

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

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VOLUME 3  
Pages 285 - 448

COPY

GTE FLORIDA, INC.,  
Petitioner,  
vs.

CASE NO. 99-5368RP

FLORIDA PUBLIC SERVICE COMMISSION,  
Respondent.

PSC DOCKET NO.  
980253-TX

BELLSOUTH TELECOMMUNICATIONS, INC.,  
Petitioner,

vs.

CASE NO. 99-5369RP

FLORIDA PUBLIC SERVICE COMMISSION,  
Respondent.

PSC DOCKET NO.  
980253-TX

PROCEEDINGS:

FINAL ADMINISTRATIVE HEARING

BEFORE:

ELLA JANE P. DAVIS  
Administrative Law Judge

DATE:

Wednesday, April 26, 2000

TIME:

Commenced at 9:30 a.m.  
Concluded at 2:33 p.m.

LOCATION:

2727 Mahan Drive  
Building 3  
Conference Room D  
Tallahassee, Florida

REPORTED BY:

JOY KELLY, RPR

ACCURATE STENOGRAPHY REPORTERS, INC.  
100 SALEM COURT  
TALLAHASSEE, FLORIDA 32301  
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EXHIBITS

GTE FLORIDA, INC.		ID.	IN EV.
NUMBER			
1	Competitive Network Alternatives and Eight Typical GTE Franchises	342	379
BELLSOUTH			
NUMBER			
5	PSC Commission Order PSC-97-1459-FOF-TL dated 11-19-97	397	401
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## P R O C E E D I N G S

(Hearing reconvened at 9:30 a.m.)

**THE COURT:** Let us be in order. We are reconvened on the second day of 995368 and 69. Ready to proceed, Ms. Brown?

**MS. HELTON:** Yes, Your Honor. The Commission calls Craig Hewitt.

**THE COURT:** Mr. Hewitt, were you here yesterday to hear my instructions?

**THE WITNESS:** Yes, Your Honor.

**THE COURT:** Do you have a religious objection to swearing?

**THE WITNESS:** No.

**THE COURT:** You may inquire.

- - - - -

**CRAIG B. HEWITT**

was called as a witness on behalf of the Florida Public Service Commission and, having been duly sworn, testified as follows:

**DIRECT EXAMINATION**

**BY MS. HELTON:**

**Q** Could you please give your full name and business address for the record.

**A** Craig B. Hewitt, 2540 Shumard Oak Boulevard, Tallahassee 32399.

1 Q By whom are you employed?

2 A Florida Public Service Commission.

3 Q And how long have you been employed by the  
4 Commission?

5 A 12 years.

6 Q And what is your current job?

7 A I'm an economic analyst with the Division of  
8 Auditing and Financial Analysis.

9 Q And what was your prior job?

10 A I was in research in the same capacity  
11 before the reorganization. And prior to that, I  
12 worked for the Florida Marine Fisheries Commission as  
13 an economic analyst.

14 Q And what is your job responsibility at the  
15 Commission?

16 A My primary job responsibility is preparing  
17 the Statements of Estimated Regulatory Costs.

18 Q How many Statements of Estimated Regulatory  
19 Costs or Economic Impact Statements have you prepared  
20 in your career at the Commission and the Marine and  
21 Fisheries Commission?

22 A About 150.

23 Q In your opinion, what is the purpose of a  
24 SERC?

25 A The SERC is to inform the decision-making

1 body, in our case the Commissioners, of the estimated  
2 cost of their rulemaking activities, how it's going to  
3 impact the regulated utilities, the end users and any  
4 other affected parties.

5 Q And when did you become involved in the  
6 rulemaking proceeding for the Fresh Look rules?

7 A I believe it was June-July of '99.

8 Q Do you recall at what stage in the  
9 proceeding the rulemaking was?

10 A There had been the proposed rule. There had  
11 been a Chapter 120.54 hearing.

12 Q And what was your involvement in the  
13 rulemaking process?

14 A Well, out of that hearing process, staff had  
15 made some rule changes, so the original SERC that had  
16 accompanied the rule needed to be revised to reflect  
17 those changes.

18 Q So did you prepare another SERC?

19 A Yes, I did.

20 Q Do you recall when?

21 A September 13th, 1999.

22 MS. HELTON: I point out, Stipulated Exhibit  
23 No. 57 -- Your Honor, may I get an exhibit from  
24 the box and give it to the witness?

25 I'm handing the witness Stipulated Exhibit

1 No. 57, which is staff's November the 4th, 1999,  
2 recommendation to adopt the Fresh Look rules with  
3 changes.

4 BY MS. HELTON:

5 Q Could you look and see if the SERC that is  
6 attached to that recommendation is the SERC that you  
7 prepared?

8 A Yes, it is.

9 Q What procedures did you follow when you  
10 prepared this SERC?

11 A Well, I had been following the process of  
12 the rule development in the SERC preparation, as Kathy  
13 Lewis had prepared the original SERC. I listened to  
14 the hearing and attended staff meetings, had  
15 discussions with staff, and then reviewed Mrs. Lewis's  
16 work.

17 Q Did the change in the rule change the costs  
18 that would be imposed on the regulated entities?

19 A I believe so. It was favorable to the  
20 ILECs, the incumbents, subject to this rule.

21 The window of opportunity was decreased from  
22 two years to one year for contracts to be opted out  
23 of. Plus the length of time left in a particular  
24 contract was extended to a year from six months. So  
25 that meant there were fewer contracts that would be

1 eligible for this Fresh Look rule. So the costs were  
2 fewer than the original estimate. And to save time, I  
3 just adopted Mrs. Lewis's estimates that she had  
4 obtained from the companies through data request, and  
5 essentially just modified the SERC to reflect the  
6 changes in the final proposed rule.

7 Q Did you address lost revenues in the revised  
8 SERC?

9 A Yes. The original data request asked the  
10 companies what their termination costs were going to  
11 be if the worst-case scenario occurred and all of the  
12 contracts were terminated. And as a part of those  
13 termination charges includes lost revenues.

14 In other words, if the clients, contractors  
15 had opted out on their own without the rule, they  
16 would have a maximum termination charge they would  
17 pay. So in lieu of the rule, the maximum cost would  
18 be those termination charges the companies provided us  
19 in the estimates in the data requests.

20 Q Do you know whether anyone formally  
21 requested a lower regulatory cost alternative while  
22 you were assigned to the rule?

23 A No, they didn't. I don't believe they did.

24 Q Did you address lower regulatory cost  
25 alternatives in the revised SERC?

1           A     Yes. As part of our standard procedure, we  
2 weigh what the companies might suggest or mention in  
3 their data request and either set those or reject  
4 those. And we looked at the no cost, or the no rule,  
5 and decided that it would not meet the objectives of  
6 the statute we were trying to implement. So that no  
7 rule would be lesser cost to the companies but it  
8 would be more cost to their customers and the end  
9 users.

10           Q     Mr. Hewitt, I think I neglected to ask you  
11 what your educational background was -- or is.

12           A     I have a bachelor's and master's in  
13 economics from Florida State, and I completed all of  
14 the economic classes and exams for the Ph.D. program  
15 in economics.

16                   **MS. HELTON:** The Commission tenders the  
17 witness for cross examination.

18                                   **CROSS EXAMINATION**

19 **BY MR. GOGGIN:**

20           Q     Good morning. I'm Michael Coggin.

21           A     Good morning.

22           Q     I'd like to ask you briefly about the  
23 process you referred to earlier. Did you perform any  
24 independent research regarding the impact of the rule?

25           A     Just a review of Mrs. Lewis's work. In

1 other words, I didn't send out an additional data  
2 request.

3 Q You mentioned that you had listened to the  
4 hearing and had discussions with staff. Did you do  
5 any other independent research regarding the  
6 competitive alternatives that may have been available  
7 to customers?

8 A I'm aware of the Competition Report that the  
9 Commission prepares each year. I was familiar with  
10 that. There were some competitive alternatives out  
11 there. And, also, I'm working on the Telephone Stat  
12 Report, which reflects the growth in the alternative  
13 local exchange companies, the ALECs, over the years.  
14 So I'm aware of the background that this rule has been  
15 developed in.

16 Q Did you review the Competition Report in  
17 addition, too?

18 A I had read it earlier and reviewed it  
19 earlier, yes.

20 Q I'd like to ask you a hypothetical question  
21 I've asked of some of the other witnesses.

22 Assuming the market of a hundred customers,  
23 five of whom have long-term agreements with  
24 alternative providers and 95 of whom have long-term  
25 agreements with BellSouth. Assume at the expiration

1 of those agreements, which is simultaneous, the 95  
2 BellSouth customers receive offers from one  
3 alternative provider and from BellSouth, but all 95  
4 pick BellSouth and sign a new long-term agreement.  
5 Under those circumstances, do you believe that those  
6 customers had access to a competitive alternative?

7       A     Assuming that the conditions and the quality  
8 of service was equal, then the remaining fact would be  
9 the price and the companies would chose the one with  
10 the lowest price in that instance, I believe.

11       Q     But is that -- would the customers --  
12 assuming the facts that you just stated right there,  
13 would that constitute a competitive alternative? The  
14 only difference in the offers were price?

15       A     I believe so.

16       Q     Then merely reviewing market shares would  
17 not necessarily indicate whether competitive  
18 alternatives existed, would it?

19       A     Well, we didn't talk about the degree of  
20 competition. We just said is there some competition  
21 out there and certainly market concentration is very  
22 important.

23                In other words, if a hundred of those -- I  
24 mean, the hundred -- in the hypothetical case --  
25 customers, out of those, the 95 might have gotten

1 offers from the one competitor, but if that competitor  
2 only had the capacity to serve, say, 25  
3 hypothetically, the other 50 really don't have any  
4 other choice. Because once that competitor's capacity  
5 is filled, then there's nowhere else to go for the  
6 remaining 75.

7 Q Do you have any reason to believe that a  
8 business would offer to serve a customer that it did  
9 not have the capacity to serve?

10 A Well, a company doesn't always know which  
11 customers to target, so they might advertise that they  
12 have a service available and hope they get as many  
13 customers as they can handle. But I would say  
14 beforehand they don't have any idea how many customers  
15 are out there that are actually going to respond to  
16 them.

17 Q You didn't speak with any parties to the  
18 contracts that would be affected by the proposed  
19 rules, did you?

20 A No.

21 Q In considering whether a lower cost  
22 alternative would substantially achieve the rule's  
23 objectives, how do you perform that analysis?

24 A The depends on the complexity of the rule, I  
25 would think. And -- but in this case, you weigh

1 the -- look at the objectives of the statute we're  
2 trying to implement and weigh the different  
3 alternatives, trying to come up with some weighting or  
4 way to determine if the cost in one particular  
5 instance is going to be higher or lower. And the  
6 other question is, well, who are the costs going to be  
7 lower for? In other words, no rule would be a lower  
8 cost for the incumbent LECs because they were going to  
9 maintain those revenues from the contracts that exist.  
10 But on the other hand, their competitors are losing  
11 those revenues they cannot get through competition so  
12 contracts are opened up. So the statute is not clear  
13 about who the lower cost is to. And in our view, the  
14 customer is the end user that we are looking at the  
15 welfare of, and the end user should be paying the  
16 lowest cost.

17 Q I'm trying to get a way from -- to get  
18 closer to the point I was trying to have you make.

19 Does the -- in the abstract, would the --  
20 would you weigh the costs against the benefits of the  
21 rule in order to determine whether the objectives can  
22 be substantially achieved by a lower cost? In other  
23 words, is it a balancing test whether the marginal  
24 increasing cost is outweighed by the marginal decrease  
25 and the effectiveness of the rule?

1           A     Previously under the Administrative  
2 Procedures Act we were required to develop an Economic  
3 Impact Statement, EIS. And there we were explicitly  
4 required to weigh the cost and benefits. With the  
5 change in that Act in '97, I believe, the emphasis was  
6 more on cost, the estimated transaction costs that the  
7 companies would incur under the changes that we're  
8 implementing. So the assumption is that there are  
9 benefits or why else would the agency be doing the  
10 rule? And our job in the SERC is to lay out this cost  
11 that is going to affect the ILECs or competitors or  
12 whomever.

13                     So in our mind we do weigh those. We don't  
14 have to explicitly put down the benefits in the SERC.  
15 In the data request, we do ask for those benefits.  
16 Cost and benefits. And we expect the company to give  
17 us all of their costs that they are going to incur.

18           Q     What, in your mind, were the benefits of the  
19 proposed rules in this case?

20           A     To open up the market more fully to  
21 competition. That was our mandate from the  
22 Legislature, if you will, that we should encourage  
23 competition. And competition benefits the end user,  
24 like I said, by driving costs down.

25                     Now, there's going to be some losers when we

1 move from a monopolistic competition situation to  
2 competition. The monopolist is going to lose  
3 customers; is going to lose revenues. That's a given.  
4 But in the end, the ratepayer, or the customer, will  
5 save money with a more efficient marketplace.

6 Q Would you agree that without the rule,  
7 competition is, nevertheless, increasing?

8 A I agree that it's increasing in the sense  
9 there are more competitors being certified by the  
10 Public Service Commission. I believe there are still  
11 bottlenecks out there.

12 The last mile that was mentioned yesterday,  
13 going to the customer's home, for instance, in the  
14 residential sense, is still very costly to overcome  
15 that facility by a competitor.

16 So it is increasing. It's a question of  
17 time. How fast are we going to get to a fully open  
18 market where customers can freely choose.

19 Q Did you ever attempt to measure or estimate  
20 the change in the rate at which competition would  
21 increase as a result of the rule?

22 A Well, we had the number of contracts that  
23 were in existence at that time that would be affected.  
24 And like it was mentioned earlier, it is up to the  
25 customer to opt out of, say, their current contract.

1 And we have no idea ahead of time how many are going  
2 to do that and at what rate. So we had like a maximum  
3 number of contracts that would be affected, at the  
4 time of the data request anyway, and we have no way of  
5 knowing how fast that those contracts are going to be  
6 opted out of.

7 Q In the Competition Report there are some  
8 statistics about how many access lines, business  
9 access lines, are served by ILECs and ALECs, correct?

10 A Yes.

11 Q There's at least some data to indicate how  
12 rapidly customer -- or the change in customer  
13 preference, if you will, how many customers choose  
14 alternatives. Was there ever any attempt to measure  
15 to what extent the long-term agreements that this rule  
16 would affect were inhibiting customer choice?

17 A Could you repeat the question, please?

18 Q The assumption of the rule, as I understand  
19 it, is that the long-term agreements that would be  
20 affected by the rule, because of the termination  
21 liabilities, inhibit customers who might otherwise  
22 choose alternative providers; is that correct?

23 A I believe so.

24 Q Was there ever any attempt to measure, based  
25 on the data that exists for measuring how many

1 customers choose alternatives, what would be the  
2 change in customer choice?

3 A Like I said, I don't think you can know that  
4 ahead of time. It would be speculative.

5 Q Do you agree that that measure would --  
6 assuming three years down the road you were able to  
7 measure it -- would be the proper measure to use for  
8 determining the impact of the rule?

9 A Ex post you could measure the number of  
10 contracts that were opted out of and what value ahead  
11 of the normal expiration of those contracts and you  
12 can get some sort of value.

13 Q Do you have any data today about how many  
14 customers opt out of term agreements prior to their  
15 expiration?

16 A No, I don't.

17 Q So even if you had the data after the fact,  
18 you wouldn't necessarily be able to measure the impact  
19 of the Fresh rule, correct?

20 A If I had the number that -- the percentage  
21 of the values beforehand and could compare, yes.

22 Q To your knowledge, did anyone with the  
23 Commission request such data?

24 A I'm not aware of any.

25 Q Are you familiar with the statistics in the

1 Competition Reports regarding how many new market  
2 entrants, ALECs, were offering services in the years  
3 the contract -- I mean, in the years that the reports  
4 were published?

5 A Well, from the Stat Report, I recall that  
6 there were zero ALECs before the telecommunications  
7 law changed. And this has grown by leaps and bounds.  
8 And the latest figure I pulled up last week with the  
9 Commission director, we had 480.

10 Q Given those statistics, is it your opinion  
11 that these contracts that would be affected by the  
12 rule represent barriers to entry?

13 A Absolutely.

14 Q Do you believe there would be more market  
15 entrants if the Fresh Look rule were passed?

16 A There possibly could be. But although you  
17 have a certificated company, that doesn't mean they  
18 are getting customers. They might not be getting  
19 customers as fast as we could be if we had the rule.

20 Q Do you know how many of the 400-and-some  
21 carriers you mentioned before were actually offering  
22 services to customers in Florida?

23 A Well, from the staff -- excuse me, from the  
24 Competition Report, I would say a fraction, a small  
25 fraction of that, or actually -- have facilities and

1 can offer a competitive alternative.

2 Q Is resale a competitive alternative?

3 A To a certain extent I believe it is, but  
4 it's not the same as having your own facilities.

5 Q In the hypothetical example we discussed  
6 before, where a customer is offered a contract that is  
7 identical in all respects except for price, could a  
8 reseller make such an offer to a customer?

9 A Within the limits of its wholesale price.  
10 It doesn't control the cost of the underlying  
11 facilities. It has to set, I would think, the  
12 negotiated or the interconnection cost floor.

13 Q I'd like to refer you to the exhibit that  
14 counsel for the Commission put in front of you,  
15 Exhibit 57, which includes the September 1 Statement  
16 of Estimated Regulatory Cost.

17 On Page 2 of that report, in the second  
18 paragraph, the last sentence reads, "However, if the  
19 proposed rules become effective, it would make a new  
20 pool of customers available to competitive providers,  
21 possibly resulting in an increase in the number of  
22 ALECs providing such services." What is the new pool  
23 of potential customers you're referring to here?

24 A Those would be the customers that would have  
25 the option under the rule to opt out of their current

1 contracts.

2 Q To your knowledge, do these customers have  
3 any bar against accepting an offer to resell their  
4 current contracts from a alternative provider?

5 A I'm not aware of the contract terms.

6 Q Would a competitive provider have any -- be  
7 barred from offering additional services to these  
8 customers in addition to the ones covered by the  
9 current contract?

10 A I would think it would depend on their  
11 ability to offer additional services.

12 Q Would these customers be able to terminate  
13 their current contracts and choose an alternative  
14 provider at termination?

15 A Certainly they could with the attendant  
16 charges, termination fees.

17 Q I think you testified before that the  
18 Commission doesn't -- or at least you didn't have any  
19 information regarding the frequency with which  
20 customers might actually terminate these contracts  
21 without regard to the termination liability; isn't  
22 that correct?

23 A That's right.

24 Q Do you know whether ALECs currently market  
25 services to this pool of customers?

1           A     I know there are ads and commercials out  
2 there. I don't know how extensive they are, how  
3 widespread.

4           Q     Do you know whether these customers had  
5 competitive alternatives from which to choose at the  
6 time they entered into the agreements?

7           A     Repeat that.

8           Q     Do you know whether these customers had  
9 competitive alternatives from which to choose at the  
10 time they entered into these agreements?

11          A     From my knowledge, I don't think they had  
12 very much. In other words, from the 1997 change in  
13 the law, there were very few alternatives. Now,  
14 today, you have a lot more. So it would depend on  
15 when the contracts were actually entered into.

16          Q     Are you familiar with the Commission's  
17 orders granting incumbent local exchange carriers the  
18 right to enter into contract service arrangements?

19          A     I'm aware of it.

20          Q     Would it be safe to say they are permitted  
21 to enter into these -- at least prior to the '95 Act,  
22 they were permitted to enter into contract service  
23 arrangements where competitive alternatives existed  
24 for those as much as --

25                   MS. HELTON: Your Honor, I think we're

1 getting outside of the scope of Mr. Hewitt's  
2 testimony.

3 **THE COURT:** Would you read back the  
4 question, please.

5 (Thereupon, the question appearing on page  
6 305, Lines 20 through 24, was read back by the  
7 reporter.)

