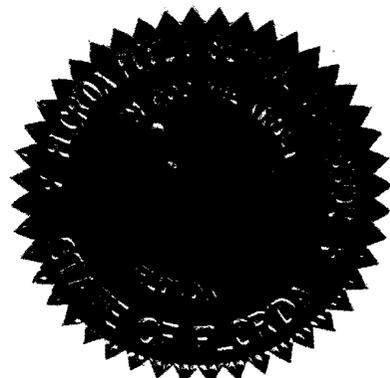


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BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

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In the Matter of :  
:  
Motions of AT&T Communications of :  
the Southern States, Inc. and MCI :  
Telecommunications Corporation and:  
MCI Metro Access Transmission :  
Services, Inc. to compel :  
BellSouth Telecommunications, :  
Inc. to comply with Order PSC- :  
96-1579-FOF-TP and to set non- :  
recurring charges for combinations:  
of network elements with BellSouth:  
Telecommunications, Inc. :  
pursuant to their agreement :  
-----

DOCKET NO. 971140-TP



VOLUME 5

Pages 518 through 676

PROCEEDINGS: HEARING  
  
BEFORE: CHAIRMAN JULIA L. JOHNSON  
COMMISSIONER J. TERRY DEASON  
COMMISSIONER SUSAN F. CLARK  
COMMISSIONER JOE GARCIA  
COMMISSIONER E. LEON JACOBS, JR.  
  
DATE: Wednesday, March 11, 1998  
  
TIME: Commenced at 9:30 a.m.  
  
PLACE: Betty Easley Conference Center  
Room 148  
4075 Esplanade Way  
Tallahassee, Florida  
  
REPORTED BY: JOY KELLY, CSR, RPR  
Chief, Bureau of Reporting  
H. RUTHE POTAMI, CSR, RPR  
Official Commission Reporters  
  
APPEARANCES: (As heretofore noted.)

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

1  
2 (Transcript follows in sequence from  
3 Volume 4.)

4 CHAIRMAN JOHNSON: We're going to go back on  
5 the record.

6 MR. MELSON: Chairman Johnson, before  
7 Mr. Hatch starts the cross of Mr. Varner, I believe  
8 the parties, at least, have agreed that we can  
9 stipulate Mr. Martinez's testimony. Assuming that's  
10 satisfactory with the Commissioners, I'd like to let  
11 him try to catch an airplane.

12 CHAIRMAN JOHNSON: That's fine. Do we want  
13 to do that now or take it in its proper course? It  
14 doesn't matter to me.

15 MR. MELSON: Okay. I'd take it in its  
16 proper course. Before I let him go I wanted to be  
17 sure I wasn't going to get hammered in two more hours.

18 COMMISSIONER CLARK: I don't have any  
19 questions.

20 CHAIRMAN JOHNSON: Okay.

21 COMMISSIONER CLARK: I guess we should  
22 assume nobody else does?

23 CHAIRMAN JOHNSON: Commissioner Jacobs, did  
24 you have any questions for Martinez? Because the  
25 witnesses -- they can stipulate.

1                   **COMMISSIONER JACOBS:** Yeah, that's fine.

2                   **CHAIRMAN JOHNSON:** I think we're fine.

3 We'll go ahead and proceed with Mr. Varner.

4   - - - - -

5   **ALPHONSO J. VARNER**

6 continues his testimony under oath from Volume 4

7   **CROSS EXAMINATION**

8 **BY MR. HATCH:**

9           **Q**       Good afternoon, Mr. Varner. It was almost  
10 good morning but I missed it.

11           **A**       Good afternoon.

12           **Q**       Do you have in front of you a handout that  
13 was handed out that says "8th Circuit" at the top?  
14 You can refer to those charts behind you. It's just a  
15 paper copy of the charts behind you. Do you have  
16 that?

17           **A**       Yes. Those are not my charts. (Laughter)

18           **Q**       Would you agree with me that the 8th Circuit  
19 held -- one of the holdings in the 8th Circuit was the  
20 fact that the incumbent LECs object to this rule,  
21 meaning the combinations, indicates that they would  
22 rather allow the entrants to access their networks to  
23 have to rebundle the unbundled network elements for  
24 them? Would you agree with that?

25           **A**       I think there's a word missing in that,

1    though, somewhere.  The sentence doesn't make sense.

2           Q     Is the quote in red behind you?

3           A     The quote reads the same as the one that's  
4    on the paper.

5           Q     Would you agree that's the holding of the  
6    8th Circuit?

7           A     That's what I said.  It looks like a word is  
8    missing.  I was just trying to find it.  Yes.  It says  
9    "allow entrants access to their network than to have  
10   to rebundle."

11          Q     Okay.  That's fine.

12                   And then the second page that has paragraph  
13   II(G)(1)(g)?

14          A     Yeah.

15          Q     The plain language of subsection 251(c)(3)  
16   indicates the requesting carrier may achieve the  
17   capability to provide telecommunications services  
18   completely through access to unbundled network  
19   elements of an incumbent LEC's network.  Nothing in  
20   the subsection requires a competing carrier to own or  
21   control some portion of a telecommunications network  
22   before being able to purchase unbundled network  
23   elements.  You would agree that the 8th Circuit held  
24   that?

25          A     Yes.

1           Q     And, finally, you would agree that the 8th  
2 Circuit made the following statement: "Congress  
3 recognized that the amount of time and capital  
4 investment involved in the construction of a complete  
5 local stand-beside telecommunications network are  
6 substantial barriers to entry, and thus required  
7 incumbent LECs to allow competing carriers to use  
8 their networks in order to hasten the influence of  
9 competitive forces in the local telephone business.  
10 The Commission's unbundling rules facilitate the  
11 competing carriers access to these networks, and thus  
12 promote the Act's additional purpose -- the  
13 expeditious introduction of competition into the local  
14 phone markets. You would agree with that?

15           A     There's one caveat. They're talking about  
16 the unbundling rules that they didn't vacate.

17           Q     Now, in reaching its conclusions, would you  
18 agree with me that the 8th Circuit rejected  
19 BellSouth's argument that CLECs must provide its own  
20 facilities in conjunction with the use of UNEs to  
21 obtain UNEs at UNE prices?

22           A     Yes.

23           Q     Would you also agree with me that the 8th  
24 Circuit rejected the argument the use of UNEs solely  
25 to provide telecommunications services would

1 circumvent the resale provisions of 252(d)(3)?

2 A Yes.

3 Q And you would also agree with me that use of  
4 UNES solely to provide telecommunications services  
5 would circumvent the joint marketing restrictions.  
6 They rejected that argument, did they not?

7 A Yes, they did. When combined by the ALEC;  
8 they rejected that argument under those conditions.  
9 They disagreed, however, that -- they actually had the  
10 opposite view when they were combined by the  
11 incumbent, such as BellSouth. They felt that if the  
12 incumbent were required to combine them, that it  
13 would, in fact, render the resale provision of the Act  
14 meaningless, and that would affect the joint marketing  
15 restriction. The exact opposite.

16 Q I'm not sure that I heard you correctly. I  
17 may have misheard you. Correct me if I'm wrong. Did  
18 you say that if the CLEC combines them, that that  
19 would obliterate the resale?

20 A No. If BellSouth combined them for the  
21 CLEC.

22 Q Wouldn't it be more accurate to say that the  
23 8th Circuit said that if they were provided on a  
24 combined basis that that would obliterate the resale  
25 restriction?

1           A     Yes.  That's -- to do that BellSouth has to  
2 do the combining.  That's how they get provided on a  
3 combined basis.

4           Q     If they are already provided in BellSouth's  
5 network, then there's nothing for BellSouth to  
6 combine; is that correct?

7           A     Yes.  It's already combined and it was  
8 combined by BellSouth.

9           Q     But nothing in the 8th Circuit's decision  
10 says BellSouth is precluded from combining?

11          A     Precludes us?  No, nothing precludes us.  
12 The important part of the decision says we have no  
13 obligation to do it.  We can do it if we want.

14          Q     If AT&T obtains a loop-port combination from  
15 BellSouth pursuant to the existing contract, it's  
16 BellSouth's position that this should be priced as  
17 though it were a retail tariffed rate less the  
18 discount; is that correct?

19          A     Yes.

20          Q     In this scenario, assuming AT&T orders a  
21 loop-port combination from BellSouth pursuant to the  
22 contract, in this scenario can AT&T specify the  
23 specific switch features that it would like in order  
24 to provide service to its own customer?

25          A     Yes, it can.  Just like if it bought it for

1 resale, it can do the same thing.

2 Q Would AT&T be limited to those BellSouth  
3 features that are in its tariffs?

4 A Yes.

5 Q Does BellSouth in its tariffs offer  
6 stand-alone 900 blocking?

7 A I don't know.

8 Q Does BellSouth in its tariffs offer  
9 stand-alone 976 blocking?

10 A I don't know.

11 Q Does BellSouth in its tariffs offer long  
12 distance Caller ID?

13 A Yes.

14 Q Would it surprise you that BellSouth's  
15 tariffs do not offer stand-alone 900 blocking or  
16 stand-alone 976 blocking?

17 A No, it wouldn't surprise me at all.

18 Q Do BellSouth's current tariffs contain every  
19 feature that each one of its switches is capable of  
20 providing?

21 A Yes. With the caveat that as the switches  
22 are currently programmed, it has every one that the  
23 switches are capable of providing.

24 Q If there's a feature that is in a switch and  
25 it is not tariffed, does that mean that AT&T cannot

1 obtain that when it orders a loop-port combination?

2 A All of the ones that we have in there are  
3 tariffed.

4 Q If you assume that there's a feature in the  
5 switch that is not tariffed, would that mean that AT&T  
6 could not obtain that feature unless and until  
7 BellSouth filed a tariff?

8 A If you assume something that doesn't exist,  
9 I would guess that's correct.

10 Q Now, BellSouth offers some unbundled  
11 networks -- unbundled network elements together now;  
12 is that correct?

13 A Yes.

14 Q We talked about those earlier. For  
15 instance, those on Page 17 of your direct testimony?

16 A Yes.

17 Q Now, those combinations are priced, I  
18 believe, as we discussed earlier, at the sum of the  
19 individual UNE rates; is that correct?

20 A That's correct.

21 Q Those rates are found in the BellSouth-AT&T  
22 contract?

23 A Yes.

24 Q Can you cite me to any provision of the  
25 BellSouth-AT&T contract that specifically provides for

1 the pricing of these combinations?

2 A No.

3 Q Do you know whether there is a provision in  
4 there that you cannot, at the top of your mind, cite  
5 to?

6 A There's no provision in there for pricing of  
7 combinations.

8 Q Let me see if I understand your proposal.  
9 If I buy one unbundled network element, then I'm  
10 entitled to the price that's in that contract; is that  
11 correct?

12 A Yes.

13 Q If I buy any two unbundled network elements  
14 in combination, then the contract is irrelevant as to  
15 the price; is that your position?

16 A If you buy a combination of elements?

17 Q Yes.

18 A Yes, that's correct. The contract doesn't  
19 have any price for any network element combinations.

20 Q Does this extend to other terms and  
21 conditions of the contract, such as provisioning of  
22 unbundled network elements and how they are going to  
23 be provisioned and when they will be provisioned?

24 A I don't know whether it extends to  
25 provisioning or not. I do know it extends to pricing.

1           Q     So you don't know whether the contract would  
2 govern any of the activities related to the purchase  
3 of a combination of UNEs?

4           A     Pricing I know it doesn't. As far as  
5 anything else, I don't know whether it does or it  
6 doesn't.

7           Q     Are you suggesting that the contract is  
8 irrelevant to -- completely, in its entirety -- to the  
9 purchase of combined unbundled network elements?

10          A     No, I haven't. As I said, I know that it  
11 does not contain any pricings. With respect to any  
12 other aspects of combinations, I don't know what it  
13 has. You can ask Mr. Hendrix.

14          Q     Under your proposal, if AT&T provided --  
15                 **COMMISSIONER CLARK:** Mr. Varner, let me  
16 follow up on that because I keep getting confused.

17                 I thought under the contract that when you  
18 combined network elements, that if it recreated a  
19 service, a retail service, it's your view it would be  
20 at the resale price --

21                 **WITNESS VARNER:** Right.

22                 **COMMISSIONER CLARK:** -- which is retail  
23 minus wholesale.

24                 **WITNESS VARNER:** Yes.

25                 **COMMISSIONER CLARK:** I also thought it said

1 where you combined them -- I thought the implication  
2 was where you combined services that don't recreate a  
3 retail service, that it is then the individual prices  
4 less any savings for duplicate charges.

5           **WITNESS VARNER:** No. Our understanding was  
6 that whether a replicated retail service or not, that  
7 the prices were not set in the contract for  
8 combinations.

9           **COMMISSIONER CLARK:** Okay. So then just so  
10 I'm clear, your testimony is that when it was talking  
11 about combinations, it was talking when you use a  
12 single order form, that was the only time you subtract  
13 duplicate charges?

14           **WITNESS VARNER:** I'm not quite following  
15 your question. I just want to be sure I'm answering  
16 the question you were getting at.

17           **COMMISSIONER CLARK:** Mr. Melson, do you have  
18 that -- the language that you put up on the --  
19 (Counsel puts charts up on easel.)

20           **WITNESS VARNER:** That one? You mean one  
21 from your order?

22           **COMMISSIONER CLARK:** Yes, I think so.

23           **MR. MELSON:** I'm sorry. The one from the  
24 order?

25           **COMMISSIONER CLARK:** Yeah. Where it talks

1 about recreating retail services. (Pause)

2 **MR. MELSON:** Here it is right here. Sorry.

3 (Document placed on projector.)

4 **COMMISSIONER CLARK:** It says "When two or  
5 more UNEs are combined, these prices may lead to  
6 duplicate charges." Oh, wait a minute. "The  
7 recurring and nonrecurring prices or unbundled network  
8 elements in Table 1 of this attachment are appropriate  
9 for UNEs on an individual stand-alone basis." Then it  
10 says "When two or more are combined, these prices  
11 might lead to duplicate charges.

12 **WITNESS VARNER:** It was the first part of  
13 that that led to our understanding that the only  
14 prices that were there were for individual stand-alone  
15 UNEs. The combining that's talked about there is  
16 you've ordered more than multiples of those individual  
17 stand-alone UNEs on the same order.

18 **COMMISSIONER CLARK:** Okay. And it's not  
19 when -- you're talking about when you order, say, two  
20 ports.

21 **WITNESS VARNER:** Not really two ports  
22 because you did, I think at first, have additional  
23 charges, but there were four of them that were  
24 identified specifically. Because --

25 **COMMISSIONER CLARK:** Let me back up and

1 maybe ask it a different way.

2 From what I understand you saying is when  
3 you order a bunch of UNES on the same order, you  
4 subtract duplicate charges.

5 **WITNESS VARNER:** Exactly.

6 **COMMISSIONER CLARK:** But it doesn't apply  
7 when you have combined UNES.

8 **WITNESS VARNER:** Exactly.

9 **COMMISSIONER CLARK:** It's the order that  
10 dictates the savings.

11 **WITNESS VARNER:** Yes. It's ordering them  
12 together. And there were four that were identified  
13 specifically that we were to look at. And if I  
14 remember right there were 2-wire analog loop and a  
15 2-wire analog port on the same order. 4-wire loop and  
16 port, ISDN loop and pot, and I think it was DS-1 loop  
17 and port. That it was those four that we were to  
18 examine and see that if you ordered those together at  
19 the same time, would there be duplicate charges.

20 **COMMISSIONER CLARK:** Okay.

21 **Q (By Mr. Hatch)** Now, going back to the  
22 BellSouth-AT&T contract, just to make sure I  
23 understood where we left this, the contract requires  
24 BellSouth to provide unbundled network elements in  
25 combinations. That's correct, you'd agree with that?

1           A     That's correct.

2           Q     Now, isn't it correct that the contract  
3 other provisions, in terms of provisioning intervals,  
4 DMOQs and all the other things in the contract related  
5 to the provisioning of those elements would also apply  
6 for the provisioning of those elements?

7           A     Would you repeat that?

8           Q     Be happy to.

9                     Doesn't the contract between AT&T and  
10 BellSouth require that when AT&T provisions these  
11 elements that it is obligated to provision, that the  
12 other contract terms would govern how they are  
13 provisioned, when they are provisioned, measures of  
14 quality and all the other provisions of that contract,  
15 would they not apply to the provision of those  
16 elements?

17          A     I think the answer to that is yes. It  
18 sounds like what you're asking me is do the contract  
19 provisions that apply to the elements apply to the  
20 elements, and the answer to that is yes.

21          Q     Now, is it your position that if AT&T  
22 provides its own loop and uses BellSouth's port, along  
23 with local switching, common transport and other  
24 elements, that AT&T can obtain a combination of the  
25 port, the local switching, the common transport,

1 tandem switching at the sum of the network elements in  
2 the contract?

3       A     Would you repeat that? Because it sounds  
4 like you said they were providing their own switching  
5 but also purchasing the switching from us at the same  
6 time.

7       Q     No. If AT&T provides its own loop --

8       A     It's own loop.

9       Q     It's own loop, and uses the other features,  
10 unbundled network elements that BellSouth provides, to  
11 complete its service offering, those elements would be  
12 available at the sum of the network element prices; is  
13 that correct?

14       A     I believe that's correct, because I don't  
15 know of a retail service that would be replicated by  
16 that arrangement.

17       Q     Then that is not consistent with your  
18 position that the sum of the network elements is not  
19 the standard under the contract for combinations that  
20 don't replicate a retail service, is it?

21       A     No, it's not. As I said, my understanding  
22 is that under the contract there are no prices for  
23 combinations, whether they replicate retail services  
24 or not. BellSouth has proposed to provide the  
25 combinations that you see here -- that are listed in

1 my testimony at Page 17, at the sum of the network  
2 element prices.

3           So when someone has called us and asked us  
4 for those elements, or those combinations of elements,  
5 the price that we've quoted is the price, the sum of  
6 the individual element prices, but it's not stated in  
7 the contract that that is, in fact, the price that we  
8 should be charging.

9           Q     So if it's not the contract you could  
10 unilaterally change those price at any time; is that  
11 what you're telling us?

12          A     Well, we couldn't change the prices for the  
13 individual elements but we could change the price for  
14 the combinations of them.

15          Q     So if today AT&T provided its own loop and  
16 used BellSouth's port switching, common transport  
17 tandem switching, currently at the sum of the network  
18 elements that are set forth in the contract, tomorrow  
19 that price could change? Is that what you're saying?

20          A     Yes, it could, because there is no price  
21 stated in the contract for what that -- how that  
22 combination should be priced. That's why we're here,  
23 is to resolve that so that it is identified, what the  
24 price is for the combination should be.

25          Q     Now, when determining when a combination

1 duplicates a BellSouth retail service we would look at  
2 BellSouth's tariffs to make that determination. Would  
3 that be correct?

4 A Yes. Tariffs and contracts. When I say  
5 contracts in this case I'm talking about customer  
6 contracts, not ALEC contracts.

7 Q If a combination doesn't duplicate a  
8 BellSouth service, can AT&T obtain that combination at  
9 the sum of the UNE prices if those elements are in  
10 that contract, any combination?

11 A As I said, no, there is no price for them in  
12 there. We've identified the list of combinations that  
13 we offer and at the sum of the network element prices.  
14 If there is another combination that AT&T wants to  
15 offer, then they would identify it and we should  
16 negotiate what the price is. If it replicates a  
17 retail service, then we believe the price ought to be  
18 the same as for the resold service.

19 Q If you assume for the moment that BellSouth  
20 provides a combination to AT&T that doesn't duplicate  
21 a BellSouth service, and that that combination is  
22 priced at the sum of the network elements in the AT&T  
23 BellSouth contract -- just assume that for the  
24 moment -- could BellSouth file a tariff to provide  
25 that service at a retail level, that combination?

1           A     I don't know whether we could or not. I  
2 mean, that's just speculation as to what the service  
3 would be. It may not -- you're talking about  
4 something I don't even know what it is. It may not  
5 have any applicability in a retail marketplace.

6           Q     Let's talk about a combination of a port and  
7 common transport. That is a combination that you  
8 currently provide that does not replicate a BellSouth  
9 service; is that correct?

10          A     That's correct.

11          Q     Now, if BellSouth determined there was a  
12 retail market for that, could they file a tariff to  
13 offer that?

14          A     If there was, but I don't know how there  
15 would be a retail market for that.

16          Q     Was that a yes or a no?

17          A     Yes, we could file a tariff, but I don't  
18 believe there is a retail market for that arrangement.

19          Q     Now, with respect to tariffs that you file  
20 with the Florida Public Service Commission, those  
21 tariffs are presumptively valid, are they not?

22          A     I don't recall. I just don't know.

23          Q     With all of your experience before the  
24 Commission in tariff filings you do not know?

25          A     It's been a long time since I've looked at

1 that. I know that the price regulation legislation  
2 came out several years ago. If you asked me then I  
3 would have known, but I don't remember everything  
4 forever.

5 Q Could such a tariff be suspended by the  
6 Commission if BellSouth filed it?

7 A I don't know.

8 Q Are there any limitations that you're aware  
9 of, either in Chapter 364 or the Commission's rules,  
10 that place any limits on the price that BellSouth  
11 could place in a retail tariff for a tariffed service?

12 A I remember there was some price controls in  
13 the legislation. There was some specific parameters  
14 in there. I don't remember what they were.

15 Q If you filed a tariff for a new service, are  
16 there any limitations that you're aware of in Chapter  
17 364 where the Commission's rules or orders limit the  
18 price BellSouth could place on that service in its  
19 tariff?

