. We would never make a decision on 271, if that's
2 the bar that we need to overcome.

3 MS. RULE: I don't think you have to reach a
4 state of perfection before you go forward, but I do think
5 it's important to recognize that performance metrics that
6 will be in place, beginning this summer, are the ones that
7 will either foster or not foster a competitive
8 environment. And, I think, it will be useful to the
9 Commission to examine those.

10 And another way to look at it is we can either
11 do it the easy way or the hard way. The easy way is for
12 the Commission to set the metrics and then you to
13 determine whether BellSouth is meeting them. If you
14 haven't set any metrics, if there's been no evidence about
15 what metrics will or will not enhance competition, what
16 metrics are or are not necessary, then you have to allow
17 us to do it in a 271 proceeding. And, I think, that we
18 started doing in the initial 271 proceeding and, I think,
19 that's why the Commission decided to pull performance
20 metrics out, put it on a separate track and put those
21 performance measures in place. It seems to me that's the
22 easier thing –

23 COMMISSIONER DEASON: But wasn't that the
24 purpose for interim?

25 MS. RULE: The purpose of the interim was solely

1 to test them with the understanding that they would not be
2 – that was not a decision on the merits of the
3 performance metrics. You have not made an evaluation on
4 whether those are the right metrics or not. Therefore,
5 assuming BellSouth meets them, you haven't made a
6 determination that that's okay.

7 So, that's why I say wait until permanent
8 performance measurements are in place, and looking to see
9 if they comply is a much easier task than saying, "Okay,
10 everybody, you come in, tell us what you think the
11 standard should be, we'll decide whether the performance
12 that's actually being provided to CLECs is sufficient ."
13 That's the hard way, and that's the way we'd have to do it
14 in 271, otherwise.

15 COMMISSIONER DEASON: But isn't that the role
16 and function of the permanent measures is for the
17 Commission to have a basis to have continuing monitoring
18 of the actual performance and, if necessary, to – which
19 has occurred in other states, require that there be
20 penalties paid, either to the state of Florida or to the
21 individual companies who have not received parity?

22 MS. RULE: The remedy plan is certainly a very
23 important component of that decision. But at a minimum,
24 the decision is what sort of performance the Commission
25 believes is acceptable, and you haven't made that

1 determination yet. So, you either make the determination
2 in a 271 proceeding and say, yes --

3 COMMISSIONER DEASON: I have to back up. What
4 was the purpose that we even set interim, then?

5 MS. RULE: The purpose of setting interim was to
6 test something, because you can't test OSS without some
7 sort of standard to say what is it doing?

8 You could have an evaluation and you could
9 produce a lot of data, but the interim test metrics were
10 specifically to give form and structure to the test, but I
11 think the CLECs were very, very clear that we did not
12 agree that those were the appropriate metrics to foster
13 competition.

14 And the Commission was very clear in its order
15 in saying these are interim. These are for the purposes
16 of testing only. And they're not a determination that
17 those metrics are the right ones or that they provide
18 parity. It's valuable information. We appreciate Staff's
19 willingness to include them in the test, because I
20 recognize it created a lot of extra work for Staff, and
21 they've been doing a great job on it. But going back to
22 the 271 process, we're entitled to make a case as to
23 what's sufficient performance. And we can either make
24 that case in the 271 docket or in the performance metrics
25 docket, but we haven't had a chance to make that case yet.

1 **So, it seems to me the easy and more efficient**
2 **thing to do is wait, look at the data that's actually**
3 **going to be produced when you order BellSouth to institute**
4 **metrics next summer. That hearing has been on track for**
5 **quite some time. And I'd like to point out, too, that,**
6 **you know, we've been accused of delay. Everything that's**
7 **been done to move competition forward, the CLECs have been**
8 **in front of you asking for.**

9 **We're the ones who said please, please, set up a**
10 **performance metrics docket, we need it. We need to move**
11 **this forward. We're the ones that asked for testing. We**
12 **asked to move that ball forward, too. We've been in here**
13 **asking for UNE prices, for collocation dockets. We can**
14 **hardly be the authors of delay when we've been the ones**
15 **asking you to take these actions, all of which inure to**
16 **BellSouth's benefit at this point, because they don't have**
17 **to litigate all these things in a 271 docket.**

18 **COMMISSIONER DEASON: I'm sure, BellSouth's very**
19 **appreciative for that.**

20 **MS. RULE: I know Nancy will congratulate me**
21 **later on how helpful I've been to her company.**

22 **A couple of other things. I've seen the Georgia**
23 **test report. It's about four inches thick or so. You**
24 **have a remarkable Staff, but I wouldn't want to put them**
25 **to the task of writing a recommendation on a report like**

1 that in two weeks. I think, all of us want them to do a
2 thorough review of it. All of us want the work that
3 they've put in so far to be evaluated fairly.

