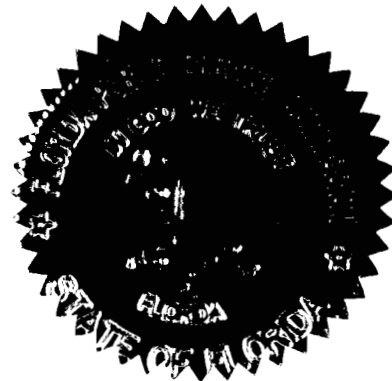


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 030851-TP

In the Matter of:

IMPLEMENTATION OF REQUIREMENTS
ARISING FROM FEDERAL COMMUNICATIONS
COMMISSION'S TRIENNIAL UNE REVIEW:
LOCAL CIRCUIT SWITCHING FOR MASS
MARKET CUSTOMERS.



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VOLUME 9

Pages 1465 through 1562

PROCEEDINGS: HEARING

BEFORE: CHAIRMAN BRAULIO L. BAEZ
COMMISSIONER J. TERRY DEASON
COMMISSIONER LILA A. JABER
COMMISSIONER RUDOLPH "RUDY" BRADLEY
COMMISSIONER CHARLES M. DAVIDSON

DATE: Tuesday, February 24, 2004

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8 APPEARANCES: (As heretofore noted.)
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I N D E X

WITNESSES

NAME: PAGE NO.

MICHAEL P. GALLAGHER

Prefiled Rebuttal Testimony Inserted 1470
Prefiled Surrebuttal Testimony
Inserted 1485

DIRECT PRESENTATION BY BELLSOUTH

Attorney: Doug Lackey 1501

CHRISTOPHER PLEATSIKAS

Direct Examination by Mr. Lackey 1506

DIRECT PRESENTATION CONTINUED BY BELLSOUTH

Attorneys: Doug Lackey and Lisa Foshee
Witnesses: Pamela Tipton, Debra Aron,
James Stegeman, Alphonso Varner,
Keith Milner 1511

CERTIFICATE OF REPORTER 1562

P R O C E E D I N G S

(Transcript follows in sequence from Volume 8.)

CHAIRMAN BAEZ: Thank you. Hold on, Mr. Feil. Let me make sure I get these notations right.

Okay. Go ahead.

MR. FEIL: Mr. Chair, if I could, I wanted to make one point clear for the record relative to the exhibit identification. My understanding is that some of the composite exhibits that we've just identified include some confidential exhibits and some nonconfidential exhibits. So I just wanted to --

CHAIRMAN BAEZ: Is that correct? Because we should be identifying them, and I'm sorry that that wasn't pointed out.

MS. MAYS: I apologize, Mr. Chair. That is correct. And I thank Mr. Gallagher for bringing it to our attention.

CHAIRMAN BAEZ: That was Mr. Feil, but maybe Mr. Gallagher can repeat it later.

MS. MAYS: Sorry, Matt.

CHAIRMAN BAEZ: That's all right. Here's what we're going to do. You're going to go through and we're not -- I'm not sure that we're going to -- I don't know if we need to do this prior or not, but you guys need to straighten out which exhibits are confidential and which aren't, and we're just going to go down the line and give them numbers. They will be

1 out of sequence, so it will be up to you to -- I'm not going to
2 renumber exhibits, so they will be out of sequence for your
3 purposes. So when you guys move them into the record, you've
4 got to keep track of it. All right.

5 Mr. Feil, let's get you out of the way real quick.

6 MR. FEIL: I don't have any exhibits.

7 CHAIRMAN BAEZ: Quicker than I thought. Excellent.

8 MR. FEIL: FDN had the prefiled of one witness,
9 Mr. Michael Gallagher, who prefiled rebuttal testimony and
10 surrebuttal testimony. He does have an errata sheet that was
11 circulated to the parties yesterday morning. I do have copies
12 of the errata sheet here with me if anybody needs that. And as
13 I said, he has no exhibits.

14 CHAIRMAN BAEZ: Direct, rebuttal, and surrebuttal of
15 Witness Gallagher, including the errata, without objection,
16 show it moved into the record as though read.

17 MR. FEIL: Excuse me, Mr. Chairman. I think you said
18 direct. He did not have direct, only rebuttal.

19 CHAIRMAN BAEZ: He did not have direct. I stand
20 corrected. The rebuttal and surrebuttal of Witness Gallagher.

21 MR. FEIL: Thank you.

22 CHAIRMAN BAEZ: And he has no exhibits.

23 MR. FEIL: Correct.

24

25

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

2 A. My name is Michael P. Gallagher. My business address is 390 North
3 Orange Avenue, Suite 2000, Orlando, Florida, 32801.

4 **Q. Who do you work for?**

5 A. I am Chief Executive Officer of Florida Digital Network, Inc. ("FDN").

6 **Q. What are your responsibilities as CEO of FDN?**

7 A. As CEO of FDN, I am ultimately responsible to the shareholders for all
8 aspects of FDN's operations and performance. On a management level,
9 FDN's President & Chief Operating Officer, Chief Financial Officer and
10 General Counsel report directly to me; FDN's Engineering & Operations,
11 Customer Service, and Sales Vice Presidents and its Chief Technology
12 Officer report to the President & COO, who is also in charge of FDN's
13 Marketing functions. I am involved in the day-to-day business dealings of
14 the company and the decision-making on everything from marketing and
15 sales strategies, product development, network architecture and deployment,
16 financing, human resources, customer care, regulatory changes, etc.

17 **Q. Please describe your education and your work experience in the**
18 **telecommunications sector.**

19 A. I received a B.S. Degree in Mathematics with a minor in Physics from
20 Rollins College.

21 Prior to co-founding FDN in 1998, I served as Regional Vice
22 President for Brooks Fiber Communications where I had overall
23 responsibility for operations, engineering, finance and sales in the State of

1 Texas. Brooks Fiber Communications merged into WorldCom on January
2 31, 1998. Prior to holding the VP position at Brooks, I was president of
3 Metro Access Networks (MAN), a second-generation CLEC in Texas
4 founded in 1993. At MAN, I developed all business strategies, designed
5 network architecture, secured contracts with the company's original customer
6 base, and had overall responsibility for operations and performance. MAN
7 merged into Brooks Fiber in March 1997. Prior to MAN, I worked for
8 Intermedia Communications and Williams Telecommunications Group
9 (WilTel) as sales representative securing contracts with large commercial
10 customers.

11 **Q. Have you previously testified in a regulatory proceeding before a**
12 **state utility commission, the FCC or a hearing officer?**

13 A. Yes. I have testified before this Commission in Docket No. 010098-TP
14 (FDN's Arbitration case with BellSouth), Docket No. 990649A-TP (the 120-
15 day portion of BellSouth's UNE cost case), and Docket No. 020119-TP
16 (FDN's Complaint against BellSouth for Anticompetitive Promotion
17 Practices).

18 **Q. What is the purpose of your rebuttal testimony in this proceeding?**

19 A. FDN believes the Commission should have a balanced view of the
20 unbundled network element (UNE) switching impairment issue. FDN
21 utilizes, and has utilized since its inception in 1998, a UNE-L strategy to
22 provide service mostly to small-to-medium sized businesses, by leasing UNE

1 loops from incumbent carriers and utilizing FDN's own Class 5 switches, as I
2 will describe later. FDN believes it operates as the federal
3 Telecommunications Act of 1996 (the "Act") contemplated competition
4 would evolve, i.e., where competing carriers invest in their own facilities and
5 infrastructure and have guaranteed access, for a fee, to certain ILEC
6 property/elements only where such property/elements could not be practically
7 replicated. Indeed, switching has been and still is readily available to any one
8 willing to purchase a Class 5 type device. Advances in soft switch
9 technology also make non-Class 5 switching realistic and have led to lower
10 overall switching costs. However, the focus of my rebuttal testimony will be
11 on a few key points summarized as follows.

12 First, for purposes of this proceeding, FDN considers itself a self-
13 provisioned switch "trigger" company as defined by the TRO. FDN believes
14 many of the interpretative twists that others argue the Commission should
15 add to the TRO are not supportable. Further, FDN believes that the hot cut
16 process of the ILECs works well for the most part. FDN has performed
17 thousands of hot cuts with Florida's ILECs and currently performs over two
18 hundred hot cuts for DS-0's per day. Finally, if the Commission finds
19 impairment stemming from the hot cut process and therefore establishes a
20 batch process, FDN maintains that any batch process should at least
21 incorporate certain features, namely: (1) the batch process will, as required
22 by the TRO, cover hot cuts of the type FDN performs daily and not just one-
23 time conversions of UNE-P to UNE-L, (2) batch rates are structured such that

1 there is a significant and real overall reduction in NRCs, and (3) batch
2 processes reflect operational efficiencies and not needlessly extend hot cut
3 intervals. If the Commission endeavors to cure any impairment finding or
4 address perceived flaws associated with hot cuts through a more direct
5 approach or means other than a batch process, FDN would support those
6 efforts.

7 FDN believes that as the leading UNE-L based provider in Florida,
8 FDN has a unique vantage point that will be valuable to the Commission in
9 this proceeding and that FDN's input should be useful in weighing some of
10 the claims that the parties have made in their direct testimony.

11 **Q. Please briefly describe FDN's operations.**

12 A. As I mentioned, FDN is a facilities-based/UNE-L CLEC. FDN is also an
13 IXC, a data services provider (both dial-up and dedicated), and FDN offers
14 ISP and other Internet services. FDN was founded in 1998 with the mission
15 of offering packaged services (local, long distance and Internet) to small- and
16 medium-sized businesses. FDN launched operations in Orlando in April
17 1999 and expanded to Fort Lauderdale in May 1999 and to Jacksonville in
18 June 1999. A second round of expansion in West Palm Beach, Miami and the
19 Tampa Bay area was completed in the first quarter of 2000.

20 FDN owns and operates Class 5 Nortel DMS-500 central office
21 switches in Orlando, Tampa, Jacksonville, and Ft. Lauderdale. FDN's
22 switches are connected by fiber optic cable owned or leased by FDN to

1 nearby incumbent local exchange carrier (or “ILEC”) tandem switches. FDN
2 leases collocation space in over 100 ILEC wire centers throughout the state.
3 Remote DLC/DSLAM equipment is installed at these collocation sites, and
4 from these sites FDN accesses ILEC UNE loops. Connectivity from the
5 collocation sites to the central ILEC tandem switch is via FDN’s own fiber or
6 leased DS-1 or DS-3 circuits. As I mentioned, FDN relies upon its rights
7 under the Act to obtain “last mile” access to Florida consumers through the
8 purchase of UNEs from BellSouth, Verizon and Sprint.

9 FDN uses BellSouth’s TAG gateway for electronic ordering and is in
10 the process of migrating to EDI. With systems and software FDN developed
11 on its own, FDN accesses BellSouth customer service records (“CSRs”)
12 electronically, and FDN transmits virtually all of its local service requests
13 (“LSRs”) to BellSouth electronically. Most of FDN’s orders to Verizon are
14 done on a partially mechanized basis, and FDN utilizes Verizon’s Wholesale
15 Provisioning Tracking System (WPTS) for tracking service activities. The
16 vast majority of FDN’s LSRs to BellSouth, Verizon and Sprint are for 2-wire
17 voice grade UNE loops.

18 **Q. Several ALEC witnesses (Mr. Gillan 52 – 65 and Mr. Reith (virtually**
19 **throughout his direct)) laud the success of the UNE-P business model,**
20 **argue that unbundling promotes investment and criticize what they see**
21 **as the failure of the UNE-L business model. Do you agree with their**
22 **testimony?**

1 A. No. FDN maintains that this sort of testimony is not relevant to
2 the tasks which the FCC has delegated to the state Commissions. The FCC,
3 after wading through the incentive, rights and benefits arguments, and taking
4 into account the intent of the Act and the prior decisions of the courts, already
5 made the choice on what the states must do and what the states are to
6 consider. The FCC did not leave the door open for states to consider policy
7 arguments like those made by Mr. Gillan and Mr. Reith, or, for that matter, to
8 consider any ILEC arguments on the same subject. If, contrary to the TRO,
9 the Commission considers such arguments, FDN, as a UNE-L provider which
10 has invested significant sums of money in its own switching, network,
11 infrastructure and OSS and which competes against UNE-P for limited
12 capital in the emerging telecommunications sector and competes against
13 UNE-P for customers, would naturally take an opposing stance.

14 **Q. A number of the ALEC witnesses (Mr. Gillan on pages 35 – 51, and**
15 **Dr. Staihr on pages 11 – 23, for example) argue that the TRO should be**
16 **interpreted in ways so as to limit which CLECs may be deemed a**
17 **“trigger” company. Do you have any comment?**

18 A. Yes. First, I believe that FDN is indeed a trigger company in the markets
19 in which FDN operates.

20 I can verify the confidential information that FDN provided to
21 BellSouth and confirm BellSouth witness Tipton’s correct reliance on same
22 in reaching her conclusions regarding the TRO triggers. Similarly, I can
23 confirm Verizon witness Fulp’s reliance on FDN’s trigger presence in the

1 Verizon-defined market. FDN serves a significant number of customers with
2 one line, two lines, and three lines in its markets. So even if the “cross-over”
3 between “mass market” customer and “enterprise” customers were as low as
4 BellSouth advocates (at three lines and below), FDN would be a trigger
5 company because FDN has numerous customers everywhere it serves with
6 three lines and below, including some residential customers. At this time,
7 FDN does not disagree with how BellSouth or Verizon have defined
8 geographic markets for purposes of this proceeding.

9 FDN maintains that the Commission should critically evaluate the
10 TRO trigger test embellishments advocated by witnesses such as Mr. Gillan
11 and Dr. Staihr in their direct testimony. Notably, Mr. Gillan goes so far as to
12 say on page 51, line 22, of his direct, “It is up to the Commission to put flesh
13 on the bones, in the form of informed analysis of the trigger criteria
14 established by the FCC.” FDN does not believe that it is permissible for the
15 Commission to go that far. Certainly, there are instances where an FCC
16 directive may be unclear and require interpretation. It is not uncommon for
17 the Commission to undertake a detailed analysis of the language of an FCC
18 ruling as applied to a particular set of facts before the Commission.
19 However, a number of the Gillan/Staihr recommendations go beyond mere
20 interpretation and amounts to inappropriate addition.

21 For instance, both Gillan and Staihr argue that any switch counted
22 against the trigger must serve “predominantly” mass market customers, not
23 enterprise customers. Dr. Staihr even states that the Commission should

1 evaluate the capacity of the switch and determine what percentage of the
2 capacity is devoted to mass market customers versus enterprise customers.
3 Neither a predominance test nor Dr. Staihr's formula approach are part of the
4 TRO or FCC rules, so the Commission should refrain from considering such
5 arguments. Further, Mr. Gillan suggests the Commission make an "informed
6 assessment of the viability" of the trigger companies' viability, despite his
7 acknowledgment that the TRO bars states from evaluating individual trigger
8 companies. Again, the Commission should not inappropriately embellish the
9 TRO by adding requirements such as these or Dr. Staihr's recommendation
10 that the trigger company be capable of serving "throughout" the defined
11 market, however the market be defined. In sum, if the FCC intended to
12 require some of the things these witness advocate, the FCC would have
13 directly said so in the TRO and accompanying rules, but it did not.