20 A I don't remember whether there are or there  
21 aren't.

22 Q Would you accept there are none in Chapter  
23 364 or in the Commission's rules or orders?

24 A I have no basis for accepting it. As I  
25 said, I just don't remember.

1           Q     Under your duplicator retail service  
2 standard, AT&T -- well, strike that.

3                     If AT&T currently had a combination that was  
4 priced at the sum of the unbundled network element  
5 prices, and then AT&T then filed a tariff to offer  
6 that at a retail level, then that price, according to  
7 your position, would then switch to the retail price  
8 minus the discount; is that not correct?

9           A     No, that's not correct.

10          Q     Why would that not be correct?

11          A     Because it's if BellSouth offers it as a  
12 retail service is when the resale discount applies.  
13 If AT&T offers it retail -- I assume everything they  
14 get from us they are going to offer somehow at retail.

15          Q     I misspoke. I meant if BellSouth filed a  
16 tariff to offer at a retail level the combination that  
17 AT&T currently was obtaining at the sum of that  
18 unbundled network elements in its contract, then under  
19 your position that price would change to the retail  
20 price minus the discount?

21          A     Yes, it would. Because it would be  
22 replicating a retail service, which is, I mean, pretty  
23 easy to identify. We've gone around and around about  
24 whether port and loop and all of this stuff. It's not  
25 all that complicated, okay.

1           What they've asked for in their testimony is  
2 the ability to migrate an existing customer to  
3 unbundled elements, okay? What that means is that the  
4 customer is getting service, he's getting retail  
5 service today. They want to purchase all of the  
6 unbundled elements to give them that retail service.  
7 I mean, whether they are trying to replicate a retail  
8 service or not is not in dispute. That's exactly what  
9 they've asked for.

10           **COMMISSIONER CLARK:** Mr. Varner, would you  
11 be concerned with that if the price for bundling those  
12 unbundled network services was more than -- discounted  
13 the wholesale price?

14           **WITNESS VARNER:** Would I be concerned about  
15 offering it to them that way?

16           **COMMISSIONER CLARK:** Right.

17           **WITNESS VARNER:** No, not really, and the  
18 reason is this --

19           **COMMISSIONER CLARK:** The issue is price.

20           **WITNESS VARNER:** The issue is price. But  
21 the reason I wouldn't be concerned about that is this:  
22 Because if it's higher than the resale price it  
23 becomes irrelevant, because they can always choose  
24 resale. They always have the option to choose resale,  
25 so if it's priced higher than the resale price they're

1 just not going to choose it.

2           **COMMISSIONER CLARK:** So then we should price  
3 it exactly.

4           **WITNESS VARNER:** At resale. That's what we  
5 proposed.

6           **COMMISSIONER CLARK:** If we price it exactly  
7 at resale then they can joint market.

8           **WITNESS VARNER:** No.

9           **COMMISSIONER CLARK:** So how can they ever  
10 joint market a retail service? If they replicate a  
11 retail service --

12           **WITNESS VARNER:** How can they ever joint  
13 market?

14           **COMMISSIONER CLARK:** Right.

15           **WITNESS VARNER:** Two ways. One is that  
16 after February of 1999 the joint marketing restriction  
17 disappears. The second is that they would quit  
18 objecting to us getting in the long distance business,  
19 so we can get in. When that happens, then the joint  
20 marketing restriction disappears. Under those two  
21 conditions.

22           **COMMISSIONER CLARK:** Well, you've  
23 effectively eliminated the other condition that  
24 Congress put out there, and that is providing service  
25 with the UNes.

1           **WITNESS VARNER:** No. In that condition if  
2 they purchase a service and they provide it utilizing  
3 UNES, if they do -- for example, if they were to do  
4 like other ALECs have done and purchase UNES, combine  
5 them with their own facilities, they can joint market  
6 that. They can joint market that arrangement with  
7 whatever it is that they want. The only thing that  
8 they could not joint market would be this combination  
9 of UNES that's solely provided by BellSouth that  
10 replicates the retail service. They couldn't joint  
11 market that arrangement with their long distance  
12 until, you know, either one of the other two  
13 conditions: Either 1999, or if we get into the long  
14 distance business. That would be the only one that is  
15 restricted. If they built their own switch, bought  
16 loops from us, put them on their switch, they could  
17 joint market that.

18           **COMMISSIONER CLARK:** Let me ask you another  
19 question. Why is it that it's cheaper, according to  
20 you, to buy UNES and recreate a service than it is to  
21 purchase at the wholesale price if, for instance,  
22 local service is priced below cost?

23           **WITNESS VARNER:** Because not all local  
24 service is priced below cost. When you look at  
25 business local service, it's not priced below cost.

1           **COMMISSIONER CLARK:** Residential. As I  
2 understood --

3           **WITNESS VARNER:** Yes. Residential you saw  
4 was very, very close, and the thing that made the  
5 difference is -- was access charges. It was the  
6 application of access charges.

7           **COMMISSIONER CLARK:** Yes, I do remember  
8 that.

9           **WITNESS VARNER:** I don't have one for the  
10 residence customer.

11           (Demonstrates document on projector.)

12           This was the chart for the residence  
13 customer. And what you can see, that if you take  
14 access charges off, if you just look at just plain old  
15 basic service, without any features, without any  
16 access charges, the unbundled element prices are high.  
17 It would probably 19 plus the 478 and the 112, so it  
18 would be higher. The thing that turns it around is  
19 access charges. And I believe that that's why this  
20 issue that you see here is only being pressed by IXCs.

21           **COMMISSIONER CLARK:** Let me see if I can ask  
22 it different -- IXCs pay you the access charges,  
23 right?

24           **WITNESS VARNER:** Yes.

25           **COMMISSIONER CLARK:** So why am I incorrect

1 that it suggests that the price that people pay for  
2 local service, in fact, covers the cost?

3           **WITNESS VARNER:** If you're talking about,  
4 you know, like the average customer, what they pay in  
5 total?

6           **COMMISSIONER CLARK:** No.

7           **WITNESS VARNER:** Is that what you're talking  
8 about.

9           **COMMISSIONER CLARK:** No.

10           **WITNESS VARNER:** If you're just talking  
11 about basic service, you know, just plain old basic  
12 service, no features, you know, no long distance --

13           **COMMISSIONER CLARK:** Yes.

14           **WITNESS VARNER:** -- nothing else, what you  
15 can see the retail price for that is \$10.65. Okay.  
16 If you assume that these unbundled network element  
17 prices are set at cost, okay, the cost of that is \$17  
18 plus \$2 plus \$4.78.

19           **COMMISSIONER CLARK:** All right.

20           **WITNESS VARNER:** So it is priced below cost.

21           **COMMISSIONER CLARK:** Got you. Thanks.

22           **Q**       **(By Mr. Hatch)** So getting back to the  
23 final tariff scenario, based on your duplicate retail  
24 service standard it is conceivable that AT&T could  
25 never get unbundled network elements at network

1 element prices and combinations; is that correct?

2 Because you could always file a tariff --

3 A No.

4 Q -- to change it to a resale?

5 A No.

6 Q Isn't that what you just told me earlier?

7 A No, it's not. It's the opposite of what I  
8 told you.

9 Q All right. Let's start again. Does  
10 anything preclude BellSouth from filing a tariff to  
11 offer any particular set of combinations of network  
12 elements?

13 A Yes. I mean, we only file tariffs if  
14 there's a retail market for it. If there's a  
15 combination for which there is no retail market then  
16 we don't offer it. The proof of that is there are  
17 eight or nine combinations that are listed in my  
18 testimony that we do offer. We don't offer those at  
19 retail.

20 Q Nothing precludes you from filing a tariff  
21 to offer that as a retail offering, is there?

22 A Yes, there is. There's no market for it.

23 Q There's nothing that precludes you from  
24 putting a piece of paper that says here is an  
25 amendment to our GSST that says the following

1 combinations of network elements are now an official  
2 retail tariffed offering?

3 A Yes, there is.

4 Q And filing that with the Commission?

5 A Yes, there is. There's no market for it.  
6 There's no point in us -- we're not going to file and  
7 make a retail offering for something for which there  
8 is -- nobody wants it; nobody to sell it to.

9 COMMISSIONER GARCIA: Okay. But that's not  
10 the question. The question is you can do it, can't  
11 you?

12 WITNESS VARNER: I mean, we can put the  
13 piece of paper and come down here and file it? Is  
14 that what he's asking?

15 COMMISSIONER GARCIA: I think that's what  
16 he's saying.

17 WITNESS VARNER: Yes, we can do that.

18 Q (By Mr. Hatch) And if you did that, then  
19 that would establish the retail price, and that would  
20 be the price, less the discount, and that would be the  
21 price that we would get for that combination of  
22 network elements?

23 A Yes. If that tariff was approved, that's  
24 what would happen.

25 Q I believe you made the statement in you

1 deposition --

2           **COMMISSIONER DEASON:** Let me ask a question  
3 on that before you go on.

4           If there were not a retail market for that,  
5 and it was plain on its face that the only reason you  
6 filed it -- and even if it was presumptively valid, if  
7 that was the only reason you filed it was to perhaps  
8 circumvent something within this contract, is there  
9 some provision in this contract which would negate  
10 that, that says something about if you're not dealing  
11 in good faith that -- I'm just curious about --

12           **WITNESS VARNER:** I don't know.

13           **COMMISSIONER DEASON:** You're not really sure  
14 about that.

15           **WITNESS VARNER:** I'm just not sure. I don't  
16 know whether there is. Mr. Hendrix might know. I'm  
17 just not familiar with all of the provisions of the  
18 contract.

19           **Q**       **(By Mr. Hatch)** Is it your testimony that  
20 the pricing standards in 252(d) of the Act do not  
21 apply to combinations?

22           **A**       That's correct. Because the 252(d) pricing  
23 standards only apply to the obligations under 251.  
24 Combinations are not an obligation under 251. So not  
25 only do the pricing standards not apply, the

1 negotiation and arbitration provisions don't apply  
2 either.

3 Q What provision of the Act grants an  
4 exemption for combinations of UNEs from the pricing  
5 provisions of 252(d)(1)?

6 A The 8th Circuit Court's opinion that  
7 combinations of network elements are not required to  
8 be provided by the ALEC. Their view was that that is  
9 not an obligation under Section 251 of the Act.

10 Q Do you have a copy of the Act handy?

11 A The Act?

12 Q Yes.

13 A No, I do not.

14 Q Would you turn to 251(c)(3)

15 (Hands document to witness.)

16 A All right.

17 Q Could you read that (3) for me, please?

18 A Read it out loud?

19 Q Yes, please.

20 A "The duty to provide to any requesting  
21 telecommunications carrier for the provision of  
22 telecommunications service nondiscriminatory access to  
23 network elements on an unbundled basis at any  
24 technically feasible point on rates, terms and  
25 conditions that are just, reasonable and

1 nondiscriminatory in accordance with the terms and  
2 conditions of the agreement and requirements of this  
3 section and Section 252.

4 "An unbundled local exchange carrier shall  
5 provide such unbundled network elements in a manner  
6 that allows requesting carriers to combine such  
7 elements in order to provide such telecommunications  
8 services."

9 Q Now, would you turn over to 252(d) for me,  
10 please.

11 A Yes. (Witness complies.) I have it.

12 Q (d)(1). That deals with interconnection and  
13 network element charges?

14 A Yes. That's pricing standard.

15 Q That's correct. And those pricing standards  
16 are set forth in sub-A there, aren't they?

17 A Yes.

18 Q And those would be that they have to be  
19 based on cost -- the cost, without reference to rate  
20 of return or rate base proceeding, of providing the  
21 interconnection or network element, whichever is  
22 applicable, and nondiscriminatory, and may include a  
23 reasonable profit. Would that be accurate?

24 A Yes. That is the pricing standard.

25 Q So where is it in there that you see an

1 exemption from combinations of network elements from  
2 the pricing standards of 252(d)(1)?

3       A     252(d) only applies to 251(c)(3) and (c)(2).  
4 And when you go to 251(c)(3) it says "An incumbent  
5 local exchange carrier shall provide such unbundled  
6 network elements in a manner that allows requesting  
7 carriers to combine such elements in order to provide  
8 such telecommunications services. This has already  
9 been interpreted by the 8th Circuit.

10           And what they said is that while the Act  
11 requires incumbent LECs to provide elements in a  
12 manner that enables the competing carrier to combine  
13 them, unlike the Commission, we do not believe that  
14 this language can be read to levy a duty on the  
15 incumbent LECs to do the actual combining of elements.  
16 The 8th Circuit has already interpreted that language.

17       Q     Now, the 8th Circuit has said if we combine  
18 them to provide service, that we get them at unbundled  
19 network element prices, the sum of the element prices;  
20 is that correct?

21       A     That's correct. And as I've said several  
22 times, if, in fact, AT&T wants to implement the 8th  
23 Circuit's decision in their agreement, BellSouth is  
24 perfectly willing to do that, but it has to be the  
25 whole decision.

1 Q Now, there is a nonrecurring cost to AT&T to  
2 hook those up; is that correct?

3 A I guess there would be. I would assume  
4 there would be.

5 Q And that would include your proposal for  
6 collocation and other things; is that correct?

7 A It would be whatever method AT&T chose to  
8 use to do that.

9 Q However they got hooked up, once AT&T got  
10 them hooked up, the recurring monthly price would be  
11 the sum of the network elements as set forth in the  
12 contract for their recurring rates?

13 A Under the 8th Circuit's decision.

14 Q Right.

15 A Yes.

16 Q Now, under your position if we're buying  
17 them combined pursuant to the contract, that's a  
18 resale price, right? Less the discount?

19 A You're talking about the under the 8th  
20 Circuit decision or under the contract?

21 Q Under the contract.

22 A Okay. Under the contract we're saying  
23 whether you combine them or we combine them they ought  
24 to be resale. Under the 8th Circuit's decision we're  
25 saying if you combine them, you're selling them under

1 network element prices; if we combine them, we'll have  
2 to see if we can agree on what the price would be.

3 But that's not an obligation that we have.

4 Q Now, would it be correct to say that the  
5 distinction that the 8th Circuit drew is on how they  
6 get combined?

7 A Who does the combining.

8 Q Who does the combining.

9 A That's right. That's the distinction.

10 Q It is not -- there's no distinction drawn in  
11 the 8th Circuit decision with respect to what the  
12 recurring rate would be on a going-forward basis. The  
13 only question that the Court concerned itself with was  
14 who did the combining; is that correct?

15 A By implication they've dealt with the price,  
16 because they've said that BellSouth does not have to  
17 do the combining. Consequently, obviously if we don't  
18 have to do it, then they haven't -- the pricing  
19 standards that apply to things that we do have to do  
20 can't apply to that. They made no decision as to what  
21 the price should be or what the price standards should  
22 be, if, in fact, we do the combining. Because that's  
23 a decision that's up to us to make whether we even  
24 want to do that or not. We're not obligated to even  
25 do it at all.

1           Q     Who does the combining is the concern of the  
2 8th Circuit; not what -- after they are combined, the  
3 Court made no statement as to what those rates are  
4 other than they would be available at the unbundled  
5 network element prices; is that correct?

6           A     That's not correct at all. What the Court  
7 interpreted was what BellSouth's obligation was under  
8 the Telecom Act, and it said BellSouth had no  
9 obligation to combine these elements. Since we had no  
10 obligation to combine these elements, that means that  
11 none of the provisions of the Act even apply to that.  
12 In fact, what that really means is that the Commission  
13 could, if it chose to do so, just not even address  
14 this issue at all, and be perfectly within the bounds  
15 of the Act, because it's not an obligation under the  
16 Act.

17          Q     So what you're really telling us is that an  
18 unbundled network element combination is not an  
19 unbundled network combination if you hook it up, but  
20 it is an unbundled network combination if we hook it  
21 up?

22          A     Combination really is language that was  
23 invented by AT&T and MCI to describe this thing.

24                 What I say is that if we hook it up and we  
25 give it to you as resale, we're giving you the

1 resold -- you're giving a retail service, if, in fact,  
2 it replicates a retail service. I mean, this idea,  
3 this fiction of somehow some difference between  
4 recombined elements and resale is never something that  
5 I've even understood except for trying to create  
6 confusion where there doesn't need to be any.

7 Q Your interim pricing standard is, is that we  
8 would be assessed a resale price less the discount  
9 even if we hook it up until the 8th Circuit is final  
10 and non-appealable; is that correct?

11 A That's correct.

12 Q What possible basis do you find in the 8th  
13 Circuit's order or in the Act or any of the  
14 Commission's orders to suggest that that's the  
15 appropriate pricing standard that is otherwise  
16 consistent with a) the contract, and b) the 8th  
17 Circuit's decisions?

18 A The basis for it is really one I find in the  
19 Commission's order. The Commission expressed in the  
20 arbitration order that they were concerned about  
21 the -- the ALECs being able to utilize these unbundled  
22 elements combined at unbundled element prices to  
23 circumvent the resale provisions of the Order.

24 Well, it doesn't matter who does the  
25 combining in that case. This price over here in

1 Column 3 is the same whether we combine it or you  
2 combine it. It doesn't change as a result of who does  
3 the combining. If that's a concern with respect to  
4 its effect on resale, it's a concern whether you  
5 combine them or we combine them.

6 **COMMISSIONER CLARK:** Mr. Varner, let me ask  
7 you something. It seems to me what you really like,  
8 what's the best of all possible worlds for you is if  
9 they get charged the unbundled rates but you get to  
10 keep the access charges. It strikes me that the real  
11 issue is the access charges.

12 **WITNESS VARNER:** For them. For us --

13 **COMMISSIONER CLARK:** No. For you.

14 **WITNESS VARNER:** No.

15 **COMMISSIONER CLARK:** Well, look at the  
16 unbundled. If you do resale it's 833; if you do  
17 unbundled 17 and \$2. And it's the 705 that makes the  
18 difference.

19 **WITNESS VARNER:** Yes. If you're talking  
20 about which one would give us the most revenue in the  
21 short term --

22 **COMMISSIONER CLARK:** Well, I assume that's  
23 what you're concerned about.

24 **WITNESS VARNER:** That would be a short-term  
25 decision.

1           **COMMISSIONER CLARK:** You keep saying the  
2 issue here is the price.

3           **WITNESS VARNER:** Exactly. And the price  
4 that we're saying is the right one to charge in that  
5 instance is the \$30.69.

6           **COMMISSIONER CLARK:** And that's because you  
7 get the access, not because of the price for the  
8 resold service.

9           **WITNESS VARNER:** Actually it's both. We get  
10 \$8.33 for the basic service. We could get \$17 if it  
11 was unbundled. But our point is simply this: All we  
12 want to do is treat these things that are the same the  
13 same way. That's really all we want to do. We're not  
14 trying to get anything more than that. We just want  
15 to treat these things that are the same the same way.  
16 We're not trying to get any more than that.

17           **COMMISSIONER CLARK:** Thank you.

18           **Q**        **(By Mr. Hatch)** When AT&T hooks them up,  
19 they are not treating them the same way, are they?  
20 It's not same as what BellSouth provides, is it?

21           **A**        I think there's a predicate there I'm  
22 missing.

23           **Q**        You just told Commissioner Clark, I believe,  
24 that you just want them treated the same way?

25           **A**        Yes.

1           Q     When AT&T does the combining, they aren't  
2 the same thing and shouldn't be treated the same way,  
3 should they?

4           A     As for pricing purposes I think they should  
5 be treated the same way because of the fact of the  
6 effect that it has. And then once the 8th Circuit  
7 decision becomes final, then, yes, they will be  
8 treated differently.

9           Q     And that effect is a revenue effect?

10          A     Which --

11          Q     Is that the effect?

12          A     Yes, it is. It is. I mean, the issue  
13 around all of this is not anything but price. From  
14 both sides.

15          Q     I believe earlier you --

16                   **COMMISSIONER CLARK:** Well, it's also the  
17 ability to joint market.

18                   **WITNESS VARNER:** Yes. I -- yes. I think  
19 that is also a part of it.

20          Q     **(By Mr. Hatch)** The joint marketing  
21 restriction, I believe you said, is going to be gone  
22 in less than a year now; is that correct?

23          A     That's correct.

24          Q     Regardless of how this proceeding turns out?

25          A     Yes. We hope it will be gone a lot sooner.

1 If we can get into long distance. We wish it had been  
2 gone already.

3 Q I believe earlier in response to a question  
4 from Commissioner Deason you stated that the cost of  
5 providing local service and exchange access, the cost  
6 of those things, those functions, is recovered in the  
7 unbundled network element prices that you have up  
8 there on that chart; is that correct?

9 A Based on the cost studies and the  
10 Commission's decisions at that time, yes. And the  
11 reason I caveat that is we've done cost studies since  
12 then that would indicate that some of those prices  
13 don't cover the cost.

14 Q So if they recover cost, then what you're  
15 describing with your desire to keep access revenue is  
16 simply pure contribution; is that correct?

17 A No. Our desire to do that is the use to  
18 which that contribution has to be put, and that is to  
19 continue to be able to offer basic service in Miami at  
20 \$10.65, or whatever, when it's costing us \$22 or \$23  
21 to do it. The only way that we're able to do that is  
22 through the contributions that come from access and  
23 vertical services and other things.

24 Q When BellSouth is no longer subject to price  
25 caps or price regulation, is it going to raise those

1 prices to its cost?

2 A I don't know.

3 Q Why would it continue to offer in a  
4 competitive market a service below its cost?

5 A As I said, you're asking me to speculate  
6 about a situation that I don't know if it will ever  
7 get here or when it might get here. I can't speculate  
8 about that.

