

1 **APPEARANCES:**

2 **NANCY WHITE and NANCY SIMS, 150 South Monroe**
3 **Street, Suite 400, Tallahassee, Florida 32301-1556,**
4 **appearing on behalf of BellSouth Telecommunications,**
5 **Inc.**

6 **JOSEPH A. McGLOTHLIN and VICKI KAUFMAN,**
7 **McWhirter, Reeves, McGlothlin, Davidson, Rief and**
8 **Bakas, 117 South Gadsden Street, Tallahassee, Florida**
9 **32301, appearing telephonically on behalf of Florida**
10 **Competitive Carriers Association and**
11 **Telecommunications Resellers Association.**

12 **MONICA BARONE, Florida Public Service**
13 **Commission, Division of Legal Services, 2540 Shumard**
14 **Oak Boulevard, Tallahassee, Florida 32399-0870,**
15 **appearing on behalf of the Commission Staff.**

16 **ERICK SORIANO, appearing telephonically on**
17 **behalf of Intermedia.**

18 **MARSHA RULE, TRACY HATCH, AT&T**
19 **Communications of the Southern States, Inc., 106 East**
20 **College Avenue, Suite 1410, Tallahassee, Florida**
21 **32301, appearing telephonically on behalf of AT&T of**
22 **the Southern States.**

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1 **APPEARANCES CONTINUED:**

2 **RICHARD D. NELSON**, Hopping Boyd Green Sams
3 and Smith, 123 South Calhoun Street, Tallahassee,
4 Florida 32314, appearing telephonically on behalf of
5 **MCI**.

6 **NORMAN H. HORTON, JR.**, Messer, Vickers,
7 Caparello, Madsen, Goldman & Metz, P. O. Box 1876,
8 Tallahassee, Florida 32302-1876, appearing
9 telephonically on behalf of **LDDS**.

10 **ROBERT S. COHEN**, Pennington, Culpepper,
11 Moore, Wilkinson, Dunbar & Dunlap, P.A., 215 South
12 Monroe Street, Tallahassee, Florida 32302, and **JOHN**
13 **LOMBARDI**, appearing telephonically on behalf of **Time**
14 **Warner**.

15 **BILL WILLINGHAM**, Rutledge, Ecenia,
16 Underwood, Purnell and Hoffman, P. O. Box 551,
17 Tallahassee, Florida 32302-0551, appearing
18 telephonically on behalf of **TCG**.

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P R O C E E D I N G S

(Hearing convened at 8:00 a.m.)

CHAIRMAN JOHNSON: We're here for the status conference to hear the Motion to Compel. Arguments on the Motion to Compel in Docket 960786-TL.

Let me go through the names that I have on our notice list and see if we have everybody on the call. If I call your name, could you give who you represent and your address please?

Tracy Hatch. Or Marsha Rule. (No response)

Joe McGlothlin.

MR. MCGLOTHLIN: I'm on the phone with Vicki Kaufman in my office. We represent the FCCA.

CHAIRMAN JOHNSON: Floyd Self.

MR. HORTON: Chairman Johnson, this is Doc Horton, representing WorldCom.

CHAIRMAN JOHNSON: Richard Melson.
Mr. Melson? (No response)

Is there somebody on a cell phone? We're getting a real bad connection here.

Tom Boyd. Oh, Tom Bond. (No response)

Richard Rindler. (No response)

Benjamin Fletcher. (No response)

Jeffery Walker. (No response)

Robert Cohen.

1 **MR. COHEN:** This is Bob Cohen. I'm
2 representing Time Warner, and I'll be the one for Time
3 Warner today.

4 **CHAIRMAN JOHNSON:** Very good.

5 Andrew Izar. (No response)

6 Nancy White.

7 **MS. WHITE:** I'm sorry. You all are fading
8 in and out. Yes, Nancy White, representing BellSouth,
9 150 West Flagler Street, Miami, Florida 33130.

10 **CHAIRMAN JOHNSON:** Pat Wiggins. Anyone from
11 Intermedia? (No response)

12 Ken Hoffman.

13 **MR. WILLINGHAM:** This is Bill Willingham on
14 behalf of Teleport. We're at 215 South Monroe Street,
15 420, in Tallahassee.

16 **CHAIRMAN JOHNSON:** Anyone on the call that I
17 didn't call?