14 **Q. Several CLEC witnesses (including AT&T witness Van de Water,**
15 **MCI witness Lichtenberg, and Supra Stahly) argue, essentially, that the**
16 **hot cut process of the ILECs is a source of operational impairment, while**
17 **the BellSouth and Verizon witnesses (including BellSouth witnesses**
18 **Ruscilli, Ainsworth and Varner and the "Verizon Panel") argue just the**
19 **opposite. With whom, if anyone, does FDN agree?**

20 A. As a UNE-L based CLEC that performs over two hundred hot cuts for
21 DS-0 loops daily and has performed more hot cuts than any other single
22 CLEC in the state, FDN would be hard pressed to say that the hot cut process
23 does not work well. BellSouth witness Ruscilli states in his direct that as of

1 October 2003, there were 156,746 lines in Florida served by a combination of
2 a BellSouth unbundled loop and a CLEC switch. (Ruscilli Direct, page 13,
3 line 21.) FDN believes it constitutes about two-thirds of that total. Further,
4 FDN believes it has performed more voice grade loop hot cuts in Verizon
5 Florida and Sprint Florida than any other CLEC as well.

6 It should be noted the direct testimony of the ILECs and CLECs
7 presents the Commission with a preliminary question when evaluating the hot
8 cut process: By what standard is the hot cut process to be judged? BellSouth
9 argues that the hot cut process has already been tried and tested in the 271
10 proceeding and that, with a few modifications (and adding scale for UNE-P
11 conversions), the existing processes are good enough. The CLECs argue that
12 hot cuts must meet the same service intervals and standards as a UNE-P or
13 PIC order. This proposed standard, some of the CLEC witnesses frankly
14 admit, could not realistically be achieved, not in the confines of this nine-
15 month proceeding anyway. FDN is not necessarily advocating one or the
16 other standard, but suggests that since the hot cut process works well for the
17 most part, when and if it does not work, the CLEC should be adequately
18 compensated for, and the ILEC strongly incented to, cure problem areas.

19 FDN suggests that ILECs would be incented to cure perceived flaws
20 in the hot cut process if the Commission tilted key performance metrics and
21 compensation payments to focus more on the realities of a UNE-L world
22 rather than a UNE-P world. When an ILEC errs in processing a UNE-P
23 order, the conversion occurs earlier or later than scheduled, a customer has to

1 reset voicemail, a feature is dropped, any of a number of inconveniences, but
2 the customer is typically not left without service. If a hot cut procedure ever
3 goes awry, the customer can be left without dial tone, the customer cannot
4 receive incoming calls or has static on the line – service impacting problems
5 that have to be cured immediately. These are the sort of issues that will
6 generate customer ire and, possibly, complaints to the FPSC. Therefore, in
7 this case or in another, the Commission should re-evaluate, and insure all
8 parties of, the adequacy of existing metrics in relation to a UNE-L oriented
9 world.

10 **Q. Why do you think other carriers consider the hot cut process too**
11 **difficult?**

12 A. The large IXCs probably have trouble with the sort of one-off, customer
13 and geography specific processes required for hot cuts, and others may
14 simply not devote sufficient, specialized resources and the OSS necessary to
15 handle hot cuts. Large IXC's have been serving the mass market since
16 divestiture with bulk PIC changes processes which are relatively simplistic
17 and uniform among customers and ILECs. Service delivery for the local
18 exchange market, however, is more complex and non-uniform, by nature.
19 So, for any CLEC to successfully carry out hot cuts, the CLEC must devote
20 significant resources to the human capital, OSS and procedures needed to
21 facilitate local exchange service. Carriers like FDN have made the regional
22 resource commitment.

1 It is also true, as some of the CLEC witnesses argue, that the presence
2 of IDLC poses a customer-specific provisioning obstacle with hot cuts.
3 However, at least in BellSouth territory where IDLC is prevalent and
4 growing, the IDLC obstacle is typically overcome. As long as the
5 Commission remains vigilant and explicit in requiring ILECs to provision
6 UNE loops through IDLC without aggravating the economies of loop
7 provisioning, the hot cut process works even with IDLC. On a daily basis,
8 FDN and BellSouth work cooperatively together to install loops through
9 IDLC for mass market customers. In Sprint's incumbent territory, however,
10 FDN is often stymied when trying to acquire an IDLC served loop, either
11 because of the exorbitant NRCs (i.e. ICB prices which Sprint demands) or the
12 inability of Sprint to deliver.

13 **Q. You referred to not "aggravating the economies of loop**
14 **provisioning" when IDLC is involved. What did you mean by that?**

15 A. The presence of IDLC should not cause undue difficulty in the
16 ability of CLECs to provision and service UNE loops. In its direct filing in
17 this proceeding, Verizon is proposing to completely revamp its hot cut NRCs,
18 not just to add a new rate for batch cuts, but to revise/restate the hot cut
19 NRCs the Commission recently approved and to add an IDLC surcharge.
20 (FDN does not believe proposed rates are confidential but refers the
21 Commission to the Panel's Confidential Exhibit III-A.) Given the frequency
22 with which Verizon advises FDN that a loop must be a designed loop
23 (probably because of IDLC), FDN believes Verizon's proposal would mean

1 an overall increase in NRC costs, not a decrease. The TRO's directive was
 2 for the states to evaluate and, where possible, **remove** causes of impairment,
 3 not to impose brand new ones. The batch processes and batch rates the states
 4 were to consider per the TRO were for the express purpose of reducing the
 5 per unit cost of NRCs. FDN supports Commission action to make
 6 meaningful reductions to NRCs, whether as part of a batch process or
 7 otherwise. An IDLC surcharge will actually hamper UNE-L competition, not
 8 help it. And if UNE-P competition is foreclosed, as Verizon and BellSouth
 9 advocate, UNE-L competition should be facilitated, not deterred.

10 **Q. BellSouth's witnesses (primarily BellSouth witness Pate) indicate that**
 11 **the batch cut process the Commission must approve should be**
 12 **exclusively for one-time UNE-P to UNE-L migrations. Does FDN agree?**

13 A. No. The FCC rule defines a batch process as

14 [A] process by which the incumbent LEC simultaneously migrates
 15 two or more loops **from one carrier's local circuit switch to**
 16 **another carrier's local circuit switch**, giving rise to operational and
 17 economic efficiencies not available when migrating loops **from one**
 18 **carrier's local circuit switch to another carrier's local circuit**
 19 **switch** on a line-by-line basis.

20
 21 (Emphasis added.) The rule does not restrict batch processing to cuts from
 22 UNE-P to UNE-L. Though one-time UNE-P conversions would be the chief
 23 beneficiary of a batch process, the rule does not say one-time UNE-P
 24 conversions are to be the sole purpose for which the batch process is put in
 25 place. Verizon in the Panel direct testimony at least recognizes that ILEC-to-
 26 CLEC hot cuts may be ordered by a batch process going-forward.

1 BellSouth's proposed batch process does not pass muster because its chief
2 restriction is that it is reserved for one-time UNE-P conversions only.

3 Aside from the supporting language of the FCC rule quoted above,
4 FDN's position is also bolstered by reason. According to the TRO, if the
5 absence of a batch process is a source of economic or operational
6 impairment, the states are directed to remove the impairment by approving a
7 batch process. So, if a batch process is required to alleviate impairment, and
8 no UNE-L based CLEC can use the batch process, the impairment to UNE-L
9 that necessitated the batch process in the first place would persist. The TRO
10 did not suggest a batch process for improving the status of UNE-P providers
11 only. And a batch process that could only be used by UNE-P providers --
12 with only UNE-P providers being eligible to take advantage of a discount --
13 would be unfair and discriminatory toward UNE-L providers.

14 **Q. FDN has performed thousands of hot cuts on an individual basis.**

15 **Why is FDN concerned with a batch process?**

16 A. A batch can be for as few as two loops. If at the conclusion of this case
17 the only means available for FDN to obtain reductions to NRCs is by
18 ordering via a batch process, FDN may choose to avail itself of a batch
19 process. With the volume of hot cuts FDN carries out, it is relatively
20 common for FDN to submit multiple hot cut orders on the same day or within
21 the same week for a single ILEC CO. FDN also regularly submits orders for
22 numerous loops to one customer. All such orders should be eligible for batch
23 ordering status under the BellSouth and Verizon proposals.

1 **Q. You have discussed Verizon's NRC proposal briefly. BellSouth**
2 **witness Ruscilli (on page 18 of his direct) recommends a 10% discount to**
3 **certain NRCs for BellSouth's batch process. Does FDN support the**
4 **ILEC batch rate proposals made in the ILECs' direct testimony?**

5 A. FDN does not support BellSouth's proposed 10% discount. Aside from a
6 10% discount being nominal at best, the discount is completely unsupported
7 in Mr. Ruscilli's testimony. Mr. Ruscilli makes only vague reference to a
8 "recent cost study" not provided. Although, as I discuss above, Verizon's
9 proposal for an IDLC surcharge should be rejected, Verizon's pricing
10 structure for batch rates at least recognizes that there should be a discount for
11 the first loop cut (off the regular hot cut price for initial loops) and a
12 substantial discount for all additional loops in the batch (off the regular hot
13 cut price for additional loops). Although not agreeing with Verizon's
14 numbers, FDN thinks at least the batch pricing structure is a first step in the
15 right direction.

16 **Q. Does FDN have any other concerns with the batch processes**
17 **proposed by BellSouth and Verizon?**

18 A. Any batch process is supposed to alleviate impairment found in
19 the hot cut process and is to reflect improved operational and economic
20 efficiencies for the hot cut process. A CLEC should not have to endure
21 added restrictions, such as waiting 20 plus days to cut the order, just to get
22 the trade off of a minimal discount on NRCs. In other words, FDN questions
23 how much efficiency is really added by the batch processes proposed.

1 It is not clear how or if BellSouth's proposal would change if it had to
2 cover ILEC to UNE-L migrations, as it should. Verizon's proposal is sketchy
3 in a number of respects. The number of days for reaching critical mass per
4 CO and other details are noticeably absent. Further, Verizon's notifying
5 NPAC on behalf of the CLEC upon execution of the cut may not work
6 considering the CLEC must also coordinate its own switch activity
7 contemporaneous to the cut.

8 **Q. Does that conclude your rebuttal testimony?**

9 A. Yes.

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

2 A. My name is Michael P. Gallagher. My business address is 390 North
3 Orange Avenue, Suite 2000, Orlando, Florida, 32801.

4 **Q. Are you the same Michael P. Gallagher who provided rebuttal**
5 **testimony in this proceeding?**

6 A. Yes.

7 **Q. What is the purpose of your surrebuttal testimony in this**
8 **proceeding?**

9 A. The purpose of my surrebuttal is to address the supplemental rebuttal
10 filed by FCCA witness Gillan on January 22, 2004, and briefly comment on
11 certain aspects of the rebuttal testimony of the BellSouth and Verizon
12 witnesses regarding batch processing.

13 **Q. On pages 2 through 5 of his supplemental rebuttal and in**
14 **Confidential Exhibit No. ___ (JPG-10), FCCA witness Gillan alleges that**
15 **BellSouth's named trigger companies are not "actively" providing**
16 **service to the mass market and do not have sufficient market share to**
17 **justify a finding of nonimpairment for local circuit switching. Do you**
18 **agree with Mr. Gillan?**

19 A. I do not believe the FDN/Mpower numbers Mr. Gillan used are what
20 he says they are or show what he claims they show. Further, as I explained in
21 my rebuttal testimony, FDN is a trigger company under the TRO and the

1 embellishments witnesses like Mr. Gillan suggest the Commission should
2 make to the trigger tests of the TRO are unwarranted.

3 Mr. Gillan supplemental rebuttal was filed January 22 and surrebuttal
4 in this case was due on January 28. The FCCA did provide FDN with the
5 FDN/Mpower numbers included in Mr. Gillan's supplemental exhibit.
6 However, prior to filing this surrebuttal, FDN had not obtained a detailed
7 explanation of what is included in the confidential data Mr. Gillan says he
8 relied on in arriving at those numbers, namely BellSouth's responses to Item
9 No. 3 of an AT&T Subpoena and AT&T Interrogatory No. 125. Once an
10 explanation of the underlying data is received and reviewed, FDN may
11 supplement this surrebuttal testimony. Therefore, while FDN is without the
12 benefit of knowing precisely what data BellSouth provided AT&T, FDN can
13 regardless maintain that the confidential data Mr. Gillan reports for
14 FDN/Mpower in his supplemental rebuttal is not what Mr. Gillan says it is.

15 Mr. Gillan reports and relies on numbers for "In-service UNE Loops."
16 But Mr. Gillan's numbers for FDN/Mpower cannot be reconciled with what
17 FDN reported to the PSC for FDN/Mpower in FDN's confidential response
18 to the staff's data request; and the figures in FDN's response to the data
19 request reflect what FDN knows to be correct. As I stated in my rebuttal,
20 FDN serves approximately two-thirds of the total UNE-L loops BellSouth
21 witness Ruscilli reported in his direct testimony -- more than three times the
22 number Mr. Gillan reports for FDN in his supplemental rebuttal. Considering

1 that the information Mr. Gillan cites for FDN is not correct, the rest of his
2 analysis and conclusions are likewise probably incorrect.

3 In any case, as I indicated in my rebuttal, Mr. Gillan's arguments (and
4 other CLEC witness arguments) that trigger companies must meet additional
5 criteria, such as meeting unspecified growth criteria to be "actively"
6 providing service or meeting some kind of threshold market share criteria, are
7 not appropriate considerations under the TRO.

8 **Q. BellSouth witness Ainsworth states on page 3, lines 11 – 14, and on**
9 **page 11, lines 17 – 18, of his rebuttal that BellSouth designated the batch**
10 **hot cut process to convert UNE-P arrangements "given the**
11 **predominance of UNE-P arrangements" and because the TRO more or**
12 **less intended the batch process only for UNE-P conversions. Does FDN**
13 **agree?**

14 A. No. As I mentioned in my rebuttal testimony, a batch process is defined
15 in the TRO rules as:

16 [A] process by which the incumbent LEC simultaneously migrates
17 two or more loops **from one carrier's local circuit switch to**
18 **another carrier's local circuit switch**, giving rise to operational and
19 economic efficiencies not available when migrating loops **from one**
20 **carrier's local circuit switch to another carrier's local circuit**
21 **switch** on a line-by-line basis.
22

23 (Emphasis added.) The rule does not restrict batch processing to one-time
24 conversions from UNE-P to UNE-L. If the FCC meant for the state

1 commissions to approve in 9 months a batch process just for one-time UNE-P
2 conversions, the FCC could have easily said so in the rule, but it did not.
3 Instead, the FCC said that if the state commissions deem a batch process
4 necessary to alleviate impairment, then the state commissions have to
5 approve in 9 months a batch process as stated in the rule – a process that must
6 encompass cutovers from the ILEC’s to a UNE-L CLEC.