9 Q But would a rationally behaving company, in  
10 economic terms, ever price its service below its cost?

11 A Some do. And for whatever reason, I don't  
12 know.

13 Q And that typically is illegal and deemed  
14 predatory pricing in the competitive market, would it  
15 not?

16 A I don't know. I don't know whether it is or  
17 not.

18 **COMMISSIONER CLARK:** Mr. Varner, can I ask  
19 you a question? If the rate rebalancing bill goes  
20 through, what is your position going to be on resale  
21 and unbundling?

22 **WITNESS VARNER:** I'm going to have to make  
23 an assumption here. I have to assume that the 8th  
24 Circuit order is not final. Okay. If you assume that  
25 we're in today's environment still, and the 8th

1 Circuit order is still not yet final, is still sitting  
2 out there, then it would still be the same; it's  
3 resale.

4           **COMMISSIONER CLARK:** Well, you're concerned  
5 about the fact that you're not getting the subsidy  
6 from the access charges. As I understand the rate  
7 rebalancing, it's to get access charges down to cost  
8 so there will be no subsidy, and that the local  
9 exchange prices will be rebalanced to reflect what you  
10 believe is the true cost. So then will you care if  
11 it's resale or unbundled?

12           **WITNESS VARNER:** Yes.

13           **COMMISSIONER CLARK:** Why?

14           **WITNESS VARNER:** Because what we're  
15 providing into this thing is we're providing the same  
16 thing. There is no point or no reason for us to be  
17 able to try to distinguish between something that's  
18 indistinguishable. I mean there's no value or no  
19 purpose in it for us to do that.

20           When they come in and they order this third  
21 column, what they're going to get is the same thing  
22 they were to get when they came in and ordered the  
23 second column. They are going to get the same thing.  
24 The only difference is what the price is.

25           **COMMISSIONER CLARK:** I suppose that -- I

1 guess what I'm maybe suggesting is if the rebalancing  
2 goes through, then the prices for unbundling and for  
3 resale ought to be the same.

4           **WITNESS VARNER:** Well, they'll make movement  
5 in that direction, I think. I don't know that they  
6 will necessarily ever be the same. You're right. You  
7 start to -- you do make movement in that direction.  
8 The top line up there goes up and the access charge  
9 lines goes down. But you've got to remember that  
10 varies depending on which customer that you are, you  
11 know, how that all balances out.

12           So for us the simplest thing to do is, you  
13 know, if it walks like a duck, you know, talks like a  
14 duck, treat it like a duck. These things are the  
15 same; they ought to be priced the same.

16           **COMMISSIONER CLARK:** Okay.

17           **Q**       **(By Mr. Hatch)** Is it BellSouth's policy  
18 that collocation is the only way to effectuate the 8th  
19 Circuit's decisions with respect to allowing carriers  
20 to combine elements themselves?

21           **A**       No, it's not our policy. That's the only  
22 way that's currently available to do it. That's not  
23 policy.

24           **Q**       That's not your policy?

25           **A**       No, it's not our policy. (Pause)

1 (Document handed to witness.)

2 Q Have you seen this letter before,  
3 Mr. Varner?

4 A Yes, I have.

5 Q Would you turn to Item 15?

6 MR. HATCH: For the record, Madam Chairman,  
7 this is an exhibit attached to Mr. Falcone's  
8 testimony. I believe it's Exhibit 18.

9 Q (By Mr. Hatch) Would you read question  
10 No. 15 for me, please?

11 A 15 says "Will BellSouth allow CLECs to  
12 combine UNES without collocation?"

13 Q Could you read the answer, please?

14 A Yes. The answer is "BellSouth's policy is  
15 to deliver UNES to a CLEC's collocation space for the  
16 purpose of combining unbundled network elements. AT&T  
17 has proposed several delivery methods since the  
18 January 6th, 1998, letter. BellSouth is reviewing  
19 these methods."

20 Q So it's BellSouth's policy that they will  
21 require collocation to effectuate the 8th Circuit's  
22 decision that AT&T and the other CLECs have to do  
23 their own combining; is that correct?

24 A No, that's not correct. Mr. Sanders, when  
25 he wrote the letter, probably should have used the

1 word other than "policy", he was correctly responding  
2 that that's the only method that's available. That's  
3 not BellSouth's policy. You know, people use the word  
4 "policy" and attach it to things that are not policy,  
5 and this is a case where they did that and they are  
6 wrong.

7 Q What is BellSouth's policy?

8 A All right. BellSouth's policy is to provide  
9 access to unbundled network elements as required by  
10 law. If, in fact -- right now the only method that's  
11 been identified as collocation. In fact, this answer  
12 is inconsistent on its face. Because if it was our  
13 policy to only do it under collocation, we wouldn't  
14 even be bothering to look at the other methods that  
15 AT&T has given us. If somebody wants us to look at  
16 other methods of doing it, we're perfectly willing to  
17 do that. And if we can find some that are workable,  
18 we would be willing to agree to do those. AT&T gave  
19 us four in this letter that we're looking at right  
20 now.

21 Q Did you hear Mr. Falcone's testimony earlier  
22 that BellSouth had rejected all of the alternatives  
23 that AT&T had proposed?

24 A I didn't hear his testimony, but if he said  
25 that he was wrong because we haven't answered you yet.

1           Q     Are you aware of a conversation or a voice  
2 mail that Quinton Sanders left Ray Crafton of AT&T; a  
3 voice mail message where he rejected all of the  
4 alternatives that AT&T had proposed and said that we  
5 are sticking with collocation?

6           A     No, I'm not aware of any such voice mail.  
7 And I do know that BellSouth is currently evaluating  
8 those options and has not yet answered AT&T. That I  
9 do know. I don't know anything about any other  
10 conversations that have gone on. To the extent they  
11 went on, if that's what they said, then they were  
12 incorrect. We haven't answered you yet. We will  
13 answer you within the next week or two.

14          Q     Now, with respect to collocation, one of the  
15 options of collocation is virtual collocation; is that  
16 correct?

17          A     Yes.

18                **CHAIRMAN JOHNSON:** Mr. Hatch, how much more  
19 do you have?

20                **MR. HATCH:** Based on the way it's been  
21 going, probably about 35, 45 minutes.

22                **CHAIRMAN JOHNSON:** Okay. We'll keep going  
23 for awhile.

24                **MR. HATCH:** Rats. I was hoping for a break.

25                **COMMISSIONER DEASON:** So your estimate is

1 down now? You inflated it so you that could get a  
2 break?

3 **MR. HATCH:** I only wish it were true.

4 (Laughter)

5 **CHAIRMAN JOHNSON:** Mr. Hatch, the first  
6 document you gave us, did you want it marked or no?

7 **MR. HATCH:** Not particularly. They are  
8 direct quotes out of the 8th Circuit order and you've  
9 taken official notice of it so it's not necessary.

10 **CHAIRMAN JOHNSON:** I mean the letter. The  
11 BellSouth letter.

12 **MR. HATCH:** Oh. No. It's already an  
13 Exhibit 18 from Mr. Falcone's --

14 **CHAIRMAN JOHNSON:** You did say that.

15 **MR. HATCH:** I was just using it for  
16 reference purposes.

17 **Q (By Mr. Hatch)** Do you recall seeing this  
18 earlier in the case with respect to Mr. Falcone,  
19 Mr. Varner?

20 **A** Yes, I do.

21 **Q** Would Figure 1 be an accurate representation  
22 of how BellSouth provides service to its customers  
23 today?

24 **A** Yeah, that's a pretty accurate illustration.  
25 And the same way we provide it to AT&T under resale.

1           Q     Or any other customer of yours? They are  
2 all provided in a similar fashion to this; is that  
3 correct?

4           A     Yes.

5           Q     Now, when BellSouth provides service in this  
6 scenario, in terms of installing new service to a  
7 customer, once that loop is run to the line side of  
8 the main distribution frame, then it -- BellSouth  
9 technicians would run a cross-connect from the line  
10 side of the MDF to the line say of the MDF, and then  
11 that switch side of MDF would be hardwired to the  
12 switch port; is that correct?

13          A     Basically that's correct. Mr. Landry is a  
14 lot more familiar with this stuff than I am, but as an  
15 illustration it's fine.

16          Q     Now, could you turn to Figure 4, I think,  
17 that you have there?

18          A     Okay.

19          Q     Would this be an accurate representation of  
20 BellSouth's physical collocation policy or provision  
21 of physical collocation as BellSouth envisions it?

22          A     I don't think so. I mean, all physical  
23 collocation is the yellow box on the bottom right. I  
24 don't know what else you're trying to depict here with  
25 this. This looks like a specific arrangement that

1 you're trying to depict. All the collocation is the  
2 box on the right.

3 Q That's the collocated space?

4 A That's collocated space.

5 Q And in order for a CLEC to combine unbundled  
6 network elements, then what BellSouth would do, as I  
7 understand it, would be to disconnect the  
8 cross-connect that you saw in Figure 1?

9 A Uh-huh.

10 Q And then run a different cross-connect to  
11 the collocated space. Is that essentially it?

12 A That's not what you have here. You have a  
13 lot more than that on this. What we end up doing,  
14 you'd have the loop coming into the line side -- well,  
15 it comes into the line side of the frame. We take our  
16 cross-connect from the line side over the POT frame  
17 that's in the collocation space. We take a  
18 cross-connect from wherever -- well, the switch port  
19 is probably not on the MDF. There's on IDF somewhere  
20 in here where the switchboard is located. What you  
21 really have on the first drawing is the connection  
22 from the MDF to that IDF. So that one was missing.  
23 You come in from that IDF and come over with a  
24 cross-connect to the POT frame.

25 As a simplified illustration it was okay,

1 but it's -- you know, it's not an accurate depiction  
2 of what happens. He's got a lot of other extraneous  
3 stuff in here. I think the important point is this:  
4 If you ordered a combination of unbundled network  
5 elements, loop-port combination, it would look just  
6 like Figure 1.

7 Q But if we want to obtain network elements at  
8 network element prices, under the 8th Circuit's order,  
9 as you have proposed allowing us to do that, it would  
10 require that we would have, at least in one version,  
11 some collocated space; is that correct?

12 A You mean this is after the 8th Circuit order  
13 goes in?

14 Q Assuming the 8th Circuit controls.

15 A Yes. The only method right now is either  
16 physical or virtual collocation. What's shown is a  
17 his physical collocation arrangement.

18 Q That's correct. Then if you assume Figure 4  
19 is a little bit too busy and there are more things  
20 that are there than are typically necessary, then even  
21 under your proposal you would have a connection of the  
22 cross-connect at the line side of the main  
23 distribution frame, and that cross-connect would run  
24 to the IDF; is that correct?

25 A POT frame.

1           Q     For the POT frame. Then the POT frame would  
2 be hardwired to a CLECs facilities in its collocated  
3 space; would that be correct?

4           A     No. The POT frame is our point of  
5 demarcation with the CLEC. What happens on the other  
6 side of the POT frame is up to the CLEC. They decide  
7 what happens on the other side. We don't even know.

8           Q     So the CLEC would have to run some  
9 cross-connect to its facilities in the collocated  
10 space, and then from those facilities back to the IDF.  
11 Is that what you said earlier?

12          A     No. No. What happens is -- again, if you  
13 were looking at the first one, there's an IDF in the  
14 first one somewhere that he left off, for whatever  
15 reason. But what you've got is the switch -- this big  
16 heavy black line he's got up here is not right. You  
17 have got a connection from the switch to an IDF  
18 somewhere in the office. Now the little line he has  
19 with the little circles on it which represents a  
20 cross-connect --

21          Q     Okay. Correct.

22          A     All right. You only have one -- you're  
23 going to have one cross-connect for port; one for the  
24 switch. There would be a cross-connect running from  
25 that IDF over to the POT frame.

1           Q     So you're saying that this scenario that  
2 he's described here never has all of the connections  
3 in it that he's describing?

4           A     No. This is just overly busy. That's way  
5 more stuff in here. I mean, he has four  
6 cross-connects, for example. You don't have four  
7 cross-connects on a loop and a port; you only get two.

8           Q     At least in BellSouth's case there's only  
9 one?

10          A     Hum?

11          Q     In BellSouth's case, the way it provides  
12 service to itself, there is only one cross-connect; is  
13 that correct?

14          A     Actually there's two, because what you have  
15 on the front side is you've got the loop coming into  
16 the MDF.

17          Q     Could you for the record, instead of -- do  
18 the overhead so we could see what you're referring to.

19                   (Witness complies.)

20          A     Yeah. The loop coming in from the MDF, all  
21 right. And then you come in on the other side of the  
22 MDF, right? Somewhere over in here there's another  
23 frame where the switch is terminated and there's a  
24 cross-connect from here over to that frame where the  
25 switch is terminated. Okay? And then there's a

1 cross-connect from that frame back into the switch.

2 Q These diagrams may be too busy. Let me show  
3 you a different one.

4 (Hands document to witness and places it on  
5 projector.)

6 Now, this is from Mr. Landry's testimony.  
7 Do you recognize this diagram?

8 A No.

9 Q Would you say that this diagram is an  
10 accurate representation of how BellSouth proposes to  
11 provide physical collocation? (Pause)

12 A Yeah, that looks pretty accurate.

13 Q So what you would have, based on this  
14 diagram, is that there would be a termination point  
15 here. The jumper would run from this point to this  
16 point (indicating). That would be one cross-connect.

17 A No, that's really -- the cross-connect is  
18 from here over to here. (Indicating) This is the  
19 cross-connect to connect the loop to the POT bay.  
20 It's from this point around through here.

21 Q There's no termination here. This is a  
22 solid wire connection from this point all the way to  
23 this point. There's no termination junction here?

24 A I don't know whether there is or not but  
25 there's one cross-connect.

1           Q     It's one cross-connect, but there's a  
2 termination here, the way this diagram has listed it,  
3 there's a termination here with another termination  
4 going to here.

5           A     I don't know that's what he's trying to  
6 depict. You might ask him. All I know is what you  
7 have is you have a single cross-connect. There's a  
8 wire that takes you from here, where the loop is  
9 terminated, over to the POT bay. Likewise on the  
10 switch, where it's terminated and he has a switch  
11 terminating on the MDF. So if that's where the switch  
12 is terminated, you have a cross-connect that goes from  
13 here over to the POT bay. Now, what he's trying to  
14 depict here I don't know. You'll just have to ask  
15 him.

16          Q     Based on at least your representation of  
17 this diagram, you would have a wire terminal at this  
18 point, and at least a wire terminal at this point.  
19 That would be one cross-connect?

20          A     That's one, yes.

21          Q     Then there would be a wire terminal at this  
22 point and at least one more wire terminal at this  
23 point?

24          A     That's correct.

25          Q     There would be four wire terminals; is that

1 correct?

2           A     Yes.

3           Q     Now, in BellSouth's version of how it  
4 provides service to its customer, there would be only  
5 two wire terminal connections; is that correct?

6           A     If you use this diagram I think that is  
7 correct. If you assume that the switch is terminated  
8 on the MDF, okay, which may or may not be the case,  
9 then you would have a jumper from here to here.

10 (Indicating)

11          Q     And if Mr. Landry then says that this is a  
12 separate jumper to this point and a separate jumper to  
13 this point, then the terminals for jumpers would  
14 increase commensurately for the number of cables  
15 involved, correct?

16          A     Yeah. If you're saying that is their wire  
17 that ends here?

18          Q     Yes.

19          A     Then yes, of course.

20                **COMMISSIONER DEASON:** Mr. Hatch, I hope when  
21 you read the transcript that you'll be able to follow  
22 all of that.

23                **MR. HATCH:** I hope I'll be able to explain  
24 it real well in the brief.

25                **COMMISSIONER DEASON:** Very good.

1           Q           (By Mr. Hatch) Has BellSouth ever  
2 provisioned -- go back to -- recalling the exhibit  
3 that we discussed over there, has BellSouth ever  
4 provisioned a combination loop and port to physically  
5 collocate its space in that fashion?

6           A           You would not provide a combination loop and  
7 port to a physical collocation. If you were providing  
8 a combination of a loop and port it would be like  
9 Figure 1 that you show.

10          Q           So if AT&T ordered a loop and a port, and it  
11 wanted to do the combining, what would BellSouth do?

12          A           Well, that's not ordering a combination. If  
13 you ordered a loop and a port, we would deliver you a  
14 loop and a port to your space. It doesn't matter  
15 whether you're going to combine them together or what  
16 you're going to do with them. You just order a loop  
17 and port from us, and we deliver them to you and you  
18 do whatever you want with them.

19          Q           Has BellSouth ever provisioned that for a  
20 CLEC?

21          A           A loop and a port?

22          Q           For providing service to a customer?

23          A           When you say "that," define "that" for me.

24          Q           Okay. Has BellSouth received an order from  
25 a CLEC that says, "I want to order a loop and I want

1 to order a port, and I want those cross-connects for  
2 the loop and the port brought to my collocated space  
3 to be hooked up by me"?

4 A I don't know whether we have or we haven't.  
5 On the same order, I just don't know.

6 Q So you don't know whether service has ever  
7 been provisioned in the way you are suggesting that it  
8 be provisioned, through physical collocation?

9 A Yes, I do. We have had people to order  
10 loops. We have had people to order ports. And we've  
11 delivered both to collocation space. Remember,  
12 whether they order them on the same order or not is  
13 irrelevant. We're going to send them -- if they order  
14 a loop, we're going to send a loop to their  
15 collocation space. If they want a port, we're going  
16 to send a port over there. So we know -- we've done  
17 that. Now, whether they've done -- what they've done  
18 with them after we've given it to them we don't know  
19 and it's really not any of our business.

20 Q Do you know whether CLECs are providing  
21 service to customers through the physical collocation  
22 in the way you have described it in this proceeding?

23 A As I said I don't know. We know that we've  
24 delivered loops to their space and ports to their  
25 space. We don't know what they've done with them in

1 their space.

2 Q Have you ever had any complaints from CLEC  
3 customers for failing to hook unbundled loops and  
4 ports up to their collocated space, thus having a  
5 customer out of service?

6 A Not that I recall, no.

7 Q You don't recall any complaints involving  
8 that scenario in the 271 proceeding?

9 A No, I do not.

10 Q In order for AT&T or any CLEC to provide  
11 service through unbundled network elements, assuming  
12 that the CLEC does the combining, it would have to  
13 have some sort of facility in its collocated space,  
14 would it not?

15 A I don't know what they would need to have.  
16 They might need a roll of tape or whatever it is they  
17 are going to use to put the wires back together when  
18 they get over there.

19 Q So you're suggesting that a CLEC would use a  
20 roll of tape to assemble the two cross-connects that  
21 would run to its collocated space?

22 A I'm not suggesting what they would use. All  
23 I'm saying is that however they do that is up to the  
24 CLEC. I don't know whether they are going to need  
25 equipment or not. It could be that simple. It could

1 be -- you know, it could be nothing more than a barrel  
2 of wire that they use to connect one thing to another.  
3 That's the CLEC's decision and they decide how they  
4 want to do that on their side of the space, however  
5 they want to do it.

6 Q I believe you talked about it in your  
7 deposition about a coordinated order of an unbundled  
8 loop and unbundled port. Do you recall that?

9 A No, I don't. I remember talking about order  
10 coordination on the purchase of unbundled loop.

11 Q Turn to Page 39 of your deposition.

12 A I don't have it. I think Staff gave me a  
13 copy. Wait. (Witness gets document.)

14 Q Read lines -- to yourself. You don't  
15 necessarily have to read them out loud. Read Lines 2  
16 through 11, please.

17 A Okay. (Witness complies.)

18 MR. PELLEGRINI: Mr. Hatch, where do you  
19 have the witness reading?

20 MR. HATCH: Page 39. Lines 2 through 11.

21 WITNESS VARNER: Yes, I see it.

22 Q (By Mr. Hatch) Does that refresh your  
23 recollection regarding order coordination?

24 A No, it doesn't. That's exactly what I said.  
25 That's order coordination on the purchase of a loop.

1 It has nothing to do with whether you purchase a port  
2 along with it or not. If you purchase the loop by  
3 itself, that's the order coordination that applies.  
4 If you purchase a loop and a port, that's the order  
5 coordination that applies on the loop. It's not an  
6 order coordination of the loop and the port.

7 Q With respect to order coordination is that  
8 something that you offer? You do offer that, correct?

9 A Yes, we do. We really offer two varieties,  
10 manual order coordination and order coordination for a  
11 specified time of day.

12 Q Does that come at an extra charge?

13 A I'm trying to remember in Florida whether we  
14 have the two varieties of analog loops. If you have  
15 SL2 loops, then the manual order coordination comes  
16 with the loop. It isn't an extra charge. With SL1  
17 loops, it is an extra charge and I can't remember in  
18 Florida whether we have one or both of those  
19 varieties.

20 Q And the purpose of your discussion of order  
21 coordination there was to indicate that that would be  
22 a means by which a customer would not be out of  
23 service for more than 15 minutes. Would that be  
24 correct?

25 A That's correct, at least with respect to

1 what BellSouth had to do in order to provision the  
2 loop.

3 Q Has BellSouth ever performed order  
4 coordination in the fashion you described here where  
5 the customer was only out of service for 15 minutes?

6 A Oh, yes, we have.

7 Q Do you know how long the customer was out of  
8 service?

9 A Less than 15 minutes.

10 Q Do you know whether they have provided  
11 unbundled loops and ports where the interval for out  
12 of service to the customer was longer than 15 minutes?

13 A Again, you asked me about the -- order  
14 coordination has to do with loops. It has nothing to  
15 do with ports. It's only applicable on loops. When  
16 you order the order coordination, that is for the  
17 loop. We don't know -- it doesn't matter what else  
18 you have ordered on that order. And so when we  
19 provision the unbundled loops under those order  
20 coordination arrangements, we provision them on the  
21 loops so that the loop is not out of service. In  
22 fact, one CLEC, I remember, where we've done that for,  
23 they've ordered -- well, several -- over a thousand  
24 loops, and we've done it -- like 99% of the time it's  
25 been 15 minutes or less.