18 **MR. SORIANO:** Chairman, this is Erick
19 Soriano, representing Intermedia Communications. I'm
20 with Kelly, Drye and Warren in Washington, D.C.

21 **CHAIRMAN JOHNSON:** Very good.

22 Anyone else?

23 **MR. NELSON:** Commissioner, this is Richard
24 Nelson. I just joined, representing MCI.

25 **MS. RULE:** Marsha Rule, representing AT&T,

1 also just joined.

2 **CHAIRMAN JOHNSON:** Okay. If you could hold
3 one second, we're going to see if this is our -- I'm
4 going to try to call back. This may be our line. So
5 we'll call right back in. We'll go off the record.

6 (Discussion off the record.)

7 **CHAIRMAN JOHNSON:** Go back on the record.
8 Did anyone else join in that I did not announce
9 earlier that they were on the call?

10 **MR. LOMBARDI:** John Lombardi from Time
11 Warner in Denver.

12 **CHAIRMAN JOHNSON:** Okay. The gentleman that
13 was speaking was he from Time Warner, the gentleman on
14 the cell phone?

15 **MS. WHITE:** That was Bob Cohen.

16 **MR. LOMBARDI:** He is our outside counsel.
17 His office is Tallahassee. He's probably on his way
18 to his office.

19 **CHAIRMAN JOHNSON:** Oh, very good. Well, I'm
20 glad we have Time Warner representation on the call,
21 because we could not accommodate the cell phone.

22 Staff?

23 We're going to go back on the record.

24 Staff?

25 **MS. BARONE:** Yes, this Monica Barone, 2540

1 Shumard Oak Boulevard, Tallahassee, Florida
2 32399-0854, appearing on behalf of the Commission
3 Staff.

4 **CHAIRMAN JOHNSON:** Okay. We're here on the
5 Florida Competitive Carriers Association Motion to
6 Compel.

7 **MR. MCGLOTHLIN:** That's correct,
8 Chairman Johnson.

9 **CHAIRMAN JOHNSON:** Okay. If you could then
10 proceed.

11 **MR. MCGLOTHLIN:** Joe McGlothlin. We're here
12 on the Motion to Compel answers to Interrogatory
13 No. 3. This is the July '97. The interrogatory was
14 served on BellSouth in July 26, '96. We're coming up
15 on the anniversary of the service of the
16 interrogatory, still trying to get a responsive
17 answer.

18 Interrogatory No. 3 was for BellSouth to
19 provide a narrative description with respect to each
20 criterion of the checklist it is presently providing
21 to describe the arrangements, services, facilities, or
22 means of access that BellSouth is presently and
23 actually providing. And I ask you, Chairman Johnson,
24 to bear in mind the specific request that was made as
25 I described, the motion and the reason for it.

1 BellSouth's first answer was provided on
2 August 16th, 1996. On September 9th you granted our
3 Motion to Compel based upon the inadequacy of that
4 answer. On September 19th BellSouth filed a motion
5 for reconsideration. In May of 1997 the Commission
6 denied the motion for reconsideration and that was
7 memorialized in an order on May 23rd. On June 16th of
8 this year BellSouth provided an answer in which it
9 said, "If you wait until June 24th, eight days from
10 now, and if you negotiate and sign a nondisclosure
11 agreement, and if you come to Atlanta, we will let you
12 review approximately 100 binders of materials in
13 response to your request for a narrative description."

14 We filed this Motion to Compel based upon
15 what we believe is BellSouth's inappropriate attempt
16 at underlying documents or its obligation to provide
17 us with a good-faith effort to provide a narrative
18 description that's responsive to our request.

19 Now, BellSouth's answer to our motion is
20 primarily that BellSouth prepared these materials
21 specifically in response to our interrogatory and that
22 is, in fact, a narrative description. Quoting from
23 Page 2, in the answer BellSouth says, "BellSouth has
24 prepared a narrative answer to FCCA's Interrogatory 3,
25 filled 87 binders. This narrative was originally

1 prepared for filing in Georgia and specific response
2 to FCCA's interrogatory, the filing was modified to
3 include Florida-specific information where
4 appropriate." And later at Page 5 of its answer
5 BellSouth says, and I quote, "FCCA propounded an
6 extremely broad interrogatory and BellSouth has set
7 out a broad carefully organized response and provides
8 a narrative statement they assert it wants." Now,
9 what I want to take is those elements of BellSouth's
10 answer.