7 **Q. Do BellSouth and Verizon take consistent positions on the question of**
8 **which services must be eligible for batch processing?**

9 A. No, they do not. Verizon’s batch proposal, though falling short in other
10 respects, at least recognizes that ILEC-to-CLEC UNE-L cuts are required to
11 be eligible for batch processing, consistent with the TRO. In the Verizon
12 Panel’s rebuttal testimony on page 9, lines 22 – 25, the Panel acknowledges,
13 “Verizon’s batch hot cut process . . . will govern the ‘everyday’ conversions
14 of customers from Verizon to a CLEC, if requested by the CLEC, in addition
15 to the transition of the embedded base of UNE-P to UNE-L.” By contrast,
16 BellSouth’s batch process covers only one-time conversions from UNE-P to
17 UNE-L, and therefore falls short of the TRO requirement. So, if the
18 Commission finds that a batch process is necessary, BellSouth’s proposal
19 fails to comply from the start.

20 **Q. Verizon and BellSouth persist in defending their batch proposals in**
21 **their rebuttal cases. What must the Commission consider in establishing**
22 **a batch process?**

1 A. The Commission should consider the comments above and those I
2 mentioned in my rebuttal. If the Commission approves a batch process, the
3 Commission will have done so to alleviate sources of impairment and to
4 improve hot cut efficiencies. So, for example, a CLEC could have the option
5 of coordinating/designating due dates and times for multiple orders in the
6 same CO without extended intervals. If a CLEC had 10 orders for a given
7 CO and wanted them all worked on one day within a set time period, the
8 CLEC should be able to do so. And, since the ILEC would work a batch of
9 orders at one time in one CO, redundant labor costs associated with first loop
10 NRCs should be reduced, and, in particular, order coordination charges for
11 the orders in the batch should be significantly reduced.

12 **Q. Does that conclude your surrebuttal testimony?**

13 A. Yes.

14

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CORRECTIONS TO FDN WITNESS GALLAGHER PREFILEDRebuttal

Page 1, lines 2 – 3, change address to “2301 Lucien Way, Maitland, Florida, 32751.”

Page 1, line 5, after “Inc.” insert “d/b/a FDN Communications.”

Page 3, line 17 – 18, change “currently performs over” to “has performed up to.”

Page 5, line 18, add “pages” before “52 – 65.”

Page 7, line 20, change “amounts” to “amount.”

Page 8, line 11, change “be” to “is.”

Page 8, line 20, change “performs over” to “has performed up to.”

Page 15, line 4, add “of Verizon’s proposal” after “details.”

Surrebuttal

Page 1, line 2, change address to “2301 Lucien Way, Maitland, Florida.

Page 2, line 14, add “After surrebuttal was filed, BellSouth explained that only SL-2 loop data could be identified by carrier. Hence, Mr. Gillan did not include SL-1 information for FDN.”

1 CHAIRMAN BAEZ: All right. Ms. Masterton, you're not
2 part of the no impairment. Okay. We're going to take you all
3 up at another point in terms of entering into the record for
4 your witnesses and so on.

5 All right. Now, shoot your -- let me have your
6 confidentials.

7 MS. MAYS: Okay, Mr. Chair. If it would please the
8 Commission, may I make a simple suggestion? May we mark our
9 exhibits as Exhibit A which would be public and Exhibit B which
10 would be confidential?

11 CHAIRMAN BAEZ: That's fine.

12 MS. MAYS: And we would just mark them all, and if we
13 do not have confidential for all, we simply will not submit a
14 B, which would be the confidential.

15 CHAIRMAN BAEZ: Okay. That works.

16 MS. MAYS: Thank you, Mr. Chairman.

17 CHAIRMAN BAEZ: All right. Let the record reflect
18 that confidential portions of the attached exhibits that have
19 been previously identified shall be marked as a Sub B.

20 MS. MAYS: Yes, Mr. Chairman.

21 CHAIRMAN BAEZ: And let that serve for all the
22 exhibits that we have identified attached to witness testimony
23 up to now.

24 Mr. Susac, do we need to clarify further what that is
25 at this point, or is that direction sufficient?

1 MR. SUSAC: I believe that direction is sufficient.

2 CHAIRMAN BAEZ: Okay. Great. I think at this point
3 can we move on to the presentations for the direct case?

4 MR. SUSAC: If I may, can I just follow up on a few
5 things we briefly discussed this morning?

6 CHAIRMAN BAEZ: Sure.

7 MR. SUSAC: As for the Witness Tipton depo tonight,
8 staff has an opportunity to review the material that was filed
9 yesterday afternoon. We do feel it is relevant, and therefore,
10 we feel that FCCA will need to depose Ms. Tipton tonight.

11 CHAIRMAN BAEZ: Very well. With the limitations that
12 were already acknowledged by FCCA as to the subject -- or the
13 scope of that deposition, BellSouth, you'll make your witness
14 available to FCCA.

15 I didn't hear everything you said, Mr. Susac. Is
16 there some -- I'm assuming there are timing issues involved at
17 this point, and do we need to address them?

18 MR. SUSAC: I don't know when Ms. Tipton could be
19 made available.

20 MS. MAYS: Mr. Chairman, we'd be happy to -- if
21 there's a room here, we have -- Mr. Shore will be defending
22 Ms. Tipton's deposition and they are available now.

23 CHAIRMAN BAEZ: They're available now. Mr. Magness,
24 does that work for you at all?

25 MR. MAGNESS: To take the deposition right now?

1 CHAIRMAN BAEZ: No. She is currently available, so
2 there seems to be a fair amount of flexibility. We don't have
3 to settle this on the record here.

4 MS. MAYS: I apologize, Mr. Chair.

5 CHAIRMAN BAEZ: That's okay. I appreciate you just
6 bringing it to our attention that the availability begins now.

7 MR. MAGNESS: I'll speak to Ms. Mays off the record.
8 We'll work it.

9 CHAIRMAN BAEZ: Please do that off-line. Thank you.
10 Mr. Susac, you had something else?

11 MR. SUSAC: Yes. Also, the FCCA has been given
12 Allegiance's confidential response to staff's first set of
13 discovery.

14 CHAIRMAN BAEZ: Right.

15 MR. SUSAC: We're working on getting the third ready
16 for them. And also, just to briefly touch on the exhibits that
17 the party will be moving into the record. If we could have
18 those, the physical copies of those by the end of the day. I
19 know some parties have already given them to us, but just to
20 ensure that we have all of the exhibits by the end of the day.

21 CHAIRMAN BAEZ: Very well.

22 MS. KAUFMAN: Mr. Chairman.

23 CHAIRMAN BAEZ: Yes.

24 MS. KAUFMAN: I can clear up one housekeeping matter.
25 We appreciate being given the opportunity to review the

1 Allegiance confidential information. We've reviewed it; we'll
2 return it, and we will withdraw our objection to that exhibit.

3 CHAIRMAN BAEZ: Thank you very much, Ms. Kaufman.
4 There's a silver lining after all, isn't there? Great.

5 Are we ready to move on?

6 MR. CRUZ-BUSTILLO: Mr. Chairman.

7 CHAIRMAN BAEZ: Yes. Who is that?

8 MR. CRUZ-BUSTILLO: Jorge Cruz-Bustillo, Supra
9 Telecom. I thought you were getting ready to go into
10 BellSouth's presentation, so I had two preliminary matters.

11 CHAIRMAN BAEZ: Oh, okay. Go ahead, Mr. Cruz.

12 MR. CRUZ-BUSTILLO: On the order that staff had
13 handed out, Mr. Nilson was not noted as sponsoring for Supra
14 four surrebuttal exhibits, and I wanted it to be reflected in
15 the order. It would be on Page 35 of the order.

16 CHAIRMAN BAEZ: Which order is that? I have three
17 orders before --

18 MR. CRUZ-BUSTILLO: It is the prehearing order.

19 CHAIRMAN BAEZ: The prehearing order? Okay.

20 MR. CRUZ-BUSTILLO: The prehearing order.

21 CHAIRMAN BAEZ: What page was that?

22 MR. CRUZ-BUSTILLO: I have Page 35. At the very end
23 we would put Nilson, Supra, sponsoring DAN-SRT-1, and then 2,
24 3, and 4.

25 CHAIRMAN BAEZ: Say that again.

1 MR. CRUZ-BUSTILLO: D-A-N -- the exhibit would be
2 DAN-SRT-1, and then the same for 2, 3, and 4, which were
3 attached to his surrebuttal testimony.

4 CHAIRMAN BAEZ: Okay.

5 MR. CRUZ-BUSTILLO: And the last item I have,
6 Mr. Chairman, is consistent with past Commission practice, was
7 to ask the Commission to take official recognition of
8 seven Commission documents that have a DN number. And I didn't
9 know if now would be the appropriate time to do it.

10 CHAIRMAN BAEZ: That's fine. And we have discussed
11 this over and over again about taking official recognition of
12 our own orders. And I guess, call me crazy, but I'm not sure
13 that we need to do that, although your suggestion is noted,
14 Mr. Cruz.

15 MR. SUSAC: We don't need to do it with Commission
16 orders, rules, or statutes.

17 CHAIRMAN BAEZ: Okay. Does that satisfy you?

18 MR. CRUZ-BUSTILLO: Yeah. I have two Commission
19 orders, and then I have four Commission -- sorry. I have two
20 Commission orders, and I have six -- I'm sorry, five Commission
21 documents that are official Commission documents that have a DN
22 number. And I would like to have them recognized so that I can
23 cite to them in the post-hearing brief. And I have the DN
24 number from the Commission's Web sites and the specific
25 dockets.

1 CHAIRMAN BAEZ: I think we're still in the same
2 posture. You can cite to them by reference.

3 MR. CRUZ-BUSTILLO: Can I cite to them for the record
4 right now so that there would be no objection later?

5 MR. SUSAC: If you want to clear it up right now, go
6 ahead and cite it to the record now.

7 CHAIRMAN BAEZ: Mr. Cruz, go ahead, cite them for the
8 record if it will get us past this quickly enough.

9 MR. CRUZ-BUSTILLO: Thank you, Mr. Chairman. The
10 first DN number is DN 00165-99. The second document number is
11 DN 12850-03. The third is DN 12616-02. The fourth is
12 DN 06855-03, and the fifth DN is DN 14453-01. And DN number
13 six, DN 14454-01. And the last one is DN 15631-01. And I
14 would ask that they be recognized for this proceeding for the
15 purposes of citing to them.

16 MR. FEIL: Mr. Chairman, if I may address that.

17 CHAIRMAN BAEZ: Mr. Feil.

18 MR. FEIL: Obviously I don't have a problem with the
19 Commission taking official recognition of its own orders, but
20 these other document numbers he's referencing I don't have the
21 benefit of knowing what they are or what dockets they were in
22 or anything about them at this juncture. So I would ask that
23 you defer ruling on official recognition until we can speak
24 with Mr. Cruz-Bustillo to find out exactly what these documents
25 are.

1 CHAIRMAN BAEZ: I'm not sure that I was even going to
2 officially recognize them. I think you may have got ahead of
3 me. This was just a courtesy to have them listed. I don't
4 know what counsel's -- it was in the spirit of efficiency, but,
5 Ms. Keating, you've got something to say?

6 MS. KEATING: Just that staff has the same concern as
7 well. It is appropriate for the Commission to go ahead and
8 take official recognition of any Commission rules, orders, or
9 statutes. I'm not sure that some of those document numbers
10 though that Mr. Cruz has identified fall into any of those
11 three categories. And to the extent that they don't, it would
12 not be appropriate normally to take official recognition unless
13 it's otherwise an official report or some other type of order
14 of the Commission itself. So I think --

15 CHAIRMAN BAEZ: And I'm not sure what you're
16 referring to either. Maybe I misunderstood. I thought you
17 were referring to orders, but --

18 MR. CRUZ-BUSTILLO: My response would be that the
19 first two are orders, the others are Commission documents.

20 CHAIRMAN BAEZ: What does that mean, Commission
21 documents?

22 MR. CRUZ-BUSTILLO: The others are actual documents
23 in the docket that are relevant to this proceeding. Documents
24 filed with this Commission in a docket that are relevant to
25 this proceeding. And my only response would be that the

1 Chairman cited earlier today that it has very liberal policy
2 and that the Commission staff --

3 CHAIRMAN BAEZ: Well, there's liberal and there's
4 liberal. I mean, this is sort of a blank check, what you're
5 asking, and I don't know that just calling them Commission
6 documents necessarily gets us over the hump. I'm still not
7 clear on what you call Commission -- you're talking about
8 documents that were filed at the Commission?

9 MR. CRUZ-BUSTILLO: Documents that were filed with
10 this Commission in a proceeding held at this Commission in
11 which the documents -- which I can provide a caption --

12 CHAIRMAN BAEZ: Yeah, I'm sure you will.

13 MR. CRUZ-BUSTILLO: -- of exactly what they are to
14 all the parties and that I would say are relevant to this
15 proceeding. And I think that in the end you can make a
16 decision --

17 CHAIRMAN BAEZ: Well, until you provide those lists
18 we're not officially recognizing anything but the two that we
19 can probably confirm are Commission orders.

20 MR. CRUZ-BUSTILLO: The first two would be Commission
21 orders.

22 CHAIRMAN BAEZ: To the extent that they are, those
23 can be officially recognized. The rest of the documents I'm
24 still -- outside of them having been filed with the Commission,
25 I'm still not sure what they are, and I think that the rest of

1 the parties I think are going to have to be provided with at
2 least some kind of information and that includes staff --

3 MR. CRUZ-BUSTILLO: Okay.

4 CHAIRMAN BAEZ: -- to allay their concerns. I'm sure
5 this is going to come back for a discussion at some point.

6 MR. CRUZ-BUSTILLO: Thank you, Mr. Chair.

7 CHAIRMAN BAEZ: Okay. Where were we?

8 MR. SUSAC: I believe we're ready for the direct
9 presentation.

10 CHAIRMAN BAEZ: All right. Wait. And before that,
11 Ms. Mays, we're running up close to twelve o'clock. I know
12 that your presentation -- I want to try as much as possible for
13 the parties that do have presentations not to wind up breaking
14 it in half and ruin the flow that I'm sure you all think is
15 crucial to your particular presentations. Fill me in on how
16 much time we're looking at. I'm under the understanding that
17 it's about two hours.

18 MS. MAYS: That would be correct.

19 CHAIRMAN BAEZ: And I want to poll the Commissioners,
20 including those up in the sky -- well, at least up on the
21 ceiling for this matter as to how their timing -- how their
22 feelings on the timing is. You're telling me two hours?

23 MS. MAYS: Yes, Mr. Chairman.

24 CHAIRMAN BAEZ: Okay. Judging from that, we're
25 running close to two o'clock. Commissioners, what's your

1 pleasure? Would you rather break now for half an hour or
2 stretch it out until roughly 1:45?

3 COMMISSIONER DAVIDSON: Stretch.

4 COMMISSIONER DEASON: If we're going to have a
5 two-hour presentation, we're going to need an intermission at
6 some point.