1 Q How long did it take to do those orders?

2 A As I said, 99% of the time it was less than  
3 15 minutes.

4 Q That's the amount of time that the  
5 customer's loop was out of service. How much total  
6 time did it take BellSouth to do the thousand orders?

7 A You mean -- when you say "total", from when  
8 to when. You have to --

9 Q Exactly. From when to when? How long did  
10 it take BellSouth to do a thousand orders?

11 A I guess I'm not following what -- when you  
12 want me to start the time and stop the time. These  
13 were not a thousand all in one day. They were spread  
14 out over a period of time. I mean, this was several  
15 months. We got two one day, three another day, 15 one  
16 day.

17 Q The way these cross-connects are provisioned  
18 it is on a manual basis where a technician actually  
19 has to disconnect the cross-connects and reconnect the  
20 cross-connects in BellSouth's side of the space; is  
21 that correct?

22 A We have to connect the cross-connect. If  
23 it's an existing customer, they also have to  
24 disconnect. If it's new customer, then they don't  
25 have to disconnect.

1 Q And that's strictly a manual process the way  
2 you're proposing it?

3 A It's a manual process. However, there's no  
4 other way to do it. You're talking about physically  
5 tying two wires together. The only way to do that is  
6 manually.

7 Q How many such manual cross-connects can  
8 BellSouth do in a day?

9 A It depends on how many we get asked to do.  
10 We're staffed to handle the demand that's presented to  
11 us.

12 Q Do you have your late-filed deposition  
13 exhibits? They're probably in the Staff package.

14 A Yes.

15 Q Would you turn to Late-filed No. 2 for me,  
16 please?

17 A Okay. (Witness complies.)

18 Q Whoops, I was wrong. No. 3.

19 A No. 3.

20 Q Now, that request was with respect to how  
21 long it takes BellSouth to provide a loop and a port.  
22 And the subcaption was how long the end user was out  
23 of service; is that correct?

24 A Yes. I noticed the request. I recall this  
25 request specifically from the deposition, and I was

1 very, very clear in setting up the request -- if you  
2 go back to the deposition you'll find that what we  
3 were supposed to provide was our provisioning  
4 intervals for these various things. Because we have  
5 no information that indicates how long a customer will  
6 be out of service if you were doing some sort of a  
7 combination. All we know is how long it takes to  
8 provide the unbundled elements, and that's what we  
9 were asked to provide and that's what you have here.

10 Q Turn to Page 1 of 3.

11 A I'm sorry, I don't have a Page 1 or 3. I  
12 have a 1 of 1, 2 of 3 and 3 of 3.

13 Q It must have got omitted in the Staff's  
14 package.

15 COMMISSIONER DEASON: My Page 1 is just the  
16 question. And the diagrams or the charts, whatever  
17 you want to call them, that's on Page 2 and Page 3.

18 MR. HATCH: I'm confused. I'm sorry. I  
19 didn't understand your question.

20 COMMISSIONER DEASON: That's my Page 2.

21 MR. HATCH: You're missing, I think, one of  
22 the pages. Because I have three pages as it was  
23 filed. It appears that the Staff may have missed one  
24 of pages in the copying process.

25 COMMISSIONER DEASON: Maybe so. I do have a

1 Page 1 that says Page 1 of 1. That's just the  
2 question and response that says "see attachment."

3 MR. HATCH: Right. And the attachment is 1  
4 of 3, 2 of 3 and 3 of 3 as I have it.

5 Q (By Mr. Hatch) Now, with respect to the  
6 first item at the top of 1 of 3, unbundled loops, and  
7 Item 3 is 2-wire analog voice grade loops; is that  
8 correct?

9 A Yes.

10 Q If I wanted one of those, you would be able  
11 to supply that according to these guidelines in seven  
12 days; is that correct?

13 A That's the targeted installation and will be  
14 seven days or less.

15 Q That's not a guarantee but that's what you  
16 strive to do; is that correct?

17 A What was your -- when you say what we strive  
18 to do.

19 Q It's targeted. Is that an ironclad  
20 guarantee you will for sure have it done in seven days  
21 if I order one unbundled loop.

22 A As much as we can guarantee anything, I  
23 mean, that's what it is. Again, these target  
24 installation intervals, or the intervals that we  
25 utilize for our own people, and were given to the

1 CLECs so that they would know what types of intervals  
2 we utilize for our own people when we have to  
3 provision, you know, new facilities, so that they  
4 would be able to know what type of time frames they  
5 could promise to their customers. That's what these  
6 are.

7 Q Go down to the bottom. It says "unbundled  
8 interoffice transport"?

9 A Yes.

10 Q Does that indicate that that you can  
11 unbundle and separately provision common transport?

12 MR. PELLEGRINI: Excuse me, Mr. Hatch. Do  
13 you have additional copies?

14 MR. HATCH: I only have the one I originally  
15 was provided, but --

16 MR. PELLEGRINI: It's very difficult to  
17 follow this.

18 MR. HATCH: If you want to take a break and  
19 get copies of it, that would be fine with me.

20 COMMISSIONER GARCIA: Why don't you just use  
21 the --

22 WITNESS VARNER: What part were you on?

23 Q (By Mr. Hatch) At the very bottom of the  
24 Page 1 of 3, it says "unbundled interoffice  
25 transport." Does that indicate that you can obtain or

1 that I can obtain separately provisioned unbundled  
2 common transport?

3 A I don't think so. I believe that's  
4 dedicated transport.

5 Q Would you turn to Page 2 of 3, please?

6 A 2 of 3. I'm there.

7 Q Okay. Now, Item 39, it says "unbundled  
8 local switching 2-wire analog port"?

9 A Yes.

10 Q And that provisioning interval is five days?

11 A Yes. For one to ten.

12 Q For just one, one to ten. Item 44 says  
13 "switching functionality." It says the target  
14 installation interval is seven days; is that correct?

15 A Yes.

16 Q How is it that the targeting interval for  
17 switching functionality is seven days, when the port  
18 and the switching functionality are all one and the  
19 same as you have described it in this proceeding?

20 A I believe in that case when they say  
21 switching functionality what they are really talking  
22 about is the combined loop, port -- not loop-port,  
23 port transport set up such that you get a combined  
24 local usage bill as opposed to individual billing for  
25 switching and individual billing for the transport.

1 It's a different billing arrangement. It's optional,  
2 if you will. If you want it billed that way, we will  
3 bill it that way. And that's the arrangement we're  
4 talking about here, if you want an unbundled local  
5 usage arrangement, instead of a separate transport  
6 switching arrangement.

7 Q Let's go back to one thing you said earlier.  
8 In any of BellSouth's engineering practices, do they  
9 ever use a roll of electrical tape to join its  
10 cross-connects together?

11 A I don't know. Mr. Landry can probably tell  
12 you.

13 Q And going back to the discussion on access  
14 charges, I believe that you stated that you are  
15 entitled to receive access charges until the  
16 Commission orders otherwise; is that correct?

17 A Yes.

18 Q And that is reflected in your calculations  
19 on the chart that you showed us earlier; is that  
20 correct?

21 A That's correct.

22 Q Is that a recent policy of BellSouth?

23 A No.

24 Q Do you recognize this chart, Mr. Varner?

25 A No, I don't.

1 Q It looks like -- it may have been out of the  
2 arbitration.

3 Q Would it refresh your recollection that this  
4 was Exhibit 43 in the BellSouth/AT&T arbitration?

5 A It could well have been. I do recall having  
6 a chart like -- a chart like this to try to portray  
7 these things in arbitration. This may be it.

8 Q Now, if you'll go down that list where it  
9 says, "interLATA interstate access."

10 A Yes.

11 Q You indicate there that if AT&T or MCI gets  
12 unbundled network elements at unbundled network  
13 element prices, that you will not be collecting the  
14 access charges; is that correct?

15 A I reflect that's what MCI and AT&T proposed.  
16 The columns are headed "MCI and AT&T Proposal." That  
17 is what they proposed at that time and what they  
18 continue to propose. It's not what BellSouth  
19 proposed.

20 Q Your assumption in this chart was that we  
21 would get to keep them under our proposals; is that  
22 correct?

23 A No. My assumption was that that was what  
24 you proposed.

25 Q Does BellSouth keep the access charges in

1 every other of its states when unbundled network  
2 elements are provided?

3 A Yes.

4 Q Have you ever seen this document,  
5 Mr. Varner?

6 A No, I have not.

7 Q Could you read the response -- or could you  
8 read the request, please?

9 A "Regarding the comments on Page 13 of its  
10 application, please identify and provide the evidence  
11 regarding the potential impact from loss of access  
12 charges that are on market rates for vertical services  
13 that will occur when competitors serve business  
14 customers through unbundling, which the company claims  
15 that the Commission has."

16 Q Now, the caption up there indicates that  
17 this is BellSouth's response to the Attorney General's  
18 first set of data requests in Kentucky; is that  
19 correct?

20 A That's correct.

21 Q Would you read the response, please?

22 A Read it out loud or just to myself?

23 Q Read it out loud, please.

24 A "When a CLEC purchases unbundled network  
25 elements at prescribed rates, the CLEC may use these

1 elements in any fashion desired. Therefore, switched  
2 access traffic originating or terminating to a CLEC  
3 end user customer served by a BellSouth rebundled  
4 elements no longer subject to switched access rates --  
5 (inaudible reading) --

6           **COMMISSIONER DEASON:** Mr. Varner, you may  
7 need to slow down a little bit.

8           **WITNESS VARNER:** Oh, I'm sorry. It was a  
9 long answer and I was trying to get through it. I'm  
10 sorry.

11           "The CLEC would pay the unbundled element  
12 rates to BellSouth for that switched access traffic  
13 where previously the IXC paid BellSouth the switched  
14 access rates. Switched access rates paid by IXCs is  
15 in the range of 3.8 cents per access minute for  
16 intrastate traffic."

17           "Rates approved by the Kentucky PSC for end  
18 office switching, tandem switching, and common  
19 transport when combined are in the range of half a  
20 cent per minute. This results in a revenue loss of  
21 over 86% for each access minute."

22           "In the case of vertical service features,  
23 the CLEC only pays the rate for unbundled local  
24 switching. No additional charges are assessed -- it  
25 says accessed -- for vertical switch features. In

1 each of these cases a CLEC has considerable leverage  
2 in pricing its services to assemble an attractive  
3 offering to end users, all the while using exactly the  
4 same BellSouth facilities used today."

5 Q So in Kentucky you don't get to keep the  
6 intrastate access charges; is that correct?

7 A I don't think that's correct, because what I  
8 recall of the Kentucky order, it specifically said  
9 that we would keep the access charges. What this  
10 response is evidently asking us to do is to provide  
11 the evidence regarding the potential impact if we did  
12 not get access charges at market rates on vertical  
13 services.

14 I don't think it's trying to say that that  
15 is what the situation is. It's saying this is what  
16 would happen if that is what the situation is. But my  
17 recollection is the Kentucky Commission's order in the  
18 arbitration proceeding was that access charges will  
19 continue to apply.

20 MR. HATCH: Madam Chairman, could we get  
21 this marked for identification, please?

22 CHAIRMAN JOHNSON: We'll mark this as  
23 Exhibit 25 with a -- what's the short title?

24 MR. HATCH: "BellSouth response to the  
25 Attorney General's data requests in Kentucky."

1           **CHAIRMAN JOHNSON:** Okay.

2           (Exhibit 25 marked for identification.)

3           **MR. PELLEGRINI:** Chairman Johnson, could I  
4 ask at this time that Page 1 of three of Mr. Varner's  
5 late-filed deposition exhibit be supplemented? It was  
6 missing from the Staff's exhibit.

7           **CHAIRMAN JOHNSON:** Okay. We'll make sure  
8 that that's supplemented and added to the exhibit.

9           **MR. PELLEGRINI:** Thank you.

10          **Q**       **(By Mr. Hatch)** Now, with respect to when  
11 BellSouth provides service to its customers, when a  
12 customer terminates service with BellSouth, BellSouth  
13 does not physically disconnect any of the unbundled  
14 network elements that were used to provide service to  
15 that customer, do they?

16          **A**       Sometimes yes, sometimes no.

17          **Q**       Under what circumstances would they?

18          **A**       There are no real set of circumstances. It  
19 really has to do with managing the facilities and what  
20 needs to be done to overall manage the facilities.

21                If there is a need to reuse the facilities,  
22 then you may disconnect them. If not, then you don't.  
23 Mr. Landry can give you more detail maybe on what type  
24 situations result in our actually disconnecting them  
25 and what situations might result in leaving them

1 partially connected, if you will.

2 Q It would be correct to say that unless there  
3 is a facilities management type of problem, that  
4 BellSouth would typically leave those facilities  
5 connected when a customer terminates service; would  
6 that be correct?

7 A No, I wouldn't think so. It doesn't have to  
8 be a problem. We would manage the facilities as we  
9 need to. That determines -- whatever we need to do to  
10 most efficiently manage the facilities in that office  
11 would determine whether to disconnect it or not.

12 Q Does BellSouth provide soft dial tone?

13 A Yes, we do in some cases.

14 Q And --

15 A One of those management tools.

16 Q What is your understanding of soft dial  
17 tone?

18 A Effectively what you have is the service can  
19 contact 911, and I think there's something else. I  
20 can't remember, but I know that they can call 911 on  
21 the line.

22 Q Now, in order to provide soft dial tone,  
23 that would require that the loop be connected to the  
24 main distribution frame, that the jumper from the line  
25 side of the main distribution frame be left connected

1 to the line side -- or the port side of the main  
2 distribution frame, and that the port remain active;  
3 is that correct?

4       A     I don't know about all those details. It  
5 does require that you have a loop connected to a port.

6       Q     So if BellSouth is obligated to provide soft  
7 dial tone, then in every case where it provides soft  
8 dial tone there would be no physical disruption with  
9 when a customer left BellSouth's service at that  
10 location served by those facilities?

11       A     Probably not. When you say obligated to  
12 provide soft dial tone, I had read something somewhere  
13 about an obligation to do that that I really wasn't  
14 aware of.

15               Typically, soft dial tone is an engineering  
16 decision about how best to manage the facilities. I  
17 didn't know that there was a obligation that you do it  
18 in certain situations. Maybe there is. I just wasn't  
19 aware of it.

20       Q     Where in the 8th Circuit's decision or in  
21 the Act itself does BellSouth find the authority to  
22 physically rip apart the network in order to provide  
23 unbundled network elements to carriers so that they  
24 may then recombine them?

25       A     251(c)(3). I mean, the answer to that is in

1 the question. Unbundled means separated. The whole  
2 purpose of 251(c)(3) was to provide carriers the  
3 ability to get parts of the network that they wanted  
4 to use, and the only way you're going to give somebody  
5 parts of something that's already put together is to  
6 take it apart so that they can get the part that they  
7 want. I mean, that's what unbundled means.

8 Q BellSouth is obligated to provide unbundled  
9 common transport pursuant to the Commission's orders  
10 and the contract with AT&T, is it not?

11 A That's correct, we do; and we do provide it.

12 Q And you do not physically rip apart the  
13 common transport trunking from your switch when you  
14 provide it, do you?

15 A Yes, if that's what -- you know, if that's  
16 what has to be done. See, common transport is  
17 somewhat of an oddity in that it can only be unbundled  
18 on one side. You can unbundle the port from common  
19 transport, but you really can't unbundle the common  
20 transport from the port, because the only way you can  
21 get to it is through the port.

22 Q So you provide it on an unbundled basis, but  
23 not on an unbundled basis?

24 A Well, you provide it on an unbundled basis.  
25 It can be unbundled in that you can get the port

1 without common transport. You can get the port with  
2 dedicated transport, if you want. So you can get a  
3 port without common transport, but you can't get  
4 common transport without a port.

5 Q Could AT&T run a cross-connect from the port  
6 side of its switch in a collocated space to a trunk  
7 side port in BellSouth's switch in order to obtain  
8 common transport?

9 A No.

10 Q Why?

11 A There's nothing for you to connect to. I  
12 mean, the only way you're going to get to that trunk  
13 side port is you have to go through the switch. The  
14 only access to that is through the switch. There is  
15 not something hanging out there for AT&T to connect a  
16 piece of wire to.

17 Q So the only other way that it could be done  
18 would be to purchase dedicated transport?

19 A Only other way what could be done?

20 Q The only other way that we could obtain  
21 transport from AT&T's switch that is collocated in  
22 BellSouth's CO and bypass the BellSouth switch itself  
23 to obtain transport would be dedicated transport,  
24 would that be accurate?

25 A Yes.

1           Q     I think I skipped by virtual collocation.  
2     Could you describe virtual collocation for me, please?

3           A     Virtual collocation is really an arrangement  
4     wherein a CLEC determines -- you know, they apply to  
5     us and say they want to locate some equipment in the  
6     lineup in our office.  It's limited to certain types  
7     of equipment.  For example, you can't virtual  
8     collocate a switch.

9                     But then they apply to us -- they make  
10    arrangements to have the equipment installed.  Then  
11    they sell the equipment to BellSouth for a nominal  
12    fee.  I think it's a dollar.  And then BellSouth  
13    maintains the equipment for them.

14          Q     Now, for BellSouth to provide unbundled  
15    network elements under its proposal for disconnecting  
16    those elements and providing them to the CLEC, how  
17    would that work under a virtual collocation  
18    arrangement?

19          A     The virtual collocation arrangement really  
20    has nothing to do with how you unbundle the elements,  
21    and if you order a loop from us, we're going to  
22    unbundle it and give it to you.

23          Q     In a virtual collocation context, is an AT&T  
24    technician allowed into BellSouth's office to work on  
25    the virtually collocated equipment?

1           A     No.  What you'd have to do in that  
2 arrangement is you prewire the equipment that you put  
3 in and you tell us to take the loop and terminate it  
4 at a specific place on that prewired frame, and that's  
5 what we would do.

6           Q     Does BellSouth currently do any of that?  
7 Are there any prewired frames collocated in their COs  
8 under a virtual collocation arrangement?

9           A     I don't know.

10          Q     Now, if AT&T bought or leased a frame, a  
11 prewired frame, for purposes of virtual collocation,  
12 wouldn't BellSouth's technicians be doing the  
13 combining under those circumstances?

14          A     No, we wouldn't.

15          Q     Why would they not?

16          A     Because what's happened is you've instructed  
17 us to terminate unbundled network elements at specific  
18 positions on your equipment.  If, in fact, those  
19 things are connected or not connected is irrelevant to  
20 us.

21                    You will have done the combining yourself  
22 when you prewired the frame.  When you prewired, you  
23 know, position 1 to position 62, or whatever it is  
24 that you did, that's when the combining was done, when  
25 you prewired the frame.

1 All we're doing is terminating these things  
2 where you told us to terminate them. We don't know  
3 whether they're connected together or not. That was  
4 something you did.

5 Q So, as I understand it, then, AT&T has  
6 precombined those unbundled elements that it wants and  
7 it's waiting for BellSouth just to catch up?

8 A No. I think you've prewired your frame and  
9 you've asked us to put the elements at those positions  
10 on the frame, and that's what we're going to do.

11 Q Would you turn to Page 94 of your  
12 deposition, please? (Pause) You're there?

13 A Yes, I am.

14 Q Could you read the question beginning on  
15 Page -- Line 3. Just read it to yourself. You don't  
16 have to read it out loud. Down through the end of  
17 Line 8.

18 A Yes. I see that.

19 Q Now, you indicate there that there are a  
20 number of ways that they could provide virtual  
21 collocation; is that correct?

22 A Yes.

23 Q And you identified a prewired frame?

24 A Yes.

25 Q What other ways could that be accomplished?

1           A     Can't think of any. One I know is the  
2     rewired frame. Mr. Landry can probably tell you. I  
3     remember there's a couple, three more that have been  
4     discussed, but I just don't remember what they are.

5                     One of them may have to do with some sort of  
6     a cross-connect panel that you could install that --  
7     you know, somehow or another you install some kind of  
8     a cross-connect panel in the space we terminate things  
9     on there, and then you make the -- you do some sort of  
10    electronic stuff with the panel. I think that's  
11    another way it could be done.

12           Q     Let's go back and talk about one thing that  
13    was discussed earlier. Do you recall the discussion  
14    surrounding the provision of operator services in the  
15    context of unbundled network elements?

16           A     Yes, I do.

17           Q     And I believe it was your testimony that the  
18    switch translation that acts as the routing function  
19    for operator services is the access that you're  
20    obligated to provide?

21           A     Yes, that's the -- well, obligated to  
22    provide. We're also obligated to provide the operator  
23    services unbundled element, too, I mean, in addition;  
24    but as far as access to it, that's provided through  
25    the port, and that's provided through the switch

1 translation.

2 Q And I believe it was your testimony that  
3 with respect to the provision of operator service as a  
4 separate unbundled network element, that those costs  
5 were recovered solely by the operator services rates  
6 themselves; is that correct?

7 A The rates for the operator services  
8 unbundled elements.

9 Q And directory assistance, lumping them both  
10 together?

11 A Yes, even though they were separate  
12 elements, but same kind of arrangement is in place.

13 Q Now, do you recall that in the Commission's  
14 arbitration order when the Commission established the  
15 resale discounts, it included in the revenues and  
16 expenses that BellSouth was allowed to use, for  
17 purposes of calculating the avoided costs, costs  
18 related to operator services?

19 A No, I don't. I remember their -- I just  
20 don't recall what all was done there. They did not  
21 exclude as avoided cost the operator services cost  
22 costs. There are some costs -- I think they really  
23 have to do with number services functions that may be  
24 avoided -- that are included in accounts that are  
25 labeled "operator services," if I remember correctly,

1 that they did exclude.