8 **MR. GOGGIN:** I believe that the question  
9 relates to assertions that are made in the CSA  
10 about whether these customers had competing  
11 alternatives, whether competition existed at the  
12 time the contracts were entered into, and whether  
13 these customers are, in fact, available to  
14 competitive providers. These are statements  
15 made --

16 **THE COURT:** Well, it's a little hard to rule  
17 on this until I hear the end of the question.  
18 From what I've heard so far, this witness has  
19 testified to knowledge of conditions prior to and  
20 after the Act changing, and if you can finish  
21 that question I may be able to rule.

22 **BY MR. GOGGIN:**

23 **Q** Mr. Hewitt, are you familiar with the  
24 Commission's -- I've already asked that.

25 Would it be fair to say that the

1 Commission's orders permitting the offering of CSAs  
2 permitted carriers, prior to 1995, to enter into such  
3 contracts where competitive alternatives existed?

4 THE COURT: Same objection as before?

5 MS. HELTON: Same objection.

6 THE COURT: Overruled. You may answer.

7 A I think the answer to that question would  
8 depend on how you define "competition" and what kind  
9 of barriers to competition there were existing at the  
10 time.

11 Q Did the Commission find that PBXs of  
12 alternative access vendors were in some cases direct  
13 substitutes for the services offered by --

14 A I'm not sure I know their conclusion.

15 Q On Page 3 of the -- 3 and 4 of your  
16 Statement of Estimated Regulatory Costs, you refer to  
17 data provided by the ALECs regarding potential  
18 termination liability; is that correct?

19 A By ILECs.

20 Q By the ILECs.

21 A Yes.

22 Q Was this data provided in response to data  
23 requests that you prepared?

24 A No. These were in response to the data  
25 requests that Mrs. Lewis prepared.

1           Q     I think you mentioned before the rule had  
2 been revised by the time that you were asked to  
3 prepare a revised SERC and that the revisions would  
4 likely result in lower cost to the ILECs; is that  
5 correct?

6           A     That's correct.

7           Q     On page 4, in the second full paragraph,  
8 first sentence reads, "If a customer chooses to  
9 terminate a contract under the proposed rule, an ILEC  
10 would certainly lose the revenues it would have earned  
11 from that customer had he not terminated his  
12 contract."

13                     Did you ask for any data regarding the  
14 amount of revenues that might potentially be lost?

15           A     The question was asked in the data request  
16 to give all costs, or any additional costs, that might  
17 result from this rule. And I believe that the figures  
18 on page 3 reflect all the possible revenues that the  
19 ILECs could have potentially lost if every contract  
20 had opted out.

21           Q     If the rule had its -- strike that.

22                     If there were no rule, it's your contention,  
23 is it not, that these customers would remain under  
24 these agreements; is that correct?

25           A     To the extent that they don't opt out.

1 Q Then we have established that we don't know  
2 how frequently customers might opt out in the absence  
3 of that rule, correct?

4 A I don't have that information in front of  
5 me.

6 Q Assuming all of the customers remain under  
7 the agreements, the ILECs would have an expectation of  
8 receiving a set amount of revenue from each contract  
9 for the duration of that contract; isn't that correct?

10 A I believe so.

11 Q And is it your understanding that if the  
12 customer were to terminate the contract in the absence  
13 of the rule, that customer would be obligated to pay a  
14 termination liability?

15 A That's what I understand.

16 Q Do you have any information about the amount  
17 of the termination liability that might be charged  
18 under, for example, a tariff term plan?

19 A From what I've heard, it varies, but it  
20 could be the remaining revenues do under the contract.

21 Q Might it also be an amount less than the  
22 remaining revenues under the contract?

23 A It could be. And I think it varies  
24 according to length of the term.

25 Q So if the rule were passed and a customer

1 terminated the agreement, the ILEC's costs might be  
2 measured by the difference in the termination  
3 liability it would have received if there were no rule  
4 and the termination of liability that it actually  
5 received under the rule; is that correct?

6       A     Minus the possibility that the customer  
7 could recontract with the ILEC at a lower price.

8       Q     Might you also measure the ILEC's cost by  
9 measuring the total revenues the ILEC might have  
10 received if the customer had stayed and the  
11 termination liability it actually received if the  
12 customer terminated?

13       A     Well, that's speculative because we don't  
14 know how many are going to opt out.

15       Q     Under the circumstance, without that  
16 information it's difficult to ascertain what the costs  
17 are; is that correct?

18       A     Well, we have estimates by the companies  
19 themselves of what their maximum losses would be.

20       Q     Did you appear at the November 16 agenda  
21 conference?

22       A     Pardon me?

23       Q     Did you appear at the Commission's  
24 November 16 agenda conference?

25       A     I believe I did.

1           Q     I believe you stated at that time that --  
2 with regard to the revenues, that we know it's going  
3 to be in the millions of dollars. Would you disagree  
4 with that statement today?

5           A     No. Because there is likely to be some  
6 terminations of contracts. There's going to be some  
7 lost revenues to the ILECs.

8                     Now, we have estimates of approximately  
9 24 million here, and if 10 percent opt out, that's 2.4  
10 million right there. That's millions. Whether it's  
11 2 million, 4 million, 16 million, I don't know. It's  
12 speculative.

13          Q     Those numbers that you were talking about  
14 are termination liability loss, correct?

15          A     That's right. And that includes lost  
16 revenues.

17          Q     But we didn't know whether the termination  
18 liabilities, in fact, are equal to the expected  
19 revenues, do we?

20          A     I would expect if the termination  
21 liabilities don't require 100 percent payment of the  
22 contract, then, yes, it would be less. But the  
23 possibility is that customers could opt out now. They  
24 could opt out with one month left in their contract  
25 and go to somebody else. We just don't know.

1 Q Isn't the -- as I understand it, isn't it  
2 the staff's position that the rule is designed to  
3 permit customers to opt out who otherwise would not  
4 due to the termination?

5 A That's right, to open up competition.

6 Q Shouldn't the assumption be that you measure  
7 the revenue to be gained over the life of the contract  
8 versus the reduced termination liability?

9 A To measure for what?

10 Q The cost to the ILEC.

11 A Not when the ILECs have already estimated  
12 that the maximum termination liabilities would be X  
13 amount of dollars.

14 Q On page 5 of your SERC, under the  
15 "Reasonable Alternative Methods," the third  
16 sentence -- actually the second and third sentence,  
17 "The ILECs believe that no rule is necessary as the  
18 marketplace is effectively competitive. However, no  
19 evidence was provided to substantiate this." What's  
20 the basis for that statement, "no evidence was  
21 provided to substantiate this"?

22 A What is the basis for that statement?

23 Q Yes.

24 A That when the companies replied in their  
25 data request that they thought that no rule was

1 necessary, it was just a statement without any  
2 evidence that the marketplace is competitive, and  
3 therefore, the rule wouldn't be necessary.

4 Q Did you -- you mentioned before that you  
5 listened to the hearing. Did you review testimony  
6 submitted by BellSouth in this matter?

7 A I believe I glanced at it. I can't say that  
8 I studied it.

9 Q Did you review the testimony submitted by  
10 GTE in this matter?

11 A I believe I looked at some of it but I  
12 didn't study it.

13 Q Did you review the testimony submitted by  
14 Sprint in this matter?

15 A Like I said, I looked at those but I didn't  
16 study them.

17 Q To your knowledge, did any other party to  
18 the affected contracts, namely customers, submit any  
19 testimony in this matter?

20 A I don't recall seeing any.

21 Q Do you recall from your glance at the  
22 testimony submitted by the ILECs whether there was any  
23 evidence of the presence of competing alternatives?

24 A I can't remember any exact numbers, no.

25 Q So your statement that no evidence was

1 provided to substantiate this was merely based on a  
2 review of the data requests?

3 A That is correct.

4 Q And the purpose of the data request was to  
5 determine the potential cost impact on the company; is  
6 that correct?

7 A Right.

8 Q Do you have any understanding of what the  
9 purpose of the hearing was?

10 A To gather more evidence.

11 Q Page 6, bottom of the page, you note that  
12 the number of new CSAs, contract service arrangements,  
13 provided by BellSouth grew substantially. And that on  
14 page 7, just below the table, the statement is made  
15 that one reason for the increase in the number of new  
16 CSAs could be that more customers are receiving offers  
17 from competitors. Do you agree with that statement?

18 A That's one possibility. The other  
19 possibility is that they fear new competitors coming  
20 into the market and may be lowering their prices in  
21 advance.

22 Q Prior to the Act, do you have an  
23 understanding of the circumstances under which CSAs  
24 could be offered?

25 A I believe the requirement is that there is

1 potential competition.

2           Q     Performing your analysis as to whether the  
3 costs that could be avoided by no rule would outweigh  
4 the potential benefits of the rule, what did you use  
5 to measure the benefits of the rule?

6           A     In many instances the benefits from  
7 competition are hard to measure. But you could use as  
8 a proxy the difference in the prices from the  
9 contracts and the revenues that the companies were  
10 receiving before versus after, of course, including  
11 what their X customers are paying for a new contract  
12 with some other provider. That difference there is  
13 the gains to the end users, to the economy, for  
14 increased efficiency in the marketplace. More  
15 competition. Because competition drives prices down  
16 to their lowest cost.

17           Q     Given the existence of termination  
18 liabilities, an ALEC competing for the business of a  
19 customer who is subject to a long-term agreement would  
20 have to offer a lower price to induce that customer to  
21 leave the contract with the termination liability than  
22 it would to induce a customer to leave a contract with  
23 no termination liability; isn't that correct?

24           A     I'm not certain who would be picking up the  
25 termination charges in that case.

1           Q     Let's take it as a hypothetical. Assume a  
2 customer, a BellSouth customer has a three-year  
3 contract that has termination liability and assume a  
4 second BellSouth customer has a three-year contract  
5 with no termination liability. And assume that the  
6 price that both customers were paying to BellSouth is  
7 equal. If a ALEC wanted to compete for the business  
8 of those two BellSouth customers, the ALEC would have  
9 to offer a lower price to the first customer to induce  
10 that customer to break his contract than it would have  
11 to offer to the second customer; isn't that correct?

12           A     If all other conditions are the same,  
13 quality, terms, et cetera, I would think the price  
14 would make a difference.

15           Q     So if the benefits of competition can be  
16 measured by whether competition yields lower prices,  
17 it's possible, isn't it, that the presence of  
18 termination liabilities might actually improve  
19 competition; isn't that correct?

20           A     No, I don't believe that. Because those  
21 termination costs are barriers to entry for that ALEC  
22 to get that customer. That's a cost that's above the  
23 marketplace if that ALEC can offer the other customer  
24 a lower price.

25           Q     Do you know whether ALECs offer long-term

1 contracts?

2 A I believe they do.

3 Q Do you know whether those long-term  
4 contracts include termination liabilities?

5 A I think some do and some don't.

6 Q Were you here yesterday when Time Warners'  
7 witness was testifying?

8 A Yes.

9 Q Do you recall she indicated that Time Warner  
10 does, in fact, have termination liability?

11 A I don't recall that exact statement but I'll  
12 accept that.

13 Q If there were ALECs who offered long-term  
14 contracts with termination liabilities, wouldn't those  
15 contracts present precisely the same sort of barrier  
16 as a long-term contract entered into with an ILEC?

17 A For another ALEC to come along and try to  
18 compete for that customer, that certainly would be a  
19 barrier. However, the ALEC does not necessarily have  
20 the -- the bottleneck facility that the ILECs do. So  
21 that the ALECs more or less have a -- unless it's  
22 facilities-based versus, say, a reseller, they don't  
23 have the same footing as an ILEC does.

24 Q Do you know what the percentage of business  
25 access lines served by ALECs allows according to the

1 Competition Reports in 1997, for example?

2           A     The latest I remember, I think, was the  
3 '98 -- maybe it was the '99 -- the latest one  
4 published I believe was around 12 to 20 percent. And  
5 I think it's a lower number, lower end of that range.

6           Q     And the market share for business access  
7 lines in the beginning of 1996 would likely be -- for  
8 ALECs would likely be close to zero, would it not?

9           A     I would think so.

10          Q     The number of market entrants in 1996 would  
11 likely be close to zero for ALECs as well, wouldn't  
12 it, in 1996?

13          A     Right. I believe we have zero and then the  
14 next year '97 was 55.

15          Q     In 1999, according to the Commission's  
16 report, there were 80 providers who were actually  
17 offering service --

18               MR. GOGGIN: Let me ask, if I might, to put  
19 an exhibit in. I believe it's BellSouth Exhibit  
20 No. 4, Competition Report for 1999. BellSouth --

21               THE COURT: Do you want to use the one  
22 that's up here?

23               MR. GOGGIN: Yes, please. BellSouth  
24 Exhibits 2 and 3 as well. The 1997 and 1998  
25 Competition Reports.

1 Can we go off the record for a moment?

2 THE COURT: Certainly. If anyone wants to  
3 go back on the record, signal the court reporter.

4 (Discussion over the record.)

5 MR. COGGIN: Back on the record.

6 THE COURT: Go back on the record. You may  
7 proceed.

8 MR. GOGGIN: Thank you.

9 BY MR. GOGGIN:

10 Q Mr. Hewitt, if you could look at the  
11 document labeled BellSouth Exhibit No. 3, please.  
12 1997 Competition Report.

13 THE COURT: 3 is 12-98.

14 MR. GOGGIN: I'm sorry. I do want 3. The  
15 12-98 report. Thank you.

16 BY MR. GOGGIN:

17 Q If you could please turn to page 7. In that  
18 report, the third bullet point there indicates that as  
19 of July 10, 1998, 51 ALECs were providing basic local  
20 service to businesses and residential access lines; is  
21 that correct?

22 A I see that.

23 Q That's about two and a half years after the  
24 beginning of 1996; isn't that right?

25 A Yes.

1 Q If could you look now at BellSouth Exhibit 4  
2 which is the 1999 Competition Report on page 32. In  
3 the first full paragraph there it indicates that there  
4 were 80 ALECs as of June 30, 1999, who were serving  
5 access lines; is that correct?

6 A I don't see that on my copy.

7 Q Sorry. Page 32. May I approach the  
8 witness?

9 A 80. I see it now.

10 Q Okay. So from the beginning of 1996 until  
11 June 30, 1998, which, coincidentally, would be the  
12 cutoff date for contracts under this rule, over 80  
13 ALECs -- 80 ALECs, at least among those who responded  
14 to the Commission's data request for purposes of this  
15 report, reported that they were serving customers;  
16 isn't that correct?

17 A I believe so.

18 Q Do you know offhand how many wireless  
19 telecommunications providers there are in Tallahassee?

20 MS. HELTON: Objection, Your Honor. I don't  
21 think that the wireless providers are relevant  
22 to --

23 MR. GOGGIN: Your Honor, I think the witness  
24 made a statement earlier about these contracts  
25 being barriers to entry. I'm trying for

1 comparison's sake to ask questions about other  
2 markets that became competitive to draw  
3 comparisons between the number of entrants in  
4 this market and the number of entrants in other  
5 markets.

6 **THE COURT:** I can see where this may lead to  
7 relevant evidence, Mr. Coggin. I'll let you go  
8 down this route and overrule the objection. But  
9 I'd suggest to you that, again, this isn't a rate  
10 case and it really is under Chapter 120 with  
11 regard to the agency's authority and scope of the  
12 rule, this rule. So let's try and keep it as  
13 close to those parameters as possible.

14 **BY MR. GOGGIN:**

15 **Q** More than 80 new market entrants in a market  
16 over two and a half years is pretty significant, isn't  
17 it?

18 **A** It depends on the context. Florida is a  
19 very big state. It has over 15, 16 million people.

20 **Q** What is the basis for your statement that  
21 these contracts are barriers to entry?

22 **A** It locked up the potential pool of customers  
23 that competitors can come in and compete for. With  
24 those competitors locked up, it limits the pool.

25 **MR. GOGGIN:** I have no further questions.

1 THE COURT: Ms. Caswell.

2 CROSS EXAMINATION

3 BY MS. CASWELL:

4 Q Good morning, Mr. Hewitt. I just have a few  
5 questions.

6 A Good morning.

7 Q I believe that early in your direct  
8 testimony you said that efficient competition will  
9 benefit customers; is that right?

10 A That's the goal.

11 Q And as a economist, how do you define  
12 "efficient competition"?

13 A I might have meant to use the word  
14 "effective" competition.

15 Q No. But I'm looking for the definition of  
16 efficient competition.

17 A When there's a free entry and exit to  
18 market.

19 Q I believe you also made the statement that  
20 competition drives prices down; is that correct?

21 A That's correct.

22 Q Would you expect that in a competitive  
23 market both the ILEC's and ALEC's prices would be  
24 driven down closer to their cost?

25 A Yes.

1 Q And wouldn't you agree that contracts and  
2 individual-case basis arrangements are often designed  
3 specifically so that the ILEC can give the customer a  
4 lower price than he might otherwise pay under a  
5 tariff?

6 A Would you repeat that question, please?

7 Q Wouldn't you agree that contracts and  
8 individual-case basis arrangements are often designed  
9 specifically so that the ILEC can give the customer a  
10 lower price than he might otherwise get under a  
11 tariff?

12 A I think that's possible, but to try to allow  
13 the incumbent LEC to cover their costs, there would be  
14 fixed costs. Because there's potential competition  
15 coming in that would lower the price in any event.

16 Q Do you understand that the purpose of the  
17 CSA is to allow the ILEC to meet competition?

18 A I believe the mission is potential  
19 competition.

20 MS. CASWELL: Thank you, Mr. Hewitt. I have  
21 nothing further.

22 MS. HELTON: I have just a couple of  
23 redirect questions.

24 **REDIRECT EXAMINATION**

25 **BY MS. HELTON:**

1           Q     You stated, I believe, in response to some  
2 questions from Mr. Coggin that the estimates of cost  
3 of termination -- that you had the estimates of costs  
4 of termination from the ILECs. In your opinion, is  
5 that what the Statement of Estimated Regulatory Cost  
6 is about, to estimate the costs?

7           A     It's to estimate it based on our best  
8 knowledge. It is just an estimate. It's speculative  
9 based on the best information we have.

10          Q     You stated in response to another one of  
11 Mr. Coggin's questions that -- concerning how fast we  
12 were going to get to an open market. And I assume  
13 that you don't believe that we are there yet at an  
14 open market; is that correct?

15          A     It's not fully open, no.

16          Q     Is it your opinion that we are still in a  
17 transition from a monopoly to competition?

18          A     Yes.

19          Q     In your opinion, is this what the rule is  
20 about, to move us from a monopoly to an open market?

21          A     Yes. And it would move us to competition,  
22 open competition faster than if we just let the normal  
23 course of events play out under the current  
24 conditions.

25                   **MS. HELTON:** Thank you. We have no further

1 questions.

2 THE COURT: Mr. Hewitt, were you here  
3 yesterday for my discussion of questions for  
4 clarification?

5 THE WITNESS: Yes, ma'am.

6 THE COURT: Please pause before you answer  
7 me so if any counsel want to object they can.  
8 And don't answer anything except what I ask you.  
9 That's hard to do sometimes.

10 Are the agenda meetings, discussed in your  
11 testimony, what are normally called public  
12 hearings or rulemaking hearings by other agencies  
13 under Chapter 120?

14 THE WITNESS: Are the agenda conferences?

15 THE COURT: Yes.

16 THE WITNESS: I believe we have separate  
17 hearings for 120-type -- that's part of the  
18 process of gathering information for the  
19 Commission in the rulemaking process.

20 THE COURT: Very well. You referred to  
21 staff making changes in the rule draft after a  
22 154 hearing -- excuse me, 120.54 hearing. Now,  
23 understanding in the course of this rule being  
24 developed, apparently the statute was changed.  
25 What do you mean by a 120.54 hearing?



1 rest our case-in-chief.

2 MS. CASWELL: GTE calls Beverly Menard.

3 THE COURT: I guess that means you're ready  
4 to proceed. Okay.

5 - - - - -

6 BEVERLY Y. MENARD

7 was called as a witness on behalf of GTE Florida, Inc.  
8 and, having been duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MS. CASWELL:

11 Q Please state your name and business address.

12 THE COURT: I do need to swear or affirm her  
13 first. I was going to try to accommodate the  
14 court reporter here. Ma'am, you do have the  
15 spellings?