7 CHAIRMAN BAEZ: Yes, we are. So why don't we take --
8 would you rather take 30 minutes --

9 COMMISSIONER DEASON: I'd rather just them go ahead
10 and start, and then when we get ready to break, we're going to
11 break.

12 CHAIRMAN BAEZ: Okay. Fair enough. Commissioners,
13 Commissioner Bradley or Jaber?

14 COMMISSIONER JABER: Mr. Chairman, whatever you and
15 the rest of the Commissioners decide is fine with me. I like
16 Commissioner Deason's idea.

17 CHAIRMAN BAEZ: And in the spirit of Commissioner
18 Jaber's attitude, we're going to press on.

19 MS. MAYS: Mr. Chairman.

20 CHAIRMAN BAEZ: Yes.

21 MS. MAYS: Would it be appropriate for the BellSouth
22 witnesses to be sworn who are participating?

23 CHAIRMAN BAEZ: We're going to do that in a second.
24 And shall we have all the BellSouth witnesses -- in fact, if we
25 have got all the direct case witnesses available and in the

1 room, if you guys can stand up, and we'll swear you in real
2 quick.

3 (Witnesses correctively sworn.)

4 CHAIRMAN BAEZ: All right. You're sworn. Thank you.
5 Mr. Lackey, you are anxious to get started, as are we, so
6 please proceed.

7 MR. LACKEY: Thank you, Mr. Chairman, Commissioners.
8 My name is Doug Lackey, and I'm one of the attorneys
9 representing BellSouth in this proceeding. We appreciate the
10 Commission allowing us to conduct this hearing in a different
11 format than normally is followed. It may seem a little strange
12 at first, but given the deadlines that the FCC has imposed upon
13 all of us, we hope that using this format will allow us to get
14 the entire case in in a coherent and comprehensive way. To
15 that end I'm going to begin, and with the assistance of some of
16 our other lawyers and a number of our witnesses, I'm going to
17 place before you the facts that we think that you all need to
18 have in order to make a decision in this proceeding.

19 Of course what I say today or what any other attorney
20 says to you today isn't evidence. You all know that. If I
21 raise an issue that you want to ask a question about and it's a
22 question that needs to be addressed by one of our witnesses
23 that's not scheduled to appear here this morning, if you will
24 stop me, I will be happy to bring that witness up here and have
25 him answer your question or her answer your question right

1 then. I know you've excused a couple of our witnesses. I've
2 asked them to say until the end of our direct presentation in
3 the event that that occurs.

4 We're gathered here today because the FCC failed to
5 resolve certain tasks that it was given by the -- we're
6 gathered here today for a wedding, how's that, for the -- a
7 task assigned to it by the '96 Communications Act. The issue
8 failing -- the issue is whether there are markets in Florida
9 where CLECs are not impaired without access to BellSouth's
10 unbundled switching. The FCC should have resolved that issue,
11 but to use a legal term, they punted it to you all.

12 Let me follow that with a headline. The evidence
13 that BellSouth offers will demonstrate that there are
14 31 distinct markets in Florida. The picture on the screen
15 behind the Commissioners is a bit washed out, but hopefully on
16 your monitors it's easier to see. The evidence will show that
17 the FCC's bright line trigger that I'm going to talk about
18 indicates that CLECs are not impaired without access to
19 unbundled switching in 12 of those markets.

20 The application of the FCC's more general potential
21 deployment test will show that there is no impairment in nine
22 additional markets. Therefore, when this case is over, we will
23 be asking you to make a no impairment finding in 21 of the
24 31 markets we've identified.

25 Now, let's look at the task that the FCC has

1 assigned. First, you have to approve a batch hot cut process.
2 Let me reinforce one of the most important points regarding
3 this batch hot cut process issue. The FCC requires you to
4 approve and implement a batch hot cut process. This is not a
5 situation where you can simply reject the processes that are
6 offered to you because the CLECs don't like them. The FCC has
7 said you must approve and implement a batch hot cut process.
8 At the same time you are, quote, fixing, close quote, the
9 perceived hot cut problem, you have to determine whether there
10 are other barriers that prevent CLECs from entering the local
11 market. In this regard, you're going to have to define two
12 terms, and you're going to have to apply two tests.

13 First, you're going to have to determine who
14 constitutes a mass market customer. After that, you're going
15 to have to define the appropriate geographic market for Florida
16 where the FCC's impairment test will be applied.

17 With regard to the FCC test, as you know, there are
18 two. The first is what we call a specific bright line test,
19 are three or more CLECs unaffiliated with each other and
20 unaffiliated with BellSouth self-provisioning switching to
21 serve mass market customers in the areas that we're talking
22 about. I'll digress for a moment to say that there's a second
23 bright line trigger test, the wholesale trigger test, which
24 BellSouth has not asserted applies in the case. That is the
25 situation where there are two CLECs who are wholesaling

1 switching to other CLECs. We are not presenting any evidence
2 on that. We have, in fact, stipulated that issue.

3 If the specific trigger that we're going to talk
4 about isn't met then, the FCC gave you a more general potential
5 deployment test that you have to apply. We're going to talk
6 about each of these topics this morning, and in addition, we're
7 going to talk a little bit about what we expect the other side
8 to convey to you during their cross-examination of our
9 witnesses and to their direct case. In talking about that, I
10 expect to point out to you where we think the CLECs have gone
11 wrong and to highlight claims they will make that we think you
12 ought to question closely.

13 Let's turn to the first issue. What constitutes a
14 mass market customer? The FCC has indicated that what it was
15 trying to do here was to separate customers into two classes.
16 Mass market customers consist of residential customers and very
17 small business customers. All other customers, medium and
18 large business customers, constitute the enterprise market. In
19 attempting to do this, the FCC has said very clearly that a
20 four-line limit would include nearly all residential users and
21 those business users who because they had less than four access
22 lines were more similar to residential users than they were to
23 large businesses.

24 In this case BellSouth has simply accepted what we
25 have characterized as the FCC's default demarcation point. In

1 our view, customers served with three or fewer DS0 or analog
2 lines, which are the kind of lines that run into your houses,
3 are mass market customers. Customers who have four or more
4 lines, in our view, are what the FCC calls enterprise
5 customers. Mr. Ruscilli is our witness who will discuss this
6 point. He's not participating in the direct presentation. He
7 has been called for cross-examination and will be available to
8 discuss that point.

9 With regard to the issue of the crossover point,
10 you'll find that the other parties are suggesting different
11 higher crossover points with the most ambitious, in our view,
12 being the crossover of 12 advocated by Sprint and supported by
13 the FCCA. Quite frankly, in our view, it's difficult to think
14 of a customer who has 11 lines running into their house is a
15 residential customer. It's difficult to think of a customer
16 who has 11 lines running into their house is a very small
17 business customer. We think the demarcation point we've
18 recommended, which the Public Counsel has concurred in, makes
19 more logical sense and we recommend it to you.

20 I want to tell you, we're conflicted on this, and the
21 reason we're conflicted on this is that the other side offers
22 higher crossover points, which means there's more mass market
23 customers, which means it's easier to meet the triggers.
24 Ms. Tipton's testimony indicates that if we simply
25 characterized all customers with analog loops as mass market

1 customers and all others as enterprise customers, we'd meet the
2 trigger in 15 of the 31 markets instead of 12.

3 Moving to the definition of the appropriate market
4 area in which you need to apply the test, I'm going to ask
5 Dr. Chris Pleatsikas to talk to you about our recommendation
6 that you use your UNE zones further subdivided by component
7 economic areas as your market definition. While Dr. Pleatsikas
8 will talk to you in a moment about the specifics, I want to
9 give you a thought that I'd like you to hold on to as you're
10 listening to our case and as you listen to the other side's
11 case about market definition. You're going to hear about
12 market definitions that range from using wire centers to
13 aggregations of wire centers to MSAs to LATAs. The thought I
14 want you to keep in mind as you look at these definitions is
15 that whatever definition you select really ought to have an
16 economic meaning. You need to define the relevant market in a
17 way that might actually reflect reality.

18 Let's begin this portion of our presentation by
19 introducing Dr. Pleatsikas who is sitting here to my left.

20 CHRISTOPHER PLEATSIKAS
21 was called as a witness on behalf of BellSouth
22 Telecommunications, Inc. and, having been duly sworn, testified
23 as follows:

24 DIRECT EXAMINATION

25 BY MR. LACKEY:

1 Q Dr. Pleatsikas, will you give us your name and by
2 whom you're employed?

3 A My name is Christopher Pleatsikas. I'm employed by
4 LECG as a principal. LECG is an economics and finance
5 consulting firm.

6 Q What's the purpose of your testimony in this
7 proceeding?

8 A The purpose of my testimony is to provide an
9 appropriate, economically sound geographic market definition
10 for conducting the impairment analysis.

11 Q Could you tell us a little bit about your educational
12 background?

13 A I have a Ph.D. in economics and regional economic
14 analysis from the University of Pennsylvania, and I've taught
15 economics at the University of Pennsylvania and the University
16 of Maryland.

17 Q Do you have any prior experience related to defining
18 appropriate market areas for use in economic analysis?

19 A I have more than 15 years' experience defining
20 markets both in antitrust and other contexts. I've defined
21 markets in telecommunications industry and a variety of other
22 industries. I've also published on the subject including a
23 recent article and book chapter on defining markets in
24 high-technology industries.

25 Q Why do we need an economist to talk to us about

1 market definition in this proceeding?

2 A Well, economics has long been concerned with
3 identifying the principles involved in defining markets, and I
4 believe the FCC requirements relate to these economic
5 principles. And by applying these principles, we can provide a
6 rigorous foundation for market definition for use as a basis
7 for the impairment analysis.

8 Q What guidance did the FCC provide regarding the
9 definition of the appropriate market areas in these
10 proceedings?

11 A We have a slide that provides some of that guidance.
12 I won't read it but try to summarize a few of the points. The
13 FCC specified that the market must be less than an entire
14 state. It must take into account the location of mass market
15 customers and the factors that affect the CLECs' ability to
16 serve customers profitably using existing technology. The FCC
17 also provided a lower bound for the market in that it specified
18 that one not define a market so narrowly that one doesn't
19 consider the available scale and scope economies that CLECs can
20 take advantage of in serving a wider market. And these are the
21 basic boundaries that the FCC has set.

22 Q Tell us what market definition you're proposing to
23 the Commission here.

24 A Well, I recommend the use of the UNE rate zones that
25 were established by this Commission subdivided by component

1 economic areas or CEAs. This results in 31 markets in the
2 BellSouth area of -- the BellSouth service territory in
3 Florida.

4 Q Why are the Commission's UNE zones the appropriate
5 starting point for any market definition?

6 A Well, the TRO suggests that commissions consider how
7 variation in loop rates might affect market boundaries and the
8 ability of CLECs to provide service profitably. I believe the
9 use of the UNE rate zones is also directly responsive to the
10 FCC factors such as the location of mass market customers and
11 factors that account at least in part for the variation and the
12 ability of CLECs to provide service profitably. One of the
13 reasons why is CLECs clearly have to consider how loop rates
14 vary in deciding where to provide service.

15 Q Why didn't you stop your definition with just the UNE
16 zones that this Commission has previously approved?

17 A Well, while the UNE loop rates are relevant to some
18 of the economic considerations that one has to investigate,
19 more is needed to develop a sound economic market definition.
20 For example, in UNE rate Zone 1, there are customers in
21 Jacksonville and Miami, and these locations are so distant that
22 transport could well impact the ability of CLECs to serve both
23 as part of a single market. Having considered the
24 alternatives, I decided it was economically reasonable to
25 subdivide the UNE zones by component economic areas.

1 Q Can you tell us a little bit about what a component
2 economic area is?

3 A Yeah. CEAs were developed by the Bureau of Economic
4 Analysis of the U.S. Department of Commerce. They consist of
5 348 geographic areas that cover the entire United States. They
6 tie each county to the economic node to which it's most closely
7 related, and they have been designed for regulatory and
8 commercial applications.

9 Q Were there other ways that you could have divided the
10 UNE zones?

11 A Yes. For instance, two have been suggested here.
12 MSAs is one. The difficulty with MSAs is they don't cover the
13 entire state of Florida. LATAs was another that has been
14 suggested, but LATAs aren't really relevant to economic
15 substitutability or the way that CLECs develop their networks
16 to provide service.

17 Q Why couldn't the Commission just use wire centers as
18 the market in this state?

19 A Well, wire center boundaries are also not generally
20 relevant to economic substitutability or the way that CLECs
21 develop their networks to provide service. CLECs aren't really
22 constrained by the incumbent's network architecture. For
23 instance, their networks are generally characterized by more
24 transport and fewer switches than the incumbent's network. I
25 believe that once one applies the economic principles and

1 method that I've specified, you may find that some individual
2 wire centers constitute markets, economic markets, but to start
3 with wire center boundaries as the basis for market definition
4 I believe is inconsistent with both economic principles and the
5 FCC's guidance.

6 MR. LACKEY: Thank you, Dr. Pleatsikas.

7 Once the Commission has determined the appropriate
8 definition for the group of customers that we'll call mass
9 market customers and once you've defined the appropriate
10 geographic market, we then have to start applying the FCC's
11 impairment test. The first test is a specific bright line
12 trigger test. As a practical matter, the FCC created a trigger
13 test which if met ends the inquiry. If the test is met, the
14 discussion is over. The test is objective, easily understood,
15 and easily applied.

16 The specific trigger we're relying on is captured in
17 the FCC's Paragraph 462. And basically, as I've said earlier,
18 what it requires is that there be a finding that if there are
19 three or more carriers unaffiliated with each other or the
20 incumbent LEC or each other, that's what it said, that are
21 serving the mass market customers in a particular market using
22 self-provisioned switches, the state must find no impairment in
23 the market. Pretty simple and straightforward. Indeed, the
24 FCC has said that the use of triggers keyed to objective
25 criteria can avoid the delays caused by protracted proceedings

1 and can minimize administrative burdens. In fact, as the
2 Prehearing Officer said in an order issued just this past
3 Friday, as the FCC recently reiterated in its brief filed with
4 the United States Court of Appeals, the triggers analysis is a
5 separate, discrete analysis from the potential deployment
6 analysis and is essentially a counting exercise.

7 With regard to this point I'm going to ask Ms. Tipton
8 to speak to you all regarding what BellSouth's evidence
9 demonstrates with regard to the existence of CLECs who are
10 providing services to mass market customers in Florida.

11 Ms. Tipton.

12 WITNESS TIPTON: Thank you, Mr. Lackey. Good
13 morning, or I guess I should now say good afternoon,
14 Commissioners, as it is a few minutes past 12:00. My name is
15 Pam Tipton, and I'm employed with BellSouth, director of
16 interconnection services. I've got 16 years' experience with
17 BellSouth predominately in the wholesale side of the business,
18 and I focussed on both the local and the special access
19 markets.