2 Q So in the cost of the local service that was  
3 established for BellSouth for purposes of local  
4 service resale, operator services expenses were  
5 included in that amount; is that correct?

6 A No, because you are not trying to figure out  
7 the cost of local service. What you were trying to do  
8 was to figure out what costs would be avoided if, in  
9 fact, somebody was to resell the local service. And  
10 the resale discount was applicable across all resident  
11 services and all business services. It wasn't  
12 separate discounts for separate services.

13 So what you were identifying was the cost  
14 that would be avoided when somebody resold a resident  
15 service, regardless of which one that it was. So  
16 there was no distinction trying to be made between  
17 basic versus operator services versus features versus  
18 any other residential retail service.

19 Q You're correct. I may have misspoken.

20 With respect to establishing the avoided  
21 costs discount, operator services expenses were left  
22 in. They were not considered avoided; is that  
23 correct?

24 A That's right, because operator services was  
25 one of the things that could be resold. That's why it

1 was left in. So since it was one of the services that  
2 could be resold, then obviously those costs would not  
3 be avoided, and the costs that they were identifying  
4 was the costs that would be avoided when the service  
5 was resold. You're obviously not going to avoid the  
6 cost of the service that you're actually providing for  
7 resale.

8 Q Now, if AT&T provides its own operator  
9 services in a resale context, it must pick up the cost  
10 of all of its operator services expenses; is that  
11 correct?

12 A That's correct.

13 Q Now, with respect to its resale discount  
14 that was calculated, it is also paying BellSouth for  
15 operator services expenses; is that correct, that  
16 BellSouth would not be providing?

17 A I don't think so. Again, the resale  
18 discount is a broad average. When you get any given  
19 arrangement, some things are going to be in it, some  
20 things are not going to be in it. So the purpose for  
21 setting the resale discount as a broad average, I  
22 believe, was to avoid sort of the administration of  
23 trying to have multiple discounts.

24 You could have come up with 2,000 different  
25 discounts if you wanted to, but I think the Commission

1 opted for a single discount across all residential  
2 services, recognizing that just like any average when  
3 you do that, some situations it's going to be more  
4 appropriate for than others.

5 Q And a final couple of clean-ups, I think.

6 (Pause)

7 MR. HATCH: I'm done. Thank you very much,  
8 Mr. Varner.

9 WITNESS VARNER: Thank you.

10 CROSS EXAMINATION

11 BY MR. PELLEGRINI:

12 Q Mr. Varner, I want to try to clean up just a  
13 few points with you. You've testified that with the  
14 purchase of a loop and a port, an ALEC acquires access  
15 to a number of functionalities, correct?

16 A Yes.

17 Q Access?

18 A Yes.

19 Q However, the ALEC does not acquire those  
20 functionalities, does it?

21 A No, it does not.

22 Q Is it not true, then, that without those  
23 functionalities, an ALEC does not possess the capacity  
24 to provide basic local service?

25 A No, that's not correct.

1 Q Why is it not correct?

2 A For example, let's just take operator  
3 services. Operator services is not basic local  
4 exchange service. It is a separate service. There  
5 are companies that that's their only business is  
6 operator services.

7 What you get when you purchase basic local  
8 exchange service is the ability to access an operator.  
9 The simplest way to think about it is what do you get  
10 for the \$10.65 you pay in Miami, okay? Anything that  
11 you don't get for the \$10.65 is not a part or -- if  
12 you've got to pay something else for it, it's not  
13 basic local exchange service.

14 Q So then it's your testimony, with the  
15 purchase or lease of a loop and a port giving access  
16 to these functionalities, that much alone  
17 constitutes -- or provides a capacity to provide basic  
18 local service?

19 A Yes, because that's what you get for the  
20 \$10.65 at the residential price in Miami. That's all  
21 you get for that. So that when you get the loop and  
22 port, you've now gotten the same things that a retail  
23 customer gets for their \$10.65.

24 Q Now, when AT&T or MCI would purchase a loop  
25 and a port, either combined under the agreements or

1 uncombined to be recombined by AT&T or MCI, it's your  
2 testimony that in either case, the service -- if the  
3 service provided thereby replicates an existing  
4 BellSouth retail service, it should be priced at  
5 resale, correct?

6 A That's correct.

7 Q Even in the case where the ALEC does the  
8 combining?

9 A Yes.

10 Q Now, I want to direct your attention to the  
11 8th Circuit's order, and specifically the language  
12 which is in the middle panel behind you. Let me read  
13 you the salient phrase there. The 8th Circuit said  
14 that it held that the new entrant -- that new entrants  
15 may obtain the ability to provide finished  
16 telecommunications services entirely through the  
17 unbundled access provisions in Section 251(C)(3).  
18 Do you see that?

19 A Is that the middle?

20 Q The middle panel, I believe. I can't see it  
21 quite as well as I need to from here.

22 A I was pretty close.

23 Q I'm sorry?

24 A It was pretty close.

25 Q All right. Given that holding of the 8th

1 Circuit, how do you reconcile BellSouth's position  
2 that when the ALEC combines -- purchases unbundled  
3 elements, loops and ports and combines them itself to  
4 provide a competitive service, how is that position  
5 not in conflict with what the 8th Circuit has held?

6       A     Okay. When they combine it themselves -- it  
7 is in conflict with what the 8th Circuit has held.  
8 It's different. The 8th Circuit has said when they  
9 combine it themselves, that they are able to get those  
10 unbundled network elements at unbundled network  
11 element prices. So that part of it is different. But  
12 that's not what we're dealing with here.

13               We're dealing with what do you do in these  
14 agreements that have an obligation for us to combine  
15 and also allow them to combine these until such time  
16 as the 8th Circuit order becomes final. Once the  
17 8th Circuit order becomes final, then the language  
18 under the 8th Circuit order will control. We put that  
19 in the agreements, and there will be no reason for us  
20 trying to deal with this.

21               But until it does become final, we've got to  
22 figure out, okay, well, what are we going to do in the  
23 interim time frame. And what I submit is that the  
24 right thing to do in this interim time frame, since we  
25 are obligated to combine the elements for them, would

1 be to treat both of the situations as resale.

2           Once the 8th Circuit comes along and their  
3 ruling becomes final, then our obligation to combine  
4 the elements for them should be removed from the  
5 agreements in its entirety, and then if they combine  
6 them themselves, they'll get them at unbundled network  
7 elements prices. And, in fact, if they wanted that in  
8 their contract today, we'd be more than happy to give  
9 it to them today.

10           Q     But I'm specifically focusing on the  
11 agreement as it exists today and the situation in  
12 which the ALEC would purchase, as it may, unbundled  
13 elements, loops and ports unbundled, and recombines  
14 them.

15           As I interpret the 8th Circuit's holding  
16 here, it would enable the ALEC to put together  
17 unbundled network elements in any manner of their  
18 choosing to provide any telecommunication service  
19 without limitation. Would you accept that  
20 interpretation?

21           A     No. Because what you'd have to assume is  
22 that the 8th Circuit's ruling is controlling on those  
23 agreements, and those agreements specifically say that  
24 these court rulings are not binding until they're  
25 final and nonappealable. So the fact that the

1 8th Circuit has ruled has no impact on the agreement  
2 until that ruling becomes final and nonappealable. So  
3 then the agreement exists as if that ruling didn't --  
4 wasn't even there until such time as that ruling  
5 becomes final and nonappealable.

6 Q I want to ask you a question or two with  
7 reference to Issues 9 and 10 in this proceeding. Do  
8 you have handy access to the agreements, both the AT&T  
9 and MCI agreements?

10 A No, I don't.

11 Q Okay. In Issues 9 and 10 the Commission is  
12 asked to determine whether BellSouth is required under  
13 its interconnection agreements with MCI and AT&T to  
14 provide MCI and AT&T with usage data for billing  
15 purposes; isn't that right?

16 A I think -- yes, that sounds right.

17 Q And BellSouth holds the position that since  
18 MCI and AT&T provide local service only through  
19 service resale, it is therefore appropriate for  
20 BellSouth to bill and collect intrastate interLATA  
21 access charges and withhold usage data from them; is  
22 that correct?

23 A No, that's not correct.

24 Q All right. Why is that not correct?

25 A I mean that it's not our position.

1           Q     Well, what then is your position? How is my  
2 statement of your position wrong?

3           A     Well, first, it doesn't matter whether  
4 they're engaged in services of resale or not. With  
5 respect to intrastate access charges, until the  
6 Commission makes a determination -- unless the  
7 Commission decides that BellSouth is not entitled to  
8 collect access charges, then we will continue to  
9 collect intrastate access charges.

10                     Since we are the ones that's billing the  
11 intrastate access charges, there's no reason for us to  
12 send data to AT&T and MCI for intrastate access  
13 charges.

14                     We do send them data, or at least have the  
15 capability to send them data, and are working for them  
16 to get it to them, for interstate access charges,  
17 since the FCC has said they're entitled to bill those;  
18 but for intrastate they're not entitled to bill them,  
19 so we don't send them the data.

20           Q     Okay. I'm not sure my interpretation of  
21 your position is very much different from yours. But  
22 I want to direct your attention now to the AT&T and  
23 BellSouth agreement and specifically Attachment 7.

24                     **MR. MELSON:** Is that AT&T or MCI?

25                     **MR. PELLEGRINI:** The AT&T agreement.

1           **MR. MELSON:** I think you're looking at the  
2 MCI, Mr. Varner.

3           **WITNESS VARNER:** I am.

4           **MR. PELLEGRINI:** Attachment 7.

5           **WITNESS VARNER:** Okay. I have it.

6           **Q**       **(By Mr. Pellegrini)** Mr. Eppsteiner  
7 testified that Sections 1.2, 2.1 and 3.1 require  
8 BellSouth to furnish usage data. Do you see those  
9 sections?

10          **A**       Yes, I do.

11          **Q**       Can you explain to me why you think  
12 Mr. Eppsteiner is wrong?

13          **A**       Yes. It requires -- it's my understanding  
14 of this part of the agreement is that what it is is  
15 this is usage data that AT&T needs to enable it to  
16 bill its customers.

17          **Q**       Yes.

18          **A**       So it would be things like, for example,  
19 interstate access, which is kind of a misnomer,  
20 because they're not going to bill that to anybody  
21 since they're the IXC. Things like, you know, if they  
22 were reselling toll, for example, or the toll detail  
23 to enable them to bill their customers. If they were  
24 using usage sensitive features like usage sensitive  
25 three-way calling, tell them how many times the

1 customer used to do that so they could bill it. Those  
2 kinds of things; measured service. It was local  
3 measured service, you know, what was the measured  
4 usage so that they can bill their customers.

5 So it's things that they were able to bill;  
6 credit card calling, third number, that kind of stuff.  
7 So it's any stuff that they would need data for in  
8 order to bill their customers is what we had to  
9 provide them.

10 Intrastate access is not something they  
11 bill. It's BellSouth does that billing, so there's no  
12 reason to send them that data.

13 Q All right. Would you turn next to the MCI  
14 agreement and Attachment 8?

15 A Okay.

16 Q Specifically, I'd like you to look at  
17 Section 4.1.1.3. I believe it was Mr. Martinez's  
18 testimony in his deposition that by virtue of that  
19 section particularly, BellSouth is required to furnish  
20 usage data to MCI.

21 Could you explain to the Commission why you  
22 believe Mr. Martinez to be wrong, if you do?

23 A Okay. Would you repeat what he said? I  
24 didn't hear all of what he said.

25 Q Mr. Martinez relies on Section 4.1.1.3 in

1 concluding that BellSouth is required to furnish usage  
2 data for all calls to MCI. Why is he wrong?

3       **A**       Well, from what I recall -- you might ask  
4 Mr. Hendrix this -- there are some other parts of the  
5 agreement that also deal with MCI, provision of usage  
6 data to MCI. And essentially what it says -- what it  
7 ends up is the same thing I said for AT&T applies to  
8 MCI.

9               **MR. PELLEGRINI:** All right. Thank you,  
10 Mr. Varner.

11               **WITNESS VARNER:** Yes.

12               **COMMISSIONER JACOBS:** I have a couple quick  
13 questions. You've indicated that the primary issue  
14 here is one of pricing. There have been some  
15 allegations, particularly I think in Mr. Falcone's  
16 rebuttal, that there are competitive issues as well,  
17 and I'd like to have you briefly expound on two of  
18 those.

19               One has to do with the ability of ALECs to  
20 compete against BellSouth in this market on a  
21 going-forward basis as you migrate to -- I think it's  
22 the IDLC technology, and the idea being that the ALECs  
23 are probably going to be left with the older  
24 technology as you migrate to the newer technology.

25               And then the other issue has to do with --

1 and I guess it's associated with that -- is that your  
2 ability -- I think it's under the recent change  
3 facility under switches to do the same -- to carry out  
4 the same provisioning without breaking apart these  
5 elements.

6           **WITNESS VARNER:** Okay. Let me take them in  
7 order. The idea on the IDLC of us having the newer  
8 technology while they're having the older is  
9 fictitious. They are coming into the market, have the  
10 ability to buy from the same people we buy, and when  
11 they use our equipment, they're going to be using the  
12 same equipment we use.

13           If they come in and they want to serve a  
14 customer, they're going to be serving the customer  
15 utilizing the same stuff that we serve the customer.  
16 And if they're buying the elements and the  
17 capabilities from us -- otherwise they can go to the  
18 same people we buy stuff from and buy it from them.

19           **COMMISSIONER JACOBS:** I think the point of  
20 it was that if you provision them the way you propose,  
21 it would be unlikely that they would migrate to the  
22 newer technology. Is that --

23           **WITNESS VARNER:** I can't see why that -- why  
24 they would -- why that will be an issue of why they  
25 would have that kind of a contention. Because, for

1 example, they buy a loop from us; as we migrate --  
2 that's what they get from us is a connection from  
3 point A to point B.

4           Let's say we come in and upgrade our  
5 facilities, okay. That loop is going to get upgraded  
6 just like every other loop in the wire center, or  
7 every other loop in that cross-section. You're not  
8 buying a specific technology. They're buying a  
9 capability from us. And then as the network is  
10 upgraded, the capabilities, the equipment providing  
11 things, it ends up upgraded as well as the things for  
12 us is upgraded.

13           The second point was really an irrelevant  
14 point. We're not disputing that when AT&T and MCI  
15 under their contract today orders a combination from  
16 us that we will provide them a combination. What that  
17 means is that when they order a combination, we're not  
18 going to break it apart. We're going to leave it  
19 exactly the same. We're going to leave it the same as  
20 it would be if they had issued us a resale order.  
21 That's what they've asked us to do in combinations.

22           Remember, we've talked a lot about, you  
23 know, how can you tell when it replicates a retail  
24 service. There's a very, very easy way to tell. The  
25 order they send us says, "Send this customer to me and

1 give me the unbundled network elements to give him the  
2 service he already has." Okay.

3 That means you're replicating a retail  
4 service. Their own order shows that that's what  
5 they're getting. All right. When they do that we're  
6 not to going to break it apart. We're not going to go  
7 through this collocation arrangement and set up all of  
8 that that's on those other diagrams that he has.

9 It's going to be that simple diagram  
10 number 1. The same way the customer is getting  
11 service from BellSouth today is going to be left in  
12 place, given to him the same way tomorrow. The only  
13 issue is that are we going to price that the way that  
14 that service, you know, should be priced and is  
15 priced, which is resale, or are you going to give him,  
16 you know, a lower price for it.

17 But all those technical issues don't exist.  
18 All the stuff that he brought in about collocation is  
19 really irrelevant to the issue that's at hand here  
20 because we're going to leave the network elements  
21 combined under the contract.

22 **COMMISSIONER JACOBS:** That's it. Thank you.

23 **CHAIRMAN JOHNSON:** How much redirect do you  
24 have?

25 **MS. WHITE:** None. I wouldn't dare, in the

1 first place. (Laughter)

2 MR. PELLEGRINI: Chairman Johnson, just a  
3 moment please.

4 MS. WHITE: Can I object?

5 CHAIRMAN JOHNSON: Yes.

6 MS. WHITE: It would be one objection I  
7 could win, and I object. (Laughter)

8 Q (By Mr. Pellegrini) Mr. Varner, just  
9 one -- this is the final question. Are you aware that  
10 during the arbitration proceeding, AT&T asked the  
11 Commission to remove the costs of operator services  
12 from resale because it wanted to provide its own  
13 operator services?

14 A I think they asked them to remove it from  
15 the avoided cost of resale; not from the cost of the  
16 services to be resold, but from the avoided cost of  
17 the resale sale, I think, is what they asked.

18 Q And the Commission denied AT&T's request  
19 stating that if AT&T wanted to charge BellSouth retail  
20 services, that it needs to provide service through  
21 UNEs. Do you recall that?

22 A No, I don't. I really don't. I do remember  
23 a finding about you have to take the service as it is.  
24 I recall something like that, if that's what you're  
25 referring to.

1           **Q**     So the point though is, isn't it true that  
2 in order to differentiate its service, AT&T would have  
3 to use its own operator services through UNEs?

4           **A**     That differentiates its operator services.  
5 It doesn't differentiate its basic exchange service.

6           **Q**     To differentiate its service as from  
7 BellSouth's service?

8           **A**     Its operator services from BellSouth's  
9 operator services. It doesn't differentiate -- if  
10 they're using unbundled network elements, always  
11 remember they're using the same equipment that  
12 BellSouth is using, the same stuff that's providing  
13 service to the retail customer. Can't do anything  
14 more with it than BellSouth can do with it because  
15 it's the same stuff.

16                   **MR. PELLEGRINI:** All right. Thank you.

17                   (Witness Varner excused.)

18   - - - - -

19                   **MS. WHITE:** BellSouth would move Exhibits 22  
20 and 23.

21                   **CHAIRMAN JOHNSON:** Show those admitted  
22 without objection.

23                   (Exhibits 22 and 23 received in evidence.)

24                   **MR. PELLEGRINI:** Staff moves Exhibit 24.

25                   **CHAIRMAN JOHNSON:** Show that admitted

1 without objection.

2 (Exhibit 24 received in evidence.)

3 **MR. HATCH:** AT&T moves 25.

4 **CHAIRMAN JOHNSON:** Show 25 admitted without  
5 objection.

6 (Exhibit 25 received in evidence.)

7 **CHAIRMAN JOHNSON:** We will take a 20-minute  
8 lunch break.

9 (Thereupon, lunch recess was taken at 2:20  
10 p.m.)

11 - - - - -

12 **CHAIRMAN JOHNSON:** We're going to go back on  
13 the record. BellSouth?

14 **MS. WHITE:** BellSouth calls Mr. Hendrix.

15 **JERRY HENDRIX**

16 was called as a witness on behalf of BellSouth  
17 Telecommunications, Inc. and, having been duly sworn,  
18 testified as follows:

19 **DIRECT EXAMINATION**

20 **BY MS. WHITE:**

21 **Q** Mr. Hendrix, would you state your name and  
22 address for the record, please?

23 **A** Yes. My name is Jerry D. Hendrix. My  
24 address is 675 West Peachtree Street, Atlanta,  
25 Georgia.

1 Q By whom are you employed?

2 A By BellSouth.

3 Q Did you previously cause to be prepared and  
4 prefiled in this case direct testimony consisting of  
5 15 pages and rebuttal testimony consisting of 11  
6 pages?

7 A Yes, I did.

8 Q Do you have any additions, corrections or  
9 changes to make to that testimony at this time?

10 A No, I do not.

11 Q If I were to ask you the same questions  
12 today that are posed in your prefiled direct and  
13 rebuttal testimony, would your answers be the same?

14 A Yes.

15 MS. WHITE: I'd like to have the direct and  
16 rebuttal testimony of Mr. Hendrix inserted into the  
17 record as if read.

18 CHAIRMAN JOHNSON: It will be so inserted.

19

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BELLSOUTH TELECOMMUNICATIONS, INC.  
TESTIMONY OF JERRY HENDRIX  
BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION  
DOCKET NO. 971140-TP  
JANUARY 29, 1998

Q. PLEASE STATE YOUR NAME AND COMPANY NAME AND ADDRESS.

A. My name is Jerry Hendrix. I am employed by BellSouth Telecommunications, Inc. as Director - Interconnection Services Pricing. My business address is 675 West Peachtree Street, Atlanta, Georgia 30375.

Q. PLEASE SUMMARIZE YOUR BACKGROUND AND EXPERIENCE.

A. I graduated from Morehouse College in Atlanta, Georgia in 1975 with a Bachelor of Arts Degree. I began employment with Southern Bell in 1979 and have held various positions in the Network Distribution Department before joining the BellSouth Headquarters Regulatory organization in 1985. On January 1, 1996 my responsibilities moved to Interconnection Services Pricing in the Interconnection Customer Business Unit.

Q. HAVE YOU TESTIFIED PREVIOUSLY?

1 A. Yes. I have testified in proceedings before the Alabama, Florida, Georgia,  
2 Kentucky, Louisiana, Mississippi, South Carolina, and Tennessee Public  
3 Service Commissions and the North Carolina Utilities Commission.

4

5 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

6

7 A. The purpose of my testimony is to discuss the issues identified in this docket  
8 relative to the contractual obligations contained in the BellSouth-MCI and  
9 BellSouth-AT&T interconnection agreements.

10

11 Q. IN YOUR OPINION, IS BELL SOUTH OBLIGATED TO COMBINE  
12 UNBUNDLED NETWORK ELEMENTS?

13

14 A. Based on the Eighth Circuit Court's decision, BellSouth is not obligated to  
15 recombine unbundled network elements (UNEs). However, the Eighth Circuit  
16 Court affirmed the right of ALECs to combine unbundled elements themselves  
17 and BellSouth will provide such elements as delineated in executed  
18 interconnection agreements, at the individual rates established by the various  
19 state commissions.