4 And, I think, asking them to do that in two
5 weeks is too much. I don't think it can be done. You can
6 do something, but you couldn't do it well. And, I think,
7 you're shortchanging the Staff and shortchanging the
8 enormous amount of work that's gone into the test if you
9 try and press it at the end.

10 Another point that you have made is the schedule
11 proposed by BellSouth assumes zero problems. There has
12 been no jurisdiction that any BOC test has happened where
13 there have been zero problems. As you may know, the
14 Georgia test was recently ended, and there are problems
15 still open. And that has not been this Commission's
16 theory. This Commission has stated the test will continue
17 until the faults are fixed. And the Georgia test
18 concluded without the faults being fixed. So, I think,
19 you have to assume there will be some problems.

20 I believe, BellSouth will do everything in its
21 power to move the ball forward, but we can't pretend that
22 zero problems will exist. We know they do exist out
23 there. And I'm sure I have some colleagues down there who
24 would like to talk, so one final note. If BellSouth files
25 its case right now, and it files the exact case that it

1 intends to file at the FCC, the Staff schedule, I think,
2 has an order in January.

3 Let's assume that they file at the FCC in
4 January. Then, that information before the FCC is nearly
5 a year old at that time. And you've told them to file it
6 up front, not to be piecemealing it throughout the
7 process, but to give you everything you need up front to
8 make that review. I don't think it's reasonable to
9 believe that BellSouth can file everything in March of
10 this year that it intends to rely on in January of next
11 year.

12 I think, the schedule that Staff has proposed is
13 preferential already. We're asking for a two-month period
14 to allow the Commission to consider more information,
15 consider it in a more efficient manner. And in either
16 event, I think, filing next week is probably a little
17 premature.

18 Thank you.

19 COMMISSIONER DEASON: Ms. Kaufman.

20 MS. KAUFMAN: Thank you, Commissioner Deason.

21 I'm not going to repeat all that Ms. Rule said,
22 but I would commend to you the schedule that we have
23 worked on. We think that this accomplishes what the
24 Commission needs to do in the most expeditious way, and it
25 doesn't have us kind of reinventing the wheel everytime.

1 I wanted to come back to a point that you made,
2 I think, in questioning Ms. White, which is how can she be
3 prepared to file her testimony when we haven't had the
4 issue identification conference yet? And I would say to
5 you that this case ought to follow the normal process, and
6 the normal process is that all the parties hash through
7 the issues and have issue identification before testimony
8 is filed.

9 We're not here today to speak to you but what
10 about what the issues in the case should or shouldn't be,
11 but you can probably glean from the comments that have
12 already been made, it's likely that there's going to be
13 some controversy over what issues, perhaps, should or
14 should not be included. And it makes a lot more sense to
15 proceed with issue identification so that all the parties
16 know what is and isn't on the table.

17 The schedule that your Staff has proposed, and I
18 want to echo Ms. Rule's comments about us being very
19 appreciative of the addition, of the ability to discuss
20 the report with KPMG, as well as file comments on it, is
21 very, very ambitious.

22 I think that moving the hearing back, as
23 BellSouth has requested, is basically undoable. And, I
24 think, that the schedule we have suggested puts the events
25 in their proper order, gives everybody appropriate due

1 process, and still allows for a very expeditious decision
2 on this Commission's part.

3 I think, that we get everything done in the
4 correct order, we get everything done one time. And at
5 the end of the day, you and your Staff and the other
6 Commissioners, as well as all the parties, have a better
7 decision for it. So, we would commend to you the schedule
8 that we have proposed, and we are certainly in opposition
9 to any move of the hearing date back to August.