11 The next piece of information that bears on
12 this is the fact that according to counsel for
13 BellSouth, the binders that were to be made available
14 in Atlanta on June 24th, eight days after the answer
15 was due, are the same binders BellSouth provided,
16 filed with the Commission and delivered to parties,
17 including the FCCA on the 7th.

18 I think that's significant because it
19 indicates that the representation that the materials
20 were compiled specifically for the purpose of
21 answering Interrogatory No. 3 is incorrect.

22 And in addition to that, we received on the
23 8th of July, the day after the binders were filed with
24 the Commission, prefiled testimony of Keith Milner for
25 BellSouth. At Pages 2 and 3 of his prefiled testimony

1 Mr. Milner states as follows:

2 "Question: What is the purpose of your
3 testimony being filed today?

4 "Answer: I will discuss the format and
5 contents of material provided to the Florida Public
6 Service Commission in support of BellSouth's filing of
7 its draft statement of generally available terms or
8 SGAT. This material consists of 86 volumes of printed
9 material furnished to this Commission on July 7th,
10 1997."

11 So not only was the material not prepared
12 specifically in response to the FCC interrogatory as
13 BellSouth represented in its answer, but the materials
14 are prepared and designed to support the contention of
15 BellSouth that it can fulfill Section 271 by virtue of
16 an SGAT, even if particular items have not been
17 requested, a purpose far different than the
18 interrogatory, which is premised upon BellSouth
19 providing information as to the services it is
20 actually and presently providing.

21 In addition to the fact that materials were
22 not prepared in response to the interrogatory, they
23 were prepared for a very different purpose and much of
24 the content of an SGAT bearing on items that have not
25 been requested, irrelevant to the interrogatory.

1 I'd like to point out also that both in the
2 answer to the interrogatory and in the response to the
3 motion, BellSouth contended that the binders contained
4 proprietary information. Yet, when the same materials
5 were filed with the Commission and delivered to the
6 parties there was no proprietary information contained
7 in any of the binders. And so the answer contained an
8 additional unnecessary hurdle because the negotiation
9 and execution of these agreements is always measured
10 in days, even if they are not particularly
11 controversial. Sometimes they are.

12 Now, as to the representation that the
13 binders are a narrative and are not consistent with
14 the underlying documents, that we would have to
15 review -- I'm happy to let those materials speak for
16 themselves. I haven't had much of an opportunity to
17 audit the numerous binders. I'm sure that you have
18 seen them stacked up somewhere, that virtually at
19 random, and without any scientific study at all, I
20 pulled out for purposes of this argument, the two
21 binders addressing the FERC interfacing device. They
22 are 4-23, in Volume 1; 4-3, Volume 2. And as I say, I
23 chose these for purposes of argument, but it really
24 doesn't matter which ones you pick up. But I'd like
25 for you, Chairman Johnson, and Staff counsel, as you

1 take this motion under advisement, and as you consider
2 whether BellSouth is right or wrong when it maintains
3 that it has provided a narrative response, to look at
4 these two binders or any others and gauge whether the
5 many manual instructions, computer printouts,
6 procedures, form sample letters and work instructions
7 represent a narrative description as we requested or
8 whether they are, in fact, the type of underlying
9 documents that we claim that they are.

10 I think if you'll give those two volumes
11 even a cursory glance, you'll conclude, as we have,
12 that the representation by BellSouth that it has filed
13 a narrative response instead of a compilation of
14 underlying documents is incorrect. So there's no
15 proprietary information as was represented. It was
16 not prepared in response to our interrogatory as was
17 represented. It does not address -- is not limited to
18 those items that are actually presently being provided
19 as represented. And there's no proprietary
20 information. And there is a huge number of underlying
21 documents that do not comport to the representation
22 that there's a narrative description.

23 So we think that the answer is grossly
24 insufficient. We think that as a consequence to that
25 our ability to prepare our case is being prejudiced.

1 We think that BellSouth has not met its obligations to
2 provide discovery. I'd like to remind you that the
3 entire purpose of opening this docket was to prevent
4 parties -- to begin the discovery process knowing that
5 at the time that BellSouth made its filing the parties
6 would be scrambling because of the time crunch to
7 prepare their cases.