20 Today, I'll present evidence showing the markets
21 where the self-provisioning triggers are met as indicated in my
22 direct testimony in Exhibit 3 and as shown here on this screen.
23 Let me also draw your attention to the map highlighting the
24 geographic markets, and unfortunately, the colors do not show
25 up well on this screen. The colors are separately indicated

1 for the 12 markets in BellSouth's territory where the triggers
2 have been met. Let me draw out the Jacksonville CEA, which is
3 in the upper right corner of the map. Jacksonville has
4 particular meaning to me as I lived there for over five years,
5 so I wanted to use this as an example. And again, it's
6 unfortunate the colors don't show up better; they do on the
7 computer screen. In Jacksonville, there are two separately
8 identified markets where the triggers are met: Jacksonville
9 Zone 1 and Jacksonville Zone 2.

10 Later, I'm going to spend some time talking about the
11 data which demonstrates where the triggers are met. My role in
12 this case has been to collect data regarding mass market
13 deployment and to apply that data to the self-provisioning
14 trigger test as defined by the FCC using BellSouth's mass
15 market definition and geographic market definition. My role
16 was not to make interpretative decisions about the Triennial
17 Review Order, and it certainly wasn't to draw any legal
18 conclusions. I'm going to leave that up to the attorneys to
19 do.

20 My task was to apply a set of data to a set of
21 straightforward and clearly defined criteria. As Mr. Lackey
22 just discussed, the FCC itself characterizes its
23 self-provisioning trigger test as a bright line test. And
24 again, let's review the criteria. It's very straightforward
25 and this is pulled from the rule itself. To satisfy the

1 trigger, a state commission must find that three or more
2 competing providers not affiliated with each other or the
3 incumbent LEC, including intermodal providers of service that
4 are comparable in quality to that of the incumbent LEC, each
5 are serving mass market customers in the particular market with
6 the use of their own local switches.

7 In order to determine the markets where the trigger
8 has been met BellSouth used two sources of data. One was CLEC
9 responses to BellSouth discovery, and two, BellSouth's own
10 data. First, let me talk a little bit about the CLEC responses
11 to BellSouth discovery.

12 BellSouth asked CLECs to identify the switches they
13 have deployed which are providing qualifying service to
14 customers in Florida. We asked them to identify the BellSouth
15 wire centers from which these end users are served. We also
16 asked them to identify the number of customers by BellSouth
17 wire center, and we asked them to order those customers by
18 customer location by the number of lines served to those
19 customers starting with one, two, three, and up to more than 10
20 to 13 lines. We also asked CLECs to identify if they plan to
21 terminate service in any area in Florida.

22 Second, BellSouth conducted its own separate analysis
23 using its internal data. This included residential ported
24 telephone numbers and unbundled loops. For the CLECs that were
25 responsive to BellSouth's request, BellSouth used CLEC-provided

1 data in its trigger analysis. For those who did not provide
2 usable information, BellSouth used its own data.

3 BellSouth's data is straightforward and it's very
4 accurate. It's based on the actual records for the unbundled
5 services that CLECs are purchasing from BellSouth and paying
6 for to serve their end user customers. It should be noted that
7 over 85 percent of the data used in determining whether
8 triggers were met was actually based on CLEC-provided data.

9 So how did we get to the end result? We applied the
10 actual data on mass market deployment to the FCC's
11 straightforward criteria. Again, let me draw your attention to
12 the outcome of our analysis. The data demonstrates that the
13 triggers were met in 12 of BellSouth's 31 markets in Florida.
14 Actual CLEC deployment serving mass market customers in Florida
15 speaks for itself. In all 12 of the markets there are at least
16 three CLECs self-providing switching to mass market customers,
17 and indeed, you'll notice in several of the markets there's as
18 many as eight to ten CLECs self-providing switching to mass
19 market customers.

20 Applying the FCC's straightforward self-provisioning
21 trigger test, it is clear that the trigger is satisfied in
22 these 12 markets. The Commission must therefore find that
23 CLECs are not impaired without access to BellSouth's unbundled
24 switching in these 12 markets where the trigger is met. Thank
25 you.

1 MR. LACKEY: Mr. Chairman, Commissioners, based on
2 the evidence that BellSouth has placed into the record, we
3 believe that there are 12 markets, the ones you see on the
4 screen there now, where the automatic trigger that the FCC has
5 created are met. We are, however, interested in other markets,
6 and that's markets where the bright line test is not met. With
7 that in mind, we want to turn to the application of the FCC's
8 potential trigger test. This test will be discussed by
9 Ms. Tipton again, Dr. Aron, Mr. Stegeman, and Mr. Varner.
10 Before they begin though let me give you the headline as well
11 as a brief overview of this deployment test.

12 The headline is that there are nine markets,
13 nine additional markets to the 12 markets that Ms. Tipton was
14 just talking about where CLECs are not impaired without access
15 to our unbundled switching. The potential deployment test that
16 leads to this conclusion consists of three parts. The
17 first part, which Ms. Tipton will discuss, is evidence of
18 actual switch employment in these areas. Ms. Tipton is going
19 to tell you that in seven of these nine markets there's at
20 least one and often two CLECs self-provisioning service to mass
21 market customers. There just aren't three. There aren't
22 enough to reach the trigger. Given that the FCC has said that
23 actual deployment is the best evidence of a lack of barriers,
24 we urge you to focus on that evidence.

25 The second part of the potential deployment test is

1 the determination of whether there are operational barriers to
2 entry. In this regard, Mr. Varner is going to discuss the
3 evidence we present regarding our nondiscriminatory provision
4 of loops to CLECs as well as our collocation and cross-connect
5 policies and performance.

6 The final part of the potential deployment in case
7 involves an analysis of whether there are any economic barriers
8 to entry in these markets. With regard to this, BellSouth has
9 commissioned the model that was created by Mr. Jim Stegeman,
10 the man who developed the BSTLM model that you've adopted in
11 this state, a modeler of at least 15 years' -- 10 years' to 15
12 years' experience. We've also retained Dr. Debra Aron with
13 LECG to work with Mr. Stegeman's model to develop a CLEC
14 business case that demonstrates that there's no impairment in
15 these nine markets.

16 Let's begin with Ms. Tipton's testimony regarding the
17 existence of actual competition in seven of the nine markets
18 that I've been speaking about.

19 WITNESS TIPTON: Thank you. There are a lot of
20 numbers that Mr. Lackey just discussed, so if you'll permit me
21 just a moment, I'd like to review just a few points. There are
22 31 specific geographic markets in BellSouth's territory. And
23 I've already talked about the 12 markets where the
24 self-provisioning trigger is met. And as Doug mentioned, in a
25 few moments Dr. Debra Aron will discuss that BellSouth's

1 potential deployment analysis indicates there are nine
2 additional markets where CLECs are unimpaired without access to
3 unbundled switching. I'll now present evidence regarding these
4 nine additional markets.

5 For this analysis, I used the same data and the same
6 methodology used in our trigger analysis. The data shows that
7 CLECs are providing service to mass market customers in
8 seven of the nine potential markets. And these seven are shown
9 on the screen. In some of these markets there are as many as
10 three CLECs self-providing switching to enterprise customers as
11 well. The FCC urges state commissions to give significant
12 weight to the evidence of actual deployment in markets where
13 the trigger is not met but where the potential deployment
14 analysis demonstrates CLECs are unimpaired in entering the
15 market. Again, the data demonstrates that CLECs have deployed
16 service in seven of the nine potential markets. Thank you.

17 MR. LACKEY: Moving to the next part of the potential
18 deployment case, the question is to examine whether there are
19 operational barriers to entry, and Mr. Varner is going to talk
20 to you for a couple of moments about this. I do want to note
21 that Mr. Varner here isn't talking about cost of collocation or
22 cost of backhaul, which is basically hauling calls from the
23 subscriber back to the CLEC switch. Those topics are covered
24 in the discussion of the model and the economic barriers that
25 we're going to be talking about shortly.

1 Mr. Varner.

2 WITNESS VARNER: First, I want to describe what the
3 data cover. The loop provisioning data illustrate how well
4 BellSouth provides loops to CLECs from beginning to end; that
5 is, the data covers not only performance with provisioning
6 category but performance on ordering and maintenance and repair
7 as well. I've also included data regarding collocation and
8 trunking because those areas are affected if CLECs decide to
9 use their own switches more in conjunction with
10 BellSouth-provided loops.

11 Now, in a nutshell, our performance is excellent, and
12 here are a few of the specific statistics that support that
13 conclusion. These statistics cover a one-year period.
14 BellSouth has performed flawlessly for collocation. For
15 ordering, we've met the Commission-prescribed objectives for
16 accuracy and timeliness in 90 percent of the cases. Likewise,
17 for provisioning and for maintenance and repair, we've met
18 those standards in 87 percent of the cases. Our performance
19 for interconnection trunking runs between 93 percent and
20 perfection.

21 Now, when you look at results of this aggregated
22 level, if they were low, which is not the case here, we would
23 also go and look at the individual data underlying them to see
24 what might be causing the performance misses. But even though
25 we had very high performance, we went and looked at the misses

1 anyway. And when we looked at them what we found is that in
2 most cases there was no indication of a performance problem.
3 It was just some issue with the data that was causing it to be
4 missed. So when we look at the few misses that we did have
5 what we find is that our performance is actually stronger than
6 what's indicated on the chart.

7 Now, to counter this outstanding performance the
8 CLECs only replay the unsupported contention that disaster
9 looms again in the future. Once again, they claim that
10 BellSouth's ordering systems and processes must be more
11 mechanized; otherwise, a potential for errors resulting from
12 manual operations will cause our performance to plummet. In
13 the past, CLECs claim that this scenario was inevitable if we
14 were allowed into the long distance business. Now they implied
15 that the sky will fall once again if, in fact, UNE-P is removed
16 in favor of UNE-L. Notably, they don't try to refute those
17 facts, and those facts show that BellSouth has a strong history
18 of providing loops accurately and timely to CLECs. CLECs don't
19 offer any tangible evidence to even attempt to rebut that
20 finding.

21 Now, BellSouth's record is equally good in the last
22 two operational areas to be examined. These are collocation
23 space availability and the availability of co-carrier
24 cross-connects. BellSouth has met all on this Commission's
25 objectives for collocation space availability since 2001.

1 Currently collocation space is available in all but two wire
2 centers, and in one of those two space will be available next
3 month when the office is relocated. The other the Commission
4 has issued a collocation waiver until 2006. So there should
5 not be any concerns regarding the availability of collocation
6 space.

7 Now, a cross-connect is merely the wire that connects
8 equipment within an office. BellSouth does this wiring every
9 day. And the data that I've discussed up here includes our
10 performance in providing cross-connects. Now, a co-carrier
11 cross-connect is just a specific form that allows one CLEC to
12 connect its collocation space to another CLEC in the same
13 office. BellSouth has permitted CLECs to do this using a
14 certified vendor, and there are about 200 such installations in
15 existence in Florida today. Further, a new service has been
16 offered via tariff so CLECs can use either BellSouth or a
17 certified vendor to do the work. So as you can see in all of
18 the operational areas to be examined BellSouth does not pose a
19 barrier to CLECs utilizing their own switches. Thank you.

20 Mr. Lackey.

21 MR. LACKEY: Turning to the final part of the
22 potential deployment case, the question to be answered is
23 whether there are any economic barriers to entry that prevent
24 CLECs from offering services in the markets that we're talking
25 about. Mr. Stegeman's model and the business case built on

1 that model demonstrate that there are nine markets where CLECs
2 are not impaired without access to our unbundled switching. To
3 present the evidence considering this portion of the case we'll
4 have a panel consisting of Dr. Aron and Mr. Stegeman. I think
5 what we're going to do is Mr. Stegeman is going to sit at the
6 witness stand and Dr. Aron will speak from the podium.

7 WITNESS ARON: Thank you, Mr. Lackey. And good
8 morning, Commissioners. I appreciate the opportunity to speak
9 to you today. And because I have not had the opportunity to
10 address you before, let me tell you a little bit about myself.
11 I'm an economic. I have a Ph.D. in economics from the
12 University of Chicago. I am a director at the economics and
13 finance consulting firm LECG, and I also teach at Northwestern
14 University.

15 Before joining LECG I taught for many years at the
16 Kellogg Graduate School of Management at Northwestern where I
17 taught graduate students managerial economics and pricing
18 strategy. And since joining LECG for the last several years
19 I've been primarily engaged in the telecommunications industry
20 in projects pertaining to regulatory matters such as this one
21 and antitrust matters both domestically and internationally.
22 And I still teach, of course, at Northwestern to graduate
23 students on economic strategy in communications markets. I
24 continue to do research and publish in scholarly journals on
25 these economic issues.

1 My testimony in this proceeding and my discussion
2 here today addresses the issue of economic barriers to entry in
3 the various geographic markets in Florida. And as you can see
4 from the slide and from Mr. Lackey's discussion, my testimony
5 fits in as part of the potential deployment test. My testimony
6 addresses the issue of are there economic barriers to entry for
7 a CLEC without access to unbundled local switching.

8 What the Triennial Review Order requires you to do is
9 determine whether entry is economic in such markets. Now, how
10 can you go about doing that? How can you determine whether
11 entry would be economic? Well, there's a standard economic
12 methodology or approach to making an assessment like that, and
13 that approach is, in fact, the one that the Triennial Review
14 Order requires, and it amounts to conducting a business case
15 analysis.

16 A business case analysis is an assessment of the
17 financial prospects of a business opportunity or a business
18 undertaking. To do a business case analysis, what you attempt
19 to do is identify what it would cost to enter and serve a
20 market and what revenues you could expect to achieve by doing
21 so. And in the end, if you have identified properly all of the
22 costs, and that would include in a case like this the cost of
23 switching, the cost of backhaul, the cost of overheads, the
24 cost of acquiring customers, and you compare those to the
25 revenues that are achievable reasonably in that market, you

1 identify whether the market is profitable. And it's
2 profitability ultimately that determines whether that business
3 prospect is economic.

4 So that's our task, is to develop a business case for
5 a CLEC and, in particular, the business case for a CLEC serving
6 a market in Florida without access to unbundled local
7 switching. But we're not modeling the business case of a
8 specific CLEC in Florida or any specific CLEC; rather, we are
9 modeling the business case for an efficient CLEC. And that's
10 what the FCC order requires. That doesn't mean that we are
11 modeling an unrealistic business case or an unrealistically
12 achievable CLEC but rather a conservative, realistic business
13 case for an efficient CLEC. And that means a CLEC that has an
14 efficient business case, it serves residential customers, it
15 serves business customers, it serves small and large business
16 customers, and it also serves a variety of geographic markets
17 and that permits it to take advantage of economies of scale and
18 scope.

19 So we model that business case, and in doing so, we
20 come to the ultimate question of, is this business case
21 profitable? So what's profit? Well, profit is simply the
22 difference between the potential revenues and subtracting out
23 the likely costs. In other words, its revenue minus cost.
24 It's very simple, except that there's a nuance, of course. And
25 the nuance is that in a real firm, in a real business prospect

1 revenues and costs don't happen all at the same time all at
2 once. Revenues are achieved over time, over the life of the
3 enterprise, and costs are incurred over time. And in fact, the
4 revenues and the costs aren't incurred and received at the same
5 time, but typically in an entry scenario, costs may be incurred
6 up front to a large extent and revenues received over time.