10 COMMISSIONER DEASON: Mr. Melson.

11 MR. MELSON: Commissioner Deason, let me echo –
12 I'll try to be short. I think, the Staff's current
13 schedule is ambitious. We appreciate the effort that went
14 into it. We appreciate, in particular, the accommodation
15 they're trying to make to give an opportunity to look at
16 some commercial operation data and to provide a workshop
17 and comment process. I guess, we're not convinced that is
18 the best way to proceed.

19 And for that reason, we support the approach
20 that AT&T has put forth which, essentially, contemplates a
21 single track in which information about performance and
22 particularly, in a commercial setting would be resolved,
23 not by the Staff making a recommendation based on workshop
24 comments, but on Staff making a recommendation based on a
25 record built before this Commission. With that said –

1 **COMMISSIONER DEASON:** Let me interrupt for just
2 a second. So, you contemplate, and you think this is
3 built into Ms. Rule's proposal, you contemplate that there
4 would be an evidentiary proceeding concerning commercial
5 performance data?

6 **MR. MELSON:** Yes. The Commission will be
7 establishing permanent performance metrics midyear this
8 year. Seems to us to be appropriate to evaluate
9 performance under those metrics. And to do that, not
10 simply through a workshop process, but through the hearing
11 process.

12 **COMMISSIONER DEASON:** So, you anticipate a
13 record built on the performance data using the permanent
14 criteria, right?

15 **MR. MELSON:** Yes. And if I heard Ms. White
16 correctly, I believe, BellSouth anticipates they would
17 file performance data, at least under the interim metrics,
18 and that that examination would be part of the 271
19 proceeding. We agree with AT&T that it's appropriate to
20 do that in light of the permanent metrics.

21 And frankly, as slowly as competition is
22 growing, you are going to have more performance data three
23 or four months from now than you have today. And you will
24 have a better picture, not only of the level of
25 competition that is currently being experienced, but also

1 of BellSouth's performance.

2 COMMISSIONER DEASON: Okay.

3 MR. MELSON: I guess, we oppose the BellSouth
4 position, which is to advance things. And that is simply
5 because even if the Commission were to decide that the
6 timetable AT&T has put forward is unworkable and you are,
7 for some reason, going to insist on getting to a decision
8 point this year, that advancing a piece of it by two
9 months on the hope or expectation that another piece of it
10 may finish early doesn't really, at the end of the day,
11 gain you any time.

12 You're scheduled, even under the Staff's
13 schedule, to vote on both of these matters in
14 mid-December. The difficulty we see with the Staff's
15 schedule is in terms of issue identification. I think,
16 there is likely to be some controversy about the extent to
17 which OSS issues, in the Staff's view, are and BellSouth's
18 view perhaps, are conclusively decided by the third-party
19 test and the extent to which there are aspects of OSS that
20 are fair gain under the current two-track procedure.

21 And for that reason, I think, it's imperative
22 that we have an issue ID before anyone files testimony,
23 because I suspect we will be back in front of you trying
24 to get a decision on exactly how performance data, OSS
25 issues, issues that are not yet covered by the OSS test,

1 because they are in process and the OSS systems do not yet
2 exist, how all of that will be handled in this hearing
3 process.

4 COMMISSIONER DEASON: When's the earliest we can
5 have an issue ID, in your opinion?

6 MR. MELSON: Not during my depositions next
7 week. I forget the Staff's schedule –

8 COMMISSIONER DEASON: April 24th, I believe.
9 Apparently, BellSouth's willing to file their testimony
10 without the benefit of an issue ID. I hear you saying
11 that you want issue ID, and that – I also hear you saying
12 you're putting everyone on notice that you're probably
13 going to be raising some issues to which there will
14 perhaps be some disagreement.

15 MR. MELSON: I guess, obviously, if BellSouth
16 chose to file testimony without waiting for an issue ID,
17 and if the prehearing officer were to agree that there are
18 issues beyond those covered by Bell's testimony, then
19 you've got the question of how Bell – does Bell
20 supplement testimony before any other parties file? Do we
21 get into an out-of-sequence filing? It just seems to me
22 your established procedure for identifying issues up front
23 is the only one that makes sense.