20

21 Furthermore, until such time as the Eight Circuit's opinion becomes final and  
22 non-appealable, BellSouth intends to honor its contractual obligation to  
23 provision UNE combinations in those executed agreements which include  
24 language regarding the provisioning of combinations.

25

1 BellSouth has consistently taken the position that ALECs are free to use  
2 unbundled network elements recombined by BellSouth in any manner it  
3 chooses. However, in Florida, when an ALEC orders a combination of  
4 network elements or orders individual network elements that, when combined,  
5 duplicate a retail service provided by BellSouth, for purposes of billing and  
6 provisioning, such orders should be treated as resale. Consequently, requests  
7 for a migration or a "switch-as-is", should be treated as resale, with the pricing  
8 rules applicable thereto, and not as the sale of unbundled network elements.

9

10 Q. MCI ALLEGES THAT THE BST-MCI INTERCONNECTION  
11 AGREEMENT SETS FORTH PRICES FOR COMBINING UNBUNDLED  
12 NETWORK ELEMENTS. DOES BELLSOUTH AGREE?

13

14 A. No.

15

16 Q. WHAT IS THE HISTORY BEHIND THE LANGUAGE CONTAINED IN  
17 THE BST-MCI INTERCONNECTION AGREEMENT THAT ADDRESSES  
18 THE COMBINATION ISSUE?

19

20 A. The Commission allowed MCI to combine unbundled network elements in any  
21 manner they choose, including recreating a BellSouth service, but the  
22 Commission did not rule on the pricing of recombined elements. (Order No.  
23 PSC-96-1579-FOF-TP, pages 37-38).

24

25

1 Negotiations with MCI revolved around trying to encompass the  
2 Commission's orders, however, there was no direction from the Commission  
3 as to how the purchase of combinations should be priced.

4

5 Furthermore, in its March 19, 1997 Final Order on Motions for  
6 Reconsideration regarding the consolidated dockets, the Commission stated:

7 "In our original arbitration proceeding in this docket, we were not  
8 presented with the specific issue of the pricing of recombined elements  
9 when recreating the same service offered for resale....

10

11 Furthermore, we set rates only for specific elements that the parties  
12 requested. Therefore, it is not clear from the record in this proceeding  
13 that our decision included rates for all elements necessary to recreate a  
14 complete retail service. Thus, it is inappropriate for us to make a  
15 determination on this issue at this time. (Order No. PSC-97-0298-FOF-  
16 TP, page 7).

17

18 In BellSouth's version of the Agreement filed on April 4, 1997, BellSouth  
19 proposed language to address the issue of how UNE combinations should be  
20 priced. BellSouth's proposed language stated that:

21

22 "negotiations between the parties should address the price of a retail  
23 service that is recreated by combining UNEs. Recombining UNEs  
24 shall not be used to undercut the resale price of the service recreated."

25

1 In the Commission's May 27, 1997 Order (Order No. PSC-97-0602-FOF-TP)  
2 the Commission required the parties to sign an agreement that included exactly  
3 the language prescribed in the Commission's previous Final Order Approving  
4 Arbitration Agreement and threatened to fine any non-signing party  
5 \$25,000.00 a day for each day after the June 10 filing date that the agreement  
6 remained unsigned. In that same order, the Commission stated:

7 "We expressed concerns with the potential pricing of UNEs to  
8 duplicate a resold service at our Agenda Conference, and we expressed  
9 our concerns in the Order in dicta; however, we stated that the pricing  
10 issues associated with the rebundling of UNEs to duplicate a resold  
11 service was not arbitrated.... Accordingly, BellSouth's proposed  
12 language shall not be included in the agreement." (Order page 5).

13  
14 BellSouth's proposed language mirrored the Commission's language in its  
15 March 19, 1997 Order, PSC-97-0298-TP in FPSC Dockets 960846-TP and  
16 960916-TP, wherein the Commission itself stated that it "would be very  
17 concerned if recombining network elements to recreate a service could be used  
18 to undercut the resale price of the service."

19  
20 As you see, BellSouth attempted to address the pricing issue in the agreement  
21 and the Commission determined that since this issue was not arbitrated it was  
22 not appropriate for the Commission to rule upon the pricing issue. BellSouth  
23 was forced to include contract language it did not negotiate.

24  
25 ISSUE #1

1 Q. DOES THE BELLSOUTH-MCIm INTERCONNECTION AGREEMENT  
2 SPECIFY HOW PRICES WILL BE DETERMINED FOR COMBINATIONS  
3 OF UNBUNDLED NETWORK ELEMENTS THAT DO NOT RECREATE  
4 AN EXISTING BELLSOUTH RETAIL TELECOMMUNICATIONS  
5 SERVICE?

6

7 A. No, the BellSouth-MCIm Interconnection Agreement specifies prices for  
8 individual network elements.

9

10 Q. DOES THE BELLSOUTH-MCIm INTERCONNECTION AGREEMENT  
11 SPECIFY HOW PRICES WILL BE DETERMINED FOR COMBINATIONS  
12 OF UNBUNDLED NETWORK ELEMENTS THAT DO RECREATE AN  
13 EXISTING BELLSOUTH RETAIL TELECOMMUNICATIONS SERVICE?

14

15 A. No, the BellSouth-MCIm Interconnection Agreement does not specify how  
16 combinations of unbundled network elements should be priced.

17

18 Q. MCIm ALLEGES THAT ATTACHMENT III, SECTION 2.6 OF THE  
19 BELLSOUTH-MCIm AGREEMENT ADDRESSES THE PRICING ISSUE  
20 OF COMBINING UNBUNDLED NETWORK ELEMENTS. DO YOU  
21 AGREE?

22

23 A. No. Section 2.6 states:

24 "With respect to Network Elements and services in existence as of the  
25 Effective Date of this Agreement, charges in Attachment I are inclusive

1                   and no other charges apply, including but not limited to any other  
 2                   consideration for connecting Network Element(s) with other Network  
 3                   Element(s). BellSouth and MCIIm agree to attempt in good faith to  
 4                   resolve any alleged errors or omissions in Attachment I.”

5  
 6                   This section of the agreement does not set prices for combinations. This  
 7                   language was agreed to in conjunction with the pricing language BellSouth  
 8                   tried to incorporate into the agreement, but which was rejected by this  
 9                   Commission. BellSouth has consistently maintained its position that  
 10                  unbundled network elements combined to recreate an existing retail service  
 11                  offering is considered resale. BellSouth would never have voluntarily agreed  
 12                  to a provision in the agreement that would undercut its position on  
 13                  combinations.

14  
 15 Q.           ISSUE #2 - IF THE ANSWER TO EITHER PART OR BOTH PARTS OF  
 16                  ISSUE 1 IS YES, HOW IS THE PRICE(S) DETERMINED?

17  
 18 A.           Please see response to Issue #1. The prices for unbundled network element  
 19                  combinations are not contained in the BellSouth-MCIIm Interconnection  
 20                  Agreement.

21  
 22 Q.           ISSUE #3 - IF THE ANSWER TO EITHER PART OR BOTH PARTS OF  
 23                  ISSUE #1 IS NO, HOW SHOULD THE PRICE(S) BE DETERMINED?

24  
 25

1 A. Mr. Varner will address the issue of how prices should be determined for  
2 combining unbundled network elements in his testimony.

3

4 ISSUE 4

5 Q. DOES THE BELLSOUTH-AT&T INTERCONNECTION AGREEMENT  
6 SPECIFY HOW PRICES WILL BE DETERMINED FOR COMBINATIONS  
7 OF UNBUNDLED NETWORK ELEMENTS THAT DO NOT RECREATE  
8 AN EXISTING BELLSOUTH RETAIL TELECOMMUNICATIONS  
9 SERVICE?

10

11 A. No, the BellSouth-AT&T Interconnection Agreement does not specify how  
12 combinations of unbundled network elements should be priced.

13

14 Q. DOES THE BELLSOUTH-AT&T INTERCONNECTION AGREEMENT  
15 SPECIFY HOW PRICES WILL BE DETERMINED FOR COMBINATIONS  
16 OF UNBUNDLED NETWORK ELEMENTS THAT DO CREATE AN  
17 EXISTING BELLSOUTH RETAIL TELECOMMUNICATIONS SERVICE?

18

19 A. No, the BellSouth-AT&T Interconnection Agreement does not specify how  
20 combinations for unbundled network elements should be priced.

21

22 Q. ISSUE 5 - IF THE ANSWER TO EITHER PART OR BOTH PARTS OF  
23 ISSUE #4 IS YES, HOW IS THE PRICE(S) DETERMINED?

24

25

1 A. Please see response to Issue #4. The prices for unbundled network element  
2 combinations are not contained in the BellSouth-AT&T Interconnection  
3 Agreement.

4

5 Q. ISSUE 6 - IF THE ANSWER TO EITHER PART OR BOTH PARTS OF  
6 ISSUE #4 IS NO, HOW SHOULD THE PRICE(S) BE DETERMINED?

7

8 A. Mr. Varner will address the issue of how prices should be determined for  
9 combining unbundled network elements in his testimony.

10

11 Q. ISSUE 7 - WHAT STANDARD SHOULD BE USED TO IDENTIFY WHAT  
12 COMBINATIONS OF UNBUNDLED NETWORK ELEMENTS RECREATE  
13 EXISTING BELLSOUTH RETAIL TELECOMMUNICATIONS  
14 SERVICES?

15

16 A. There are several different factors that should be considered by this  
17 commission in determining whether or not a requested combination of UNEs is  
18 recreating an existing retail telecommunications service offering. The “switch  
19 as is” request is a clear example of an existing retail service offering.

20

21 A second consideration is the “switch with change”. This is when an ALEC  
22 makes changes to an existing retail service offering, such as the elimination or  
23 addition of a feature, in an attempt to disguise the existing retail service  
24 offering.

25

1 A more difficult situation is to distinguish combinations which perform  
2 functions similar to the functions of an existing service offering. These  
3 combinations are distinguishable from the existing service offering in some  
4 manner, but the functions are identical.

5

6 The real test for this Commission will be to look at the core functions of the  
7 requested combination to see if those functions mirror the functions of an  
8 existing retail service offering.

9

10 Bottom line, the Commission must use its best judgment to identify UNE  
11 combinations which recreate an existing retail service offering. If the  
12 recombined unbundled elements creates a service identical to an existing retail  
13 service offering and such recombination contains the same functions, features  
14 and attributes of that existing retail offering, the combination should be  
15 considered resale and priced accordingly.

16

17 The Georgia Commission in its Order in Docket No. 6801-U, stated

18 “..when AT&T recombines unbundled elements to create services  
19 identical to BellSouth’s retail offerings, the prices charged to AT&T for  
20 the rebundled services shall be computed as BellSouth’s retail  
21 offerings, the prices charged to AT&T for the rebundled services shall  
22 be computed as BellSouth’s retail price less the wholesale discount and  
23 offered under the same terms and conditions, including the same  
24 application of access charges an the imposition of joint marketing  
25 restrictions. In this situation, “identical” means that AT&T is not using

1           its own switching or other functionality or capability together with  
2           unbundled elements in order to produce its service.”

3

4           The Louisiana Public Service Commission issued similar language in its  
5           January 15, 1997 Order U-22145.

6           “...AT&T may purchase unbundled elements from BellSouth and  
7           rebundle those elements in any manner that is technically feasible. This  
8           fact is undisputed by either party. The real issue is not whether AT&T  
9           may purchase and rebundle elements in any manner they choose, but  
10          the rate of compensation for the purchase of such ‘elements.’

11

12          To the extent AT&T purchases unbundled network elements and then  
13          recombines them to replicate BellSouth services, it is reselling  
14          BellSouth’s services. As Shakespeare pointed out, a rose by any other  
15          name is still a rose, and so it is with resale, even when AT&T chooses  
16          to call it a combination of unbundled elements. Both the FCC and this  
17          Commission have issued Orders strongly supporting an aggressive  
18          resale market. This commitment to resale would be rendered  
19          meaningless if AT&T were allowed to bypass resale through the fiction  
20          of “rebundling.” Unrestricted pricing on the recombination of  
21          unbundled elements would allow AT&T to purchase unbundled  
22          elements from BellSouth and then rebundle those elements without  
23          adding any additional capability, in order to create a service which is  
24          identical to a retail offering already being provided by BellSouth and  
25          therefore subject to mandatory resale. Such an arrangement would

1 allow AT&T to avoid both the Act's and this Commission's pricing  
 2 standards for resale, avoid the Act's restrictions regarding joint  
 3 marketing and avoid access charge requirements. Such an arrangement  
 4 would also serve as a disincentive to the ILECs to construct their own  
 5 facilities."(pg. 38-39).

6  
 7 The Georgia and Louisiana Commission language is consistent with the  
 8 concerns expressed by this Commission in its March 19, 1997 Order, PSC-97-  
 9 0298-TP in FPSC Dockets 9660846-TP and 960916-TP in which the  
 10 Commission stated that it "would be very concerned if recombining network  
 11 elements to recreate a service could be used to undercut the resale price of the  
 12 service."

13  
 14 Q. ISSUE #8 - WHAT IS THE APPROPRIATE NON-RECURRING CHARGE  
 15 FOR EACH OF THE FOLLOWING COMBINATIONS OF NETWORK  
 16 ELEMENTS FOR MIGRATION OF AN EXISTING BELLSOUTH  
 17 CUSTOMER;

- 18 (A) 2-WIRE ANALOG LOOP AND PORT;  
 19 (B) 2-WIRE ISDN LOOP AND PORT;  
 20 (C) 4-WIRE ANALOG LOOP AND PORT; AND  
 21 (D) 4-WIRE DS1 AND PORT?

22  
 23 A. Mr. Varner will discuss the appropriate non-recurring charge while the  
 24 associated cost issues will be addressed by Ms. Caldwell and Mr. Landry.

25

1 Q. ISSUE #9 - DOES THE BELLSOUTH-MCI<sub>m</sub> INTERCONNECTION  
2 AGREEMENT REQUIRE BST TO RECORD AND PROVIDE MCI<sub>m</sub> WITH  
3 THE SWITCHED ACCESS USAGE DATA NECESSARY TO BILL  
4 INTEREXCHANGE CARRIERS WHEN MCI PROVIDES SERVICES  
5 USING UNBUNDLED LOCAL SWITCHING PURCHASED FROM  
6 BELLSOUTH EITHER ON A STAND ALONE BASIS OR IN  
7 COMBINATION WITH OTHER UNBUNDLED NETWORK ELEMENTS?  
8

9 A. Section 7.2.1.9 of Attachment III of the BellSouth-MCI<sub>m</sub> Interconnection  
10 Agreement requires BellSouth to “record all billable events involving usage of  
11 the element, and send the appropriate recording data to MCI<sub>m</sub> as outlined in  
12 Attachment VIII” of the agreement when MCI orders unbundled network  
13 elements. Interstate access records will be transmitted to MCI via the Access  
14 Daily Usage File (ADUF). ADUF is transmitted via that same transmission  
15 media used for ODUF. These files can be received over a Connect:Direct feed  
16 or on a mag tape. Whether it is appropriate to provide ADUF to MCI when  
17 MCI orders a combination of elements will be discussed by Mr. Varner.  
18

19 Q. ISSUE 10 - DOES THE AT&T-BELLSOUTH INTERCONNECTION  
20 AGREEMENT REQUIRE BELLSOUTH TO RECORD AND PROVIDE  
21 AT&T WITH DETAIL USAGE DATA FOR SWITCHED ACCESS  
22 SERVICE, LOCAL EXCHANGE SERVICE AND LONG DISTANCE  
23 SERVICE NECESSARY FOR AT&T TO BILL CUSTOMERS WHEN  
24 AT&T PROVIDES SERVICE USING UNBUNDLED NETWORK  
25 ELEMENTS EITHER ALONE OR IN COMBINATION?

1

2 A. Interstate access records are available to AT&T via the Access Daily Usage  
3 File (ADUF). ADUF is transmitted via that same transmission media used for  
4 ODUF. These files can be received over a Connect:Direct feed or on a mag  
5 tape. Again, the question of whether it is appropriate to provide ADUF to  
6 AT&T when AT&T orders a combination of elements will be discussed by Mr.  
7 Varner.

8

9 Q. WOULD YOU PLEASE SUMMARIZE YOUR TESTIMONY?

10

11 A. Based on the Eighth Circuit's opinion which states that the Act intends that  
12 requesting carriers are to combine the UNEs themselves, BellSouth has no  
13 legal obligation to provide combined UNEs. In accordance with this opinion,  
14 BellSouth will provide the individual UNEs delineated in its executed  
15 interconnection agreements at the rates established by the various  
16 commissions. Until such time as the Eighth Circuit's opinion becomes final  
17 and non-appealable, BellSouth will accept and provision UNE combination  
18 orders from ALECs which have combination language in their interconnection  
19 agreement.

20

21 BellSouth believes that MCI is free to use UNEs recombined by BellSouth  
22 in any manner it so chooses. In Florida, when MCI orders a combination of  
23 UNES or orders individual UNES, which when combined duplicate an existing  
24 retail service, BellSouth will treat such orders as resale.

25

1           Furthermore, neither the MCI nor the AT&T interconnection agreements  
2           specify how combinations of unbundled network elements should be priced.

3

4 Q.       DOES THIS CONCLUDE YOUR TESTIMONY?

5

6 A.       Yes.

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1                   **BELLSOUTH TELECOMMUNICATIONS, INC.**  
2                   **REBUTTAL TESTIMONY OF JERRY HENDRIX**  
3                   **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**  
4                   **DOCKET NO. 971140-TP**  
5                   **FEBRUARY 20, 1998**

6  
7  
8 Q.    PLEASE STATE YOUR NAME AND COMPANY NAME AND ADDRESS.

9  
10 A.    My name is Jerry Hendrix. I am employed by BellSouth Telecommunications,  
11        Inc. as Director - Interconnection Services Pricing. My business address is  
12        675 West Peachtree Street, Atlanta, Georgia 30375.

13  
14 Q.    ARE YOU THE SAME JERRY HENDRIX WHO FILED DIRECT  
15        TESTIMONY IN THIS PROCEEDING?

16  
17 A.    Yes.

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

20  
21 A.    The purpose of my testimony is to rebut the testimony filed in this docket by  
22        MCI's witness, Chip Parker and AT&T's witness, David Eppsteiner, regarding  
23        the contractual obligations contained in the BellSouth-MCI and BellSouth-  
24        AT&T interconnection agreements.

25

1           **Rebuttal to Mr. Parker's Testimony**

2   Q.    ON PAGE 3 OF MR. PARKER'S TESTIMONY, MR. PARKER STATES  
3            THAT THE AGREEMENT ALLOWS FOR THE MIGRATION OF  
4            EXISTING BELLSOUTH CUSTOMERS TO MCIIm SERVED THROUGH  
5            UNBUNDLED NETWORK ELEMENTS BY REUSING EXISTING  
6            BELLSOUTH FACILITIES. DO YOU AGREE?

7  
8   A.    BellSouth does not dispute that Attachment VIII, Section 2.2.15.3 of the  
9            interconnection agreement allows MCIIm to purchase combinations of  
10            unbundled network elements. This provision in the agreement however, does  
11            not provide a price for such combinations. Section 2.2.15.3 merely states that  
12            "...Network Elements or Combinations that are currently interconnected and  
13            functional...shall remain connected and functional without any disconnection  
14            or disruption of functionality."

15  
16   Q.    MR. PARKER STATES ON PAGE 3 OF HIS TESTIMONY THAT THE  
17            EIGHTH CIRCUIT COURT'S DECISION "DOES NOT  
18            AUTOMATICALLY INVALIDATE CONTRACTUAL PROVISIONS..."  
19            WHAT IS BELLSOUTH'S OPINION?

20  
21   A.    Part A, Section 2.4 of the BST/MCIIm Agreement specifically states:

22            In the event that any final and nonappealable legislative, regulatory,  
23            judicial or other legal action materially affects any material terms of  
24            this Agreement, or the ability of MCIIm or BellSouth to perform any  
25            material terms of this Agreement, or in the event a judicial or

1 administrative stay of such action is not sought or granted, MCI or  
2 BellSouth may, on thirty (30) days written notice (delivered not later  
3 than (30) days following the date on which such action has become  
4 legally binding and has otherwise become final and nonappealable)  
5 require that such terms be renegotiated, and the Parties shall renegotiate  
6 in good faith such mutually acceptable new terms as may be required.  
7 In the event that such new terms are not renegotiated within ninety (90)  
8 days after such notice, the dispute shall be resolved in accordance with  
9 Section 23 (Dispute Resolution Procedures) of this Agreement.

10

11 Furthermore, Part A, Section 7 of the BST/MCI Interconnection Agreement  
12 provides that:

13 [t]his Agreement shall be governed by and construed in accordance  
14 with applicable federal law and the laws of the state of Florida, without  
15 regard to its conflicts of law principles.

16

17 Therefore, once the Eighth Circuit's Order becomes final and non-appealable,  
18 Section 2.4 of the General Terms and Conditions section of the BST/MCI  
19 Interconnection Agreement requires that the parties re-negotiate the  
20 combination provisions.

21

22 Q. MCI'S WITNESS MR. PARKER ALLEGES THAT SECTION 8 OF  
23 ATTACHMENT 1 OF THE INTERCONNECTION AGREEMENT SETS  
24 FORTH PRICES FOR UNE COMBINATIONS. DO YOU AGREE WITH  
25 THIS INTERPRETATION OF THE AGREEMENT?