7 In order to accommodate that difference in timing,
8 economists have developed the concept of net present value.
9 And net present value is a version of profit that simply takes
10 into account the different timing of costs and revenues. So to
11 calculate net present value, you essentially calculate the
12 profit each year, the revenues minus the costs, discount them
13 to the present using a proper discount rate that takes into
14 account the fact that future money counts less than current
15 money, add it all up, you get one number, that's the net
16 present value and that tells you whether this enterprise is
17 economic.

18 Costs include all costs and that includes not just
19 the ones that I mentioned earlier, switching, backhaul,
20 overheads and so forth, but also the cost of capital, the cost
21 required to pay back your investors. Because that cost is
22 included as a cost in the net present value, the criterion for
23 whether entry is economic is simply, is the net present value
24 positive. If it's positive, entry is economic; if it's
25 negative, it isn't. So that was our task. That was the task

1 assigned by the Triennial Review Order and is consistent with
2 economic principles and that's what we did.

3 Mr. Stegeman built a model known as the BellSouth
4 analysis of competitive entry, we call BACE. And the BACE
5 model is the business case model that I just described to you.
6 Mr. Stegeman is going to describe the model to you in a moment,
7 but let me just mention that I participated in the development
8 of some of the architecture of the model and oversaw that the
9 model complies with economic principles. And I can tell you
10 that, first, the model is built according to economic
11 principles. Moreover, the Triennial Review Order requires that
12 the model be granular. This model is, in fact, the most
13 granular and most comprehensive business case model that I've
14 ever seen or worked with in my career.

15 And finally, this model is designed to answer the
16 specific question that the Triennial Review Order requires us
17 to address, which is, is it economic for a CLEC to serve mass
18 market customers in a specific geographic market without access
19 to the incumbent's unbundled local switching? And so to do
20 that the model identifies the net present value associated with
21 mass market service.

22 And so to -- before Mr. Stegeman describes the
23 characteristics and features of the model to you, I'll give you
24 the bottom line, which is, as Mr. Lackey told you, the results
25 of the model demonstrate that there are nine markets in

1 BellSouth's territory in Florida in which CLECs would not be
2 impaired with an efficient business model in serving mass
3 market customers without access to unbundled local switching.
4 And that's in addition to the 12 trigger markets that
5 Ms. Tipton already described to you. The 12 trigger markets,
6 just so you know, also are demonstrated in the BACE model to be
7 markets in which CLECs would be unimpaired. And here are the
8 markets. And with that, let me turn the floor over to
9 Mr. Stegeman to describe to you the features and
10 characteristics of the BACE model.

11 Jim.

12 WITNESS STEGEMAN: Thank you, Dr. Aron. Good
13 afternoon, Commissioners. First, let me take this opportunity
14 to introduce myself. My name is James Stegeman. I am
15 president of CostQuest Associates. Some of you may recognize
16 me as I was the developer of BellSouth's loop model, the BSTLM,
17 that was approved by this Commission for use in determining the
18 cost of unbundled network elements, specifically loops. I also
19 led the development of the benchmark cost proxy model or the
20 BCPM that was used in the Florida universal service
21 proceedings. For the past ten years I have focussed on the
22 building of telecommunications models that have been used
23 throughout the world in universal service proceedings, UNE
24 proceedings, and by businesses in making business decisions.
25 Most recently, I was retained by the New Zealand Commerce

1 Commission to develop a portion of their universal service cost
2 model.

3 In regard to this proceeding, CostQuest was retained
4 by BellSouth to develop a model that would be open and
5 reviewable, granular in its approach, develop a business case
6 for an efficient CLEC, and be easy to use. In a nutshell,
7 BellSouth wanted a model that would meet the requirements of
8 the TRO. To accomplish this, my team met with BellSouth
9 regulatory, legal, network, cost and UNE experts and met with
10 LECG economic and financial experts to understand the
11 requirements we would have to capture within the model.

12 As Dr. Aron mentioned, the concept of BACE is quite
13 simple. Net present value is the comparison of revenue and
14 cost over time. Implementation of the concept, however, is
15 quite complex. This complexity is the result not only of the
16 TRO requirements but also of the intricacies involved in
17 modeling the telecommunications network of a CLEC and the need
18 to capture the granularity of operating within Florida and,
19 finally, driven by the reporting requirements of these TRO
20 proceedings.

21 As Dr. Aron and I have demonstrated, BACE meets the
22 TRO, and it is the only model filed in this proceeding to meet
23 the guidelines. Quite simply, BACE is a business case tool to
24 model an efficient CLEC using granular data to capture all
25 voice and data revenues and cost for a CLEC operating in the

1 state of Florida, and it produces the NPV which can be used to
2 analyze the potential markets for deployment.

3 Now, let me walk through a few screen shots of BACE
4 to give you a feel of its ease of use and intuitive feel. The
5 first screen you see is the wizard that walks the user through
6 putting together a quick analysis from the model based upon
7 changes to key inputs. The power user has access to all inputs
8 within the model as seen on the input screen, as such they have
9 full control of the business case. Once processed, BACE has a
10 dynamic reporting engine that allows the user to drill down
11 into the data behind the business case. Finally, the reports
12 are laid out in an intuitive manner for easy understanding.

13 Dr. Aron will now discuss the inputs and the
14 conservative approach used within BACE.

15 WITNESS ARON: Thank you, Mr. Stegeman. As
16 Mr. Stegeman indicated, part of my assignment in this exercise
17 was to research, develop, and recommend sound, supported,
18 conservative inputs to the business case model developed by
19 Mr. Stegeman. So let me, first, just tell you briefly what I
20 did, how I went about that task.

21 I adopted four approaches. The first one was, I and
22 my staff reviewed literally hundreds of industry analyst
23 reports and third-party research pertaining to the various
24 carriers around the country in the telecommunications industry,
25 their characteristics, their costs, their prospects and so

1 forth so that we could glean from them whatever we could find
2 that's available describing the characteristics of those firms
3 that would be relevant to the development of the inputs.

4 Second, I reviewed the academic literature to the
5 extent that that literature pertains to and provides insight to
6 various issues that I faced in developing the inputs to the
7 model.

8 Third, I looked at industry data both from BellSouth
9 and from other carriers around the industry, conducted original
10 data analysis as well as looking at other data analysis.

11 And fourth, I reviewed the discovery materials to the
12 extent that CLECs provided them in this proceeding to identify
13 proper and sound inputs to the model. And I've also provided
14 thousands of pages, I believe, of materials, my analysis and
15 underlying support materials in discovery to the parties
16 supporting the research steps that I've described here.

17 There are many inputs into the BACE model, and I've
18 provided many inputs to it. You probably won't hear about all
19 of those over the course of the next few days. The CLECs have
20 focussed their attention on a few of the inputs, and so I'd
21 like to just talk very briefly about those inputs that seemed
22 to have garnered the most attention.

23 First is market share. In conducting a business case
24 analysis one has to make some assumption about both the
25 ultimate penetration that the modeled CLEC is likely to

1 achieve. And in this case that would be over the ten years
2 that we explicitly model the CLEC life to be as well as the
3 speed at which the CLEC would achieve that penetration rate.
4 So those two inputs I provided to the model.

5 Retail prices. In the BACE model, the modeled CLEC
6 offers services in a bundle, as real CLECs do in the state of
7 Florida today, as well as offering services separately or what
8 we call a la carte. So the model incorporates prices of
9 bundled services and a la carte services, and I provided those
10 inputs to the model based on the prices that are in effect from
11 CLECs and BellSouth in the market today.

12 Churn. Churn refers to the speed at which or the
13 degree to which CLECs or any firm loses customers over time.
14 And that's a real phenomenon. It's a real cost to firms, and
15 therefore, it must be incorporated in a business case model and
16 we've done that. I developed churn assumptions based again on
17 my review of the industry literature and observations of churn
18 from the real carriers in the markets. I provided different
19 churn rates for residential, for small business, and for large
20 business customers.

21 Customer acquisition costs. Well, any firm has to
22 and does incur costs to market to and capture customers in the
23 market, and those costs also must be incorporated into a
24 reasonable business model. And so I have done so and provided
25 different customer acquisition costs for residential and

1 business -- different categories of business customers.

2 And finally, G&A, that's general and administrative.
3 Those are the overhead costs that any business incurs. I have
4 provided inputs on G&A overhead costs again based on analysis
5 of the actual G&A costs incurred by carriers in the
6 telecommunications markets today.

7 So these are some of the inputs that I think you'll
8 hear about and that I provided to the model. But there are
9 many other characteristics of the BACE model that you probably
10 won't hear very much about, and that's because the BACE model
11 itself is a very conservative model. The architecture and
12 construction of the model incorporates a long list of very
13 conservative assumptions. And I've put some of those on the
14 slide for you here. This isn't a complete list of all of the
15 ways in which base is a conservative model, and I'm not going
16 to talk all of the items on this list but just to highlight a
17 few of them.

18 In the model, we assume that CLECs pay retail
19 transport rates, and by that I mean, a CLEC has to transport
20 its traffic and real CLECs in the market today may already have
21 or choose to provision their own transport. We don't
22 incorporate any economies from that into the model. Instead we
23 assume that the CLEC pays retail rates for all of its transport
24 in the state of Florida.

25 Another conservative assumption in BACE is we assume

1 that the modeled CLEC isn't starting out with a customer base.
2 Real CLECs, including many in this room today, have tens of
3 thousands of customers already in the state of Florida. We are
4 applying in the model a customer acquisition cost to each and
5 every customer that the CLEC acquires over the life of the CLEC
6 rather than incorporating into the model any base of
7 preexisting customers.

8 And third, we're assuming that the CLEC provides a
9 variety of services, local, long distance and other services,
10 but we are not assuming that the CLEC owns its own long
11 distance network already, although many CLECs do; rather, we're
12 assuming that the CLEC provides long distance service as a
13 reseller and pays resale rates for that. For every minute of
14 long distance service it provides, it pays resale rates for
15 that, and that's a substantial cost that a real CLEC in this
16 market may not incur because it has a preexisting network. We
17 didn't incorporate those economies into the model.

18 Now, Mr. Stegeman will discuss briefly the steps that
19 he took to ensure that the BACE model was open and verifiable
20 by you and by the parties in this proceeding.

21 WITNESS STEGEMAN: Thank you, Dr. Aron. As I noted
22 earlier, one of BellSouth's key criteria was that I needed to
23 develop a model that was open and reviewable. Given the amount
24 of attention paid to this point by the parties during this
25 proceeding to date, I imagine you will hear a great deal about

1 this topic during the week ahead.

2 Let me establish a clear record. I realize BACE is a
3 sophisticated model with many interrelated components.

4 However, what has been provided in this proceeding, as shown on
5 the screen, will allow any reasonably seasoned

6 telecommunications modeler the ability to review the code,
7 review the logic, review the inputs and verify the output. If
8 parties have difficulty, I am available to answer questions.

9 And parties in this proceeding have taken advantage of that.

10 In fact, I walked through the source code line by line in my
11 deposition using the material that has been provided to the
12 parties of this proceeding. In the end analysis you will find
13 that the model is open, verifiable, produces reliable outputs
14 to measure the economics of potential deployment in Florida.

15 And now Dr. Aron will provide her concluding remarks.

16 WITNESS ARON: Thank you. So in summary, what we
17 have developed is a business case model of an efficient CLEC
18 serving mass market customers in the geographic markets in the
19 state of Florida today. The model comports with economic
20 principles. It comports with the requirements of the Triennial
21 Review Order. It's conservative; it's well supported. And the
22 model demonstrates that there are nine markets in the state of
23 Florida in which a CLEC could provide and make a profit service
24 to mass market customers without access to unbundled local
25 switching. Thank you very much.

1 MR. LACKEY: Mr. Chairman, Commissioners.

2 COMMISSIONER DEASON: Mr. Chairman, I think these
3 folks are available for questions from Commissioners; is
4 correct at this point?

5 CHAIRMAN BAEZ: Yes, they were. I think that's what
6 Mr. Lackey had said.

7 COMMISSIONER DEASON: Okay.

8 MR. LACKEY: Under the procedure that we agreed to,
9 if you have questions of the witnesses, you can ask them right
10 now and I'll see if I can help.

11 COMMISSIONER DEASON: I have a couple of quick
12 questions.

13 MR. LACKEY: Let me get out of the way. Is it
14 Dr. Aron or --

15 COMMISSIONER DEASON: For Dr. Aron.

16 MR. LACKEY: Dr. Aron.

17 WITNESS ARON: Yes, sir.

18 COMMISSIONER DEASON: What was your cost of capital
19 for an efficient CLEC utilized in your model?

20 WITNESS ARON: I did not provide the cost of capital.
21 Dr. Billingsley, who is here today, developed and provided the
22 cost of capital. I believe it was 13.09 percent.

23 COMMISSIONER DEASON: That's overall cost of capital?

24 WITNESS ARON: Weighted average cost of capital.

25 COMMISSIONER DEASON: And what was the discount rate

1 utilized?

2 WITNESS ARON: That was the discount rate.

3 COMMISSIONER DEASON: That was the discount. So the
4 cost of capital used for determining the cost of an efficient
5 operation was the same as the discount rate used?

6 WITNESS ARON: That's correct.

7 COMMISSIONER DEASON: Okay. Thank you.

8 WITNESS STEGEMAN: Let me interject here. In the
9 model itself in the development of the NPV, the discount rate
10 used was the after-tax cost of capital. What Dr. Aron
11 provided, the 13.09 percent, was the pretax. The after-tax was
12 used as the discounting rate in the model.

13 COMMISSIONER DEASON: So what's the difference
14 between -- in terms of magnitude, the difference between the
15 pretax cost and the after-tax cost? Do you recall?

16 WITNESS STEGEMAN: I can't recall at this time. I
17 know it was filed in some discovery. I can find that out.

18 COMMISSIONER DEASON: Is that primarily the tax
19 deductibility of the interest component of the cost of capital?
20 Is that what you're referring to?

21 WITNESS STEGEMAN: It's the tax benefit that you get
22 from the interest that is then brought through.

23 COMMISSIONER DEASON: And the 13.09, that was pre- or
24 post-tax?

25 WITNESS STEGEMAN: That's pretax.

1 COMMISSIONER DEASON: Thank you.

2 COMMISSIONER JABER: Mr. Chairman, I have questions
3 whenever it's appropriate.

4 CHAIRMAN BAEZ: Do you have questions of Dr. Aron or
5 Dr. Stegeman?

6 COMMISSIONER JABER: Actually, what I'd like to do is
7 pose them to Mr. Lackey and have him direct me to where they
8 need to go. Some stem from his opening remarks.

9 CHAIRMAN BAEZ: Mr. Lackey is right here. Go ahead.

10 COMMISSIONER JABER: Okay. You started out,
11 Mr. Lackey, by saying the definition -- under the definition of
12 mass market, Public Counsel agrees, and you lost me on what
13 exactly they agreed with you on.