24 COMMISSIONER DEASON: Ms. White, I'll give you
25 an opportunity to respond, and I'll probably have some

1 questions for you, but we'll go ahead and hear from
2 everyone. Mr. Melson, are you finished?

3 MR. MELSON: Yes, sir, that concludes.

4 COMMISSIONER DEASON: Mr. Gross.

5 MR. GROSS: Thank you, Commissioner Deason.

6 I'm just going to state briefly that the FCTA
7 supports the schedule proposed by AT&T and joins and
8 concurs with the other remarks and positions stated by the
9 ALECs.

10 Thank you.

11 COMMISSIONER DEASON: Okay. Ms. Masterton.

12 MS. MASTERTON: On behalf of Sprint, I just want
13 to say that we would oppose any shortening of the time
14 frame and believe the time frames recommended by Staff are
15 the least that are needed in order to have a fully
16 deliberative process on this issue.

17 COMMISSIONER DEASON: Okay. Ms. Boone, any
18 comments? Mr. Feil?

19 MR. FEIL: No comment, sir.

20 COMMISSIONER DEASON: All right, very well. Ms.
21 White, I'm going to give you a chance to respond – well,
22 first, does Staff have any comments?

23 MS. KEATING: I just had one question about
24 this, if that's all right.

25 COMMISSIONER DEASON: Sure.

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1 **MS. KEATING:** I was noticing down here on AT&T's
2 proposal on the hearing, it says test results and
3 commercial data review. Are you contemplating – what
4 exactly are you talking about there, I guess, is what I'm
5 asking. I mean, are you talking about having a hearing on
6 the test results, as well as commercial data? Are you
7 talking about running a portion of the test using the new
8 metrics? I mean, I'm a little fuzzy.

9 **MS. RULE:** I think, Mr. Melson put it very well.
10 He said there are aspects – first of all, there's a
11 question of the extent to which the test will be
12 conclusive, and there are also aspects that would be fair
13 game. So, to the extent that those ultimately play out in
14 an issue ID in testimony, it would all be done at one
15 time.

16 **MS. KEATING:** Okay. Thank you, that's the only
17 question I had.

18 **COMMISSIONER DEASON:** Ms. White.

19 **MS. WHITE:** I promise we won't take too long.
20 I'm going to have Ms. Foshee talk about the interim
21 measures versus the permanent measures, and then I'll
22 follow-up with just a couple final comments.

23 **MS. FOSHEE:** Yes, sir. First of all, BellSouth
24 agrees that the review performance data is essential. I
25 also want to make it clear that we support the Staff

1 recommendation, that that review can take place in the
2 comment period that Staff has proposed as opposed to in
3 the hearing. But the point that I really want to make is
4 that the interim performance measures are the right ones
5 for this Commission to proceed.

6 And Commissioner, you made the point earlier
7 that we have to, at some point, decide that we have enough
8 data points to proceed. And that point is directly
9 applicable here. The Commission adopted the interim
10 performance measurements in two orders; the latest was in
11 December of 2000. The measures were reviewed, they were
12 revised, they were broadened by interested parties, by
13 KPMG and by the Commission.

14 And the stated purpose of those interim measures
15 was to provide a set of performance data upon which both
16 KPMG and the Commission could rely to assess the quality
17 of BellSouth's provision of services to ALECs.

18 Now, I think, Ms. Rule told you that the purpose
19 of those measures was only to test. But if you look at
20 the order, Commissioner, the Commission explicitly stated
21 that the initial set of interim performance metrics
22 approved by this Commission provide the quantitative
23 yardstick by which the existence of nondiscrimination or
24 parity can be detected. So, that is the stated purpose
25 for what the interim measures were established, and that

1 is the purpose for which we're asking you to use them.