16 THE REPORTER: Yes, thank you.

17 THE COURT: Ms. Menard, were you present for  
18 my prior instructions with regard to oath or  
19 affirmation?

20 THE WITNESS: Yes.

21 THE COURT: Do you have a religious  
22 objection to swearing?

23 THE WITNESS: No, ma'am.

24 BY MS. CASWELL:

25 Q Please state your name and business address.

1           A     Beverly Y. Menard. My business address is  
2 One Tampa City Center, Tampa, Florida 33602.

3           Q     What is your educational background?

4           A     I have a bachelor's and master's in  
5 accounting from the University of South Florida.

6           Q     And who is your employer?

7           A     I'm currently employed by GTE Service  
8 Corporation.

9           Q     And how long have you worked for GTE?

10          A     I started with GTE 31 years ago as a clerk.

11          Q     Can you give us a brief history of your  
12 employment with GTE.

13          A     Yes. Basically, I started with GTE Florida  
14 February 4th, 1969. Went through various increasing  
15 responsibility. Went to our corporate headquarters  
16 for four years until 1981 and returned to Florida in  
17 1981 as the Business Relations Director. Held  
18 different positions. Currently I'm responsible for  
19 Florida and Georgia, all regulatory proceedings, and  
20 all GTE business units.

21          Q     And how long have you held your current  
22 position?

23          A     Approximately two years.

24          Q     What is the purpose of your testimony in  
25 this case?

1           A     The purpose of my testimony is to discuss  
2 the -- I'm the policy witness for GTE, as I'm  
3 responsible for all regulatory proceedings at the  
4 Commission. I'm responsible for filing all the  
5 interconnection agreements at the Commission. Also  
6 responsible for the Contract Service Arrangement  
7 reports we file at the Commission.

8           Q     What is the premise of the Fresh Look rule  
9 as you understand it?

10          A     It's my understanding the purpose was to  
11 enable customers who have not had an alternative  
12 choice an opportunity to contract with a competitor.

13          Q     What is the Commission's view, as you  
14 understand it, of termination liability provisions in  
15 the ILECs contracts?

16          A     They said it was a barrier to competition  
17 and was extravagant.

18          Q     Did the Commission review any of GTE's  
19 contracts to determine what those termination charges  
20 were to your knowledge?

21          A     Not to my knowledge.

22          Q     To your knowledge, did it seek to interview  
23 any customers to find out if the termination charges  
24 kept them from changing to another provider?

25          A     Not to my knowledge.

1 Q What kind of customers would the Fresh Look  
2 rule apply to?

3 A Basically -- I'd say probably 95 percent of  
4 them are for our medium and large business customers  
5 and other 5 percent would probably be the small  
6 business customers.

7 Q And does the rule make any distinction  
8 between small and large business customers?

9 A No, it does not.

10 Q Did competition arise in some GTE exchanges  
11 before others?

12 A Yes. We did our first interconnection  
13 agreements in 1996. We have four facility-based  
14 carriers that I personally negotiated the  
15 interconnection agreements for. Those were  
16 Intermedia, MCI, MFS, and Winstar. So the  
17 Tampa/St. Pete/Clearwater area is the first area we  
18 got competition in and over time it has been  
19 increasing.

20 Q And does the Fresh Look rule recognize that  
21 competition arose in some exchanges before others?

22 A No. Because it's all contracts that were in  
23 existence as of June 30th, 1999.

24 Q Do you know how many other states have  
25 adopted Fresh Look rules in the local exchange

1 context?

2           A     To my knowledge there have only been two,  
3 Ohio and New Hampshire.

4           Q     And do those rules recognize the fact that  
5 some exchanges became competitive before others?

6           A     Yes. In both cases the type arrangement  
7 that they have is that the ALEC -- of course, in those  
8 states they were called CLECs -- the ALEC makes a  
9 filing with the Commission when they are operational  
10 in an exchange and they open up a Fresh Look window  
11 for 180 days in that exchange.

12          Q     Did GTE discuss the Ohio and New Hampshire  
13 rules during the rulemaking?

14          A     Yes, they did.

15          Q     What would be the practical effect in  
16 Florida if the Commission had adopted a Fresh Look  
17 rule similar to Ohio's and New Hampshire's where the  
18 rule, or the Fresh Look opportunity is triggered by a  
19 competitor's entry into an exchange?

20          A     Based on the last Commission Competition  
21 Report, which is labeled BellSouth Exhibit 4, I think,  
22 in GTE's case I had competition in all exchanges, but  
23 I did have Indian Lakes that did not have any business  
24 competition. In that exchange we're talking about  
25 probably approximately 200 business access lines.

1           Q     Do you think it would have been more  
2 reasonable for the Florida Commission -- aside from  
3 any legal problems with the Fresh Look rule, do you  
4 think it would have been more reasonable for them to  
5 tailor a rule to the realities of the marketplace?

6           A     Yes, I do.

7           Q     And in what respects is the Commission's  
8 rule different from the Fresh Look rules in those  
9 other states?

10          A     The main problem we have with it is, number  
11 one, in most of the cases we're talking about these  
12 customers had an alternative when they signed the  
13 contract with me. Under the rules for contract  
14 service authority they had to have an alternative and  
15 under our tariffs they have to have an alternative to  
16 take a contract. They already had an opportunity to  
17 go with a competitor. They chose GTE. And now in a  
18 sense we're giving the carriers a second chance to  
19 take the customer when they didn't get them the first  
20 time.

21          Q     How long is the Fresh Look window under the  
22 Florida rule?

23          A     It is left open for one year.

24          Q     And how does that compare to the Fresh Look  
25 windows in the other rules you've looked at?

1           A     As far as Ohio and New Hampshire, those were  
2 180 days. My recollection in all of the Fresh Look  
3 for other type proceedings that I've looked at in all,  
4 I think the standard is 90 to the 180 days.

5           Q     And what amount of time must remain on the  
6 contract for the Fresh Look rule to operate in  
7 Florida?

8           A     Based on the effective date of the rule,  
9 they have to have a year left on the contract. In  
10 Ohio and New Hampshire what they did was you had to  
11 have two years left on the life the contract.

12          Q     Do those other rules allow contract  
13 repricing in all instances?

14          A     Yes. In every instance I've seen that has  
15 adopted Fresh Look there was full repricing of all  
16 contracts.

17          Q     Aside from Ohio and New Hampshire, what has  
18 been the general reaction of states that have been  
19 petitioned to consider a Fresh Look rule?

20          A     Either they have said they did not think it  
21 was good public policy or they have said they did not  
22 have the legal authority.

23          Q     When the Florida telecommunications law  
24 changed in 1995, was the Commission required to  
25 undertake any program to notify customers of potential

1 choices in the local exchange market?

2       A     Yes.  There was a statutory language saying  
3 they needed to do an education program.  As a result,  
4 we sent bill inserts at the end of '95, beginning of  
5 '96, two sets of inserts to all customers.

6       Q     When staff was first asked to draft a Fresh  
7 Look rule, what date did it choose to determine the  
8 availability of a Fresh Look opportunity?

9       A     January 1, 1997.

10      Q     And do you recall the rationale for that  
11 1997 date?

12      A     Basically, my remembrance, without looking  
13 at the transcript, was that by that point they felt --  
14 you know, the Commission had gone through their  
15 proceedings in '96 in competition, you had the  
16 Telecommunications Act, and that the customers should  
17 be aware at that point that there are alternatives and  
18 that competition was coming.

19      Q     In the current version of the Fresh Look  
20 rule, what is the date before which contracts would be  
21 subject to the Fresh Look?

22      A     June 30th, 1999.

23      Q     And when was that date first proposed?

24      A     At the November agenda that set the rule.

25      Q     Is an agenda a rulemaking hearing?

1           A     No, it is not.

2           Q     Do parties get to speak about the merits of  
3 the rule at an agenda conference?

4           A     No. My recollection is because there was a  
5 new SERC, parties were allowed to address the new SERC  
6 and that was it.

7           Q     Did staff propose that June 30, '99 date?

8           A     No. They had proposed it be all contracts  
9 up to the effective date of the rule.

10          Q     And, again, contracts up to the effective  
11 date of the rule. Was that staff's idea or was that a  
12 proposal made by someone else?

13          A     That was a proposal made by Commissioner  
14 Johnson in an earlier agenda.

15          Q     And getting back to the date that made it  
16 into the rule, who proposed that date?

17          A     Commissioner Clark.

18          Q     And to your recollection was there much  
19 discussion of that June 30th date when the Commission  
20 adopted it?

21          A     No. And my recollection was there was some  
22 discussion by Commissioner Clark saying you shouldn't  
23 have a problem picking a date certain. That it didn't  
24 have to beat the effective date of the rule. And then  
25 right near the end of the discussion on this item she

1 suggested using June 30th, 1999.

2 Q I'm going to read from the November 16th,  
3 1999, transcript, and this is on Page 30, where the  
4 date was proposed. At line 3, this is a quote from  
5 Commissioner Clark, "I certainly think that there has  
6 developed recently sufficient competition or awareness  
7 of competition that I don't think Fresh Look needs to  
8 apply to contracts entered into currently. I would be  
9 willing to accept a date of June 30, 1999, which is  
10 covered in the recommendation, and that indicates  
11 roughly 40 percent of what is out there would be  
12 available to renegotiation."

13 Commissioner Clark used the term "sufficient  
14 competition," and I believe the Commission staff has  
15 also used it at this hearing. Did the Commission ever  
16 define "sufficient competition" for purposes of the  
17 rule?

18 A No, they did not.

19 Q Has the Commission engaged in competitive  
20 analysis in other dockets in the past?

21 A Yes, they have.

22 Q And what kinds of factors has it looked at  
23 to determine whether a service or a market was  
24 competitive?

25 A We had a case, effective competition, and

1 basically some of the things they looked at were  
2 comparability of substitutes, market coverage of the  
3 competitor, size and product line scope of the  
4 competitors, performance of the competitors and scope  
5 of the LEC performance.

6 Q So the Commission has performed economic  
7 analyses before to determine whether something was  
8 competitive, correct?

9 A That is correct.

10 Q Did it perform any such economic analysis in  
11 this case to justify June 30th, 1999, as the date that  
12 marked the advent of competition in local switched  
13 services for business customers?

14 A No.

15 Q Did it perform any analysis whatsoever to  
16 support that June 30th date?

17 A Not to my knowledge.

18 Q Is there any support in the rulemaking  
19 record that business customers were not aware of  
20 competitive alternative before July of 1999?

21 A No. I would say more -- the testimony  
22 covered the fact that customers were aware of the  
23 competition.

24 Q And was that staff's initial view at least?

25 A Yes. When we started the proceeding, yes,

1 it was.

2 Q In your view, was the June 30th, 1990, date  
3 an arbitrary choice?

4 A Yes.

5 Q Have you participated in many rulemaking  
6 proceedings in your time at GTE?

7 A I've participated in every rulemaking at the  
8 Commission since December 1981.

9 Q Do you have an idea of how many proceedings  
10 that might be, an estimate?

11 A Anywhere from 70 to 100.

12 Q Okay. Have you seen or are you familiar  
13 with the letter that the Joint Administrative  
14 Procedure Committee sent to the Commission in April of  
15 1999?

16 A I have seen that letter.

17 Q Have you ever seen a letter like that  
18 questioning the Commission's authority to adopt a rule  
19 in any of the rulemaking proceedings in which you have  
20 been involved?

21 A No, I have not.

22 Q After GTE and BellSouth filed petitions here  
23 challenging the rule and the Commission decided to  
24 defend its rule, did the Commission ask alternative  
25 local exchange carriers if they would support the

1 Commission in the rulemaking challenge?

2 A Yes, they did, at the January agenda.

3 Q And what was their response?

4 A Other than Time Warner, the other carriers  
5 said they would decline the opportunity; that they did  
6 not think it was worth it.

7 Q What company is GTE's longest running  
8 competitor in the local market?

9 A Intermedia.

10 Q Did they participate in the Commission's  
11 rulemaking proceeding?

12 A No, they did not. Not as a party.

13 Q Are you in a position to know generally  
14 about competitive activity in GTE's local markets in  
15 Florida?

16 A Yes. Partly because I file all the  
17 interconnection agreements at the Commission.

18 Q From your perspective, were there  
19 alternatives to the ILECs switched local services  
20 before June 30, 1999?

21 A Yes, there were. As of --

22 MS. HELTON: Excuse me. I don't know what  
23 the witness is referring to.

24 THE WITNESS: A piece of paper which I'll be  
25 happy to show you.

1           **THE COURT:** Counsel has a right to look at  
2 her notes. If it's an exhibit that is marked --

3           **THE WITNESS:** It's not an exhibit that's  
4 marked.

5           **THE COURT:** You have a right to inspect her  
6 notes.

7           (Hands document to Ms. Helton.)

8           **THE WITNESS:** As of June 30th, 1999, we had  
9 56 resell agreements and 45 interconnection  
10 unbundling and resale agreements.

11 **BY MS. CASWELL:**

12           **Q** Can you explain what a resale agreement is?

13           **A** Yes. A resale agreement is where -- as  
14 Ms. Marek testified yesterday, there are three ways  
15 that a carrier can compete with an ILEC. Resell means  
16 that they do not have to put in any facilities of  
17 their own. They buy our services at discount and the  
18 Commission's discount is 13.04 percent, and then they  
19 provide the service to the carrier using our  
20 facilities.

21           **Q** So would they need a resale agreement to  
22 provide services to the reseller?

23           **A** That's correct.

24           **Q** Would you explain what an Interconnection  
25 Agreement is?

1           A     An Interconnection Agreement is an agreement  
2 you do with a facilities-based carrier so that you can  
3 connect the facilities that contains all the terms,  
4 conditions and prices on how we will connect the two  
5 networks of the two carriers.

6           Q     And are interconnection and resale  
7 provisions often combined in one agreement?

8           A     Yes. As I said, we had 45 which are a  
9 combination. It has interconnection, which is what  
10 you need for our facilities-based carriers. It also  
11 has unbundling because the third way that a carrier  
12 can do service is you actually buy piece-parts of our  
13 network at a wholesale basis, and so that's the  
14 unbundling part. And then the resale is also there.  
15 So it's three agreements in one.

16          Q     And would the Fresh Look apply regardless of  
17 whether the customer sought to move to a reseller or  
18 for a facilities-based provider?

19          A     Yes, it would.

20          Q     Focusing on facilities-based competitors, do  
21 you know how many were operating in GTE's territory as  
22 of June 30th, 1999?

23          A     I know there were at least nine operating at  
24 that point.

25          Q     Are you sponsoring an exhibit discussing

1 competition from facilities-based providers --

2 A Yes, I am.

3 Q -- in GTE's Tampa area?

4 A Yes, I am.

5 MS. CASWELL: I would like to have this  
6 exhibit marked for identification, please.

7 THE COURT: GTE-1.

8 MS. CASWELL: Yes.

9 THE COURT: Marked for identification at  
10 this time. GTE-1, Competitive Network  
11 Alternatives. And Eight Typical GTE Franchises.

12 (GTE Exhibit 1 marked for identification.)

13 MS. HELTON: Excuse me, Your Honor. I gave  
14 away my copy of my prehearing stipulation, so I  
15 don't know the answer to this, but was this  
16 listed as an exhibit?

17 MS. CASWELL: PNR competitive data, yes.

18 MS. HELTON: Is this the exhibit --

19 MS. CASWELL: This is not confident.

20 MS. HELTON: Is this the exhibit Ms. Brown  
21 asked you for yesterday? Because this is the  
22 first time that we've seen it.

23 MS. CASWELL: No. She asked me what it was  
24 way back when we had the deposition. And I said  
25 it had been attached to Mr. Dennis Trimble's

1 testimony in a another proceeding and if she  
2 wanted another copy, I would give it to her.

3 MS. HELTON: Okay.

4 THE COURT: Is there an objection to  
5 tendering it to the witness?

6 MS. HELTON: No, Your Honor. I just wanted  
7 to make sure I understood.

8 THE COURT: What is the question? I had  
9 marked and tendered to the witness GTE-1, which  
10 is designated as Competitive Network Alternative  
11 and Eight Typical GTE Franchise areas. If you  
12 want to, you can call it PR whatever it is you  
13 just said.

14 MS. CASWELL: No.

15 BY MS. CASWELL:

16 Q Is this a portion of the report on the eight  
17 franchise areas?

18 A Yes, it is.

19 Q And what does this portion of the report  
20 concern primarily? What area?

21 A This is the -- primarily the activity for  
22 the Tampa area.

23 Q Is that GTE's entire serving area?

24 A As far as for the proceeding we've got here,  
25 yes. But the purpose of this document also addressed

1 other GTE areas because it was used for an FCC  
2 proceeding.

3 Q What is the date of the report?

4 A The date of the report was May 1999. As far  
5 as when it was filed in the FCC docket, on Page 5 of  
6 the document it says that the initial part of the  
7 research was done between November '98 and January  
8 '99, and the rest of the research was done in March  
9 and April of 1999.

10 Q And who performed this study?

11 A PNR and Associates.

12 Q Is PNR a generally well-known name in the  
13 telecommunications industry?

14 A Yes, they are.

15 Q According to this report, what market  
16 segments were facilities-based competitors targeting  
17 when the data was gathered?

18 A Business customers.

19 Q And do you recall what company had achieved  
20 the greatest penetration in this market?

21 A On bypass basis it was MCI.

22 Q And according to the report, how many bypass  
23 customers did MCI have in the Tampa area at the time  
24 the data was gathered for the report?

25 A Page 14 of the report shows they had about

1 10,000 bypass lines.

2 Q And aside from number of competitors, what  
3 other indicators of competition does the report  
4 discuss?

5 A It discusses the fiber, collocation and  
6 switched placement.

7 Q Can you explain to us what collocation is?

8 A Yes. Collocation is where either we  
9 physically give a portion of our central office to the  
10 carrier so they can put their own equipment in, or  
11 they hand us their equipment and we put their  
12 equipment in with our equipment for their use in our  
13 central office.

14 Q And why is collocation an indicator of  
15 competitive activity?

16 A With collocation the carrier has access to  
17 all of the last mile facilities.

18 Q And why is switched deployment a good  
19 indicator of competitive activity?

20 A Because this shows you where they can reach  
21 the customers. And as it showed in this report,  
22 83 percent of the buildings were within 18,000 feet of  
23 a competitor switch in our territory.

24 Q And why is fiber placement a good indicator  
25 of competitive activity?

1           A     Because that is where it shows that the  
2 carriers have placed their facilities so that they can  
3 actually bypass us and produce the last mile or do not  
4 have to use GTE's facilities at all.

5           Q     Are you familiar with the Florida PSC's  
6 annual load competition reports that have been  
7 discussed here and labeled as BellSouth Exhibits 1  
8 through 4?

9           A     Yes, I am.

10          Q     Generally, could you tell me what these  
11 reports show with respect to competitive trends in the  
12 business market?

13          A     Yes. My recollection is it's basically  
14 tripled over the years; from about 1.4 percent to  
15 12 percent over the two-year period from '97 to '99.  
16 Tripled each year from '97 to '98, '98 to '99.

17          Q     Are the percentage line gains of ALECs in  
18 the reports entirely accurate?

19          A     Probably not, since I -- the Commission has  
20 not required all carriers to report. Some carriers  
21 have not chosen to report. And we don't know if they  
22 are all reporting consistently with how we report  
23 lines.

24          Q     Do the reports disclose who answered the  
25 Commission survey?

1           A     No, they do not.

2           Q     Can you tell me a little bit about the  
3 Commission's CSA process, its origin and operation?

4           A     Yes. BellSouth had made a tariff filing  
5 back around 1994 or so requesting contract service  
6 authority. As a result of them doing that, then we  
7 made a filing asking for the same. And basically in  
8 our tariffs we had a requirement -- it was to ensure  
9 that there was not uneconomic bypass of our facilities  
10 when a customer had a competitive choice. And we did  
11 not file the contracts with the Commission, but  
12 instead, what we did -- first it was a monthly report  
13 and then it went to a quarterly report. We filed  
14 quarterly reports with the Commission saying how many  
15 contracts had been quoted, pending, accepted,  
16 rejected. And then for any of them that are accepted  
17 we say how much revenue the customer would have paid  
18 if he had ordered under the tariff. How much he's  
19 paying under his contract and what the difference is.