14 MR. LACKEY: Well, what I said was I believe that
15 Dr. Johnson, the OPC's witness, also recommends that the mass
16 market demarcation point be three lines or less or four lines
17 or more depending on whether you are talking about mass market
18 or enterprise. That's in Dr. Johnson's testimony.

19 COMMISSIONER JABER: Okay. And then you said as it
20 relates to issue I believe it's 4B, you, in fact, stipulated
21 that issue and you have -- you take no position on -- or
22 actually, there's agreement that there isn't a wholesale
23 trigger for switching; is that right?

24 MR. LACKEY: That's correct, Commissioner. We have
25 not claimed that the wholesale trigger that the FCC created is

1 met in this case. We produced no evidence to that effect.

2 COMMISSIONER JABER: Okay. And my question is this.
3 I don't understand the significance of that. What is it I'm
4 supposed to take away from that stipulated issue? How is it
5 relevant at all?

6 MR. LACKEY: Yes, ma'am. The FCC gave us two choices
7 with regard to the bright line test that we could use. We
8 could either find three CLECs that were self-provisioning
9 switches and providing local services to mass market customers,
10 or for any individual market we could find two CLECs that were
11 wholesaling switching to other CLECs who are providing mass
12 market services in those markets.

13 COMMISSIONER JABER: I see.

14 MR. LACKEY: We found and we have represented in this
15 case for the triggers case that in each market there are at
16 least three and as many as ten in some of the markets
17 self-provisioning CLECs. We have not made a claim that there
18 are any CLECs that are wholesaling switching in this case.

19 COMMISSIONER JABER: Okay. So at some point does the
20 Commission need to accept that stipulation for purposes of the
21 record? What do we do with that stipulation?

22 MR. LACKEY: I suspect that the Commission will have
23 to accept that stipulation because, to my knowledge, there is
24 no evidence in the record related to wholesale switching. We
25 certainly haven't presented it, and I don't think Verizon has.

1 I shouldn't speak for them.

2 COMMISSIONER JABER: Okay. And then I think I was
3 okay on the numbers until we started talking about operational
4 and economic barriers. So let me just confirm what I think
5 your bottom line position is.

6 Your bottom line position is you want us to rely on
7 the UNE zones to establish the appropriate geographic markets
8 and that equates to 31 markets.

9 MR. LACKEY: Actually, what it is, is the UNE zones
10 further subdivided into things called component economic areas.

11 COMMISSIONER JABER: Yes. And I should have said
12 that.

13 MR. LACKEY: Yes, ma'am, that's what we've asked.

14 COMMISSIONER JABER: Okay. But 31 markets is the
15 right number, not talking into account how it should be further
16 subdivided.

17 MR. LACKEY: Yes, ma'am. That is the total of the
18 markets when you divide the UNE zones by the CEAs in
19 BellSouth's service territory.

20 COMMISSIONER JABER: Okay. Now, 12 of those 31 meet
21 the trigger test, and what that means, according to your
22 position, is that those 12 markets should be considered no
23 impairment; therefore, the switching UNE should be removed from
24 the list.

25 MR. LACKEY: That's correct.

1 COMMISSIONER JABER: In addition to those 12, there
2 are nine others that even though they don't meet the trigger
3 test, you think they meet the potential deployment test and
4 therefore constitute no impairment; therefore, switching should
5 be removed from the list.

6 MR. LACKEY: Yes, ma'am.

7 COMMISSIONER JABER: So there are 21 markets total
8 out of your 31 that you believe are affected.

9 MR. LACKEY: That's correct.

10 COMMISSIONER JABER: Okay. I thought you were
11 talking -- you were starting to talk about an additional
12 nine markets when Mr. Varner and Mr. Stegeman got into
13 operational and economic barriers.

14 MR. LACKEY: No, ma'am. You have it precisely
15 correct.

16 COMMISSIONER JABER: Okay. Now, with regard to Issue
17 6, in a transition period, are you going to put someone on to
18 flush that issue a little bit more?

19 MR. LACKEY: We are not putting that on in our direct
20 case. I'd have to think about which of our witnesses -- I've
21 got people mouthing things to me. Is it Mr. Ruscilli?
22 Mr. Ruscilli discusses the transition in our view. And these
23 21 markets we have demonstrated that there is no impairment,
24 and therefore, there is no need for a transition period other
25 than the one that the FCC has already imposed, which is they

1 get five additional months in these markets to order UNE-Ps and
2 then they get a total of 27 months to transition from UNE-P to
3 UNE-L.

4 COMMISSIONER JABER: Okay. Let me ask you these
5 questions, and whether you want to handle them now or in
6 your -- you know, whenever you believe it's appropriate, that's
7 fine with me. Some of those -- out of the 21 we just
8 discussed, some of the CLECs, I assume, are currently utilizing
9 your switching facilities or in the process of or will consider
10 using another provider for switching. My question is, how long
11 does it take to get set up with another provider for that
12 service?

13 MR. LACKEY: We'll have to address that to one of the
14 network witnesses. I do not believe that I can answer that,
15 although I know that we have a guest host arrangement that
16 allows CLECs to terminate loops into other CLECs' collocation
17 spaces. My recollection is that it takes 30 days to set it up,
18 and once it's set up, it's just a matter of ordering it. But
19 the network witnesses can confirm that.

20 COMMISSIONER JABER: Okay. Is that something you
21 want to do later or --

22 MR. LACKEY: We're going to have a network witness in
23 the next part of the presentation, Mr. Milner.

24 COMMISSIONER JABER: Okay.

25 MR. LACKEY: And I could probably get him to -- yes.

1 Let's put it this way. Either Mr. Milner or Mr. Varner will
2 address that question for you, ma'am.

3 COMMISSIONER JABER: Okay. And the second one, just
4 to give them enough time to prepare, I'm really asking these
5 questions more to understand what the transition looks like to
6 a customer if we decide to go that route. And I'm
7 interested -- if the Commission at the end of the day removes
8 any UNEs from the list, my concern is really in facilitating a
9 seamless transition for the benefit of the consumer. And in
10 that regard I'm asking how long does it take to have switching
11 set up with a new provider. Your position is that if we do any
12 transition period at all, it should be at the most 90 days?

13 MR. LACKEY: That's correct, ma'am. That's in
14 Mr. Ruscilli's testimony.

15 COMMISSIONER JABER: When should that 90 days start?

16 MR. LACKEY: Again, I think the answer is going to
17 have to be that -- let's just say that the Commission decides
18 on July 2nd to take a market out, to say that there's no
19 impairment in Miami Zone 1, let's say. Well, under the TRO,
20 the CLECs there are still going to be able to order UNE-Ps just
21 like they are now for another five months. And then over the
22 next 22 months, they have to transition one-third of the UNE-Ps
23 at a time to UNE-Ls. So you're talking about a considerable
24 time, much longer than 90 days to do that transition anyway
25 under the existing TRO.

1 COMMISSIONER JABER: Because UNE-P includes switching
2 as a component.

3 MR. LACKEY: Yes, ma'am.

4 COMMISSIONER JABER: Are you going to put a witness
5 on to confirm that?

6 MR. LACKEY: Yes, ma'am. Again, Mr. Milner or
7 Mr. Varner who are going to stand up can confirm that, I
8 believe.

9 COMMISSIONER JABER: Okay. Well, I really appreciate
10 it. Thank you.

11 MR. LACKEY: I appreciate the opportunity to testify.

12 COMMISSIONER JABER: Thank you, Mr. Chairman.

13 COMMISSIONER DAVIDSON: Chairman.

14 CHAIRMAN BAEZ: Commissioner, you've got --

15 COMMISSIONER DAVIDSON: Yes, three questions for
16 Dr. Aron.

17 MR. LACKEY: I'm sorry. I didn't hear you,
18 Commissioner.

19 COMMISSIONER DAVIDSON: Three questions for Dr. Aron.

20 WITNESS ARON: Yes, sir.

21 COMMISSIONER DAVIDSON: Thank you, Doctor. And all
22 of these questions tend to go more toward general economic
23 principles. Assuming that a market exists for a commodity at
24 question, from a consumer welfare perspective which of the
25 following two choices is more likely in the long run to

1 maximize consumer welfare -- again, assuming a market exists
2 for the commodity -- a price for a particular commodity set by
3 regulation or a price set by the market?

4 WITNESS ARON: Well, I would say that economic
5 principles would dictate that in general a price set by the
6 market would tend to best serve consumer welfare as long as
7 there is competition in the market. Of course, in an ideal
8 world if regulators could set prices perfectly, one could argue
9 that that might mimic the price that would be achieved in a
10 competitive market.

11 COMMISSIONER DAVIDSON: How often have you seen that
12 happen?

13 WITNESS ARON: That would be like the snipe hunt that
14 I think Mr. Lackey is going to talk about later. It is hard to
15 identify any case where any market or any regulators have set
16 prices perfectly.

17 COMMISSIONER DAVIDSON: Let me ask you another
18 question. Assume the following. And this is a very simplistic
19 hypothetical that is not meant at all to indicate the realities
20 in Florida or any other state. But assume for purposes of this
21 hypothetical there are three incumbent local exchange companies
22 all of which self-provision switching. Assume that there are a
23 total of 20 competitive local exchange companies or CLECs. Ten
24 of those competitive local exchange companies self-provision
25 switching. Ten of the CLECs do not. Focussing just on the

1 availability of switching in a market, what would the fact that
2 half of the CLECs are self-provisioning switching instruct one
3 about the economics of self-provisioning switching?

4 WITNESS ARON: Well, that would depend in part on
5 where they were self-provisioning. If they were all
6 provisioning switching, let's say, throughout the state and
7 coexisting in markets with those CLECs that were not
8 self-provisioning switching, then one would have to conclude, I
9 think, that self-provision switching is economic and that there
10 is a sound business case supporting it.

11 COMMISSIONER DAVIDSON: Let's take that one -- let me
12 follow up on that with my last question which I'll tailor to
13 your answer. Assume that there are two CLECs in a similar
14 geographic market, a similar market, whatever that market is
15 geographically, but assume both of these CLECs are in, for
16 example, Orlando or in Tampa proper. If CLEC One concluded
17 that market entry for it was not economic without access to a
18 local exchange company's switch but CLEC Two concluded that
19 market entry without access to that switch was, in fact,
20 economic, does economics teach that regulation should adjust
21 the pricing so that CLEC One can also enter the market
22 economically, or should perhaps CLEC One adjust its business
23 model?

24 WITNESS ARON: Was CLEC One the carrier that was not
25 self-provisioning switching?

1 COMMISSIONER DAVIDSON: The two CLECs are similar in
2 whatever the important respects are and they're operating in
3 similar markets, and the focus is CLEC One self-provision
4 switches, CLEC Two does not. CLEC One -- well, I've changed
5 the number. CLEC One concluded that it can't do it without
6 access to an incumbent local exchange company's switch. CLEC
7 Two says, you know what? I can. I'm going to enter that
8 market. I'm going to compete. I can do it on my own. If
9 you're faced with that scenario and you're teaching a class,
10 are you going to tell your students, well, you know what? We
11 should adjust the pricing so that it's also profitable for CLEC
12 One, or would you conclude that, you know, perhaps the market
13 is working and CLEC One should perhaps adjust its model?

14 WITNESS ARON: I would say that in the scenario you
15 just described there would be no justification for regulatory
16 intervention that would make unbundled local switching more of
17 a viable option for either of those CLECs because the fact is
18 that in the situation you just described, self-provisioning
19 appears to be feasible, economic. And in a case where carriers
20 can and do provide their own facilities-based service, that
21 provides opportunities for investment and innovation that are
22 not replicated in a market in which carriers are using the
23 incumbent switching facilities.

24 COMMISSIONER DAVIDSON: Thank you. I have no further
25 questions, Chairman.

1 CHAIRMAN BAEZ: Thank you. Mr. Lackey, I know that
2 we were going to try and get through your presentation all at
3 once, but this seems like a natural breaking point at
4 Commission Deason's suggestion.

5 MR. LACKEY: If I could make a suggestion. We're an
6 hour and 15 minutes into it. We are allocated two hours, 15
7 minutes. I have two half-hour blocks left, so this would be a
8 perfect time to take a lunch if you'd like.

9 WITNESS STEGEMAN: Can I interject one thing?

10 CHAIRMAN BAEZ: Go ahead, Dr. Stegeman.

11 WITNESS STEGEMAN: Commissioner Deason, you asked
12 about the after-tax weighted average cost of capital. I have
13 the number and I just want to provide it before we left.

14 CHAIRMAN BAEZ: Go ahead and clarify now.

15 WITNESS STEGEMAN: It was provided in the staff's
16 seventh interrogatories. It was Item Number 168. And the
17 after-tax weighted average cost of capital used within the
18 model is 10.85 percent.

19 COMMISSIONER DEASON: Thank you.

20 WITNESS STEGEMAN: You're welcome.

21 COMMISSIONER BRADLEY: Mr. Chair.

22 CHAIRMAN BAEZ: Yes, sir.

23 COMMISSIONER BRADLEY: I missed your time certain.
24 What time are you going to reconvene?

25 CHAIRMAN BAEZ: We haven't gotten there yet,

1 Commissioner. If you'd just give me a second. I had said
2 earlier 30 minutes so we'll break. Call it 1:30 we'll be back
3 here. Okay. Thank you.

4 (Lunch recess.)

5 CHAIRMAN BAEZ: We'll go back on the record. I know
6 that we had an abbreviated lunch half hour, and we'll keep it
7 kind of liberal with the food in the hearing room. All I ask
8 is that you not mess up the upholstery and the carpet. You
9 know the drill.

10 Mr. Susac, is there anything that we need to address
11 before we continue with the presentations?

12 MR. SUSAC: None, Chairman.

13 CHAIRMAN BAEZ: The parties, anything that we need to
14 address? Okay. Great.

15 Mr. Lackey, moving right along.

16 MR. LACKEY: Thank you, Mr. Chairman, Commissioners.
17 The evidence in this record to this point demonstrates that
18 you've got 12 markets where the FCC triggers are met. I'm
19 reverberating here. And in addition, there are nine markets
20 where the FCC's potential deployment test is met. With that
21 said, it's time to consider hot cuts. To make this portion of
22 our presentation Ms. Foshee with Mr. Milner and Mr. Varner will
23 talk about what the evidence shows regarding hot cuts. I
24 simply want to preface their remarks with what I said earlier,
25 and that is the task assigned is not to give a thumbs up or a

1 thumbs down to the hot cut process, although a thumbs up would
2 be fine, but to approve and implement a batch hot cut process
3 within the nine-month period that the FCC is allowing.

4 Ms. Foshee, take it away.

5 MS. FOSHEE: Good afternoon. My name is Lisa Foshee.
6 I'm an attorney for BellSouth. And I have with me here today
7 Mr. Keith Milner and Mr. Al Varner who are witnesses in this
8 case.