2 **Secondly, there is no question that the interim**
3 **measures are thorough and detailed enough to permit this**
4 **Commission to make a 271 assessment. They meet all of the**
5 **criteria raised by the Commission in its 1997 271 order.**
6 **You talked about wanting collocation timeliness, trunk**
7 **blockage, loop provisioning intervals, percentage**
8 **flowthrough, held orders. All of those things are**
9 **addressed in the performance measures. They're also**
10 **comparable in breadth and depth to the measures used in**
11 **New York and Texas.**

12 **And then, the last point I'd like to make, sir,**
13 **which goes to your point earlier, is that the interim**
14 **measures are no more interim than the measures that will**
15 **be established in the permanent performance measures**
16 **docket. This is a dynamic process. The industry is**
17 **growing, and it's changing.**

18 **Even New York and Texas have continued to modify**
19 **their measures after having been granted 271 relief. And,**
20 **I think, many of the CLECs have raised, in their comments**
21 **in the performance measures docket, that they foresee the**
22 **permanent performance measures being reviewed periodically**
23 **to see if they need updating or changing.**

24 **So, my point is that they are dynamic, they are**
25 **changing, and the interim measures are no more interim**

1 than those will be. So, we believe, and the Commission
2 has stated that those measures are appropriate to make the
3 271 determination.

4 MS. WHITE: Ms. Rule claimed that BellSouth is
5 asking for preferential treatment on the schedule.
6 Nothing could be further from the case. Mr. Criser first
7 filed a letter in December of 2000 asking for a procedural
8 schedule to be set for 271. The August hearing dates were
9 opened at that time. When BellSouth filed its motion for
10 a status conference just a few weeks ago, the Commission
11 had the August dates open. We're not asking that anything
12 be bumped.

13 Second of all, Mr. Melson said that he had new
14 issues he wanted to bring up. Well, I'm a little
15 surprised, because this is not a new docket. The issues
16 have been set in this docket, they were set in this docket
17 by agreement with the parties and by order of the
18 prehearing officer. The 14-point checklist in the Act has
19 not changed. There's nothing new that's been added. We
20 don't see any reason why the issues would differ, and
21 that's why BellSouth is able to file its testimony and its
22 exhibits on that in such a short time.

23 COMMISSIONER DEASON: Ms. White, let me
24 interrupt and ask you a question.

25 I understand that's your position, but let's

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1 look at the reality. We're going to have an issue ID. I
2 have no idea what the outcome of that's going to be, the
3 number of issues, and the specificity of those issues. It
4 may go beyond – conceivably, could go beyond what you
5 anticipate filing in your direct case. If there are
6 issues that are identified and allowed which go beyond
7 what you have in your direct case, how do you propose to
8 remedy that?

9 MS. WHITE: We'll file supplemental testimony.
10 It's been done before. This Commission has had dockets
11 where testimony was required to be filed before the issue
12 ID and, therefore, parties filed testimony on what they
13 believed the issues would be when the issue ID was held.

14 If something new was added then, parties filed
15 supplemental testimony. If it was deleted, parties struck
16 that part of their testimony. This is nothing new for
17 this Commission. With the schedules that this Commission
18 has, the number of dockets, and the fast track that things
19 are sometimes on, it's happened before. I've been
20 involved in several of those where that has happened. So,
21 to me, that's nothing new. It can be dealt with.

22 Ms. Rule thinks it's amazing that we can file
23 everything with this Commission that we're going to file
24 with the FCC. Well, I mean, I don't think it's amazing
25 that BellSouth wants to comply with the Commission's

1 order, 271 order, that said you will file everything with
2 us that you file with the FCC. We don't have a choice.

3 Now, granted, the data may -- we may have new
4 data when we file with the FCC. It will be the same kind
5 of data that we file with the Commission. It just may be
6 later in time. Of course, we will file that with the
7 Public Service Commission, but it won't be new data, it'll
8 just be more recent data.

9 We don't believe that AT&T's schedule is
10 appropriate. As you can see, they've pushed this out even
11 further than the Staff. I think, they're now calling for
12 a recommendation in March where the Staff has it for
13 December, which would, if you go by -- and you're probably
14 looking at a decision in May. I mean, heck, that's almost
15 a year. It is a year, more than a year. I think, that's
16 a little ridiculous. BellSouth believes that the August
17 hearing dates would be appropriate and that the Staff
18 proposal is appropriate, proposal on the changes to the
19 third-party testing.

20 Thank you.

21 COMMISSIONER DEASON: Okay. Let me ask this
22 quick. Right now we're scheduled for hearing in October,
23 and we have five days, split hearing; three one week and
24 two the next or whatever.

25 MS. KEATING: That's correct.

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1 **COMMISSIONER DEASON:** Okay. Let me ask the
2 parties, is it – realizing that we haven't even had an
3 issue ID yet, do the parties believe that five days of
4 hearing, that that time period is sufficient? Ms. White?