8 It's unfortunate that so many times in these
9 Commission proceedings the scheduled hearing date
10 provides preparation. Sometimes I know that's
11 unavoidable. But where the Commission was cognizant
12 of that and opened the proceeding a full year in
13 advance of the hearing so that parties could take care
14 of their needs by early discovery. I think it's very
15 unfortunate that we're in this position, despite our
16 efforts early on, finding ourselves prejudiced. And
17 that's why when counsel for BellSouth suggested
18 yesterday that the Motion to Compel was now moot
19 because we have in hand the binders that they were
20 going to make to us available, I strongly disagreed.
21 BellSouth has delivered to us everything they intend
22 to say about the 14 criteria, the timing of that
23 information and it's available to us and the form in
24 which it was provided to us has injured our ability to
25 prepare our case.

1 For that reason I ask that you find, first
2 of all, that BellSouth has not met its discovery
3 obligations, that their answer to a straightforward
4 interrogatory was insufficient because of -- it's
5 apparent now that we have the filings in hand that
6 BellSouth didn't do anything to answer the
7 interrogatory.

8 Secondly, that as a consequence of that,
9 we're entitled to an extension of time to prepare any
10 testimony that we feel is necessary to address the
11 extent to which BellSouth has implemented fully the
12 onus of the checklist. I'll reserve a little bit of
13 time for response.

14 **CHAIRMAN JOHNSON:** Okay. BellSouth?

15 **MS. WHITE:** Yes, Nancy White for BellSouth.

16 I'm not quite sure where to start. If you
17 believe Mr. McGlothlin, BellSouth has undertaken a
18 massive conspiracy in specifically keeping FCCA in the
19 dark. Nothing could be further from the truth.

20 If you will recall, if we want to go back
21 into the past, when Mr. McGlothlin and the FCCA first
22 propounded their interrogatories, Interrogatory No. 3,
23 which is the basis of this discussion, said from their
24 Interrogatory No. 1 which is essentially, "What track
25 are you going to take, BellSouth? Track A or Track

1 B?" Even a year ago FCCA was trying to force BellSouth
2 into a corner, make decisions that had not been --
3 force them to make decisions that had not been made
4 yet. BellSouth had a valid objection to Interrogatory
5 No. 1 and, therefore, to the interrogatories that went
6 towards that one.

7 We made that objection. We had a right to
8 make that objection, we believed in that objection.
9 The Chairman found against us. The Prehearing Officer
10 found against us. We had a right to appeal that
11 finding. We took that right. There's nothing wrong
12 with BellSouth exercising its right.

13 When the full Commission decided that
14 BellSouth needed to answer these questions, and this
15 was mostly based on one, but, of course, the follow-up
16 questions went along with it, BellSouth started to see
17 what it had. As Mr. McGlothlin is correct, we had put
18 together several binders for a filing of our 271 case
19 in Georgia. In Georgia they were going for a
20 statement of generally approved terms and conditions,
21 I believe it was strictly Track B, and that's the way
22 Georgia was preparing its case. There was no
23 Florida-specific information in those binders.

24 At that point BellSouth had not made a
25 decision yet as to whether it was going to file a

1 statement of generally available terms and conditions
2 in Florida; and, therefore, whether the 87 binders
3 needed to be filed per the Commission's procedural
4 orders as evidence of BellSouth's meeting the
5 commitments of the checklist.

6 When we received the interrogatory and there
7 was the decision by this Commission that we had to
8 answer this interrogatory, the FCCA states in its own
9 motion on Page 4, quote, "FCCA called on BellSouth to
10 provide the particulars as to any checklist item it is
11 providing in sufficient technical, geographical,
12 qualitative and quantitative detail to enable FCCA to
13 gauge the sufficiency of the status of each checklist
14 item," end quote. That's what these 86 binders do.
15 They contain seven sections, including narratives.
16 Seven sections on each one of these issues. It takes
17 the technical service description, the activity with
18 regard to that, the testing, ordering procedures, the
19 provisioning procedures, the maintenance procedures,
20 and miscellaneous other information. It contains
21 everything FCCA has asked for. I just think they
22 don't like the size of it. That is why we said we
23 were working on doing the Florida-specific
24 information, which was not going to be ready until
25 June 24th. That's why we said, "Come see it if you

1 want to see it." Instead of taking Bell South up on
2 that offer, FCCA determined that it would be better to
3 file a Motion to Compel.