9 Commissioners, BellSouth has a seamless and efficient
10 batch hot cut process that it has presented to this Commission.
11 Our process is currently operational. Our process works and
12 our process is scalable to meet any foreseeable volumes.
13 Moreover, the individual hot cut process is not new to this
14 Commission or its staff. This Commission extensively reviewed
15 our individual hot cut process in its 271 case both via
16 empirical evidence and via your KPMG third-party test.

17 Now, while BellSouth is not relying on the
18 271 decision in this case or its individual hot cut process,
19 those findings are the foundation for the decision that you
20 have before you now. The wiring work to perform a hot cut is
21 the same in the individual process as it is in BellSouth's
22 batch hot cut process. Thus certainly the Commission's
23 decision about the individual process and our extensive
24 empirical performance data can and should inform this
25 Commission's decision about whether BellSouth can effectively

1 migrate loops from one carrier's local switch to another
2 carrier's local switch.

3 Moreover, during the course of this proceeding we
4 will provide you additional evidence that our batch hot cut
5 process meets the requirements of the TRO, that it works and
6 that it is scalable. I think you'll agree with me at the
7 conclusion of this proceeding that based on the evidence the
8 answer to the question of whether this Commission should adopt
9 BellSouth's batch hot cut process is unequivocally yes.

10 Let's talk for a minute about what the TRO requires.
11 The rule sets forth the Commission's obligations with respect
12 to the batch hot cut process. Let's look at a few of the key
13 points.

14 First, as Mr. Lackey said, the Commission must adopt
15 a batch hot cut process during this proceeding. Second, the
16 process must simultaneously migrate two or more loops from one
17 carrier's local switch to another carrier's local switch.
18 Next, the process should allow for the migration of loops
19 combined with unbundled local circuit switching to another
20 local switch. In other words, UNE-P to UNE-L. Next, this
21 Commission must determine the appropriate volume of loops that
22 should go in the batch. The Commission must also evaluate
23 whether ILECs can perform the batch hot cut in a timely manner,
24 and last, you must adopt rates for the process.

25 Mr. Milner.

1 WITNESS MILNER: (Inaudible. Microphone off.)

2 MS. FOSHEE: Why don't you just use this one,
3 Mr. Milner.

4 CHAIRMAN BAEZ: We're going to lose the whole theater
5 and the round effect.

6 MS. FOSHEE: Back to you in Studio B.

7 WITNESS MILNER: Thank you. Before we talk about
8 what a seamless batch hot cut is I'd like to take a moment and
9 just talk generally about hot cuts. First, I appreciate --
10 AT&T is allowing BellSouth to use the portion of their hot cut
11 video that I'll show in just a moment.

12 The evolution of the video clip itself demonstrates,
13 I think, that BellSouth and AT&T generally agree about what a
14 hot cut process entails. Some of the slides you are about to
15 see in the video were produced by BellSouth to demonstrate its
16 hot cut process. AT&T used those slides in addition with
17 others and produced this video explaining the steps involved in
18 a hot cut. Here is that part of AT&T's video clip.

19 (Video clip shown.)

20 WITNESS VARNER: Yes. Thank you. That's how an
21 individual hot cut happens. There's very little, if any,
22 debate amongst the parties about that. Moreover, the parties
23 agree that a hot cut is not difficult. Even MCI's witness
24 Ms. Lichtenberg herself has punched down loops.

25 Ms. Foshee.

1 MS. FOSHEE: Thank you. Let's talk some about the
2 process. First, as we talked about, the batch process is for
3 converting UNE-P to UNE-L, UNE-P to UNE loops. MCI's
4 transition process which Ms. Lichtenberg told us in her
5 deposition equates to the FCC's batch process is for, as she
6 said, addressing the base customer that currently exists on
7 UNE-P.

8 Now, let's talk a little bit about the FCC's use of
9 the term seamless. The FCC has defined a hot cut as a process
10 that necessarily disconnects service to a customer for a brief
11 period of time. In light of this, MCI has defined the term
12 seamless as meaning a minimal disruption of service.

13 Ms. Lichtenberg again in her definition described seamless as
14 the smallest amount of disruption possible. Supra agrees with
15 MCI that seamless means a minimal disruption of service.

16 Let's next talk about the FCC's use of simultaneous,
17 as I mentioned from the rule. As AT&T's video demonstrates,
18 loops must by definition be disconnected and reconnected one at
19 a time. In light of this, AT&T's witness Mr. Van de Water
20 defines simultaneous as multiple hot cuts taking place in a
21 same central office in a single day.

22 Mr. Milner.

23 WITNESS MILNER: BellSouth has a hot cut process that
24 complies with the TRO. While Mr. Ainsworth provides the
25 details of that process in his testimony, I will highlight it

1 for you here. BellSouth's batch hot cut process has four main
2 components: Preordering, project management, batch ordering,
3 and batch provisioning.

4 First, a CLEC submits a spreadsheet listing the lines
5 it wants to migrate. The fields in yellow are the parts that
6 the CLEC fills in. The CLEC sends that spreadsheet to
7 BellSouth, and BellSouth assigns a project manager who reviews
8 the spreadsheet, marshals and coordinates the necessary network
9 forces to effect those changes, and then assigns a due date for
10 the cut-overs. And they send that spreadsheet back. The CLEC
11 submits its bulk hot cut local service request or LSR, and this
12 ordering functionality allows CLECs to submit one batch LSR for
13 a total of almost 2,500 telephone numbers per request.

14 Now, as you may recall from AT&T's videotape,
15 BellSouth's network force is, first, prewire and then later on
16 the due date actually perform the hot cut. The wiring work
17 involved in migrating the customers is the same as the wiring
18 work in BellSouth's individual hot cut process. The reason for
19 this is simple. As this Commission recognized, BellSouth has
20 already developed the most seamless hot cut process possible.
21 To comply with the TRO, however, BellSouth had added project
22 management to gain provisioning efficiencies. Project
23 management allows BellSouth to manage the batch orders so that
24 all the loops in a batch are cut in a single time frame. This
25 creates the network efficiencies by allowing those orders to be

1 worked together.

2 Ms. Foshee.

3 MS. FOSHEE: Thank you. The CLECs appear to agree
4 with the component parts of BellSouth's batch process. For
5 example, AT&T agreed in its FCC Triennial Review Declaration of
6 Elise Brenner (phonetic) relied upon by Mr. Bradbury in this
7 case that there are, quote, numerous advantages to a project
8 managed approach. In fact, in that same declaration AT&T
9 touted project management as resulting in a loss of dial tone
10 less than 1 percent of the time.

11 Moreover, BellSouth has the batch provisioning
12 process that the CLECs want. MCI, for example, wants a batch
13 provisioning process in which multiple customers are migrated
14 on the same day with a very short period of loss of dial tone.
15 And AT&T believes that batch provisioning is working a set of
16 hot cuts within a time window. BellSouth's batch process has
17 these attributes. In fact, most telling probably about the
18 success of BellSouth's process is the fact that no CLEC has
19 proposed a different process. Ms. Lichtenberg in her
20 deposition told us that MCI is not proposing a process to this
21 Commission. Similarly, Mr. Van de Water in his deposition told
22 me that AT&T is not proposing a process. In fact, even though
23 it presented testimony on electronic loop provisioning or ELP
24 in this case, Mr. Van did Water and Mr. Bradbury have told us
25 that ELP is not an issue in this case. Similarly, Supra has

1 not presented a specific batch hot cut process.

2 Commissioners, the fact that no CLEC has proposed a
3 significantly different process or any process for that matter
4 is strong evidence that BellSouth's batch process is the right
5 process.

6 Mr. Milner.

7 WITNESS MILNER: Does BellSouth's batch hot cut
8 process work? Absolutely. But how can the Commission know
9 that since no CLEC is using it? Well, there are three ways.
10 First, BellSouth conducted a third-party test to confirm it
11 works. PricewaterhouseCoopers, the same auditor that was
12 relied on by the FCC in BellSouth's 271 case to establish
13 regionality, watched BellSouth perform its batch cut process
14 from start to finish. They validated management's assertions
15 that the process works and is regional in nature. PwC's audit
16 report is attached to Mr. McElroy's testimony.

17 Importantly, AT&T's hot cut expert Mr. Van de Water
18 described what he calls preimplementation third-party monitor
19 testing that he believes should be done. Well, guess what?
20 What Mr. Van de Water suggests is exactly what PwC did.

21 Second, in the last three months BellSouth has
22 performed over 13,000 hot cuts for one CLEC in Florida. This
23 included order volumes as high as 267 hot cuts in a single
24 office in a single day. Our excellence performance on these
25 hot cuts is described in Mr. Ainsworth's testimony.

1 Now, while this CLEC declined to use the batch
2 process, that is, use the individual process instead, the fact
3 that BellSouth can perform so well using its less efficient
4 individual process is strong evidence that its performance
5 would be even better using the batch process that is
6 specifically designed for large volumes of hot cuts.

7 Now here's Mr. Varner.

8 WITNESS VARNER: Now, third, BellSouth's performance
9 data for this individual hot cut process is outstanding. These
10 data will give the Commission a high degree of confidence
11 BellSouth has and is performing timely and efficient hot cuts
12 for CLECs with a minimum of service disruption. The data we
13 gave you are based on the four measurements that you approved
14 that deals specifically with hot cuts. This Commission
15 measures whether the cut starts on time, whether it's completed
16 on time, and the extent to which the cuts encounter problems.
17 Now here are some of the results for a one-year period.

18 We performed the wiring work seamlessly over
19 99.9 percent of the time, and importantly, this is based on a
20 significant number of hot cuts, over 23,000 in this one-year
21 period. And the average time it took to convert each one of
22 these hot cuts was 2 minutes and 39 seconds. With respect to
23 starting on time, we started over 99 percent of the conversions
24 at the time specified, and this outstanding performance
25 occurred on over 99 percent of the hot cuts -- I mean, on over

1 7600 orders.

2 We also performed these cuts accurately. Fewer than
3 1 percent of the cuts encountered a problem during the process
4 of the cut and fewer than 1 percent encountered a problem
5 within seven days of completion of the cut. These data are
6 irrefutable that our performance is excellent.

7 Ms. Foshee.

8 MS. FOSHEE: Now, Commissioners, you've seen some of
9 our evidence and you've seen our performance data. And now you
10 must be thinking to yourself but the CLECs say the process
11 doesn't work. So let's talk a little bit about the CLECs'
12 so-called evidence on BellSouth's hot cut performance.

13 First of all, in her deposition and in discovery
14 responses Ms. Lichtenberg admitted that she has no empirical
15 evidence for most of what she said in her testimony. For
16 example, we asked her to support her contention that LFACS does
17 not contain accurate data, and she responded that MCI has no
18 direct information regarding the accuracy or errors in the
19 LFACS database. We asked her to support her contention that
20 work is required on all of BellSouth's databases when we do a
21 hot cut, and MCI responded that it hasn't issued any UNE-L
22 orders in Florida, so it has no direct information on this
23 question. We asked her to support her contention that
24 BellSouth's hot cut process that would put customers in the
25 middle of finger-pointing exercises, and they said again that

1 we haven't issued any orders, so what we mean is it could put
2 customers in the middle of finger-pointing exercises.

3 We asked her to support her contention that the
4 process is not working in Florida, and again they responded
5 that they don't know. In the end, Ms. Lichtenberg finally just
6 admitted that her evidence on BellSouth's hot cut performance
7 is speculative.

8 To compound that problem, MCI's hot cut expert
9 Mr. Webber who says he's the expert admitted that he relied in
10 large part for his discussion of the performance of BellSouth's
11 process on Ms. Lichtenberg. Now, AT&T's hot cut expert Mr. Van
12 de Water admitted that his evidence of BellSouth's hot cut
13 performance is based on the North Carolina 271 testimony of
14 Denise Berger filed in 2001. It's three years old. The other
15 allegations in Mr. Van de Water's testimony are based on his
16 expert opinion, but Mr. Van de Water has never worked in
17 BellSouth's region much less actually used the BellSouth hot
18 cut process.

19 AT&T's witness Cheryl Bursh admitted that she had no
20 evidence to support her testimony that the batch hot cut
21 process didn't work, and AT&T's witness Mr. Bradbury referred
22 the Commission again to the FCC Declaration of Elise Brenner
23 for his evidence on the fact that BellSouth's process doesn't
24 work, but when we asked him in his deposition if he could
25 identify any facts to support her declaration he responded no.

1 So during discovery we asked AT&T a series of interrogatories
2 to provide us data supporting that declaration. These were
3 their answers. Since the time of the declaration our data
4 keeping has changed, so we don't even have the last version of
5 the documents that support her declaration. To another
6 interrogatory they responded, no BellSouth-specific data is
7 available. To yet another interrogatory they responded,
8 BellSouth-specific data is no longer available.

9 In sum, Commissioners, in sum, Commissioners, the
10 CLECs admittedly have no empirical data to support their
11 allegations. Now, let's now quickly contrast that with parties
12 like FDN, a company that actually uses its own switches and
13 uses UNE loops. FDN has told this Commission in its prefiled
14 testimony that it believes that the individual hot cut
15 processes of the ILECs work well for the most part. So I ask
16 you, Commissioner, whose testimony you should believe,
17 testimony from companies who are speculating about hot cuts, or
18 testimony from a company that is actually using them.

19 Mr. Milner.

20 WITNESS MILNER: BellSouth's hot cut process works.
21 But can BellSouth prove that it can scale its process to
22 anticipated volumes? Here again the answer is yes. To prove
23 we could handle the hot cut volumes BellSouth developed what I
24 call a worst-case scenario. What do I mean by that? Well, we
25 took the highest volume that we had ever seen per month for

1 UNE-Ps and we added to that the worst ever month, highest ever
2 month for unbundled loops. We carried those monthly growth
3 rates into the future to determine the embedded base of UNE-Ps.
4 Then we assumed that BellSouth would get relief in every single
5 market even in markets for which we are not asking relief, and
6 then we assumed that in no cases would BellSouth and the CLEC
7 agree to a market-rated UNE-P, which means that the entire base
8 of UNE-Ps would have to be hot cut.

9 We added 40 percent annual churn; that is, almost
10 half of all the UNE-P customers will change service providers
11 each year, and we made other adjustments upwards. But even
12 talking all of those extreme assumptions into account,
13 BellSouth can find, hire, and train the necessary personnel to
14 effectively cut-over as many loops as is needed.

15 For years BellSouth has used sophisticated models to
16 size its force. For Florida at these worst-case loads,
17 BellSouth must add 530 to its regional centers and 759 people
18 to its network operations. How could BellSouth hire and train
19 that many people? Well, first, the typical hiring and training
20 cycle is only about four months. Further, the transition
21 period when the highest loads would occur won't even start
22 before August of 2005 so there's plenty of time. Has BellSouth
23 ever ramped up its force like this before? Yes. Mr. Heartley
24 in his testimony points out several examples.

25 Mr. Varner.

(Transcript continues in sequence with Volume 10.)

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1 STATE OF FLORIDA)
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CERTIFICATE OF REPORTER

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I, TRICIA DeMARTE, RPR, Official Commission Reporter, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorneys or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 27th DAY OF FEBRUARY, 2004.

Tricia DeMarte

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