20           Q     Does GTE use contracts to reduce its  
21 business risk?

22           A     No. We use -- the number one criteria for  
23 contract service arrangement is the customer has to  
24 have a competitive alternative.

25           Q     I think you mentioned earlier the

1 Commission's resale requirement. In your opinion, is  
2 this requirement to resell your contracts an advantage  
3 to your competitors?

4 A Yes, it is. Because they do not have to do  
5 any work. They simply get our contracts at a  
6 13.04 percent discount.

7 Q Can you tell us, briefly, what kind of  
8 changes the Legislature made in the telecommunications  
9 law, the Florida Legislature, in 1995?

10 A Basically what they did is, number one, they  
11 opened up the market to the competition, and then put  
12 in procedures for unbundling and reselling proceedings  
13 that the Commission ended up having. In return for  
14 opening up the markets to competition, we were given  
15 the ability to go to price regulation. And the  
16 Legislature expanded the contract authority so that we  
17 could compete with our competitors.

18 Q Was there any requirement for there to be a  
19 certain level of competition before the ILEC could use  
20 its contract authority?

21 A No, there was not.

22 MS. CASWELL: That's all I have. Thank you,  
23 Ms. Menard.

24 THE COURT: Mr. Coggin.

25 MR. GOGGIN: I have no questions for this

1 witness.

2 THE COURT: The agency.

3 MS. HELTON: It's me this time.

4 CROSS EXAMINATION

5 BY MS. HELTON:

6 Q Ms. Menard, you gave some testimony this  
7 morning about what other states have done.

8 A Yes, ma'am.

9 Q Does each state Public Service Commission  
10 have the same rules, regulations and organic law from  
11 which it works?

12 A Not to my knowledge, no.

13 Q You also gave some testimony this morning  
14 about the proceedings before the Commission in this  
15 rulemaking matter. Do you know whether GTE asked the  
16 Commission to tailor rules to competitive entry in  
17 each exchange?

18 A No, we did not specifically, because we  
19 thought, number one, the basic problem we have is we  
20 don't think the Commission has the authority.

21 Q Well -- I'm sorry, go ahead.

22 A If I can explain?

23 Q Uh-huh.

24 A We did discuss the Ohio and the Pennsylvania  
25 things. It was our position that at the time we were

1 doing these type proceedings it was past time for a  
2 Fresh Look in Florida.

3           Q     Well, Ms. Caswell stated at the  
4 February 12th, 1999 -- I'm sorry, I said February and  
5 I meant to say May -- May 12th, 1999 Fresh Look  
6 hearing, on Page 88 of the transcript of that  
7 proceeding, which is in Stipulated Exhibit No. 45, at  
8 Line 12, that "The second change that needs to be made  
9 in the Fresh Look windows is the Fresh Look window.  
10 Staff has proposed two years. This is longer than any  
11 Fresh Look window I've seen in any context. Usually  
12 the assumption, and I think it's a correct one, is  
13 that competitors will capture customers in the first  
14 few months, if at all."

15           **THE COURT:** Is that a question?

16           **MS. HELTON:** My question is then why didn't  
17 she also ask about doing a -- narrowing the rule  
18 so that it would be available only by exchange if  
19 there was competitiveness found in that exchange.

20           **MS. CASWELL:** Objection. That calls for  
21 speculation as to what I was thinking at the  
22 agenda conference.

23           **THE COURT:** Sustained.

24 **BY MS. HELTON:**

25           Q     You also gave some testimony this morning

1 about the Competitive Network Alternative and Eight  
2 Typical GTE Franchises, which is marked as GTE No. 1?

3 A Yes, ma'am.

4 Q Does GTE serve outside of the Tampa area?

5 A This report covered most of the Tampa area.

6 It did not cover Sarasota so it did not cover KMC,

7 which is another facilities-based carrier.

8 Q But does GTE serve outside of the Tampa  
9 area?

10 A Well, when I think of our territory I think  
11 of our company as the Tampa area so that's -- it's a  
12 six-county area.

13 Q Does GTE have data for the other areas that  
14 it serves that are not covered by this report?

15 A I believe most of the areas were in this  
16 report. Sarasota, Bradenton -- all the areas are in  
17 the report. The only thing that's not in here is the  
18 switch and facility-based carrier, KMC, which has a  
19 switch in Sarasota.

20 Q How large are the businesses that are the  
21 subject of this report?

22 A My recollection --

23 THE COURT: Is the report you're referring  
24 to GTE-1?

25 MS. HELTON: Yes, I'm sorry. GTE-1.

1 MS. CASWELL: I'm sorry, could I ask for a  
2 clarification. When you say "businesses," do you  
3 mean the ALECs or the customers?

4 MS. HELTON: I mean the customers.

5 MS. CASWELL: Thank you.

6 THE COURT: Perhaps you could clarify what  
7 you mean by how large. Are you talking about a  
8 geographical area, the number of phones receiving  
9 a dial tone? Can you make this smaller than a  
10 bread box? Because no matter what she answers,  
11 I'm not going to be able to understand what the  
12 business is.

13 MS. HELTON: It might not be so easy to do.  
14 Because it's my understanding --

15 THE COURT: Ma'am, if you can't define  
16 larger, let me ask the witness, are you able to  
17 guess what she means by larger?

18 THE WITNESS: Well, if she's asking me -- if  
19 the question -- does this survey only address  
20 what we would call large business customers, the  
21 answer is no. This survey addresses all business  
22 customers. Small, medium and large. Any size  
23 you want to quantify them as.

24 BY MS. HELTON:

25 Q In your testimony this morning you made a

1 statement about the percentage of customers within  
2 18,000 -- was it 1800 or 18,000?

3 A 18,000.

4 Q 18,000 feet of an ALEC. What was that  
5 percent again?

6 A 88 percent.

7 Q Do you know whether an adjustment was made  
8 to the Commission's Competition Report to account for  
9 the fact that some ALECs did not respond?

10 A I know that the Commission attempted to try  
11 to make an adjustment. They asked us to give them  
12 data on what we showed on lines. The problem is when  
13 we do our count of lines, we don't have a count of the  
14 bypass line so we know that's understated.

15 Q How did you go about determining what  
16 information to give to the Commission as far as the  
17 adjustment goes?

18 A We did a look at our billing records on what  
19 we were billing carriers, which, by definition, would  
20 not include bypass lines, because the carriers aren't  
21 using our facilities.

22 MS. HELTON: We have no further questions.

23 MS. CASWELL: I just have one redirect  
24 question.

25 **REDIRECT EXAMINATION**

1 BY MS. CASWELL:

2 Q You had some discussion with Ms. Helton  
3 about potentially tailoring the Fresh Look rules to  
4 make them acceptable to GTE. Could you clarify, was  
5 GTE in favor of any Fresh Look rule at all?

6 A No, they were not.

7 MS. CASWELL: Thank you.

8 THE COURT: Have you concluded?

9 MS. CASWELL: I'm finished. Thank you.

10 THE COURT: Very well. Ma'am, did you hear  
11 my --

12 THE WITNESS: Yes, ma'am.

13 THE COURT: -- instruction with regard to  
14 clarification earlier.

15 THE WITNESS: I'll work hard to stop before  
16 I answer.

17 THE COURT: I may just be listening slower  
18 than you're talking.

19 THE WITNESS: No problem.

20 THE COURT: What do the initials "PNR" stand  
21 for? Are they on GTE-1?

22 THE WITNESS: Let me see. I always called  
23 them PNR and Associates. I do not know what that  
24 stands --

25 THE COURT: Is this a marketing firm?

1           **THE WITNESS:** Yes, ma'am. It's a marketing  
2 firm. They do research.

3           **THE COURT:** In response to one of  
4 Ms. Caswell's questions, you responded, putting  
5 question and answer together, that PNR is  
6 generally well-known in the industry. Is it a  
7 for-hire marketing firm?

8           **THE WITNESS:** Yes, ma'am.

9           **THE COURT:** That anyone can hire.

10          **THE WITNESS:** Yes, ma'am. And they have  
11 been used for a number of FCC and Commission  
12 proceedings by the various parties.

13          **THE COURT:** And nobody knows their name.

14          **THE WITNESS:** I think that's the actual  
15 company name, PNR and Associates. I don't think  
16 it actually stands for anything.

17          **THE COURT:** Okay. Was it your testimony  
18 that the contracts used by GTE -- that all of the  
19 termination contracts that would be affected by  
20 this rule held by GTE had competitive  
21 alternatives at the time they were entered into?

22          **THE WITNESS:** Yes, ma'am. For all of the  
23 contracts, that is correct.

24          **THE COURT:** Is that information contained in  
25 any of the exhibits in evidence?

1           **THE WITNESS:** That is stated in our tariffs.  
2           I do not think that's an exhibit -- I haven't  
3           gone over the full exhibit list. I do not -- I  
4           know it was attached -- some of that stuff was  
5           attached to the data request we did for the  
6           Commission and all, but I do not think that's  
7           part of this record.

8           **THE COURT:** Any questions as a result of  
9           mine, Ms. Helton?

10          **MS. HELTON:** Could we have one minute,  
11          please? (Pause)

12                                   **RE CROSS EXAMINATION**

13 **BY MS. HELTON:**

14           **Q**     The judge asked you a question about when  
15           you enter into contracts, whether you have to have  
16           competition out there.

17           **A**     Yes, ma'am.

18           **Q**     Was your response that for CSAs only or was  
19           it also for tariff term plans?

20           **A**     The question was asked for contracts.

21           **THE COURT:** I'm sorry, I didn't hear the  
22           answer.

23           **THE WITNESS:** I said the question was asked  
24           for contracts.

25 **BY MS. HELTON:**

1 Q Which are CSAs?

2 A Correct.

3 MS. HELTON: We have no further questions.

4 THE COURT: Any questions as a result of  
5 mine, Ms. Caswell?

6 MS. CASWELL: I have just one. And it  
7 concerns the operation of the CSA mechanism.

8 REDIRECT EXAMINATION

9 BY MS. CASWELL:

10 Q How would you know whether customers had  
11 competitive alternatives for CSAs?

12 A Because the customer would have told us.  
13 Either they may show us the bid, they may tell us  
14 about the carrier's bid or they may actually issue a  
15 request for proposal.

16 Q When the CSA process was established, what  
17 was the requirement for GTE to use a CSA?

18 A That there had to be a competitive  
19 alternative.

20 MS. CASWELL: Thank you. I have no further  
21 questions.

22 THE COURT: Very well. Thank you, ma'am.  
23 You may step down.

24 Would anyone care to check and make certain  
25 all the exhibits used by the last witness are

1 still here, or perhaps the witness would  
2 accommodate us by making sure that nothing with a  
3 mark --

4 THE WITNESS: I put them there as I left.

5 THE COURT: Thank you.

6 MS. CASWELL: GTE calls Patty Tuttle.

7 THE COURT: Ms. Tuttle, you heard my earlier  
8 explanation.

9 THE WITNESS: Yes.

10 THE COURT: Do you have a religious  
11 objection to swearing?

12 THE WITNESS: No.

13 - - - - -

14 PATRICIA LYNN TUTTLE

15 was called as a witness on behalf of GTE Florida, Inc.  
16 and, having been duly sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MS. CASWELL:

19 Q Please state your name and business address.

20 A Patricia Lynn Tuttle. Business address is  
21 1907 US Highway 301 North, Tampa, Florida 33619.

22 Q What is your educational background?

23 A I have a bachelor of science degree in  
24 psychology from the University of Florida.

25 Q Who is your employer?

1           A     GTE.

2           Q     And how long have you worked there?

3           A     A little over 13 years.

4           Q     And can you please give us a brief history  
5 of your employment at GTE?

6           A     Sure. All of it has been within the branch  
7 sales organization, having different responsibilities  
8 of being an individual sales contributor, with the  
9 last two years being a regional sales manager.

10          Q     And can you tell us what kind of customers  
11 the branch sales organization would deal with?

12          A     Certainly. We at GTE deem it as the large  
13 business customer, and how we define large is from a  
14 revenue stream. So these are customers that are  
15 billing more than 14,400 of local service on an annual  
16 basis.

17          Q     And how long have you been regional sales  
18 manager?

19          A     Since February of 1998. For a little over  
20 two years.

21          Q     And what are your responsibilities in that  
22 position?

23          A     Primarily I'm responsible for bringing in  
24 the revenue objectives, for coaching and developing  
25 the employees that report to me, for hiring and

1 recruiting and for maintaining budgets.

2 Q What is the purpose of your testimony in  
3 this hearing?

4 A The purpose of the testimony is to talk  
5 about the competitive activity in the marketplace and  
6 the options and the alternatives that customers have  
7 at time of entering into agreements.

8 Q Did you hear Ms. Menard's testimony?

9 A Yes.

10 Q Did you hear her describe that competitors  
11 could enter through both resale and facilities-based  
12 competition?

13 A Yes.

14 Q From your perspective in the sales function,  
15 do customers differentiate between resellers and  
16 facilities-based providers in evaluating competing  
17 offers?

18 A No, they don't. They look at their  
19 objectives and not if you're a reseller or a  
20 facility-based. They have various objectives and  
21 various solutions that they discuss with us.

22 Q Does the GTE sales force make any  
23 distinction between resale and facilities-based  
24 competition when trying to meet competitive offers?

25 A No, none.

1 Q Did you hear Ms. Menard testify about the  
2 PSC's contract resale requirement earlier today?

3 A Yes.

4 Q And how does the GTE sales force view that  
5 requirement in terms of trying to compete in the  
6 marketplace?

7 A It definitely puts us at a disadvantage.  
8 Customers are obviously looking at lower price points.  
9 Our competitors also have some abilities from a  
10 national presence to where they can have a unified  
11 price throughout the nation. They have national  
12 relationships with some of the ALECs, or regional, at  
13 least, if not national. In addition, they can bundle  
14 services. They can buy out term agreements so they  
15 have a lot more latitude and flexibility than we do.

16 Q And is that, at least in part, because of  
17 regulatory requirements?

18 A Yes.

19 Q Are you generally aware of what the Fresh  
20 Look rule would do?

21 A Yes.

22 Q Do you deal with customers in your present  
23 job?

24 A Yes, I do. As a sales manager I have the  
25 individual sales representatives who report to me.

1 But part of my job, as I mentioned, was coaching and  
2 development so that -- may actually go out on joint  
3 sales calls, as well as larger, since these are the  
4 larger customers we deal with, a lot of the agreements  
5 have to be negotiated above terms or discounts that  
6 the individual sales person has the ability to do. So  
7 I'm involved in those negotiations as well.

8 Q And before you became regional sales manager  
9 in 1998, were you in a position to deal with  
10 customers?

11 A Yes. As I said, all 13 years has been as a  
12 direct contributor in the sales, working with  
13 customers.

14 Q In your experience in dealing with  
15 customers, are most large business customers aware of  
16 competitive alternatives to GTE when they sign  
17 contracts with GTE?

18 A Yes. As the individual contributor, I  
19 handled the large major accounts and I was responsible  
20 for approximately seven to ten customers. All of them  
21 are very large sophisticated customers with IT  
22 departments and telecom directors and managers. We  
23 engaged in numerous conversations as far as education,  
24 the telecom reform, of the different laws and statutes  
25 as well as our CSAs and ICB abilities for pricing as

1 well as the relationships that they had with their  
2 existing long distance providers, which many were  
3 getting into the local markets.

4 Q Do those customers ever tell you about  
5 competitive bids they've received?

6 A Yes. Many of them share the information  
7 asking for a competing bid from GTE. They let us know  
8 some terms and conditions, price points, what it's  
9 going to take to win their business. They also do a  
10 formal process referred to as RFP request for  
11 proposal. They give us feedbacks. Some customers  
12 will actually share the proposal so we can compare  
13 apples to apples and make sure we're really talking  
14 the same opportunity.

15 Q Would you say that business customers'  
16 awareness of competitive alternative has -- has been  
17 in evidence since you took your job as sales manager  
18 in 1998?

19 A Yes. Definitely as sales manager. My scope  
20 became a little larger being responsible for multiple  
21 territories, so just as the individual contributor I  
22 could honestly say in most all cases that I personally  
23 was involved in with the negotiations for term  
24 agreements they all had competing bids. And this was  
25 a reactive measure that we did, be it term or what we

1 call individual customer basis on ICBs, pricing.

2 Q And was this awareness on the business  
3 customer's part also apparent in '96, 1996 and 1997,  
4 when you were an individual sales rep?

5 A Yes, it was.

6 Q Is it possible that some of the customers  
7 that would exercise Fresh Look to terminate their GTE  
8 contracts would have been solicited by other companies  
9 before they entered those contracts?

10 A In most all cases the accounts that we  
11 handled had competing bids for us to do term  
12 agreements as well as ICBs, or what you all are  
13 calling CSAs.

14 Q Do you think it's fair that these companies  
15 would get a second chance with these customers?

16 MS. HELTON: I think I have been sitting  
17 here listening to some leading questions and  
18 trying very hard to --

19 THE COURT: Is the objection that it's  
20 leading?

21 MS. HELTON: Yes, Your Honor.

22 THE COURT: Sustained. Ma'am, you can  
23 rephrase.

24 MS. CASWELL: That's what I'm doing.

25 BY MS. CASWELL:

1           Q     Would the Fresh Look rule allow the same  
2 competitors to solicit those customers that GTE won  
3 before June 30th, 1999?

4           A     It would actually allow not only the same  
5 competitors but it would allow new and different  
6 competitors to also compete.

7           Q     From your perspective in sales, has GTE  
8 taken any actions to respond to competition?

9           A     Yes, we have. We've done several things  
10 from a marketing initiative. We've put together some  
11 marketing programs. One of the programs was referred  
12 to as ROAR, and that acronym stood for retain our  
13 annual revenues.

14                     Many of those ROAR initiatives had to do  
15 with lowering price points through our tariffed items  
16 to offer to our customers. Some of the other  
17 marketing initiatives that we put in place was a  
18 product tariff called flex grow, which is a T-1 based  
19 facility, that we used only as a defense strategy for  
20 when customers had competing bids. So we did some  
21 targeting marketing on our products as well.

22                     Lastly, what we did is we reduced some of  
23 the account load on each of the account managers to  
24 give better account management and face-to-face  
25 attention to give higher quality in customer service

1 to retain customers.

2 Q And were these kinds of actions taken before  
3 June 30, 1999?

4 A Yes. It's been evolving. Many of these  
5 initiatives started as early as 1998, but they  
6 continued to be developed each and every year.

7 Q In your experience, are the contract  
8 termination liability terms in GTE's contracts  
9 uniform?

10 A No, they are not. Depending on the product  
11 in service, the termination liability language varies  
12 anywhere from -- that I know of personally -- anywhere  
13 from as little as 25 percent up to 90 to 100 percent  
14 for termination liability. There is a range.

15 Q And what would that percentage be a  
16 percentage of? 25 percent of?

17 A Well, once again, for instance, with  
18 Centranet, there are what I call two main pricing  
19 elements. One is called main station line and the  
20 other is the network access register. You have to  
21 have both to make Centranet work.

22 The network access register is what we refer  
23 to the dial tone element and the main station line is  
24 where you get your feature functionality. There's  
25 absolutely no termination liability on the network

1 access register. The main station line has the  
2 25 percent termination liability.

3 Q I think I was trying to get a slightly  
4 different question. When you said termination  
5 liabilities range from 25 percent to 100 percent, what  
6 is the measure of the liability, 25 or 100 percent of  
7 what?

8 A Oh. Of the reoccurring monthly revenue for  
9 that service.

10 MS. CASWELL: Okay. Those are all my  
11 questions. Thank you.

12 THE COURT: Mr. Coggin?

13 MR. GOGGIN: I have no questions.

14 THE COURT: The agency? Or by whatever name  
15 you may be going.

16 MS. HELTON: I will be asking the questions  
17 and we just have a few, I think.

18 CROSS EXAMINATION

19 BY MS. HELTON:

20 Q I believe that your testimony this morning  
21 has been directed towards large customers; is that  
22 correct?

23 A What GTE deems large, yes.

24 Q How does GTE define a large customer?

25 A As I stated, from a revenue perspective. A

1 customer that bills more than 14,400 of local revenue  
2 on an annualized basis or greater would fall into our  
3 organization.