1

2 A. No. Section 8 of Attachment 1 specifies “[t]he recurring and nonrecurring  
3 prices for unbundled Network Elements (UNEs) in Table 1 of this Attachment  
4 are appropriate for UNEs on an individual, stand-alone basis.” This section  
5 does not specify the rates for combinations. It does require however, the  
6 parties to “work together to establish recurring and non-recurring charges in  
7 situations where MCI is ordering multiple network elements.”

8

9 Q. MR. PARKER CLAIMS ON PAGE 4 OF HIS TESTIMONY THAT  
10 BELLSOUTH IS NOT AUTHORIZED BY THE AGREEMENT TO  
11 CHARGE A “GLUE” CHARGE TO MCI WHEN MCI ORDERS  
12 ELEMENTS IN COMBINATION. DO YOU AGREE?

13

14 A. No. The agreement does not prohibit BellSouth from charging a “glue”  
15 charge. Mr. Parker has based his assertion on Attachment III, Section 2.6 of the  
16 interconnection agreement which states:

17 With respect to Network Elements and services in existence as of the  
18 Effective Date of this Agreement, charges in Attachment 1 are inclusive  
19 and no other charges apply, including but not limited to any other  
20 consideration for connecting any Network Element(s) with other  
21 Network Element(s). BellSouth and MCI agree to attempt in good  
22 faith to resolve any alleged errors or omissions in Attachment 1.

23

24 As I explained in my Direct Testimony on page 6, lines 23-25 and page 7, lines  
25 1-13, the language in this section was agreed to in conjunction with the pricing

1 language BellSouth proposed be incorporated in the agreement, but which was  
2 rejected by this Commission. This section simply addresses combinations  
3 which recreate existing retail service offerings. Such combinations are  
4 considered resale and priced accordingly.

5

6 Q. MR. PARKER AGREES THAT "MIGRATION OF AN EXISTING"  
7 CUSTOMER CAN APPLY TO A RESALE OR TO THE PROVISIONING  
8 OF SERVICE THROUGH THE USE OF A LOOP/PORT COMBINATION  
9 PURCHASED FROM BELLSOUTH. MR. PARKER FURTHER STATES  
10 THAT NON-RECURRING CHARGES FOR SUCH MIGRATIONS  
11 SHOULD NOT APPLY SINCE THERE IS NO CONNECTING OR  
12 DISCONNECTING ACTIVITY. DOES BELLSOUTH AGREE THAT THE  
13 NON-RECURRING CHARGES FOR "MIGRATION OF AN EXISITING"  
14 CUSTOMER SHOULD NOT APPLY IN THESE SITUATIONS?

15

16 A. No. The "migration of an existing customer" is the same thing as resale and  
17 therefore the appropriate non-recurring charge when MCIIm "migrates" an  
18 existing customer is the non-recurring charge applicable to resale, which in  
19 most cases would likely be the secondary service order charge less the  
20 wholesale discount.

21

22 Q. ON PAGE 7, MR. PARKER ASSERTS THAT THE INTERCONNECTION  
23 AGREEMENT DOES NOT AUTHORIZE BELLSOUTH TO TREAT  
24 COMBINATIONS OF UNES AS RESALE. DOES BELLSOUTH AGREE  
25 WITH MR. PARKER'S ASSERTION?

1

2 A. No. Mr. Parker has based his assertion on Section 8 of Attachment 1 which  
3 simply states that when MCI orders two or more UNEs combined, "BellSouth  
4 shall provide recurring and non-recurring charges that do not duplicate charges  
5 for functions or activities that MCI does not need when two or more network  
6 elements are combined in a single order." What Mr. Parker fails to recognize  
7 is that this section of the agreement requires the parties to work together to  
8 establish a recurring and non-recurring charge in these situations. Nowhere in  
9 the agreement does it state how those combinations are to be priced.

10

11 Q. ON PAGE 7 OF MR. PARKER'S TESTIMONY, HE STATES THAT  
12 BELLSOUTH HAS NOT BEEN PROVIDING INFORMATION ON  
13 SWITCHED ACCESS USAGE AS REQUIRED BY THE AGREEMENT. IS  
14 THIS TRUE?

15

16 A. No. As I stated in my direct testimony, interstate access records are available  
17 to MCI via the Access Daily Usage File (ADUF).

18

19 **Rebuttal to David Eppsteiner**

20

21 Q. DOES BELLSOUTH CONTEND THAT IT HAS NO OBLIGATION TO  
22 PROVIDE COMBINATIONS OF UNES TO AT&T?

23

24 A. No. While BellSouth believes that as a result of the Eighth Circuit's decision,  
25 BellSouth has no legal obligation to provide combinations of UNEs, BellSouth

1 has continuously stated that it intends to abide by its contractual obligation to  
2 provide unbundled network element combinations to those ALECs who have  
3 such language in their agreements. The agreement between BellSouth and  
4 AT&T was executed when the laws governing such an agreement required  
5 BellSouth to provide AT&T with combinations of network elements and to  
6 deliver unseparated elements previously combined. It is for this reason, and  
7 this reason only, that BellSouth agreed to provide combinations to AT&T.  
8 However, once the Eighth Circuit's decision becomes final and non-  
9 appealable, BellSouth will have no legal obligation to continue to do so and at  
10 that time will expect to renegotiate the pertinent provisions pursuant to  
11 Section 9.3 of the General Terms and Conditions section of the agreement  
12 which states:

13 In the event that any final and nonappealable legislative, regulatory,  
14 judicial or other legal action materially affects any material terms of  
15 this Agreement, or the ability of AT&T or BellSouth to perform any  
16 material terms of this Agreement, AT&T or BellSouth may, on thirty  
17 (30) days' written notice (delivered not later than thirty (30) days  
18 following the date on which such action has become legally binding  
19 and has otherwise become final and nonappealable) require that such  
20 terms be renegotiated, and the Parties shall renegotiate in good faith  
21 such mutually acceptable new terms as may be required. In the event  
22 that such new terms are not renegotiated within ninety (90) days after  
23 such notice, the Dispute shall be referred to the Alternative Dispute  
24 Resolution procedures set forth in Attachment 1.

25

1 Q. DOES BELLSOUTH AGREE THAT SECTION 36.1 OF THE  
2 INTERCONNECTION AGREEMENT CONTAINS A SPECIAL  
3 PROVISION RELATING TO CHARGES FOR MULTIPLE NETWORK  
4 ELEMENTS AS STATED BY MR. EPPSTEINER ON PAGE 7 OF HIS  
5 TESTIMONY?

6

7 A. No. The "special provision" referred to by Mr. Eppsteiner pertains to the  
8 language which states that, "Any BellSouth non-recurring and recurring  
9 charges shall not include duplicate charges or charges for functions or activities  
10 that AT&T does not need when two or more Network Elements are combined  
11 in a single order." This section also requires, per the Commission's order, the  
12 parties to negotiate non-recurring and recurring charges to be paid by AT&T  
13 when AT&T orders multiple Network Elements. The Commission clearly  
14 states in its March 19, 1997 Order (PSC-97-0298-FOF-TP) and again in its  
15 May 27, 1997 Order (PSC-97-0602-FOF-TP) that it did not set prices for  
16 combinations. It is hard to understand how AT&T can assert otherwise.

17

18 Q. MR.EPPSTEINER ON PAGE 9 OF HIS TESTIMONY STATES THAT THE  
19 LANGUAGE IN SECTION 36.1 STATES THAT THE PRICES FOR  
20 UNBUNDLED NETWORK ELEMENTS ARE SET FORTH IN PART IV,  
21 TABLE 1. DOES BELLSOUTH AGREE THAT SPECIFIC PRICES FOR  
22 UNBUNDLED NETWORK ELEMENT COMBINATIONS ARE  
23 CONTAINED IN THE AGREEMENT?

24

25 A. No. The prices set forth in Part IV, Table 1 are the prices for individual

1 unbundled network elements and do not pertain to unbundled network element  
2 combinations.

3

4 Section 36.1 of the General Terms and Conditions section of the agreement  
5 states that "BellSouth and AT&T shall work together to mutually agree upon  
6 the total non-recurring and recurring charge(s) to be paid by AT&T when  
7 ordering multiple Network Elements." Neither of these sections specifies the  
8 prices for combinations.

9

10 Q. DOES BELLSOUTH AGREE WITH MR. EPPSTEINER'S CLAIM ON  
11 PAGE 9 OF HIS TESTIMONY THAT ATTACHMENT 4, SECTION 4.5  
12 SETS THE PRICES FOR ELEMENTS THAT ARE CURRENTLY  
13 COMBINED?

14

15 A. No. BellSouth agrees that Attachment 4, Section 4.5 prohibits BellSouth from  
16 disconnecting combined elements. However, BellSouth disagrees with Mr.  
17 Eppsteiner's assertion that the price for such combinations is the sum of the  
18 individual elements as set forth in Part IV, Table 1 of the General Terms and  
19 Conditions. This section of the agreement does not address the price of such  
20 combinations, but merely states that "[e]lements or combinations that are  
21 currently interconnected and functional....will remain interconnected and  
22 functional without any disconnection or disruption of functionality."

23

24 Q. DOES BELLSOUTH AGREE THAT PART IV, TABLE 1 OF THE  
25 INTERCONNECTION AGREEMENT SETS FORTH PRICES FOR

1 COMBINATIONS AS STATED BY MR. EPPSTEINER ON PAGE 10 OF  
2 HIS TESTIMONY?

3

4 A. No. As I stated in my Direct Testimony on page 8, lines 11-12 and 19-20, the  
5 BellSouth-AT&T Interconnection Agreement does not specify how  
6 combinations should be priced. Part IV, Table 1 of the agreement sets forth the  
7 prices for individual unbundled network elements.

8

9 Q. HOW DOES BELL SOUTH RESPOND TO MR. EPPSTEINER'S  
10 ASSERTION ON PAGE 10 OF HIS TESTIMONY THAT COMBINATIONS  
11 SHOULD NOT BE PRICED AT THE WHOLESALE DISCOUNT?

12

13 A. In Mr. Eppsteiner's testimony, at page 10, he refers to the language proposed  
14 by BellSouth to address the combination issue. Such language was in fact  
15 rejected by this Commission, although the Commission did not reject the  
16 concept upon which such language was predicated. In fact, as I stated in my  
17 Direct Testimony on page 5, lines 14-18, BellSouth's proposed language  
18 mirrors the concern expressed by the Commission itself in its March 19, 1997  
19 Order in FPSC Docket 960846-TP. Furthermore, Mr. Eppsteiner continues to  
20 incorrectly point to Part IV and Table 1 of the Interconnection Agreement to be  
21 the sections which govern the pricing of combinations. "Part IV: Pricing" is  
22 the general pricing section of the agreement and Table 1 lists the prices for  
23 individual unbundled network elements. The interconnection agreement  
24 entered into between BellSouth and AT&T does not specify how combinations  
25 of unbundled network elements should be priced.

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Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?

A. Yes.

1           Q        (By Ms. White) Mr. Hendrix, you have no  
2 exhibits attached to your testimony, do you?

3           A        No, I do not.

4           Q        Mr. Hendrix, would you please give us a  
5 summary of your testimony?

6           A        Yes. I have a very brief summary. First,  
7 let me state I served as the lead negotiator for  
8 BellSouth in both the AT&T and MCI agreements. I'm  
9 also responsible for signing all of the  
10 interconnection agreements for the BellSouth region.

11                   Based on the 8th Circuit opinion which  
12 states that the Act intends that ALECs combine UNES,  
13 BellSouth has no legal obligation to provide combined  
14 UNES. We will provide the individual UNES as  
15 contained in those agreements.

16                   Until the 8th Circuit is final, BellSouth  
17 will accept and provision orders from ALECs which have  
18 the combination language in it. When such orders for  
19 combined UNES are given to BellSouth that would  
20 replicate a retail offering, BellSouth will treat such  
21 orders as resale.

22                   Finally, the interconnection agreements do  
23 not provide prices for combined elements. In fact,  
24 the agreements require the parties to meet and  
25 negotiate prices, recurring as well as nonrecurring

1 prices.

2 That ends my summary.

3 **MS. WHITE:** Mr. Hendrix is available for  
4 cross.

5 **MR. PELLEGRINI:** Chairman Johnson, before  
6 Mr. Hendrix's cross-examination begins, Staff would  
7 proffer Exhibit JDH-1 consisting of Mr. Hendrix's  
8 February 27, 1998, deposition transcript, as well as  
9 deposition and late-filed deposition Exhibit Nos. 1  
10 and 2 and ask that it be marked for identification.

11 **CHAIRMAN JOHNSON:** Do we have that? But  
12 I'll go ahead and mark it, and you can keep going.  
13 You can continue. Was that it, Mr. Pellegrini?

14 **MR. PELLEGRINI:** Yes.

15 (Exhibit 26 marked for identification.)

16 **CHAIRMAN JOHNSON:** Okay. Mr. Melson?

17 **CROSS EXAMINATION**

18 **BY MR. BOND:**

19 **Q** Good afternoon, Mr. Hendrix. Tom Bond on  
20 behalf of MCI. Just to be clear, BellSouth  
21 acknowledges that it is currently bound by the  
22 combination provisions in the MCI/BellSouth  
23 interconnection agreement; is that correct?

24 **A** Yes.

25 **Q** And you acknowledge that you are bound to

1 provide MCI loop/port combinations under the  
2 agreement; is that correct?

3           A     Provide combinations, yes. But as I  
4 mentioned in my summary, when those are ordered from  
5 BellSouth, they would be billed as resale.

6           Q     When MCI orders a loop/port combination  
7 under the agreement from BellSouth, is it correct that  
8 BellSouth intends to actually provide MCI with resale  
9 and not a loop/port combination?

10          A     We will provision and bill the service as  
11 resale if on that order, the service on that order  
12 would be for a loop/port combined. We would, in fact,  
13 provision and bill it as resale.

14          Q     So you're not merely saying that BellSouth  
15 intends to price it at the resale rate, that BellSouth  
16 actually intends to provide MCI with resale; is that  
17 correct?

18          A     I think there are two different cases. Let  
19 me first of all say almost a yes, but let me go on and  
20 explain.

21                 As Mr. Varner mentioned, if you were to  
22 order an unbundled loop and an unbundled port to be  
23 terminated at your collocated space, then that will be  
24 billed as resale. It would actually be provisioned as  
25 UNEs.

1           However, if you ask us to migrate a customer  
2 that is an existing customer of BellSouth and then to  
3 bill those as UNEs, we will not bill those as UNEs.  
4 That service has already been provisioned by  
5 BellSouth, and for that purpose we would bill it as  
6 resale.

7           Q     Mr. Melson is passing out a handout, and if  
8 you could look, the first page of that is Page 7 from  
9 the Commission's order on reconsideration.

10           Would you agree that the Commission ruled in  
11 its arbitration order that MCI may combine UNEs in any  
12 manner they choose including recreating an existing  
13 BellSouth service?

14           A     Yes, it says that MCI may do so.

15           Q     And in the order on reconsideration, is it  
16 correct that the Commission stated that they were not  
17 presented with the specific issue of pricing of  
18 recombined elements when recreating the same service  
19 offered for resale?

20           A     I think it was somewhat more broader than  
21 that. I believe what they mentioned, that this issue  
22 had not been couched before them, and so they are not  
23 addressing what the price would be for multiple UNEs  
24 combined to replicate a resale service, or a resold  
25 service.

1 Q And the issue that you say -- that you're  
2 referring to is the specific issue of pricing of UNES  
3 that recreate a BellSouth service; is that correct?

4 A I would agree that is the basic issue.

5 Q Can you show me in the Commission's order on  
6 reconsideration, or in any other order that the  
7 Commission has issued, where the Commission said that  
8 they would reconsider the provisioning of UNE  
9 combinations?

10 A You will not find the provisioning language  
11 in the order. What is cited is the need to -- well,  
12 let me go back. What is mentioned is the concern that  
13 billing these services as UNES that would replicate a  
14 retail offering would undercut the resold services.  
15 And for that reason, when we have UNES that would  
16 replicate an existing retail service that BellSouth  
17 offers, then it would be billed as resale.

18 Q My question was, are there any provisions  
19 that -- in any Commission orders where the Commission  
20 said it was reconsidering the provisioning of UNE  
21 combinations, not the pricing of UNE combinations?

22 A No, there is not, to my knowledge.

23 Q Are you aware of any Commission order where  
24 the Commission said that network elements would cease  
25 being network elements when ordered in combination?

1           A     I don't believe that they do. I'm not aware  
2 of any cite, but network elements are network  
3 elements. They do not cease being a network element  
4 even if I bill those as resale.

5           Q     And it's true, is it not, that in the order  
6 on reconsideration the Commission specifically stated  
7 that they would not reconsider their decision on the  
8 rebundling of network elements?

9           A     I'm not sure that was stated just that way.

10          Q     On the handout I passed out, if I could  
11 refer you to the first sentence on Page 7.

12          A     Okay. But I think -- I do not know the date  
13 of this order. Could you tell me date of this order?

14          Q     I believe it's March 19th, 1997.

15          A     (Pause) That sentence is there. However,  
16 in a later order -- and I'm referring to the May 27th,  
17 1997 order where the parties were required to sign the  
18 agreements, the issue -- or the statement that I made  
19 about the concern on the pricing of UNES is also  
20 mentioned in that order.

21                     So I think you cannot take this out of  
22 context, because the issue was again talked about in  
23 reference in the May 27th order.

24          Q     Is it correct that the May 27th order merely  
25 referred to the pricing issue associated with

1 rebundling of UNEs?

2           A     I would agree the bottom line is to pricing  
3 the issue associated with the UNEs.

4           Q     And the May 27th order makes no mention of  
5 provisioning of UNEs?

6           A     No, it does not.

7           Q     And the May 27th order does not say that  
8 when UNEs are ordered in combination they cease being  
9 UNEs?

10          A     No, it does not.

11          Q     On the handout that Mr. Melson passed out,  
12 if you could turn to the next page, and I'll refer you  
13 to Section 4.1.1 of Attachment 3.

14                   Is it correct that this section of the  
15 agreement states that when MCI buys a loop, MCI is  
16 granted exclusive use of that loop?

17          A     Those words are there, yes.

18          Q     If MCI buys a loop/port combination, is  
19 BellSouth going to recognize that MCI has exclusive  
20 use of that loop?

21          A     We will definitely abide by what's in the  
22 agreements. So I suppose the answer is yes, if, in  
23 fact, what we're speaking of is what is contained in  
24 this agreement.

25          Q     Now, under resale, BellSouth is required to

1 provide MCI for resale all telecommunication services  
2 that BellSouth offers at retail; is that correct?

3 A That are tariffed at retail.

4 Q Yeah, that Bell -- that BellSouth offers to  
5 the public at retail.

6 A That are tariffed. There are some retail  
7 services that may be -- and I'm drawing a blank now --  
8 but there are some retail services that may not be  
9 tariffed wherein it may be detariffed. So a retail  
10 service that is tariffed, yes, we would offer those  
11 for resale.

12 Q Okay. Would you agree that there are  
13 potentially switch features which BellSouth could  
14 offer its end users, but that for some reason it has  
15 chosen not to offer its end users at retail or has not  
16 tariffed those offerings?

17 A I wouldn't couch it in that fashion. What  
18 is the -- what is required in the agreement is that we  
19 offer the features available in that switch at that  
20 time, and all retail features in that switch are, in  
21 fact, tariffed. So as to whether we have features in  
22 a switch that we choose not to tariff -- or choose not  
23 to offer to our end users, there are other factors  
24 that you would have to weigh, because not all switches  
25 in a local calling area may have the same features

1 available in that switch.

2 Q Well, let me try to rephrase it. If  
3 BellSouth has a feature in a switch that it does not  
4 offer, has not tariffed and does not offer to the  
5 public, can MCI resell that feature from BellSouth?

6 A No.

7 Q Under UNEs, is it correct that BellSouth is  
8 required to offer MCI all local switching features  
9 that are technically feasible? And I refer you on  
10 Page 6 of the attachment to Section 7.2.1.15 of  
11 Attachment 3.

12 A Would you give that cite again, please?

13 Q 7.2.1.15 of Attachment 3.

14 A Yes, I'm there.

15 Q Would you agree that that provides that  
16 BellSouth shall offer all local switching features  
17 that are technically feasible to MCI?

18 A I think you left off the rest of the  
19 sentence.

20 Q And provide feature offerings at parity to  
21 those provided by BellSouth to itself or any other  
22 party?

23 A That's correct. I would agree with that.  
24 The whole sentence I would agree with.

25 Q If MCI buys local switching from BellSouth,

1 it would have the right to offer technically feasible  
2 features that BellSouth does not currently offer at  
3 retail; is that correct?

4 A Would you ask that again?

5 Q If a BellSouth switch was technically  
6 capable, if it was technically feasible for that  
7 switch to offer a certain feature, would MCI have the  
8 right under its contract to offer to provide that  
9 feature using local switching without regard to  
10 whether BellSouth had tariffed that feature?

11 A No, I would not agree. The language that  
12 you just cited, there is a word A-N-D, "and," which  
13 would mean that it would have to be feasible, and it  
14 was something that we would provide to BellSouth  
15 itself or to any other party. So those are the  
16 requirements that would have to be met.

17 Q So you don't believe that parity refers to  
18 if BellSouth is providing the feature for its own  
19 customers then it must provide it at parity to MCI?

20 A That's correct. If you're asking me what  
21 parity means, you faded out somewhat. But if you're  
22 asking me if parity is what we offer to our own end  
23 users we must also offer to you to be able to offer to  
24 your end user customers, I would agree that is parity.

25 Q You are aware, are you not, that local

1 switching under the agreement includes the capability  
2 of routing local intraLATA and interLATA calls; is  
3 that correct?