5 **MS. WHITE:** Yes.

6 **MS. RULE:** I'm trying to remember what we
7 actually – how many hearing days we actually took up last
8 time. And I know it was scheduled for, I think, for more
9 than five days, but my recollection is we completed it in
10 less than that, possibly five or six days of hearing.

11 **COMMISSIONER DEASON:** So, five days is
12 reasonable.

13 **MS. RULE:** I think, so and I can tell you that
14 AT&T is willing to come early and stay late to make that
15 happen. And, I think, too, some of the things that have
16 happened in the interim, your policy decisions on
17 collocation, hopefully, you know, by then your policy
18 decision on performance measures will ease up some of the
19 hearing demands.

20 **MS. KAUFMAN:** I think that this schedule, five
21 days, is reasonable. I know in the prior 271 we did have
22 some long days and we did start early, and we probably
23 would have to do that again, but I think we could do it in
24 five days.

25 **COMMISSIONER DEASON:** Mr. Melson – I'm sorry,

1 **Ms. McNulty.**

2 **MS. McNULTY: Worldcom things five days is**
3 **reasonable.**

4 **MR. MELSON: We agree.**

5 **COMMISSIONER DEASON: Okay. Is there anyone**
6 **that objects, continuously objects to five days? Okay.**

7 **So, we agree on something. We've made progress today.**

8 **Ms. White, I do have a few questions. First of**
9 **all, before I ask you a question, I guess, I need some**
10 **clarification from Ms. Rule or maybe Mr. Melson, because**
11 **you both used the terminology one-track process. Can you**
12 **further define what you mean by one-track process?**

13 **MS. RULE: Well, this is in contrast to the**
14 **Staff two-track process where there's a separate hearing**
15 **and test report process, so we put them both together in**
16 **one. So, the Commission has a hearing, and during the**
17 **process of that hearing, depending on how the issues fall**
18 **out, hears about the test, hears information on what may**
19 **be fair game after the test that was not covered, and**
20 **hears everything connected with the checklist. So, one**
21 **hearing, instead of hearing and workshop.**

22 **COMMISSIONER DEASON: You used the phrase,**
23 **"things that were not covered in the test ." Do you**
24 **envision that there would be – the hearing would cover**
25 **issues that were – that you feel should be addressed**

1 which were not addressed within the test and that that is
2 an opportunity to do that?

3 MS. RULE: Yes, sir.

4 COMMISSIONER DEASON: Was that contemplated when
5 we first made the decision to go to third-party testing?

6 MS. RULE: I think, we will – there is
7 controversy about that. I think, we'll eventually end up
8 wrangling over that at an issue ID hearing. All I can do
9 is direct you back to the Commission's order where the
10 purpose of the test and the effect of the test was said to
11 be to resolve the specific issues that the Commission
12 identified in its 1997 271 order. It didn't say it was
13 going to do more than that. And, you know, rather than
14 spend today arguing about what that means, I submit it
15 will be thoroughly discussed and probably briefed in
16 connection with issue ID.

17 COMMISSIONER DEASON: Okay.

18 MS. RULE: But I don't think anybody at that
19 time thought that the OSS test was going to foreclose
20 testimony on operational support systems. I mean, that's
21 an integral part of the other checklist items. And you
22 have to hear about them in conjunction with them, even if
23 you decide that you wish to rely on the test exclusively.

24 COMMISSIONER DEASON: Mr. Melson, do you have
25 anything to add?

1 **MR. MELSON:** Just two. I think, you know, to
2 look at actual commercial performance data is something
3 that is really outside the – at least the scope of the
4 test as originally envisioned. You know, Staff is now
5 talking about adding that and suggesting a workshop and
6 comment process. We believe that is fair game, that it
7 properly ought to be part of the hearing process.

8 Another – an example of the kind of thing that
9 the test may not cover, KPMG can only test what exists.
10 The FCC has now issued a line-splitting order which
11 requires line splitting to be offered. To the extent that
12 the Commission determines that is a prerequisite, that's a
13 UNE that must be offered in order to qualify for 271
14 relief. The OSS test does not address at all the
15 operational support systems necessary to support that.
16 So, I suggest that would be fair game for a Commission
17 hearing –

18 **COMMISSIONER DEASON:** What I hear you saying is
19 that we're constantly raising the bar. Is that – I'm not
20 trying to mischaracterize, but that's the way I interpret.