4 Q Do you know whether the competitors in GTE's  
5 service area have made competitive offers to your  
6 small customers?

7 A I'm not responsible for that area. All of  
8 my career has been with the branch organization.

9 Q I think you gave some testimony this morning  
10 about the network access register. Do you know  
11 whether the network access register element was  
12 subject to competition before 1996?

13 A Before 1996? I don't believe so but I'm not  
14 sure.

15 Q Were you involved in the proceedings before  
16 the Commission as far as the rulemaking goes for the  
17 Fresh Look rule?

18 A No, I was not.

19 Q Are you generally familiar with Commission's  
20 policies and procedures, the PSC policies and  
21 procedures?

22 A I would probably say no. I'm familiar with  
23 tariffs and regulations but I'm not sure if you're  
24 asking that that would be the same.

25 MS. HELTON: We have no further questions.

1           **THE COURT:** Redirect?

2           **MS. CASWELL:** I have no redirect. Thank  
3 you.

4           **THE COURT:** You may step down. Thank you  
5 ma'am.

6           Are we about ready for lunch or is there  
7 another witness you think you can do in a short  
8 period of time? I'm guessing based on prior  
9 representations your next witness may be your  
10 lengthy one.

11           **MS. CASWELL:** No, actually I think it's  
12 going to be pretty brief.

13           **THE COURT:** Do you want to put that person  
14 on now?

15           **MS. CASWELL:** If I could just find the  
16 witness.

17           GTE calls Amy Martin.

18           **THE COURT:** Perhaps I misapprehended what  
19 counsel had agreed to yesterday. Was it not  
20 agreed that a portion of Ms. Martin's deposition  
21 would be put in evidence and sealed, and,  
22 therefore, she would not be testifying, or did I  
23 miss something?

24           **MS. CASWELL:** No. The portion of the  
25 deposition that may come into evidence is just a

1 very small portion of what she's going to testify  
2 to. We may not need to even introduce that,  
3 depending on the Commission's questions.

4 **THE COURT:** Okay. I'm not trying to control  
5 your case. I was just under the impression that  
6 her deposition was going to be substituted and  
7 sealed. And, apparently, I was the one who was  
8 misapprehending things.

9 Ms. Martin, I gather you were not here  
10 yesterday. Very well. Let me -- understand that  
11 my remarks are not directed to you. They are  
12 directed to the first witness of the day. And  
13 presumably everyone else was present so they  
14 heard the same thing. This is for your  
15 information.

16 **THE WITNESS:** All right.

17 **THE COURT:** Under Florida law you have an  
18 opportunity to swear or affirm to tell the truth.  
19 If you have a religious objection to swearing or  
20 to taking an oath you may say, "I affirm." In  
21 either case, you're under penalty of perjury if  
22 you do not tell the truth in these proceedings.  
23 Do you have a religious objection to swearing?

24 **THE WITNESS:** No.  
25 - - - - -

**AMELIA MARTIN**

1  
2 was called as a witness on behalf of GTE Florida, Inc.  
3 and, having been duly sworn, testified as follows:

**DIRECT EXAMINATION**

4  
5 **BY MS. CASWELL:**

6 Q Please state your name and business address.

7 A My name is Amelia Martin. And my business  
8 address is 201 North Franklin Street, Tampa, Florida  
9 33602.

10 Q And what is your educational background?

11 A I have a bachelor's degree in management  
12 from the University of South Florida and an M.B.A.  
13 from the University of Tampa.

14 Q Who is your employer?

15 A GTE Network Services.

16 Q And how long have you worked for GTE?

17 A 16 years.

18 Q Can you briefly tell us what kind of  
19 positions you have held at GTE?

20 A Yes. I started out in various sales  
21 positions. I then spent a few years in project  
22 management. And the third area I went into was our  
23 Advanced Network Products group which is responsible  
24 for product introductions. And currently I'm in  
25 Market Development.

1           Q     And what do you do in your current position  
2 in Market Development?

3           A     Actually, I do a variety of things, but my  
4 largest area of responsibility is serving as our local  
5 subject matter expert in the area of competition. I  
6 also participate in some marketing programs with our  
7 branch sales force.

8           Q     And what is the purpose of your testimony  
9 here today?

10          A     To show the level of competition that has  
11 been in the area in our market over the last three  
12 years that I have been in this position.

13          Q     Does your job put you in a position to know  
14 whether there were companies other than GTE offering  
15 switched based substitutes for GTE's local services  
16 before June 30, 1999?

17          A     Yes, it does.

18          Q     And what is your conclusion in that regard?

19          A     Well, there have been many competitors'  
20 offerings which base services prior to 1999. When I  
21 started in the position in June of '97 there were --  
22 I've seen it grow each year since that time.

23          Q     What kind of sources do you rely on in your  
24 job as subject matter expert for local competition?

25          A     I use a number of primary and secondary

1 sources. On the secondary side, we use magazine  
2 articles, third-party research, clipping services, and  
3 then for primary sources I have interviews with our  
4 sales force and at times actually with our customers.

5 Q As you understand the Fresh Look rule, what  
6 market segment would the rule address primarily?

7 A As I understand it, it would predominantly  
8 address the larger business customer.

9 Q And has competitive activity in GTE's market  
10 prompted it to undertake any efforts to meet  
11 competition?

12 A Yes, it has. We, as Patty mentioned  
13 earlier, put together a program called ROAR, retain  
14 our annual revenue, and that was something that we  
15 spent a lot of time in 1998 putting programs and  
16 offers together in response to what our competitors  
17 were doing.

18 Q And have GTE's efforts been in both large  
19 and small business markets?

20 A Most of the offers -- to answer your  
21 question, yes, they have been in both large and small  
22 because of the fact the offers that we put together  
23 under tariff are available for all customers.

24 Q Do you have any information on what  
25 percentage of our business customers have been

1 contacted by a competing provider?

2           A     Yes, I do. We did a study in the second  
3 quarter of 1998. And this was done -- this particular  
4 study was targeted at small business customers. But  
5 at that time the sample that was used, 61 percent  
6 indicated that they have been contacted by another  
7 provider for local service. And I would expect that  
8 number to be even larger for medium and large business  
9 customers.

10           MS. CASWELL: That's all I have. Thank you,  
11 Ms. Martin.

12           THE COURT: Mr. Coggin.

13           MR. GOGGIN: I have no questions.

14           THE COURT: Ms. Brown.

15           MS. BROWN: It's Mutt this time of Mutt and  
16 Jeff. (Laughter)

17           THE COURT: She said that. I did not.

18                           **CROSS EXAMINATION**

19 **BY MS. BROWN:**

20           Q     Good morning, Ms. Martin.

21           A     Good morning.

22           Q     You testified that you provide a  
23 consultation and advice to the branch services  
24 division of GTE, am I correct?

25           A     Yes.

1 Q So you're in the same division that  
2 Ms. Tuttle is?

3 A We're not in the same division. I support  
4 the branch organization and I do have some involvement  
5 with all of our sales channels.

6 Q But am I correct in my understanding that  
7 the branch services addresses the market -- GTE's  
8 market needs in the area of large business customers?

9 A Yes.

10 Q Okay. Now, Ms. Caswell asked you a question  
11 regarding the Fresh Look rule. Do you have a copy of  
12 that proposed rule with you or available?

13 MS. CASWELL: I can give her a copy.

14 MS. BROWN: It's in the record of this  
15 proceeding, attached, I think, to both petitions.

16 THE COURT: It may be so. But this is a  
17 witness who doesn't have access to your legal  
18 pleadings.

19 MS. BROWN: May I approach the witness?

20 THE COURT: Yes.

21 MS. BROWN: Your Honor, I'm handing the  
22 witness of our Fresh Look rule.

23 THE COURT: Yes, ma'am.

24 MS. BROWN: All right.

25 (Hands document to witness.)

1 BY MS. BROWN:

2 Q You testified earlier that it was your  
3 understanding that this Fresh Look rule predominantly  
4 addresses the larger business customer. Will you  
5 point to me where the rule says that?

6 A Okay. The reason why I said that is because  
7 of the fact that my understanding of the Fresh Look is  
8 to allow customers some alternatives for getting out  
9 of current contracts. And most of the customers under  
10 any type of contract would be a larger business  
11 customer. So I can't point to that in the rule.

12 Q All right. And when you say "contracts,"  
13 correct me if I'm wrong, but I think you were  
14 referring to contract service arrangements as  
15 Ms. Menard did earlier?

16 A That's correct.

17 Q So you're not referring to tariff term  
18 plans?

19 A Well, it is true that tariff term plans are  
20 predominantly used by larger business customers as  
21 well.

22 Q Predominantly.

23 A Uh-huh.

24 Q But not exclusively.

25 A Not exclusively. But I'd say --

1 MS. BROWN: Thank you. We have no further  
2 questions.

3 MS. CASWELL: Just one follow-up question.

4 BY MS. CASWELL:

5 Q I think you were -- Ms. Brown asked you  
6 about your statement that tariff term plans were used  
7 predominantly by large business customers. Could you  
8 tell us what "predominantly" means?

9 A Well, up until 1999, up until April of '99,  
10 the tariff term plans were for services that are  
11 used -- tariff plans are for services used by larger  
12 customers. What percentage of that? I would say the  
13 vast majority, 80, 85 percent.

14 MS. CASWELL: Thank you. I have nothing  
15 further.

16 THE COURT: Very well. Thank you. Hardly  
17 worth the trip, was it?

18 MS. CASWELL: I have nothing further.

19 THE COURT: Does that mean that you rest?

20 MS. CASWELL: That means I rest my case.  
21 Yes. Thank you.

22 THE COURT: Before I allow you to do that,  
23 are there any other -- do you want a moment to  
24 consider and see if there's any other documentary  
25 evidence or anything else, because as I

1 understand your prehearing stipulation, there was  
2 a question about a demonstrative piece of  
3 evidence. And I'm not trying to tell you how to  
4 run your case --

5 MS. CASWELL: Right. I think they no longer  
6 will be necessary. The case took a different  
7 turn than I had expected. I don't think we'll  
8 need to introduce anything confidential. I think  
9 that might make things easier. I just apologize  
10 with the Court for taking up time with a motion  
11 that was eventually moot.

12 THE COURT: That's the way trials are,  
13 ma'am. Don't worry about that.

14 MS. CASWELL: I do -- what's in this package  
15 is the California case that I mentioned yesterday  
16 that would be a supplemental --

17 THE COURT: How about if you folks meet  
18 during the recess and be certain -- if you want  
19 to offer that for official recognition that will  
20 be fine. The groundwork has already been laid.

21 What I'm attempting to do is what they tell  
22 you never to do in front of juries and give  
23 lawyers an opportunity to think, and tell me if  
24 there's any other documents that you may have had  
25 marked that weren't admitted or anything else

1 that may have been overlooked.

2 MS. CASWELL: I believe the only thing we  
3 had marked was the Menard exhibit, and I would  
4 like that admitted into the record. That would  
5 be the PNR Study GTE-1. GTE-1.

6 THE COURT: You're offering GTE-1. Any  
7 objection?

8 MS. HELTON: No, Your Honor.

9 THE COURT: Hearing none. It is admitted.  
10 Let's be sure that it stays here and doesn't go  
11 home with anyone. Are we ready for lunch?

12 (Exhibit 1 received in evidence.)

13 MS. CASWELL: Yes, Your Honor.

14 THE COURT: Mr. Coggin, how long do you  
15 think your case may take this afternoon?

16 MR. GOGGIN: That will depend in part on how  
17 long the cross examination takes, but I don't  
18 imagine his testimony would take -- his direct  
19 testimony would take more than 20 minutes, half  
20 an hour.

21 THE COURT: Okay. Then it seems to me an  
22 hour for lunch is not unreasonable. Very well.  
23 We'll return in an hour. Let's pretend it's 12  
24 and come back at 1:00 o'clock. That's easier.

25 (Thereupon, lunch recess was taken.)

1 - - - - -

2 THE COURT: Very well, folks. Are you ready  
3 to proceed or do you need a few more minutes?

4 MS. BROWN: We're fine, Your Honor. We're  
5 ready. Ms. Helton is not here right now but we  
6 can proceed.

7 THE COURT: You don't want to wait on her.  
8 That's not a good way to phrase that. Do you  
9 wish to wait on her?

10 MS. BROWN: If you wouldn't mind. (Pause)  
11 Your Honor, we're ready whenever you are.

12 THE COURT: The real issue is, is Mr. Coggin  
13 ready?

14 MR. GOGGIN: I believe I am, Your Honor.  
15 BellSouth would like to call Mr. C. Ned Johnston  
16 to the stand.

17 THE COURT: Mr. Johnston, you heard my  
18 earlier explanation --

19 THE WITNESS: Yes.

20 THE COURT: Do you have a religious  
21 objection to swearing?

22 THE WITNESS: No, I don't.

23 - - - - -

24 C. NED JOHNSTON

25 was called as a witness on behalf of BellSouth

1 Telecommunications, Inc. and, having been duly sworn,  
2 testified as follows:

3 DIRECT EXAMINATION

4 BY MR. GOGGIN:

5 Q Mr. Johnston, could you please state your  
6 name and spell your name for the record?

7 A C. Ned, N-E-D, Johnston, J-O-H-N-S-T-O-N.

8 Q What is your business address?

9 A My business address is 701 Northpoint  
10 Parkway, West Palm Beach, Florida 33407.

11 Q By whom are you employed?

12 A BellSouth.

13 Q And what is your position with BellSouth?

14 A My position is market assessment manager.

15 Q Market assessment manager for?

16 A Florida.

17 Q Can you tell us what your job

18 responsibilities are as market assessment manager?

19 A My job responsibilities are reporting on the  
20 local market to our upper management, helping account  
21 teams -- account teams are sales folks who call on  
22 customers -- with any kind of technical or regulatory  
23 help they may need, going to see large customers  
24 myself when big decisions come down. Just in general,  
25 providing any kind of assistance that anybody needs

1 that nobody else knows what to do with. I'm kind of a  
2 catchall, if you will.

3 Q You said the local market. Are you talking  
4 of about all local customers or only a segment of  
5 local customers?

6 A It's large business that I'm associated  
7 with, large business customers.

8 Q How long have you been in this position?

9 A In this position, I have been there since  
10 1980. The position has broadened since then, but I  
11 started at that point in time in that position. I  
12 have been with BellSouth since 1978; with the Bell  
13 System since 1970.

14 Q Can you briefly describe your employment  
15 positions between 1978 when you came to Southern Bell,  
16 I guess?

17 A Yes, at that time it was Southern Bell.  
18 I was manager and assistant manager in the  
19 rates and tariffs organization prior to my coming to  
20 the marketing organization and taking this position.

21 Q Have you ever testified before the Division  
22 of Administrative Hearings?

23 A No, sir, I have not.

24 Q Have you testified before the Florida Public  
25 Service Commission?

1           A     Yes.

2           Q     Did you submit prefiled written testimony in  
3 the Fresh Look proceeding?

4           A     Yes, I did.

5           Q     Did you also appear at the hearing in the  
6 Fresh Look proceeding?

7           A     Yes, I did.

8           Q     What is the purpose of your testimony here  
9 today?

10          A     The purpose of my testimony here today is to  
11 talk about the fact that there's a lot of competition  
12 in the market and has been for quite some time. And  
13 that our contracts have been a response to competition  
14 generally.

15          Q     Can you describe for me the business  
16 customer market in Florida, the portion of the market  
17 for which you are responsible?

18          A     The portion of the market for which I'm  
19 primarily responsible is customers, business customers  
20 that pay us \$80,000 or more a year.

21          Q     Do you have any knowledge about the portion  
22 of the business market for which you are not  
23 responsible?

24          A     Yes. Through contact with my counterparts  
25 that handle that market and through meetings and

1 knowledge of general market conditions, talking to  
2 those sources.

3 Q GTE's witness, Ms. Menard, testified  
4 earlier. Were you present for her testimony?

5 A Yes, I was.

6 Q I believe she testified that 88 percent of  
7 GTE's business customers were in areas served by  
8 ALECs. Do BellSouth's business customers tend to be  
9 clustered in major metropolitan areas?

10 A Yes, they do.

11 Q Are all of the major metropolitan areas  
12 served by BellSouth currently -- do each of them  
13 currently have alternative local exchange companies  
14 operating in them?

15 A Yes, they do.

16 Q How long has BellSouth faced competition in  
17 Florida for its local services?

18 A For its local services?

19 Q Any of its local services.

20 A Any of its local services? It's faced  
21 competition for various local services since 1984, at  
22 a minimum, and CPE prior to that.

23 Q Can you tell me what you mean by "CPE"?

24 A Customer premises equipment.

25 Q What sort of customer premises equipment?

1           A     That's anything to the phone on your desk to  
2 PBXs that were talked about previously here, to  
3 bridges, routers, things that transmit data but are  
4 owned by the customer and on the customer's property.

5           Q     Can you describe for me what a PBX is?

6           A     PBX stands for private branch exchange  
7 system. And what it does is it switches calls between  
8 employees for a customer based on -- it has features  
9 and functionality that are present in the telephone  
10 company central office. It competes directly with our  
11 ESSX and CENTREX product lines, and it's an effective  
12 alternative to ESSX and CENTREX.

13          Q     Are PBX systems available throughout  
14 BellSouth's service territory?

15          A     Yes, they are.

16          Q     How long has that been true?

17          A     Since -- the first tariff I ever saw for a  
18 PBX was 1921 tariff, if that gives you any idea.

19          Q     Can you tell me what a shared tenant service  
20 provider is?

21          A     A share tenant service provider is someone  
22 who provides several services, which would include PBX  
23 service, to unaffiliated tenants in the same building  
24 or same property.

25          Q     Through the provision of shared tenant

1 service, might PBX-like services be more affordable  
2 for small businesses?

3 A Yes.

4 Q Are there shared tenant service providers  
5 competing currently in BellSouth's service territory?

6 A Yes, there are.

7 Q Throughout BellSouth's service territories?

8 A In the major metros.

9 Q For how long has this been the case?

10 A At least since 1988, that I remember.

11 Q Can you tell me what an alternative access  
12 vendor is?

13 A An alternative access vendor is someone who  
14 provides point-to-point communication, be it private  
15 line, which connects the same customer location to  
16 another location for the same customer, or special  
17 access, which is basically a facility going from a  
18 customer to the long distance carrier of his choice.

19 Q Yesterday were you here when Mr. Larsen  
20 testified?

21 A Yes.

22 Q He stated that he received channelized T-1  
23 service from Sprint. Is that correct?

24 A Yes. It's -- I believe that's part of what  
25 he said.

1 Q Could an alternative access vendor offer  
2 channelized T-1 service?

3 A Yes. An alternative access vendor could  
4 offer channelize T-1 service in a private line sense.

5 Q Does BellSouth currently face competition  
6 from alternative access vendors?

7 A Yes, it does.

8 Q Throughout its service territory?

9 A Yes, it does.

10 Q And for how long has this been the case?

11 A Since at least 1989.

12 Q When you give these answers about whether  
13 BellSouth faces competition from these various  
14 competitors, on what is your knowledge based?

15 A It's based on my personal knowledge.  
16 Commission proceedings is one way. Customer -- I talk  
17 to customers direct and get the knowledge from our  
18 sales teams indirectly. Reading the press generally.  
19 The information is all over.

20 Q In your experience, are customers, business  
21 customers, aware of these alternatives?

22 A Yes, they are.

23 Q Were they aware of these alternatives prior  
24 to 1996?

25 A Oh, yes.

1 Q I believe you testified in the late '80s or  
2 early '90s, wherever BellSouth began to seek  
3 competition from PBXs and shared tenant service  
4 providers, AAVs, how did BellSouth respond to that?

5 A We responded generally with contract service  
6 arrangements for our equivalent to their -- what they  
7 were being offered.

8 Q Did BellSouth have to ask the Commission for  
9 permission to offer a contract service arrangement?

10 A It had to ask the Commission for permission  
11 to offer contract service arrangements generally, and  
12 it did that in 1984.