4 So they are incorrect that these were
5 prepared for the case, not this FCCA, because a
6 decision was not made until very recently to file
7 these 87 binders with the Commission. And I'm not
8 here to debate whether BellSouth may or may not have
9 made the right or wrong decision with regard to that
10 and that was our decision to make.

11 He is also correct that at first they were
12 deemed to be proprietary. When the time came that we
13 decided that we were going to file these binders with
14 the Commission, we looked very, very closely at
15 whether there was a way we could say these were not
16 proprietary because, frankly, nobody wanted to go
17 through the Commission procedures that you have to
18 deal with when something is proprietary. Nobody
19 wanted to have to try to redact parts of 87 binders.
20 We were very lucky in that they decided, "Okay. We
21 can live with releasing the information; it is not
22 proprietary." So, you know, I'm sorry we had a belief
23 that it was at first. We relooked at it closely and
24 decided it wasn't.

25 It is a narrative. We were perfectly doing

1 the right thing in inviting the FCCA to come look at
2 it if they want to. It seems to me that, essentially,
3 FCCA really wants two things. They want a shorter
4 summary than what they have, and they are just as able
5 to concoct that shorter summary as BellSouth is.
6 Because in order to do that shorter summary, BellSouth
7 would have to go to the '87 binders in order to bring
8 that together. FCCA can do the same thing.

9 And, also, what they really want is an
10 extension of time in which to file their testimony.
11 This is the second bite at the apple. We've already
12 talked about this at one of the earlier conferences; I
13 believe it was an issue ID conference. BellSouth was
14 agreeable to giving the intervenors some extra days on
15 which to file testimony, but now they're trying to
16 take that even further and that should not be allowed.
17 Because if you give them more time then it minimizes
18 the time that BellSouth has to file rebuttal
19 testimony, and you can imagine the amount of testimony
20 that's going to be filed opposing BellSouth and that's
21 just not fair and not right.

22 Finally, BellSouth has made a good-faith
23 effort to answer the interrogatory. We're sorry that
24 Mr. McGlothlin and the FCCA doesn't like that answer.
25 We're sorry that they don't like the fact that we have

1 exercised our right with regard to objections and
2 appeals. We're sorry that they don't like the fact
3 that maybe we didn't make -- maybe BellSouth didn't
4 make decisions on which way it wanted to go with
5 regard to the 271 filing earlier. But that's life.
6 This is the way the case is, and we feel like we've
7 done everything we can do. Thank you.

8 **CHAIRMAN JOHNSON:** Rebuttal?

9 **MR. McGLOTHLIN:** Yes.

10 **CHAIRMAN JOHNSON:** Go ahead.

11 **MR. McGLOTHLIN:** All right. Interrogatory 3
12 has always asked for information bearing on those
13 criteria, ranges of service that BellSouth is
14 presently actually providing. Ms. White's reference
15 to the indecision of BellSouth doesn't support her
16 argument, because whether or not they knew which way
17 they were going at the time, the 87 binders from
18 Georgia were always intended to support an SGAT. So
19 those binders were always aimed at a direction very
20 different from the purpose of the interrogatory. And
21 so her argument simply doesn't wash.

22 Secondly, we're not contending there's a
23 conspiracy. What we're contending is that BellSouth
24 has not met its discovery obligation. And I think one
25 of her statements is very telling. She says why

1 doesn't the FCCA go to the 87 binders and distill a
2 narrative response? BellSouth simply doesn't want to
3 make the effort, and the law is that they have to make
4 a reasonable effort to provide the information we
5 want.

6 The rules of civil procedure state that
7 where the parties do not have the -- an equivalent
8 ability to work with these massive documents that the
9 decision maker takes into account who has the better
10 ability to provide the information. BellSouth's
11 employees are the ones who are knowledgeable about
12 their efforts to implement the checklist requirements
13 and BellSouth is in a better position of providing the
14 information. They can't thrust that on the FCCA. I
15 think if you'll take just a few minutes to look at the
16 volumes that I've identified or any others, it will be
17 clear to you that many of these documents, computer
18 printouts, instruction manuals are simply
19 unintelligible without a narrative description coming
20 from someone who works with the document and is in a
21 position to describe the content of those documents.