21 **MR. MELSON:** I think, it's a moving target and,
22 obviously, at some point you have to stop and say we're
23 going to take a look at the way things exist today, but
24 you now have the line-splitting order which didn't exist
25 six months ago.

1 And to the extent you are making a decision in
2 December of this year under the Staff's schedule, you
3 know, in October this year under BellSouth's schedule,
4 that's a requirement that will have been in place for nine
5 or ten months. And, I think, it's something that you
6 legitimately should be looking at as part of the overall
7 process. I recognize that may be an issue that's right
8 for discussion during an issue ID.

9 **COMMISSIONER DEASON:** I understand.

10 **MS. BOONE:** Commissioner Deason, this is Kathy
11 Boone with Covad. If I could make one comment in addition
12 to what Mr. Melson just said. I don't believe the
13 question is so much whether we're raising the bar as
14 whether we are asking that BellSouth be tested on its
15 compliance with the law.

16 When New York obtained 271 relief, they were not
17 obligated to provide line sharing at that point. That
18 does not mean now that every carrier that seeks 271 relief
19 is, in fact, obligated to provide line sharing and line
20 splitting and OSS. So, I think, what we seek as
21 competitors in Florida is to ensure that the test will
22 result in a conclusion about whether BellSouth complies
23 with the law as it exists.

24 **MS. KAUFMAN:** Commissioner Deason, if I could
25 just add my two cents to this discussion. We're probably

1 getting into the issue ID issues, but you're going to have
2 a number of things that you're going to take evidence
3 about and listen to witnesses on in the 271 proceeding,
4 and a very important part of that is going to be OSS,
5 which permeates all of the checklist items.

6 And as I said earlier, even though we think a
7 commenting workshop is an improvement over the originally
8 suggested process, we think it's much better for the
9 Commission to follow the same procedure it's going to
10 follow as to all the other issues it's going to have to
11 deal with in 271 and have everything looked at, decided,
12 and discussed in the context of an evidentiary proceeding.
13 And that's the one-track, two-track shorthand, I think,
14 we've been using.

15 And our proposal puts everything in one place;
16 it does away with the comment workshop aspect and says
17 let's just deal with everything in the context of the 271
18 hearing in front of the Commissioners who are going to
19 make the decision. So, I think, that's the distinction
20 you might match been looking for.

21 COMMISSIONER DEASON: Okay.

22 MS. WHITE: Well, I have to say that this
23 Commission made it extremely clear in the order in which
24 they said we're going to do third-party testing, that that
25 process would provide the information to allow the

1 Commission to fulfil their role under 271 with regard to
2 BellSouth's provision of OSS. If the Commission hadn't
3 said it, then, I think, my company would have had a
4 problem with spending millions of dollars to pay for
5 third-party testing.

6 It's interesting also that Ms. Rule is concerned
7 about wanting hearings on what's not in the test, because
8 in the February 2001 Internal Affairs agenda on February
9 20th, she said that their concern was on the things that
10 are not being tested. And she said, and I quote, "We're
11 working with Staff and asking for an opportunity at least
12 to file comments on the test report," end quote, page 19
13 of the transcript.

14 This Staff, with their additional proposal, has
15 given AT&T, and all the other parties that opportunity.
16 So, I think, it's quite interesting that they're now
17 complaining that's not enough. And I'm sorry, you had
18 questions for me.

19 COMMISSIONER DEASON: Yes. I think, we've kind
20 of covered them as we've gone back and forth, thank
21 goodness.

22 MS. RULE: Commissioner, I'm sorry to interrupt
23 again, but there's one thing I wanted to follow-up on. I
24 think, it's very important to understand that to the
25 extent the Commission has examined an issue and made a

1 policy issue, has gone through its process and left it in
2 the hands of KPMG to test, then what you're really doing
3 is testing compliance with the decision you've made.