13 Q 1984?

14 A Yes, sir.

15 Q And under what circumstances did the  
16 Commission permit BellSouth to offer contract service  
17 arrangements?

18 A Well, it was an evolutionary process. It  
19 started with private line services and special access  
20 services and I believe WATS access lines, and then  
21 later on, in a matter of months, we were allowed to go  
22 with ESSX and CENTREX. And then as the Commission  
23 periodically became convinced that another service was  
24 becoming competitive, they let us add that to the list  
25 in the tariff of services we were able to offer

1 contract service arrangements for.

2 Q When you say private line special access,  
3 can you tell us what you mean by that?

4 A Yeah. Private line is a facility, it's a  
5 telephone company facility dedicated to a single  
6 customer that links two locations of that customer.

7 Special access is a facility that links a  
8 customer to his chosen interexchange carrier, but,  
9 again, it's a dedicated facility.

10 Q You also mentioned ESSX service, is that an  
11 acronym?

12 A That's the BellSouth equivalent of the  
13 generic term CENTREX.

14 Q What's CENTREX service?

15 A CENTREX is a central office-based service  
16 that contains the same features and functionality as  
17 most PBXs do, so it competes directly with it.

18 Q What are those features?

19 A Those features would include intercom, call  
20 transfer, call waiting, call forwarding -- this is all  
21 within the customer group itself. It's not something  
22 like you would buy for custom calling at your home and  
23 talk to the world. This would just be features that  
24 would be internal to the way the ESSX was defined.

25 Q Are you familiar with the term "hunting"?

1           A     Yes.

2           Q     Could you -- would hunting services also be  
3 available through a CENTREX-type operation?

4           A     Yes.

5           Q     Would hunting services be available through  
6 a PBX operation?

7           A     Yes.

8           Q     How do you have knowledge of the  
9 Commission's requirements with regard to CSAs?

10          A     Well, I was there, just like Ms. Menard was,  
11 when it was formulated.

12          Q     Do your job responsibilities include any  
13 type of regulatory compliance with regard to these  
14 requirements?

15          A     Yes. The CSAs that come in are screened  
16 under my supervision to make sure that competitive  
17 reporting is there, that there's competition there and  
18 that they've told us who the competitor is. And the  
19 reports to the Commission that are quarterly are  
20 prepared under my supervision.

21          Q     When BellSouth enters into a CSA, is it  
22 required to ensure that an actual competitive  
23 alternative is available to that customer before  
24 offering a CSA?

25          A     Yes.

1 Q How does BellSouth ascertain that?

2 A That's what we get from the sales teams and  
3 the sales teams get it from the customer. It's a lot  
4 of different ways. The customer can give you a  
5 proposal. They can tell you the competitor was there  
6 and here's what the competitor offered. There can be  
7 a RFP process, which is a request for proposal.  
8 That's a formalized process that the government  
9 sometimes use and they send it out to everybody,  
10 including our competitors.

11 If a known competitive presence is in the  
12 area, whereas the customer is known to be on a  
13 competitor's fiber ring and salesman have been known  
14 to be in that area, we assume that the salesman also  
15 has been to see that customer but we ask that the  
16 customer confirm it.

17 Q So at least with respect to CSAs, to your  
18 knowledge are there any CSAs that have been entered  
19 into with a customer where the customer did not have a  
20 competitive alternative?

21 A No.

22 Q That would include CSAs entered into all the  
23 way up through June 30, 1999?

24 A That's correct.

25 Q Would it be accurate to characterize CSAs as

1 a result of competition?

2 A Yes.

3 Q Does BellSouth have any tariff term  
4 arrangements?

5 A Yes.

6 Q Can you describe to me what those are in  
7 general terms.

8 A In general terms, tariff term arrangements  
9 allow a customer to select a payment plan other than  
10 month to month, which let's them go under contract for  
11 36, 60, 84 months in some cases, and pay a lower rate  
12 for the same service.

13 Q Did you participate in the preparation of  
14 these tariff term plans?

15 A Yes.

16 Q What was BellSouth's reason for developing  
17 these tariff term arrangements?

18 A Competitive response.

19 Q Earlier some of the staff witnesses  
20 testified that there may be more than one reason to  
21 enter into a long-term agreement. Companies might be  
22 responding to competition but they also might be  
23 attempting to lower their transaction cost, if I  
24 remember correctly. Is that a consideration, to your  
25 knowledge?

1           A     Not to my knowledge.  When we developed  
2 them, we developed them because we needed competitive  
3 alternatives.

4           Q     Are all customers on tariff term plans with  
5 BellSouth -- did each of them have a competitive  
6 alternative available to them at the time they entered  
7 into the tariff term arrangement?

8           A     I don't know that because we don't require  
9 that anyone document that competition is available to  
10 its customers.

11          Q     How long has BellSouth been offering  
12 tariffed arrangements?

13          A     Since at least 1973.

14          Q     I'd like to talk a bit now about how the  
15 Telecommunications Act of 1996 and the state's price  
16 regulation statute of 1995 changed things.  From your  
17 personal knowledge, were customers aware generally of  
18 these statutory changes?

19          A     Yes.

20          Q     Did it affect the way they analyzed offers  
21 for telecommunications service?

22          A     Yes, it did.

23          Q     How did it change the way --

24          A     Well, the customers were very aware very  
25 early on of the alternatives that were available to

1 them, and they actively sought alternatives much, much  
2 more frequently than had been the case in the past.

3 Q Who were -- from your experience, who were  
4 the first switch-based ALECs to begin offering service  
5 in the wake of these acts?

6 A The first, I believe, was TCG. Then shortly  
7 thereafter MCI and ICI, Intermedia Communication was  
8 right in there.

9 Q And when did these competitors begin to  
10 offer services in competition with BellSouth?

11 A 1996. You're talking about dial tone  
12 competition or competition --

13 Q I'm talking about switch-based services as  
14 opposed to the other alternatives competing --

15 A Because a lot of them were AAVs long before  
16 the Act and I just wanted to make that distinction.  
17 So, okay, then it would be the answer I gave.

18 Q And how did these ALECs focus their  
19 marketing?

20 A Well, they had a lot of established  
21 customers before because most of them had been AAVs.  
22 So this was not a new thing. This was not a brand-new  
23 ball game for a lot of them. It was just in addition  
24 to their product line. And they went after it in that  
25 fashion. They went back to the customers that had

1 bought AAV products, private line services, special  
2 access and what have you and started working those  
3 customers almost immediately, and then just kept  
4 going. In a lot of cases they had sales forces out  
5 ahead of the time they had switches deployed, which is  
6 not unusual because you do want to build up the basic  
7 customers, or potential customers before you actually  
8 spend the money to build the plant, if you will.

9 Q Do you have -- what's your understanding of  
10 the competitive alternative?

11 A A competitive alternative is something that  
12 is substitutable by the customer and that the customer  
13 can use for the purpose that the customer wants to  
14 accomplish. So it doesn't necessarily have to be like  
15 service. It doesn't have to be the same technology.  
16 It simply has to be of use to the customer for the  
17 same purpose.

18 Q Would it be accurate to say that a  
19 competitive alternative is something that causes you  
20 to risk losing a customer?

21 A Absolutely.

22 Q Did BellSouth lose customers to PBX  
23 providers?

24 A Yes.

25 Q Did BellSouth lose -- maybe I should

1 rephrase that. Did BellSouth lose business to PBX  
2 providers?

3 A Yes.

4 Q Did BellSouth lose business to shared tenant  
5 providers?

6 A Yes.

7 Q Did BellSouth lose business to alternative  
8 access vendors?

9 A Yes.

10 Q Did BellSouth lose business to ALECs?

11 A Yes.

12 Q When BellSouth makes a contract service  
13 arrangement offer, does BellSouth always enter into a  
14 contract service arrangement?

15 A No.

16 Q Have ALECs targeted business customers and  
17 residential customers equally?

18 A No.

19 Q Which group of customers have they focused  
20 on?

21 A The business market.

22 Q Why do you think that is?

23 A Well, the business market, number one, is  
24 more lucrative and more profitable. And that's  
25 obvious to us, so it's got to be obvious to the ALECs.

1 We charge more to businesses, therefore, they can  
2 offer it at better margins for businesses. Businesses  
3 buy in much greater quantities and they are more  
4 concentrated. So if you're on the outside looking in,  
5 for a relatively small investment you can get a lot of  
6 revenue if you know where to target it.

7           **MR. GOGGIN:** Your Honor, I'd like to ask  
8           that a document be marked as BellSouth Exhibit  
9           No. 5. It is a copy of an Order issued by the  
10          Commission in Docket 960786.

11          **THE COURT:** It will be marked for  
12          identification BellSouth 5, Final Order.

13          **MR. GOGGIN:** Final order will do. Thank  
14          you.

15          **THE COURT:** And it would perhaps be easier  
16          to designate this as 11-19-97 or does it need to  
17          be by the Order number? I'm betting Order  
18          number. PSC-97-1459-FOF-TL.

19                    (BellSouth Exhibit 5 marked for  
20          identification.)

21 **BY MR. GOGGIN:**

22           **Q**     Mr. Johnston, have you seen a copy of this  
23          Order before?

24           **A**     Yes, I have.

25           **Q**     Can you describe generally what this order

1 concerns?

2           A     This concerns our application to the Florida  
3 Public Service Commission for permission to offer long  
4 distance services interLATA in the state of Florida.

5           Q     When you say "our petition" you're referring  
6 to BellSouth?

7           A     Correct.

8           Q     And why must BellSouth ask for permission to  
9 offer long distance services?

10          A     Because the Communications Act of 1996  
11 specifies that before we can go into long distance, we  
12 have to have permission from both the state commission  
13 and then we have to apply to the FCC.

14          Q     Do the alternative local exchange companies  
15 and others with whom you compete have a similar  
16 prohibition?

17          A     No, they do not.

18          Q     In your experience with customers, do  
19 customers often prefer to receive long distance and  
20 local service from the same provider?

21          A     Yes, they do.

22          Q     So to the extent we cannot offer long  
23 distance service, BellSouth cannot offer long distance  
24 service, does that put us at somewhat of a competitive  
25 disadvantage?

1           A     Yes, it does.

2           Q     Do you have some general understanding of  
3 what BellSouth must show in order to be permitted to  
4 offer long distance service?

5           A     I have a general understanding.

6           Q     Isn't one of the showings that it must make  
7 is that competition exists?

8           A     Yes.

9           Q     Can you please turn to Page 18 of the Order.

10          A     Okay.

11          Q     Third paragraph on Page 18 it's mentioned  
12 that TCG contends that it provides service to under  
13 500 business customers in whole or in part with its  
14 own facility. Does that comport with your  
15 recollection of the TCG's entry?

16          A     You mean at the time this was --

17          Q     Yes.

18          A     That would be accurate based on what I know  
19 at the time. It's bigger now but --

20          Q     Okay. What is the date of this Order?

21          A     Date of this Order is November 19th, 1997.

22          Q     Do you know when the data referred to in  
23 this Order was provided by TCG?

24          A     Not specifically by date, no, I do not.

25          Q     Page 20 of the agreement in the second

1 paragraph reports that the contention that MediaOne  
2 was also providing business service as of July 1997.

3 A Yes.

4 Q Is this consistent with your personal  
5 knowledge of whether MediaOne was competing with  
6 BellSouth?

7 A They were competing with BellSouth in  
8 Jacksonville and Fort Lauderdale at the time.

9 Q Okay. Page 20, at the bottom of the page  
10 and following on to Page 21, the Order relates  
11 testimony from Intermedia indicating that it was  
12 providing telephone exchange service in major  
13 metropolitan areas in Florida. Miami, Fort  
14 Lauderdale, West Palm Beach, Tampa, St. Petersburg,  
15 Clearwater, Jacksonville and the Orlando area. Is  
16 this consistent with your personal knowledge of what  
17 the competitive market looked like at that time?

18 A It is as far as their provision of service  
19 in BellSouth territory. I can't speak for Tampa,  
20 St. Pete or Clearwater.

21 THE COURT: Excuse me, Mr. Coggin, I don't  
22 mean to throw you off your stride, but if this is  
23 a final order and there is no suggestion that the  
24 copy has been tampered with, and if you are  
25 asking the witness to verify facts found, the

1 order has not been appealed; the facts are found.  
2 Is there any suggestion that this is not a final  
3 order? Ms. Brown?

4 MS. BROWN: No, Your Honor. This is a final  
5 order.

6 THE COURT: Is what is being read from the  
7 facts as found by the Commission?

8 MS. BROWN: Yes, Your Honor, that would be  
9 the case, for the purposes of the 271 proceeding,  
10 the long distance proceeding, yes.

11 THE COURT: I guess what I'm getting at is,  
12 whatever the agency found in a final order is  
13 found as fact at the date and time of the order.  
14 So whether or not this witness agrees now that  
15 that was the case then is perhaps superfluous.

16 I'm not trying to throw you off your stride,  
17 Mr. Coggin, but it sounds to me like you're  
18 proving it a second or a third time.

19 MR. GOGGIN: I'm content to set it aside.  
20 But I would ask that what has been marked as  
21 BellSouth Exhibit 5 be admitted at this time.

22 THE COURT: Is there any objection?

23 MS. BROWN: No objection.

24 THE COURT: It is admitted.

25 (BellSouth Exhibit 5 received in evidence.)

1 BY MR. GOGGIN:

2 Q You reviewed the Commission's Competition  
3 Reports?

4 A Yes.

5 Q In those reports there are statistics  
6 regarding business access lines served by ALECs; is  
7 that correct?

8 A Yes.

9 Q Do you know whether those shared statistics  
10 include competition from other competing providers of  
11 service, such as PBX, shared tenant or alternative  
12 access vendor?

13 A I don't believe I do.

14 Q What's your understanding of the proposed  
15 rules?

16 A My understanding of the proposed rules is  
17 that services, certain dial tone services, if you  
18 will, that were under contract prior to June 30th,  
19 1999, would be opened up to competitors to come in and  
20 bid with a customer to get the customer to move over  
21 to the competitor and pay us a very nominal  
22 termination charge that was established in the order.

23 Q Did BellSouth submit data in response to a  
24 data request in this proceeding regarding the number  
25 of contracts that would be affected by this rule?

1           A     Yes, we did.

2           Q     Has the proposed rule been amended since the  
3 time that data was provided?

4           A     Yes, it has.

5           Q     Did you supervise the collection of the data  
6 that was provided?

7           A     Yes, I did.

8           Q     Do you recall through what period the data  
9 was provided?

10          A     I believe that it was through the first  
11 quarter of 1999.

12          Q     If the rule would cover contracts entered  
13 into before June 30, 1999, then it's likely that there  
14 may be agreements that were not included in that data,  
15 correct?

16          A     That's correct.

17          Q     What is the average duration of the  
18 agreements included that would be affected by the  
19 rule?

20          A     37 months.

21          Q     37 months?

22          A     37 months.

23          Q     Given that, is it also likely there would be  
24 some agreements included that data that would have  
25 expired before this rule takes effect?

1           A     Yes.

2           Q     What sorts of agreements were covered --  
3 were provided in that data?

4           A     In that data were agreements for ESSX,  
5 CENTREX, primary ISDN service, PBX trunks, and basic  
6 rate ISDN service.

7           Q     I guess I'm asking a bit of a different  
8 question. Were CSAs included?

9           A     Yes.

10          Q     Were tariff term arrangements included?

11          A     Yes.

12          Q     In your opinion -- strike that.

13                     In your experience, do ALECs compete for the  
14 business of your existing customers?

15          A     Yes, they do.

16          Q     Even customers who are subject to CSAs?

17          A     Yes, they do.

18          Q     Even customers who are subject to tariff  
19 term plans?

20          A     Yes, they do.

21          Q     To your knowledge, is there anything to  
22 prevent an ALEC from competing for business of a  
23 brand-new customer, a new business?

24          A     No, nothing.

25          Q     Is there anything to prevent an ALEC from

1 competing for additional business from your existing  
2 customers?

3 A No.

4 Q New services they haven't used before?

5 A No. They do it all the time.

6 Q Anything that would prevent an ALEC from  
7 bidding for the business, the services that you  
8 currently provide at the expiration of the agreement?

9 A No.

10 Q Anything that would prevent an ALEC from  
11 bidding for services under a resold CSA or tariff  
12 term?

13 A No. They can take the agreement.

14 Q Has that ever happened?

15 A Yes.

16 Q Anything that would prevent a customer from  
17 terminating an agreement prior to its term and  
18 switching to a competitor?

19 A Not as long as they are willing to pay the  
20 charge.

21 Q Do they ever do it?

22 A Yes.

23 MR. GOGGIN: I have no further questions at  
24 this time.

25 THE COURT: Mr. Caswell.

1 MS. CASWELL: I have no questions.

2 THE COURT: Ms. Brown.

3 MS. BROWN: Just a very few, Your Honor.

4 CROSS EXAMINATION

5 BY MS. BROWN:

6 Q Mr. Johnston, you testified in your  
7 deposition and here today that you are familiar with  
8 the large business market in BellSouth's service  
9 territory.

10 A Yes.

11 Q And I think in the transcript of the hearing  
12 before the Commission, you testified there, correct?

13 A Yes.

14 Q At page 63 you testify that competition in  
15 this market segment is large business; medium and  
16 large business?

17 A Yes.

18 Q Do you remember that?

19 A Yes.

20 Q Define for me what a medium size business  
21 is.

22 A A medium size business would be someone -- a  
23 business that bills 80- to 120,000 a year.

24 Q A year?

25 A Yeah.

1 Q You talked earlier about that businesses are  
2 clustered in the major metropolitan areas.

3 A Yes.

4 Q And that's where the competition -- or a lot  
5 of the competition that you see is focused, correct?

6 A Yes.

7 Q What are the major metropolitan areas served  
8 by BellSouth?

9 A Miami, Fort Lauderdale, West Palm Beach,  
10 Orlando, Jacksonville. Those are the majors.

11 Q I was wondering if you were going to include  
12 West Palm Beach in there. Excuse me.

13 You testified that competition has existed  
14 for BellSouth's services since the 1980s?

15 A Yes, ma'am.

16 Q I'm generalizing but isn't that generally  
17 what you said?

18 **THE COURT:** Excuse me. The witness's voice  
19 is sinking, and I'm afraid we're going to get to  
20 the stage you're nodding your head and she can't  
21 take it down when you get that low. Okay?

22 **THE WITNESS:** I'll try to enunciate a little  
23 better.

24 **BY MS. BROWN:**

25 Q If that is the case, will you explain to me

1 what in your mind would have been the necessity for  
2 the competitive amendments to the '95 Florida Statutes  
3 and the Telecom Act of 1996 if competition was already  
4 present for BellSouth services?

5       A     Yes. Competition was already present for  
6 BellSouth services in the mid-'80s in certain  
7 segments, certain services: private line, special  
8 access, ESSX, CENTREX, those types of things. A lot  
9 of that stuff was readily substitutable and there's a  
10 lot of fungibility that goes back and forth that we  
11 have spoken to.

12               In the '95 Act virtually every service was  
13 being thrown open to competition. We did not have CSA  
14 authority from the Commission for every service. The  
15 legislation basically granted that type of authority  
16 for us to do CSAs where necessary to meet competition  
17 for any service we faced.

18       Q     And that, in your mind, is the purpose of  
19 the '95 revisions to Chapter 364, is to give you CSA  
20 authority?

21       A     No, it's much, much, more comprehensive than  
22 that but I thought you were asking the question in  
23 that context.

24       Q     No. I'm asking you a broader question,  
25 about what you think the purpose of the '95 Act was.

1           **A**     The purpose of the '95 Act, in my mind, is  
2 two-fold: It took the companies that were existing,  
3 the ILECs, if you will, out of a rate of return  
4 regulation mode, at least the Class A companies, maybe  
5 not the smaller ones. And in return for that it  
6 mandated, or it allowed, if you will -- I don't say  
7 mandated -- but allowed competition in our local  
8 exchange markets that had not heretofore been there,  
9 or had been there with those products, if you will.