4 A Yes, I am aware of that.

5 Q And you're aware that local switching under  
6 the agreement includes the capability of providing  
7 carrier presubscription, that is, long distance and  
8 intraLATA toll presubscription?

9 A Yes, I am, and I believe that is all  
10 mentioned in the way local switching is defined in the  
11 agreement.

12 Q So when MCI uses local switching, it has the  
13 ability to route local intraLATA and interLATA calls;  
14 is that correct?

15 A Yes.

16 Q When MCI uses local switching, BellSouth is  
17 also required to record all billable events and send  
18 the usage data to MCI; is that correct?

19 A Yes, and I think the key -- the answer is  
20 yes. But I think the key word that is mentioned there  
21 is also found in Attachment 3, 7.2.1.9, and that is  
22 the word "billable," and I think Mr. Varner had some  
23 questions on that earlier; and I think the key word is  
24 "billable," which would be usage that you would need  
25 to bill your end user customers.

1           Q     Just for reference, that's on Page 5 of the  
2 handout that I passed to you, 7.2.1.9?

3           A     Yes.

4           Q     So you do not think that switched access is  
5 a billable event?

6           A     It is definitely a billable event, and  
7 definitely you would have every right to get the  
8 interstate switched access usage, but as far as  
9 intrastate usage, I believe there were several  
10 questions of Mr. Varner on that issue, and I do not  
11 differ with him on that issue.

12          Q     Do you believe that intrastate interLATA  
13 switched access is not a billable event?

14          A     No. I would not deny, but it is a billable  
15 event that BellSouth would have for rendering bills to  
16 its carrier customers.

17          Q     Would you agree that this says BellSouth  
18 shall record all billable events?

19          A     Yes, and there is no doubt in my mind that  
20 we, in fact, do. What we send to the carriers would  
21 be data that is required for the -- our carrier  
22 customers to bill their end user customers.

23          Q     When MCI orders a loop/port combination, is  
24 Bell intending to comply with this network element  
25 requirement?

1           A     You mentioned in the cite at 7.2.1.9?

2           Q     Yes, sir.

3           A     I mean, yes. Perhaps I'm not understanding  
4 the question. It mentions that we will, and for those  
5 events that you would need usage to bill your end user  
6 customers, we would definitely abide by this  
7 agreement.

8           Q     And I'm sorry I didn't make a copy of it,  
9 but are you aware that Section 1 of Attachment 3 of  
10 the interconnection agreement provides that BellSouth  
11 shall provide UNEs to MCI in accordance with FCC  
12 rules? And I could get you that copy.

13          A     I have the agreement. Would you give me a  
14 cite, please?

15          Q     It's Section 1 of Attachment 3.

16          A     Yes, I would agree with that. That is the  
17 first sentence.

18          Q     And if MCI orders a loop/port combination  
19 from Bell, is Bell intending to comply with this  
20 section?

21          A     Yes, we will abide by the agreement, and we  
22 will provide usage, billable usage, billable events,  
23 that would allow you, MCI, to bill your end user  
24 customers, or whatever other type of customers that  
25 you may have.

1           **MR. BOND:** Thank you. No further questions.

2                           **CROSS EXAMINATION**

3 **BY MR. HATCH:**

4           **Q**     I have a few questions, Mr. Hendrix. I'm  
5 going to be handing out a couple of things for you, so  
6 bear with me for a minute.

7           **MR. BOND:** Chairman Johnson, while he does  
8 that, could I have the handout that I passed out  
9 marked for identification?

10           **CHAIRMAN JOHNSON:** 27. And a short title?

11           **MR. HATCH:** "Excerpts from Commission order  
12 and agreement."

13           **CHAIRMAN JOHNSON:** Okay.

14           **MR. BOND:** Thank you.

15                       (Exhibit 27 marked for identification.)

16           **MR. HATCH:** Madam Chairman, what was just  
17 handed out from AT&T, could I get that marked for  
18 identification, please?

19           **CHAIRMAN JOHNSON:** It will be marked 28,  
20 "Agreement between BellSouth and AT&T, Kentucky."

21           **MR. HATCH:** It would be excerpts from that  
22 agreement.

23           **CHAIRMAN JOHNSON:** Excerpts?

24           **MR. HATCH:** Yes. I have the entire  
25 agreement, which was actually -- I didn't make a full

1 set of copies for everybody. I wanted to give one to  
2 the witness and court reporter just for inclusion, so  
3 that the full text is available, and one for the  
4 Staff, as well as folks who needed it. If we could  
5 get that marked for identification, please.

6 **CHAIRMAN JOHNSON:** Marked as 28.

7 (Exhibit 28 marked for identification.)

8 **CHAIRMAN JOHNSON:** Wait a minute. Did I  
9 just --

10 **MR. HATCH:** Yes, I think you duplicated a  
11 number. 28 was the excerpts. I think 29 would be  
12 the --

13 **CHAIRMAN JOHNSON:** She handed me something.  
14 I might have missed something, because I thought you  
15 were referring to the same document, because it's the  
16 only one that I have. Were you referring to that?  
17 Okay. So that would be 29, and what's the short title  
18 for that? What was that?

19 **MR. HATCH:** The 29 is the full Kentucky  
20 contract.

21 **CHAIRMAN JOHNSON:** Oh, that is the full  
22 contract. Okay.

23 **MR. HATCH:** 28 is just the excerpts.

24 **CHAIRMAN JOHNSON:** Got you.

25 (Exhibit 29 marked for identification.)

1           **MR. HATCH:** And then this final document is  
2 an order of the Kentucky Public Service Commission.

3           **CHAIRMAN JOHNSON:** We'll mark that 30,  
4 "Order of the Kentucky Public Service Commission."

5           (Exhibit 30 marked for identification.)

6           **Q**        **(By Mr. Hatch)** Mr. Hendrix, do you have a  
7 copy of your AT&T/BellSouth Florida agreement handy?

8           **A**        Yes, I do.

9           **Q**        And do you also have a copy of the Kentucky  
10 agreement handy? Basically what I'm going to do is do  
11 sort of a side-by-side through various provisions of  
12 the contract, so if you want to get them set up to  
13 just sort of look at both of them at the same time.

14          **A**        All right.

15          **Q**        Just for explanation, the excerpts provision  
16 that I gave you matches the excerpts provisions that  
17 were matched to Mr. Eppsteiner's testimony, so you'll  
18 have an understanding of basically the provisions  
19 we're going through.

20          **A**        All right.

21          **Q**        Would you turn to Section 1A of the Florida  
22 agreement and 1A of the Kentucky agreement?

23                **COMMISSIONER GARCIA:** Mr. Hatch, did you  
24 tell us to turn -- which one is it you want us to look  
25 at?

1           **MR. HATCH:** In the Kentucky agreement it's  
2 Section 1A. In the Florida agreement it's also 1A.  
3 These numbers will coincide between both agreements  
4 with the exception of one provision later on.

5           **Q**       **(By Mr. Hatch)** Would you just read,  
6 Mr. Hendrix, the 1A provisions in both agreements so  
7 you're familiar with both contracts?

8           **A**       I have.

9           **Q**       Is there any significant differences in the  
10 provisions of the Kentucky 1A when compared to the  
11 Florida Section 1A?

12          **A**       Well, the Kentucky agreement; at the very  
13 end where it states whether those elements are its own  
14 or are purchased from BellSouth in any manner that it  
15 chooses to provide service. So the last part of the  
16 paragraph is different.

17          **Q**       The text is different, but would you agree  
18 with me that the 1A in each of those two separate  
19 contracts specifically provides that AT&T may obtain  
20 unbundled network elements from BellSouth and may  
21 combine them in any way it chooses?

22          **A**       I would agree that that is the general  
23 framework of both agreements.

24          **Q**       Okay. Would you now turn to Section 29 in  
25 the contract? Of both contracts, actually.

1           A     I am there.

2           Q     Now read both of those provisions to  
3 familiarize yourself.

4           A     (Pause) I can tell you just from the  
5 history and, you know, staying up nights trying to do  
6 this stuff.

7           Q     They're identical, aren't they?

8           A     Yes. And the reason is this: In  
9 negotiations we came up with what we called a base  
10 agreement. Then as we received arbitration rulings in  
11 the different states, we would go in and modify the  
12 agreement to include those rulings.

13                     Issues on price, which was the -- I suppose  
14 the largest issue in working through all of the  
15 various states, was something that was pretty much  
16 left until the end, and we would incorporate the final  
17 order language as part of our best and final offer as  
18 to how we interpreted the language; and AT&T did the  
19 exact same thing.

20                     And then it was pretty much a pick and  
21 choose as to which language would actually end up in  
22 the agreements. So the base agreement is very similar  
23 and, in many cases, identical.

24           Q     Anyway, with respect to Section 29, those  
25 two provisions are identical between both contracts;

1 is that correct?

2 A I would agree.

3 Q And with respect to Section 29, it says that  
4 the terms and conditions to be applied to unbundled  
5 network elements, and the requirements for network  
6 elements described in Attachment 2, and the price for  
7 network elements is set forth in forth in Part 4 of  
8 agreement. That's the same on both contracts; is that  
9 correct?

10 A I would agree.

11 Q Now, go to section -- or continuing on in  
12 the Kentucky excerpts, it would be in Attachment 4.

13 A Which section in Attachment 4?

14 Q Attachment 4.

15 A Just Attachment 4?

16 Q Yes. Now, if you look at 2.2 of  
17 Attachment 4 for both contracts --

18 A I am there.

19 Q -- the language in 2.2 for both contracts is  
20 identical again, isn't it?

21 A Yes, it is.

22 Q Could you go to A-4, 4.5?

23 A I'm sorry?

24 Q A-4, 4.5. Attachment 4, 4.5.

25 A Okay.

1 Q And make sure you're familiar with both of  
2 those sections.

3 A I am, and they are the same.

4 Q They are the same. And 4.5 says that when  
5 elements and combinations are currently interconnected  
6 and functional, such elements and combinations will  
7 remain interconnected and functional without any  
8 disconnection or disruption of functionality. This  
9 shall be known as the contiguous network  
10 interconnection of network elements. Is that correct?

11 A That's correct. That is standard language  
12 in all of the agreements.

13 Q Okay. Now, go to section -- Part 4,  
14 Pricing, Section 34.

15 A I'm there.

16 Q Now, Section 34 between both contracts,  
17 would you familiarize yourself with that?

18 A Yes.

19 Q Now, with respect to the -- with the  
20 exception of the reference in the Kentucky contract to  
21 the Kentucky Commission and in the Florida contract to  
22 the Florida Commission, the language in Section 34 in  
23 Part 4 is the same in both contracts?

24 A Exactly right. And that simply goes back to  
25 what I had mentioned earlier as being part of the base

1 agreement.

2 Q Now go down to Section 36, which is on that  
3 same page.

4 A I am there.

5 Q Now, the language in Section 36 of both  
6 contracts is identical, isn't it?

7 A Yes, it is.

8 Q Now, there's a provision in the Florida  
9 agreement, 36.1, that is not in the Kentucky  
10 agreement; is that correct?

11 A That is correct.

12 Q And 36.1 is the language concerning  
13 eliminating duplication of activities and essentially  
14 costs, charges, when unbundled network elements are  
15 combined; is that correct?

16 A Yes. But I think there is a key that's been  
17 overlooked throughout the hearing. If you look at  
18 36.1, it's about halfway of the agreement, it states:  
19 "BellSouth and AT&T shall work together to agree upon  
20 the total prices." And that's -- charges. And that's  
21 not simply the nonrecurring charges, but also the  
22 recurring charges to be paid when multiple elements  
23 are ordered.

24 And so that is a key difference, and it  
25 appears to me that we focus only on one part of those

1 charges. We do not -- or we have not focused on the  
2 recurring charges, which would be the glue charge; you  
3 know, if there's a glue charge for putting the rate  
4 elements together for AT&T as our customer.

5 Q You're obligated under the contract, I  
6 believe, to provide combinations to AT&T; is that  
7 correct?

8 A Yes, we are, but there is no price for those  
9 combinations.

10 Q And there's no price for a glue charge  
11 either, is there?

12 A There is no price, and I think that's why  
13 this language speaks to that, because there is no  
14 price, and we are to meet to determine what that  
15 appropriate price is.

16 Q Now, it's your position that when AT&T buys  
17 combinations that replicate a BellSouth retail  
18 service, that the rate should be retail less the  
19 discount; is that correct?

20 A That is correct.

21 Q Now, this section that indicates that AT&T  
22 and BellSouth are to work together or ultimately have  
23 the Commission decide in terms of removing duplication  
24 from combinations of network elements, that would have  
25 no meaning in the context of a combination that is

1 priced at resale, would it?

2           A     Well, I think there are two different  
3 things, and I think your focus -- well, let me say,  
4 first, I do not agree.

5                     I think there are two different things, and  
6 your focus is mainly on the first sentence. But the  
7 second part of this paragraph focuses on multiple  
8 elements wherein the first part would focus on  
9 elements combined on a single order, and those are two  
10 different things.

11                    And I think most of the focus has been in  
12 what we studied in the cost studies -- and I'm not the  
13 cost witness -- but what we studied in the cost  
14 studies was the multiple elements on a single order,  
15 wherein the second part of that that has been  
16 overlooked focused on us working together to come up  
17 with prices when there are multiple elements.

18           Q     But if combinations of elements, whether  
19 they include duplication or not, the provision that  
20 requires that duplication be eliminated when multiple  
21 elements are combined, that has no meaning if you  
22 price them at resale less a discount; is that correct?

23           A     That's a difficult question to answer,  
24 because we have resale that we assess now. And,  
25 granted, if you're assessing resale, then the issue of

1 duplicate charges would not be raised. It would not  
2 be a relevant issue until you sit down to come up with  
3 charges as to what that charge should be when multiple  
4 elements are ordered and asked to be combined by  
5 BellSouth.

6 Q Could you turn to the Kentucky order for a  
7 moment, please? Could you turn to Page 21 of the  
8 Kentucky order, please? Read Section 9 that begins on  
9 Page 21, please.

10 A Section 11 begins on --

11 Q I mean, 11. I'm sorry.

12 A Yes, I've read it.

13 Q Now, that provision in the Kentucky order  
14 states that BellSouth's argument that the purchase of  
15 network elements to create a service pursuant to  
16 251(c)(3) must be priced at the rate for purchase of  
17 service for resale under Section 251(c)(4). The  
18 Kentucky Commission rejected that argument from  
19 BellSouth, did it not?

20 A That is what is stated here, and they did,  
21 in fact, reject that, I believe.

22 Q And didn't the Kentucky Commission rule that  
23 AT&T can combine network elements whether or not they  
24 create or duplicate a service of BellSouth, and that  
25 those network elements would be priced at the sum of

1 the network element prices?

2 A Yes, they did.

3 Q So Kentucky would be considered a platform  
4 state for BellSouth using the jargon. Would that be  
5 correct?

6 A Platform is yours, your term.

7 Q A UNE platform?

8 A Yes. As you define platform, I would agree.  
9 But we are here in Florida, and in Florida the order  
10 is quite different; and the contract that we had with  
11 AT&T was drafted to reflect what was in the Florida  
12 order.

13 Q Now, we just walked through the various  
14 contract provisions. What is different between the  
15 Kentucky contract and the Florida contract that says  
16 that Kentucky combinations of UNEs are priced at the  
17 sum of the network elements, while in Florida they are  
18 not?

19 A Well, I think the key difference is this:  
20 Granted, Attachment -- Part 4, which deals with  
21 pricing, and when you look at the various pricing  
22 elements in Part 4 they look very similar.

23 However, the key difference is 36.1 and the  
24 paragraph that has been overlooked in this hearing,  
25 you know, with us working together to determine what

1 the appropriate recurring price would be when there  
2 are multiple elements.

3           So I think that is the key difference and  
4 that that is a really big difference. And I think the  
5 other thing is the order, the order that's been cited  
6 in this case wherein BellSouth attempted to get  
7 language included in the agreement that was rejected,  
8 you know, when we tried to include that language to  
9 reflect what was in the order.

10           So as far as the agreement, 36.1 is key, and  
11 as far as something outside of the agreement, you  
12 would have the order that would indicate that this  
13 issue had not been addressed wherein it had been  
14 addressed in this state.

15           Q     Didn't you state in your deposition that in  
16 order to accomplish pricing of UNEs at the sum of the  
17 network element prices in the contract, you would have  
18 to have explicit language directing that that be  
19 priced, combinations be priced, at the sum of the  
20 elements?

21           A     I'm not sure those were my exact words, but  
22 the gist of what you're saying is true, that you would  
23 need to have language in the agreement. And I would  
24 hope that that agreement would have been modified to  
25 reflect what was actually ordered, since that is the

1 basis that we operated on in formulating this  
2 agreement as well as others throughout the BellSouth  
3 region once we put together a base agreement.

4 Q There's no explicit such language in the  
5 Kentucky contract, is there?

6 A There is no language that would point to  
7 that, but there is an order which is different from  
8 the order that we have here; and, further, we have  
9 36.1 that is clear that the parties are to work  
10 together to come up with those prices.

11 Q If 36.1 were not in the Florida contract,  
12 then that contract would be virtually identical to the  
13 Kentucky contract. Wouldn't that suggest that the  
14 price of the network elements under the Florida  
15 contract would be the same as the Kentucky contract?

16 A I would say not, no; definitely not. As  
17 stated earlier, the attempt was made to keep  
18 everything as common as we could throughout these  
19 states and then go in and make a part of the  
20 agreements what had been ordered.

21 So to indicate where something is different  
22 in a given agreement and everything else is pretty  
23 much the same that we should abide by the rules in a  
24 different state, no, that doesn't make sense. We will  
25 abide by what's in this agreement.

1           Q     But the Commission orders that when  
2 unbundled network elements are combined, then AT&T and  
3 BellSouth negotiate to remove duplication and tasks  
4 that AT&T doesn't need when those elements are  
5 combined; isn't that correct?

6           A     That's part of it. There's a second part  
7 that is missing yet, and that second part is that  
8 BellSouth and AT&T shall work together to agree upon a  
9 total recurring and nonrecurring charge to be paid by  
10 AT&T when ordering multiple elements. There's a  
11 second part.

12          Q     And that would be taken, subject to the  
13 provision of the Commission's order and as reflected  
14 in 36.1, that those recurring and nonrecurring charges  
15 for combinations of unbundled network elements be  
16 priced to avoid duplication of activities that we  
17 don't need and things that we don't use?

18          A     You lost me after the second word. That was  
19 a real long question. Would you mind repeating it?

20          Q     36.1 has to be read in the context of the  
21 Commission's order that says when combinations of  
22 network elements are provided, that the price should  
23 avoid duplication of activities that we don't need and  
24 things that we don't -- that are not needed and not  
25 provided. It says that, does it not?

1           **A**     As does the agreement, and that's the first  
2 part. But there is a second part that everyone has  
3 missed, and that second part begins with the second  
4 sentence.

5           **Q**     And that's the part where we just avoid the  
6 duplication of things on an order. You avoid  
7 duplicate ordering provisions; is that correct?

8           **A**     I do not agree with that, no.

9           **MS. WHITE:** Mr. Hatch, Madame Chairman,  
10 Commissioners, I apologize; but I am supposed to be in  
11 an oral argument on Supra across the hall.

12           **CHAIRMAN JOHNSON:** I thought I'd allow him  
13 to finish this dialogue, but it's taking a little  
14 longer than I thought. Let me allow this last answer  
15 to the question, and then we'll break.

16           **MS. WHITE:** Thank you.

17           **Q**     **(By Mr. Hatch)** So is it your position that  
18 the Commission only said that the price for -- that  
19 duplication referred only to combinations when orders  
20 were combined on a single order? Is that what your  
21 testimony is?

22           **A**     No. I don't believe that's what I've  
23 stated.

24           **Q**     Okay. Did the Commission require that  
25 duplication of charges and activities we don't need be

1 removed from the price, the recurring and nonrecurring  
2 rates for combinations of unbundled network elements?

3 A And the answer is yes, and that's what's  
4 quoted here in 36.1, the first sentence.

5 Q And they also said when you combine  
6 unbundled network elements on a single order,  
7 duplicate costs and charges with respect to the  
8 ordering process also be removed; is that correct?

9 A That also is in the first sentence. And the  
10 answer is yes. I'm sorry.

11 Q Now, if we're required to negotiate  
12 recurring and nonrecurring rates for combinations of  
13 unbundled network elements that BellSouth will  
14 provision, then doesn't it flow that if the pricing  
15 provisions of the Kentucky contract are the same as  
16 the pricing provisions in the Florida contract, the  
17 only meaning to be given to 36.1 is we get the sum of  
18 the network elements for the combination; that's the  
19 top price, and that we then proceed to remove  
20 duplication for things that we don't need and  
21 functions that aren't provided to us pursuant to 36.1?

22 A No, I do not agree with that, and I think  
23 that flies in the face of the Act where the Act talks  
24 about the risk associated with -- of combining  
25 elements. I think one part of it is to eliminate

1 duplicate charges on a single order, but the other  
2 part is to reflect a market based price wherein you do  
3 not assume the risk of having to staff; you do not  
4 assume the risk of having to buy trucks; you do not  
5 assume the risk of anything else that you would have  
6 to do to put those UNES together to actually offer a  
7 retail service. We actually assume that risk. And  
8 that price should reflect market pricing as well as  
9 the risk associated with doing such.

10 Q Does the Kentucky contract --

11 CHAIRMAN JOHNSON: Mr. Hatch, I'm going to  
12 break here, and then I'll allow you to pick up at that  
13 point after we reconvene.

14 (Unrelated discussion off the record.)

15 CHAIRMAN JOHNSON: We'll break until 4:00.

16 MS. WHITE: Thank you, and I apologize.

17 (Brief recess.)

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19 (Transcript continues in sequence in  
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