4 To the extent that the Commission has not made a
5 policy determination has not decided what is adequate.
6 You can't leave it in the hands of KPMG to decide what's
7 adequate. You can certainly have them gather data and
8 present you with information and evidence, but ultimately
9 you have to make that decision. And, I think, that's the
10 sort of thing we're looking at presenting evidence on.

11 COMMISSIONER DEASON: Well, I think, it's
12 becoming abundantly clear that we need to have an issue ID
13 sooner rather than later. And so, Staff, let me ask you
14 this question: When is the soonest that we can have an
15 issue ID and still comply with all of the notice
16 requirements and things of that nature?

17 MS. KEATING: We'd need to provide at least a
18 week's worth of notice for that.

19 COMMISSIONER DEASON: Well, let me indicate
20 this, that I will be meeting with Staff and we will review
21 the current schedule for issue ID, which is April the
22 24th. We may end up keeping that date. I want to put
23 everyone on notice that that date may change. And if we
24 can accommodate a sooner date, I think, it would probably
25 be – regardless of the outcome of BellSouth's request for

1 an earlier hearing date, regardless of how that's
2 addressed or disposed of, I still think it would be
3 beneficial to have some guidance for the parties and the
4 Commission as to the scope.

5 And when we say issue ID, I guess, it really
6 gets down to the scope, what we are going to address, what
7 is going to be at issue. And we probably also need to do
8 that early, because if there is a decision made by me, as
9 prehearing officer, I suppose that that can – if there is
10 a decision to exclude issues or include issues which a
11 party thinks are not appropriate, that there can be a
12 reconsideration of that to the full Commission. Am I
13 correct on that?

14 MS. KEATING: That is correct.

15 COMMISSIONER DEASON: Okay. So, if we keep the
16 April 24th date, we're still looking at some period of
17 time before there, conceivably, can be a final decision.
18 And based upon the comments I received today, I think,
19 that just identifying the issues is going to be very
20 controversial.

21 So, another thing, another point I wanted to
22 make is that there have been very good points raised on
23 both sides of this argument. And I will further consider
24 those, and I will address those with Staff. Some are just
25 practical time constraints that we're all going to deal

1 with, but there's another thing that I want to point out
2 and put everyone on notice as to at least an initial
3 viewpoint of mine. And that is that we need to be
4 cognizant of the fact that BellSouth is a potential
5 competitor in the toll market. They have to meet some
6 criteria before they are given that authority.

7 To the extent that they should be legitimately
8 in that market and they are not yet there by regulation
9 taking too much time, then we are doing a disservice to
10 customers and a disservice to the concept of competition.

11 So, I think, we need to keep that in mind as well.

12 So, Ms. Rule, I know you used the terminology
13 preferential treatment. I don't know what the decision is
14 going to be, but let me assure you that if there is a
15 decision to change the schedule in this case, it's not
16 because any party is receiving anything remotely
17 resembling preferential treatment. It's just concern
18 we've got an obligation to process a docket and make a
19 decision which we think is in the public interest.

20 And having said that, is there anything further?
21 If there's anything of a housekeeping nature, anything
22 that anybody feels that we can go ahead and address or at
23 least put people on notice, things that we need to
24 consider -- this is going to be a long process -- now is
25 the time to do that.

1 **MS. WHITE:** I do have one question going back to
2 the confidentiality agreement. I know that when – the
3 case had already started when we got into that issue last
4 time. And I know that Staff had issued a subpoena to
5 BellSouth for this information, because of BellSouth's
6 concern that it not be found guilty of second-degree
7 misdemeanor for releasing customer account information.
8 And maybe we can talk about this off-line, whether Staff
9 is to be doing it again as a subpoena or how we want to
10 handle that, but I think we could probably work that
11 off-line.

12 **MS. KEATING:** Yeah, I think, we can work
13 something out on that.

14 **MS. WHITE:** Okay.

15 **COMMISSIONER DEASON:** Okay. Anything else?
16 Hearing nothing, I want to express my appreciation to the
17 parties for participation today. And I will be meeting
18 with Staff and, hopefully, we can give you some further
19 guidance as quickly as possible. Thank you all for your
20 participation.

21 **MS. WHITE:** Thank you, Commissioner Deason.

22 **(Conference concluded at 3:50 p.m.)**

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COUNTY OF LEON)

FLORIDA PUBLIC SERVICE COMMISSION