10           **Q**     Let me rephrase this and see if you agree.  
11 Was the purpose of the Act to expunge the concept of  
12 monopoly provision of local telephone service from the  
13 telecommunications markets in Florida in return for  
14 competition for local service?

15                   **MR. GOGGIN:** I'd like to object to the  
16 question. It goes beyond the scope of his direct  
17 testimony. He testified that his job  
18 responsibilities included primarily a sales  
19 function with some regulatory. His opinion about  
20 the purpose of legislation is probably not within  
21 the scope.

22                   **MS. BROWN:** That's fine. I withdraw the  
23 question and maybe I can rephrase it to be more  
24 directed towards your testimony.

25 **BY MS. BROWN:**

1           Q     Here's what I really want to know.  If there  
2 was competition for BellSouth's services before 1995,  
3 why did the Legislature enact the statute to permit  
4 competition in the telecommunications markets?

5           **MR. GOGGIN:**  I object.  Calls for  
6 speculation about the motivations of legislators  
7 who voted for the Act.

8           **THE COURT:**  Sustained.

9 **BY MS. BROWN:**

10          Q     In your opinion, why was the Act enacted?

11          **MR. GOGGIN:**  I object.  Mr. Johnston is  
12 being offered for the purpose of offering fact  
13 testimony.  He is not being offered as an expert  
14 and I don't believe opinion testimony to be  
15 pertinent.

16          **THE COURT:**  Sustained.

17          **MS. BROWN:**  Fine.

18 **BY MS. BROWN:**

19          Q     Let me go to the 271 Order that you just  
20 discussed with Mr. Coggin.

21          **THE COURT:**  BellSouth 5?

22          **MS. BROWN:**  Yes, Your Honor.  Thank you.

23 **BY MS. BROWN:**

24          Q     In describing that order and explaining its  
25 purpose, you stated that BellSouth is prohibited from

1 offering long distance service, and this was  
2 BellSouth's petition to offer long distance service;  
3 is that correct? Isn't that what you said?

4       A     On an interLATA basis that is my  
5 understanding, that that was the proceeding.

6       Q     In Florida?

7       A     Yes.

8       Q     Why is BellSouth prohibited from offering  
9 long distance service in Florida?

10       A     The genesis of that goes back to the  
11 divestiture, of course, that was signed in 1982 and I  
12 won't take us all the way back there because you don't  
13 want to go there and I don't think any of us do.

14             But what -- it's in the Communications Act  
15 of 1996, the Federal Communications Act of 1996, that  
16 took over from those accords, that BellSouth is not  
17 allowed to get into the long distance business until  
18 it meets a checklist first with the state commission.  
19 And then if the state commission recommends approval,  
20 then it goes through the FCC. And that's my  
21 understanding. If the FCC approves it, we get to  
22 offer long distance.

23       Q     Why does BellSouth have to meet that  
24 checklist?

25       A     Because the Act specifies it.

1 Q Why does the Act specify it?

2 MR. GOGGIN: I object. You're asking him to  
3 speculate about the motivations of the  
4 legislators and the Congress who passed the Act.

5 THE COURT: Sustained. Ms. Brown, is it  
6 possible that the Commission, in the order  
7 already into evidence, indicated why the  
8 Commission has found that they can't do long  
9 distance service?

10 MS. BROWN: Yes, it is. I don't need to ask  
11 any more questions.

12 THE COURT: I think you've made that.

13 MS. BROWN: Thank you.

14 MR. GOGGIN: It would be appropriate to and  
15 BellSouth would not object, if you would like to  
16 refer to the modification of final judgment in  
17 your brief, which would include plenty of  
18 reasons.

19 THE COURT: Is there a modification of this  
20 final order?

21 MR. GOGGIN: I'm sorry, Your Honor. I'm  
22 referring to the order of the United States  
23 District Court in which Judge Greene issued an  
24 order governing the breakup of the Bell System in  
25 1982. I believe that's the origin of this.

1           **THE COURT:** Give me a cite when the time  
2 comes.

3           **MR. GOGGIN:** 151 F -- (Laughter) -- 664, I  
4 think.

5 **BY MS. BROWN:**

6           **Q** One more question.

7           **THE COURT:** There are some cases that live  
8 in memory, right?

9           **THE WITNESS:** Yes.

10 **BY MS. BROWN:**

11           **Q** What percentage of the contracts that would  
12 be subject to the Fresh Look rule are contract service  
13 arrangements?

14           **A** I don't have that with me. I can probably  
15 produce it but I don't have that with me at this  
16 moment.

17           **Q** Can you give me a ballpark figure? Is it a  
18 small percentage?

19           **A** It's less than half, I can say that. It's  
20 less than -- I just -- really, I can't go any further  
21 than that because I really don't have the data.

22           **Q** That's all right. I think we can derive  
23 that from the evidence.

24           **MS. BROWN:** All right. No further  
25 questions.

1           **THE COURT:** Redirect.

2                           **REDIRECT EXAMINATION**

3 **BY MR. GOGGIN:**

4           **Q**     Mr. Johnston, I just have a few questions on  
5 redirect.

6                     When Ms. Brown was questioning you about  
7 your testimony at the hearing, she mentioned that you  
8 had stated that you worked primarily with medium and  
9 large business customers, customers \$80,000 a year in  
10 revenues; is that correct?

11           **A**     That's true.

12           **Q**     Do you have any knowledge about what sorts  
13 of customers are parties to the contracts that would  
14 be affected by this rule?

15           **A**     They are generally medium and large business  
16 customers.

17           **Q**     Do you have any sense of what proportion are  
18 medium and large customers?

19           **A**     Overwhelmingly probably 70 to 80 percent.

20           **Q**     She also asked you to describe the major  
21 metropolitan areas in which BellSouth does business.  
22 Is competition from ALECs limited to the four major  
23 metropolitan areas you identified?

24           **A**     No, not at all. It's all over. It's in the  
25 smaller cities.

1           **MR. GOGGIN:** That's all I have of  
2 Mr. Johnston. You may be excused.

3           **THE COURT:** Well, the same instruction,  
4 counsel, with regard to clarification.

5           You used the word "amend" at one point and I  
6 want to be sure that I understand what you mean  
7 by amend. Don't answer because counsel may  
8 object to this. I think it's clarification. But  
9 if it goes beyond clarification, I don't want  
10 anyone to feel they can't object.

11           I believe that you testified that data was  
12 sought by the PSC and data was submitted by your  
13 company to the PSC. Then the rule was amended  
14 and no further data was sought. When you say  
15 "amended", do you mean that modifications were  
16 made to the rule before it was published as a  
17 proposed rule? I don't hear any objections.

18           **THE WITNESS:** That would be my  
19 understanding, yes, ma'am.

20           **THE COURT:** We have many terms of art, and I  
21 didn't want you to get caught on that one.

22           **THE WITNESS:** I appreciate that.

23           **THE COURT:** Thank you. Are there any  
24 further questions as a result of mine, Ms. Brown?

25           **MS. BROWN:** No, Your Honor.

1 THE COURT: Mr. Coggin?

2 MR. GOGGIN: No, Your Honor.

3 THE COURT: Ms. Caswell.

4 MS. CASWELL: No, Your Honor.

5 THE COURT: Very well. You may step down.

6 MR. GOGGIN: Your Honor, before we rest, I  
7 just wanted, if I could, to confirm that  
8 BellSouth Exhibits 1 through 4 have been  
9 admitted, and if not, I move their admission.

10 THE COURT: 1 through 5 have been admitted.

11 MR. GOGGIN: BellSouth rests.

12 THE COURT: Very well. It would seem to me  
13 that we are now to the stage of rebuttal. Do you  
14 need a recess to determine whether or not any  
15 rebuttal is necessary?

16 MS. BROWN: Yes, Your Honor, if we could  
17 have five minutes or ten.

18 THE COURT: How about ten?

19 MS. BROWN: Ten would be fine. Thank you.

20 (Brief recess.)

21 - - - - -

22 THE COURT: Can we get you to -- thank you.  
23 I don't want you all to be unhappy just because  
24 they posted a sign on the door that says we must  
25 keep the door closed in order to keep it quiet

1 for others, considering the ruckus sounds we  
2 heard from the other side, I'm not even asking  
3 what they are doing. Ms. Brown.

4 MS. BROWN: Yes, Your Honor. We have two  
5 rebuttal witnesses.

6 THE COURT: Very well.

7 MS. BROWN: With just a very few questions  
8 to ask. The first witness would be Anne Marsh.

9 THE COURT: Ms. Marsh, you remain under oath  
10 for the duration of these proceedings. You may  
11 inquiry.

12 - - - - -

13 ANNE MARSH

14 was called as a rebuttal witness on behalf of the  
15 Florida Public Service Commission and, having been  
16 duly sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MS. BROWN:

19 Q Ms. Marsh, you were here earlier today to  
20 hear the testimony of the GTE and BellSouth witnesses?

21 A Yes, I was.

22 Q Do you remember the testimony that discussed  
23 the Commission's -- that the Commission did not  
24 interview customers to determine whether they had  
25 alternative offers for service from alternative local

1 exchange companies?

2       A     Yes, I recall that.

3       Q     Would you explain why the Commission did not  
4 interview customers?

5       A     Well, first of all, we have no way of  
6 knowing who the customers are that are subject to  
7 these contracts. The companies do file with us  
8 reports on the CSAs, which are a very small percentage  
9 about the contracts; about two percent. But those  
10 reports don't contain any information identifying the  
11 customer at all, so we would have no way of contacting  
12 them.

13               Even if they did provide that information, I  
14 have no doubt they would provide it under seal and we  
15 would not be able to use it, so we would not be able,  
16 you know, to make it public to contact the customer,  
17 so there's no way for us to identify who these  
18 customers are that are subject to these tariff  
19 arrangements, or CSAs.

20       Q     Why do you have no doubt they would provide  
21 it under seal?

22       A     We've asked similar things before about  
23 customers and my recollection is that that's the kind  
24 of response we get. Also, if I'm not mistaken,  
25 there's a prohibition in the statute against providing

1 certain types of customer information.

2 Q If you could get the information about the  
3 customers, would you be able to get the information  
4 from the customers?

5 A They wouldn't have any obligation to provide  
6 us with any information. And, additionally, I would  
7 think that a customer would be hesitant to disclose  
8 information about what offers they had received to us.  
9 They may disclose it to a LEC or to someone they are  
10 trying to negotiate a better offer with, but to make  
11 it public to us, it's going to become a public record  
12 and then all of their competitors in their line of  
13 business know what they are paying for their services.  
14 So I wouldn't expect them to answer.

15 Q All right. Thank you.

16 MS. BROWN: We have no further questions for  
17 Ms. Marsh.

18 THE COURT: Cross.

19 CROSS EXAMINATION

20 BY MR. GOGGIN:

21 Q Ms. Marsh, does the Commission ever receive  
22 complaints from customers about anything?

23 A Yes, we do.

24 Q Isn't that the chief way the Commission  
25 might become informed about problems customers are

1 having?

2           A     Yes, the Commission is aware of that type of  
3 thing.

4           Q     Did the Commission receive any complaints  
5 from customers subject to the affected contracts  
6 regarding the assertion that's been made by the ALECs  
7 that they are locked in?

8           A     Are we talking about on the record or off  
9 the record? Are we talking about the record of the  
10 proceeding or off the record of the proceeding?

11          Q     Off the record of the proceeding but prior  
12 to the proceeding.

13          A     During the course of it, once I became  
14 involved with Fresh Look, I heard from many customers  
15 who indicated an interest in the Fresh Look rule and  
16 in getting out of contracts that were locked into.

17          Q     If you were a customer and someone proposed  
18 to you that you could terminate your contract without  
19 termination liability and switch to another carrier,  
20 would that be appealing to you?

21          A     Assuming that there was no termination  
22 liability. Even under the Fresh Look rule as it's  
23 proposed there is still a liability. It may, under  
24 some circumstances, be reduced. But if I had a reason  
25 to want to change, and I was given an opportunity to

1 change without penalty, I would certainly consider it.

2 Q The customers that contacted you, though,  
3 contacted you because the rule had been proposed,  
4 correct?

5 A They had heard about it. They had heard  
6 there was a rule and they wanted to know more and they  
7 wanted to express an interest in taking advantage of  
8 opportunities that had arisen.

9 Q I believe your testimony was that none of  
10 them participated in the hearing; is that correct?

11 A That's correct.

12 MR. GOGGIN: I have no further questions.

13 THE COURT: Redirect?

14 MS. BROWN: No redirect.

15 THE COURT: Thank you, Ms. Marsh.

16 MS. BROWN: Your Honor, we have one more  
17 rebuttal witness. We call Chris Moore.

18 THE COURT: Ms. Moore, have you heard my  
19 explanation of oath and affirmation?

20 THE WITNESS: Yes, I have.

21 THE COURT: Do you have a religious  
22 objection to swearing?

23 THE WITNESS: No, I don't.

24

- - - - -

25

CHRISTIANA MOORE

1 was called as a rebuttal witness on behalf of the  
2 Florida Public Service Commission and, having been  
3 duly sworn, testified as follows:

4 **DIRECT EXAMINATION**

5 **BY MS. BROWN:**

6 Q (By Ms. Helton) Ms. Moore, would you  
7 please state your full name and business address  
8 for the record.

9 A Christiana Moore. I work for the Public  
10 Service Commission. The address is 2540 Shumard Oak  
11 Boulevard, Tallahassee 32399.

12 Q And could you please tell us a little bit  
13 about your educational background?

14 A I have a bachelor of arts and master's in  
15 social work from Florida State University and a JD  
16 degree also from Florida State University.

17 Q And I believe you stated that your employer  
18 is the Public Service Commission?

19 A That's correct.

20 Q And how long have you been employed by the  
21 Public Service Commission?

22 A Just over ten years.

23 Q And in what capacity?

24 A As Assistant General Counsel.

25 Q And how long have you been practicing as an

1 attorney?

2       A     Since 1982. 18 years.

3       Q     Could you please tell us a little bit about  
4 what your job responsibilities are at the Commission?

5       A     Yes. I'm an attorney in the Division of  
6 Appeals, and my primary duties are representing the  
7 Commission in appeals of Commission orders, and orders  
8 of the Division of Administrative Hearings. And  
9 rulemaking is the other significant part of my duties.

10       Q     Could you please tell us what the purpose of  
11 your testimony is today.

12       A     To discuss the Commission practice and  
13 procedures with regard to rulemaking.

14       Q     Up until today, have you been involved with  
15 the Fresh Look rulemaking proceedings at the  
16 Commission?

17       A     No, I haven't.

18       Q     Could you please explain the rulemaking  
19 hearing procedures that the Commission follows when  
20 going through the rulemaking process?

21       A     Yes. A rule -- typically after a Notice of  
22 Rule Development is published, and there may be  
23 workshops, the rule is taken to the Commission at an  
24 agenda conference and the Commission decides whether  
25 to propose the rule. That agenda conference is a

1 public meeting held to discuss business that's not  
2 internal business.

3           After that, the rule is published in the  
4 Florida Administrative Weekly and notices are sent to  
5 parties affected by the rule also, the industry. And  
6 the period for comment and request for hearing, if a  
7 hearing is requested, the Commission conducts a 120.54  
8 rulemaking hearing, typically an informal hearing  
9 without sworn testimony, but exhibits, evidence and  
10 testimony.

11           Thereafter, if there are -- there's another  
12 agenda conference that is also considered to be a  
13 public hearing where the Commission -- at least one,  
14 and maybe more than one, where the Commission  
15 considers any changes that are proposed to the rule  
16 and they vote to adopt it, adopt the rule.

17           Q     Do you know whether JAPC recognizes the  
18 agenda conference where they finally vote to adopt the  
19 rule, or whether there's going to be changes to the  
20 rule or not, as a public hearing that meets the  
21 rulemaking requirements of Chapter 120?

22           A     Yes, it does. It satisfies the requirement  
23 of Chapter 120.

24           Q     There have been several questions today  
25 concerning a JAPC comment letter that was received

1 with regards to the Fresh Look rule, so I'd like to  
2 ask you a few general questions about JAPC comment  
3 letters.

4 In your experience, who are JAPC letters  
5 addressed to that comment on a proposed rulemaking?

6 A All of the letters I have seen have been  
7 addressed to the Commission attorney who is assigned  
8 to the rulemaking docket.

9 Q Have you ever seen anyone copied on a JAPC  
10 letter?

11 A Not in my recollection have I ever seen  
12 anyone copied in a proposed rulemaking proceeding. I  
13 have seen one letter where a person was copied. In  
14 that case the per who was copied initiated an inquiry  
15 about an existing rule and wrote to JAPC about that.

16 Q What is the practice of the Commission  
17 attorney who receives the JAPC comment letter, when he  
18 or she receives one, what steps do they take after  
19 they receive it?

20 A Ultimately they will write a response to the  
21 letter as required by the statute. An agency cannot  
22 file a rule for adoption without responding. That is  
23 the only requirement, though. And depending on the  
24 nature of the inquiry, it could be -- it often is not  
25 responded to until the final rule -- the Commission

1 has decided on the final rule, and just prior to  
2 filing the rule for adoption with the Secretary of  
3 State.

4 Q If there's -- in your opinion has there been  
5 a violation of any statute if a JAPC comment letter is  
6 received and there's a rule challenge and that letter  
7 has not been responded to prior to the outcome of the  
8 rule challenge?

9 A Not at all. No.

10 MR. GOGGIN: I'd like to object at this  
11 point. I'm objecting on the basis that I'm not  
12 sure what testimony this is being offered in  
13 rebuttal to.

14 MS. HELTON: You all have asked several  
15 questions about the fact that a JAPC letter was  
16 received in this proceeding. You've asked  
17 whether -- of several witnesses whether they have  
18 seen the letter or not.

19 MR. GOGGIN: I believe we asked those  
20 questions of your witness and the response was  
21 yes, the letter had been seen but no, they did  
22 not know what the procedures were.

23 MS. HELTON: I believe, too, that  
24 Ms. Caswell asked several questions of Ms. Menard  
25 about the JAPC letter.

1           **MS. CASWELL:** And I can tell you what I  
2           asked her. I asked her if she was familiar with  
3           the letter and had she ever seen such a letter in  
4           any of the rulemakings that she participated in.  
5           Those are the questions I asked her. And I  
6           believe this testimony goes beyond those  
7           questions.

8           **MR. GOGGIN:** The last question was asked --  
9           in fact, the last few questions have been asked  
10          about whether the witness could give a legal  
11          opinion as to the sufficiency of what occurred.

12          **MS. HELTON:** I'll withdraw that question and  
13          ask Ms. Moore one more that I think will maybe be  
14          directed more to the question that Ms. Caswell  
15          asked Ms. Menard.

16 **BY MS. HELTON:**

17          **Q**     Ms. Moore, does it surprise you that  
18          Ms. Menard has never seen a JAPC letter in her  
19          experience with rulemaking at the Commission?

20          **A**     Not at all. Often the letter never goes  
21          beyond the attorney's file, and no one other than the  
22          attorney is aware of it and the JAPC person writing  
23          it.

24          **MS. HELTON:** We have no further questions.  
25          We tender the witness for cross examination.

1           **THE COURT:** Ms. Caswell.

2           **MS. CASWELL:** I do have a couple of  
3           questions.

4                           **CROSS EXAMINATION**

5 **BY MS. CASWELL:**

6           **Q**     I believe you testified that the JAPC  
7           recognizes agenda conferences as public hearings. Do  
8           you have any case law or other authority to support  
9           that point?

10          **A**     I don't believe there's a case on it. I  
11          know that in 120.54(3)(e), for instance, it requires  
12          at the time a rule is filed -- I'm sorry -- in  
13          54(3)(e)(2), give the time requirements for filing a  
14          rule, not allowing a rule to be filed for adoption  
15          before 28 days or after 90 days, and then variations  
16          on that. There's a Notice of Public Hearing is  
17          published prior to expiration. That will tell the  
18          time. And there's a measuring -- days from the final  
19          public hearing in every case the JAPC has allowed that  
20          agenda conference to be the final public hearing.

21          **Q**     Would the characterization of the agenda  
22          conference as a public hearing depend on whether a  
23          hearing had already been held in the rulemaking  
24          proceeding?

25          **A**     Would the characterization by --

1 Q Right. In other words, if a rulemaking  
2 proceeding has already been held.

3 A You mean a rulemaking, a 120.54 rulemaking  
4 hearing?

5 Q Such as we have had in this proceeding,  
6 would the agenda conference still be characterized as  
7 a public hearing?

8 A Yes.

9 Q And would that be true even though parties  
10 were not permitted to address the merits of the rule  
11 at that agenda conference?

12 A Yes.

13 Q And, again, you don't have any authority  
14 other than what you cite from the statute, is that  
15 right, for that view?

16 A I don't believe it's ever been disputed. I  
17 believe at one point when there was a change in the  
18 statute and we had a discussion with the JAPC attorney  
19 and they said that was satisfactory, an agenda  
20 conference would be considered a final public hearing.

21 Q Was there any discussion at that point of  
22 the fact that at some agenda conferences parties were  
23 allowed to speak and address the issue and at other  
24 agenda conferences they were not. And in the  
25 latter -- in the latter case that would be the case

1 where there had already been a rulemaking hearing  
2 held? Was that distinction discussed at all?

3 A Yes, I believe so.

4 Q I believe you also testified that depending  
5 on the nature of the inquiry from JAPC, the  
6 Commission -- that would determine the timing of the  
7 Commission's response. Would you consider the letter  
8 an inquiry from JAPC?

9 A The letter in this case an inquiry?

10 Q The letter I'm talking about is the  
11 Exhibit 70?

12 A Are you making a distinction between  
13 "inquiry" and something else?

14 Q No, I'm not. You just said depending on the  
15 nature of the inquiry and I'm trying to understand  
16 when you use the term "inquiry" were you referring  
17 to --

18 A The letter sometimes provides comments,  
19 usually asking a -- they may comment that they think a  
20 particular term is vague or they may question the  
21 authority for the rule.

22 Q And in this case did the letter make  
23 comments or did it question the Commission's authority  
24 to adopt?

25 A I saw the letter earlier and I think it

1 asked a question about, you know, the Commission's  
2 authority. I think it used the term "inquiry."  
3 Inquire.

4           **THE COURT:** Do you want to tender that  
5 exhibit, Exhibit 70, to the witness?

6           **MS. CASWELL:** I don't think I need to at  
7 this point, but thank you. That's all I have.

8           **THE COURT:** Mr. Coggin.

9                           **CROSS EXAMINATION**

10 **BY MR. GOGGIN:**

11           **Q** Ms. Moore, with regard to your testimony  
12 about whether agenda conferences can be -- can  
13 constitute a rulemaking proceeding --

14           **A** It's whether they constitute a public  
15 hearing under 120.

16           **Q** Yes. Was your testimony intended to be your  
17 opinion as an attorney as to whether that is so, or  
18 was it intended to be a fact, evidence with regard to  
19 whether you have been told by JAPC that it believes it  
20 to be so?

21           **A** I hadn't considered what my intent was. It  
22 is both my opinion and the fact.

23           **Q** Okay. Can you tell me what fact?

24           **A** That the JAPC considers an agenda conference  
25 to be a public hearing that satisfies the requirements

1 of Chapter 120. It is not the same as the hearing  
2 under 120.54, you know, requested by a party.

3 Q Right. Okay.

4 MR. GOGGIN: I have no further questions.

5 MS. HELTON: The Commission has no redirect.

6 THE COURT: Have you heard my instruction  
7 with regard to questions for clarification?

8 THE WITNESS: Yes, I have.

9 THE COURT: Counsel is aware of it.

10 Are the notices of the workshops, 120.54  
11 hearings and agenda meetings within the exhibits  
12 or do you know?

13 THE WITNESS: In this proceeding I'm not  
14 sure.

15 THE COURT: You're not familiar with any of  
16 the exhibits in this case?

17 THE WITNESS: No. We have standard notices.

18 THE COURT: No, ma'am. Thank you.

19 I don't mean to cut you off but is there any  
20 question as a result of my unanswered question?  
21 You may step down.

22 MS. BROWN: We have no further rebuttal  
23 witnesses, Your Honor.

24 THE COURT: Very well. Would you folks like  
25 to take a break before we go into my four

1 infamous questions?

2 MS. BROWN: If we could just take five  
3 minutes. We discussed earlier about waiving  
4 closing arguments. I don't know that we have  
5 reached --

6 MS. CASWELL: I think we did.

7 MR. GOGGIN: I think we have.

8 MS. BROWN: Why don't I know what it is?

9 MS. CASWELL: We've all agreed to your  
10 suggestion.

11 THE COURT: This will never happen again,  
12 Ms. Brown. When an entire room says they agree  
13 with you, grab it.

14 MS. BROWN: Especially those two.

15 THE COURT: I'm not touching that. I think  
16 you all have behaved very civilly and I'm  
17 delighted to have you before me.

18 Now, first question: Does anyone want oral  
19 closing?

20 MR. GOGGIN: Your Honor, BellSouth waives  
21 oral closing.

22 MS. CASWELL: GTE waives as well.

23 MS. BROWN: The Commission does as well.

24 THE COURT: I figured when you said --  
25 nobody spoke up and said you wanted it that

1 probably you were waiving it.

2 That being the case, I'm already aware that  
3 there will be a transcript. As you know, you  
4 have ten days from the date the transcript is  
5 stamped "filed" with the Division of  
6 Administrative Hearings. We have already  
7 discussed the type of order that I enter to help  
8 you with this sort of thing.

9 Have you folks reached an agreement on when  
10 your proposed final orders will be due? Or be  
11 still my beating heart, does anyone want to waive  
12 that? Sorry. Just being facetious.

13 **MR. GOGGIN:** Your Honor, I think we've  
14 agreed that the proposed final orders should be  
15 due 14 days after the filing of the transcript.

16 **THE COURT:** Very well. Is that your  
17 stipulation, Ms. Brown?

18 **MS. BROWN:** Yes, Your Honor.

19 **THE COURT:** Is that your stipulation,  
20 Ms. Caswell?

21 **MS. CASWELL:** Yes, Your Honor.

22 **THE COURT:** Very well. That's fine.

23 **MR. GOGGIN:** Your Honor, if we may, we also  
24 have a question about the form of the proposed  
25 final order.

1           **THE COURT:** Surely.

2           **MR. GOGGIN:** We understand that there's a  
3 40-page limit. Is that correct?

4           **THE COURT:** Uh-huh.

5           **MR. GOGGIN:** Our question has to do with how  
6 the proposed final order should be organized.  
7 Whether the legal arguments should be made in  
8 conjunction with each proposed finding or whether  
9 a separate memorandum should be attached to a  
10 list of proposed findings and the argument and  
11 the proposed findings submitted within the same  
12 document but in separate sections.

13           **THE COURT:** I'm not certain that what I'm  
14 about to say is directed precisely to your  
15 question. But let me explain to you that the  
16 rules as outlined in my order are fairly clear.

17           Your proposed order needs to be divided into  
18 proposed findings of fact, giving specific  
19 references to the transcript or exhibit in  
20 parenthesis, just as you would in -- I assume  
21 you're familiar with federal briefs, Florida  
22 briefs, et cetera. Conclusions of law is your  
23 next segment. And the final -- I like to use the  
24 word decretal paragraph, but I understand there  
25 is one that is now more appropriate, whatever

1 that may be -- what you wish the outcome to be.  
2 Either the rule is valid or invalid, the proposed  
3 rule that is.

4 I would appreciate, without truncating your  
5 individuality and imagination, if you could  
6 organize your conclusions of law, at least,  
7 around the six challenged issues as set out in  
8 your prehearing stipulation. In other words, it  
9 will be easier for me, and I can give you all  
10 equal examination more quickly if they are more  
11 or less in the same format that each of these is  
12 addressed individually.

13 It may be when you have looked at the  
14 transcript and everything else you won't want to  
15 argue some of them. That's entirely possible.  
16 But quite honestly, if there is no authority,  
17 then you may not even want to go on to the next  
18 issues. You know, I'm not prejudging this in any  
19 way, but since that's your first one, that would  
20 be the logical assumption for the order in which  
21 you're going to do this. Would it be helpful if  
22 I discussed some issues that I think might be  
23 useful for you to be aware of?

24 **MS. BROWN:** Yes, Your Honor.

25 **THE COURT:** In saying this, there's no

1 intent to prejudge this issue in any way, shape  
2 or form. I have not, obviously, read any of the  
3 exhibits. Therefore, some of the comments I am  
4 going to make may seem extremely naive to you.  
5 And once I have read this box full of goodies  
6 that you have provided me with, I will certainly  
7 have far more information than I have now. But  
8 as a practical matter, I've jotted a few things  
9 down as we've gone.

10 I think the challenge as to the authority as  
11 expressed in connection with the JAPC letter, you  
12 all may want to be aware that there apparently is  
13 some new case law out there as to the authority  
14 of the JAPC to comment or to hold up publication  
15 of a rule. I heard this information. I did not  
16 take it down at the last seminar I attended.  
17 However, two weeks ago, apparently, there was  
18 some discussion of this in a panel at the  
19 Administrative Law Conference, and since I don't  
20 know what the law is, you folks may be able to  
21 find it and it may affect your case. Whereas,  
22 two weeks, it wouldn't have affected your case.  
23 I don't know.

24 I understand that you all are putting great  
25 reliance and very different connotations on these

1 out-of-state cases. Let me suggest to you,  
2 though, I will read them. You referred me to  
3 them. I'm going to read them. But what other  
4 states do may be less important in a rules case  
5 than it is in some other type of case. Again,  
6 I've said several times this is not a rate case,  
7 this is not a tariff case. This is not even a  
8 disputed issue of fact case with regard to an  
9 ultimate conclusion on how you are going to do  
10 business. This is purely a rules challenge. And  
11 what I'm a little bit concerned about is, so that  
12 you all are on the same wavelength, I think  
13 perhaps you need to be looking more in the area  
14 of Chapter 120 as opposed to in areas of 364 and  
15 how you are used to doing public hearings.

16 This isn't a criticism, but I think in order  
17 to challenge a rule, the first trick is to get  
18 the rule in writing so we all know what the  
19 parameters of it are. That's the purpose of  
20 publishing it with the Secretary of State. The  
21 next stage is to direct your attacks to those  
22 items that Chapter 120 allows you to challenge  
23 on.

24 If there is notice in these documents or  
25 within the testimony that would have permitted

1 consumers to come in and testify in a public  
2 hearing, that is important. The fact that they  
3 got notice and didn't come to testify may not be  
4 important. You all may want to argue that.

5 Additionally, some of the important cases  
6 with regard to rule challenges, unfortunately,  
7 may be under other sections because of the  
8 amendments in 1998. So as well as looking at  
9 those statutes that you have all wonderfully  
10 cited to me throughout your various trial  
11 preparation, you may want to look at the old  
12 Section 120.56 and old 120.54.

13 There is a system that some of you folks who  
14 don't do this on a regular basis may not be aware  
15 of. There is a research system of the Division  
16 of Administrative Hearings' Orders that you can  
17 tap into through our research system by plugging  
18 in, not just the current statute number, but the  
19 old statute number. The new language does not  
20 necessarily comport with the old language. There  
21 have certainly been cases since the statutory  
22 language has changed. But to have a broad base  
23 of where you're going with this, I think you may  
24 want to do that. And if there's any question of  
25 how to do that from your home computer, feel free

1 to call the clerk. She answers those types of  
2 questions all the time on how to use that  
3 research system.

4 It seems to me it may be important in this  
5 case that at one point the Public Service  
6 Commission attempted to do a very similar type of  
7 competition increase through an order and now is  
8 attempting to do it through a rule.

9 Now, additionally, I know you all have  
10 directed most of the testimony to increasing  
11 competition or the lack of need to increase  
12 competition. And I don't want to throw out terms  
13 that are pejorative here in any way. I'm not  
14 prejudging. I'm simply trying to give you an  
15 idea of certain research buzzwords that may make  
16 sense in the context as I understand your  
17 respective positions. We don't use terms like  
18 tortious interference with a business contract or  
19 abrogation of a business contract in a rules  
20 challenge. The language that you're more likely  
21 to find is something in the nature of reasonable  
22 right of reliance of the agency, arbitrary,  
23 capricious and all the other buzzwords. But in  
24 the event that this rule, or proposed rule, can  
25 be shown to be giving a great competitive edge to

1 one type of provider and not to another, that may  
2 impinge to the reasonableness or capriciousness  
3 or lack thereof of the rule.

4 Additionally, if certain contracts were  
5 negotiated either by an ILEC or an ALEC that  
6 would be affected by this rule, and those  
7 contracts were based on a discount that was given  
8 to the customer on the presumption that that  
9 contract was going to be for the three years or  
10 the seven years, or whatever various witnesses  
11 have testified to, that has a cost accounting  
12 feature that you may want to discuss.

13 Also, if this rule is giving a second bite  
14 of the apple or at the customer, that may be  
15 something you want to discuss.

16 Again, I have not read your exhibits. I am  
17 not prejudging any issue. But these are all  
18 subissues that I've heard come out in some form  
19 or another in testimony. And I'm not certain  
20 there is case law that addresses them, but I  
21 think you all may want to sit down and think  
22 through how you're going to do your proposals.

23 I don't think you need more than 40 pages.  
24 Is anybody suggesting that you do? I see heads  
25 shaking. I see Mr. Coggin not moving.

1 MS. CASWELL: I don't want to be the first  
2 to do it so --

3 MR. GOGGIN: We are lawyers. We could  
4 always use more than 40 pages but I think we can  
5 confine ourselves to 40 pages.

6 THE COURT: I think the thrust of my  
7 comments are that you need to stick to the  
8 parameters of the petitions and the issues raised  
9 in the petitions. If these other matters are  
10 subissues of those, then they need to be directed  
11 to the -- the issues raised in the petitions are  
12 statutorily determined. And that is what I have  
13 to concentrate on in a 120; not the monetary  
14 issues alone that have been the bulk of this  
15 proceeding.

16 So what -- you're thinking in terms of  
17 money. I'm thinking in terms of 120. What I am  
18 trying to get you do is take it, whatever it is  
19 you're presenting, and fit it into the petition  
20 issues as raised and 120.

21 Now, having done that, is there anything  
22 else that I can answer or help with?

23 MS. BROWN: Your Honor, I have one question.

24 THE COURT: I was afraid of that, Ms. Brown.

25 MS. BROWN: I'm trying to make it short.

1           **THE COURT:** Yes, ma'am.

2           **MS. BROWN:** What is your feeling about the  
3 memorandum? This case is so very much a legal  
4 case except for certain factual things. My  
5 understanding is that there is an opportunity to  
6 write a memorandum, but I can tell by the look on  
7 your face what the answer to my question is.

8           **THE COURT:** I can tell I'm going to get  
9 proposed final orders that are close to 40 pages.

10          **MS. CASWELL:** Yes.

11          **THE COURT:** I don't think you need a  
12 memorandum in this instance. Let me suggest to  
13 you that often memoranda are designed to discuss  
14 the cases in some detail. You've given me copies  
15 of the cases. If you give me the cites, I can  
16 read them. So that sort of thing is probably not  
17 necessary.

18          **MS. BROWN:** All right. Thank you.

19          **THE COURT:** Again, I think if you will  
20 organize your conclusions of law as much as  
21 possible around the six issues that were raised  
22 in the petitioner's petitions, however you  
23 organize your findings of fact will undoubtedly  
24 be based on what you believe the evidence showed.  
25 But the conclusions of law, if they are directed

1 towards those facts and towards the issues are  
2 going to be a lot easier than you think they are.

3 MS. CASWELL: Just for clarification, our  
4 briefs alone will contain extensive legal  
5 argument. What you would contemplate in this  
6 case is to do away with most of the argument,  
7 relying mostly on the case citations and then --

8 THE COURT: Tell you what. Would you like  
9 me to enter that order tomorrow when I go back to  
10 my office so you will see the rules that you are  
11 bound by? Would that be easier?

12 MS. CASWELL: If you entered --

13 MR. GOGGIN: The order directing us to --

14 THE COURT: I do a standard order that cites  
15 you to the specific rules that tell you how to  
16 set up your conclusions of law.

17 MS. CASWELL: And that order has already  
18 been issued?

19 THE COURT: No, ma'am. I usually do that on  
20 the day the transcript is filed and it contains  
21 the date the transcript is filed in order to help  
22 anybody from out of town to know it as soon as  
23 the folks in Tallahassee know it. My whole  
24 purpose is to put you all on a level playing  
25 field. I can enter it tomorrow if you would like

1 to, and then you're certainly free to call the  
2 clerk or to rely on the court reporter's notice  
3 of the date of filing. She's in Tallahassee.  
4 Chances are she'll carry it over and perhaps give  
5 you all a phone call the day you file it?

6 **THE REPORTER:** I can do that.

7 **THE COURT:** If she'll do that, then there's  
8 no reason to wait on my order. I'll be happy to  
9 enter the order tomorrow or whenever I may find  
10 my secretary and typewriter in the same room, and  
11 sometime within the next 48 hours -- and you'll  
12 have it well in advance of even having the  
13 transcript. If there are any questions that that  
14 order doesn't answer, I'm not certain that I can  
15 answer them because you are bound by the rules.

16 **MS. CASWELL:** Now, I have a stupid question.

17 **THE COURT:** There are no stupid questions.  
18 There are many long-winded answers, and I said  
19 that.

20 **MS. CASWELL:** Are there any rules on spacing  
21 or formatting of the proposed orders? Because  
22 I've seen -- I'll tell you why I'm asking this.

23 **THE COURT:** I know exactly why you are  
24 asking it, you must have practiced --

25 **MS. CASWELL:** I've seen proposed orders.

1           They are single spaced and there are spaces  
2           between the paragraphs. But I don't know if  
3           that's what you're contemplating and I don't know  
4           if there are any rules in that regard.

5           **THE COURT:** I would bet that the requirement  
6           of double spacing was left out when the rules  
7           were amended. Please double space.

8           **MS. CASWELL:** Okay. That's all I'm looking  
9           for. Thank you.

10          **THE COURT:** Having said that, you'll use the  
11          standard blue book form in order to do your  
12          quotations, indent and single space. Okay.  
13          Anything else? I'm not trying to make it hard.  
14          I'm genuinely trying to make it easy.

15          **MS. CASWELL:** It's helping.

16          **THE COURT:** I think the order will answer  
17          everything you need. And, furthermore, if you  
18          need to annotate even the rules that are in  
19          there, you can do it electronically.

20          **MS. CASWELL:** I do have the rules, but  
21          apparently I couldn't understand what they meant.  
22          But your explanation helps.

23          **THE COURT:** That's why there are all these  
24          lawsuits, Ms. Caswell. Don't worry about that.

25          Now, is there anything else I can do other

1 than spend a lot of money on a transcript  
2 talking? Very well. We'll conclude.

3 MS. CASWELL: I do have one thing. This was  
4 the order I had mentioned yesterday. This is  
5 part of my documents for official recognition.

6 THE COURT: Thank you.

7 MS. CASWELL: I had entered what was  
8 apparently the wrong part of this very lengthy  
9 proceeding. I had intended to enter this one,  
10 which is a California decision about alternative  
11 regulatory frameworks.

12 THE COURT: Is this the one that I got the  
13 first page and not the second page?

14 MS. CASWELL: You got Part I, whereas Part  
15 III --

16 THE COURT: Has your opponent, Mr. Coggin,  
17 see it?

18 MS. CASWELL: Yes.

19 THE COURT: All that is necessary is for you  
20 to fit it in where it belongs. It's in this  
21 pile. I'm just not sure --

22 MS. CASWELL: Okay. I'll do that. Thank  
23 you.

24 THE COURT: Very well. Before we leave this  
25 room, I would appreciate it if all counsel came

1 up to the front, made certain that I have all of  
2 the exhibits over here in the correct place; that  
3 none of them have walked away. This is to your  
4 benefit. You don't want me finding out 30 days  
5 down the road that I don't have something.

6 And we are concluded, but please don't leave  
7 until you are satisfied that I have all of the  
8 exhibits.

9 (Thereupon, the hearing concluded at  
10 2:33 p.m.)

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