22 We do ask for an extension of time, not
23 because we're trying to delay the proceeding, not
24 because we're trying to put BellSouth in a prejudiced
25 position, but because of BellSouth's failure to

1 provide us the discovery responses which we're
2 entitled. We need an extension that so that can
3 prepare our case appropriately.

4 **CHAIRMAN JOHNSON:** Okay. I have a question
5 for you, Mr. McGlothlin -- and I understand your
6 request for the narrative, but -- well, maybe I don't
7 understand. I know you're asking for more specificity
8 for this stuff to be streamlined in a narrative form,
9 and you've just mentioned that in looking at -- I'm
10 not sure which volume you were looking at, but you
11 were suggesting that it needed more explanation. I'm
12 wondering exactly what you want BellSouth to provide
13 to you. I'm just a little confused as to what kind of
14 direction you would like for us to give them and what
15 form would it take.

16 **MR. MCGLOTHLIN:** Chairman Johnson, the
17 thrust of Interrogatory 3, what components of the
18 checklist is BellSouth presently and actually
19 providing?

20 **CHAIRMAN JOHNSON:** Uh-huh.

21 **MR. MCGLOTHLIN:** And to support your
22 contention that you're presently and actually
23 providing that, tell us which services are being made
24 available. Which facilities are being used and tell
25 us how you are doing it, and show us that you can do

1 it to the extent necessary to comply with the law.
2 And to answer that requires more than documents that
3 are really prepared for BellSouth's internal use, your
4 instruction manuals, their forms, their work
5 instructions, temporary work instructions. What the
6 question calls for is someone who works in the area
7 and who is familiar with this data who is in a
8 position to describe and explain -- explain, I think,
9 is the operative word -- the answer to that question.

10 **CHAIRMAN JOHNSON:** Are you suggesting, then,
11 that what -- that BellSouth needs to take one more
12 step? They need to take those volumes and prepare a
13 narrative that describes what is in each and relating
14 that back to the question as the way it was posed?

15 **MR. McGLOTHLIN:** That's correct,
16 Chairman Johnson.

17 **CHAIRMAN JOHNSON:** So it's not that you're
18 saying that this information that was provided
19 couldn't be useful, you're saying but for it to be
20 useful you need something else.

21 **MR. McGLOTHLIN:** That's correct.

22 **CHAIRMAN JOHNSON:** And that even if you had
23 gone to Atlanta to just look at the volumes there,
24 that, too, would have been insufficient. You would
25 have needed more explanation.

1 **MR. McGLOTHLIN:** That's correct. And many
2 times, Chairman Johnson, the discovery takes place in
3 two steps. There's the interrogatory that asks for
4 the narrative explanation, and the party may or may
5 not request the responding party to provide backup
6 documents. What we have here is the backup documents
7 without the narrative explanation, and it's not
8 something we can work with.

9 **MS. WHITE:** That is just not true. These
10 binders are the narrative. If you will look at the
11 attachment to our answer to the Motion to Compel, it
12 specifically goes through each checklist item and
13 says, "Here are the access we're providing to
14 unbundled network elements." So if you look in this
15 binder, you get a physical description of the element,
16 and so on and so forth. The same with the BellSouth
17 retail services available for resale, it cannot be any
18 plainer. These binders were put together -- he's
19 talking like one person can do this narrative that
20 he's now looking for. That's not the case. These
21 binders were put together by hundreds of people, not
22 like that's one person who knows everything there is
23 to know about everything on this list.

24 **MR. McGLOTHLIN:** I didn't say one person is
25 going to do it, but I did say with respect to each of

1 the components a person knowledgeable about the
2 efforts and activities of BellSouth would be in a
3 position to explain and describe what has --

4 MS. WHITE: And that's what they have done
5 in the binders. That is what they have done in the
6 binders.

7 CHAIRMAN JOHNSON: Ms. White. Ms. White,
8 hold up, hold up. Mr. McGlothlin, hold up. Hold up.
9 (Simultaneous conversation.) We've got to go this in
10 a more organized fashion.

11 Let's go way back to Ms. White's earlier
12 comment as to why you think the narrative has been
13 provided.

14 You cited to an attachment. What were you
15 citing to?

16 MS. WHITE: Well, it's the Attachment A to
17 our response to their Motion to Compel.

18 CHAIRMAN JOHNSON: Okay.

19 MS. WHITE: It's three pages -- five pages
20 that talk about the binders. The fact that they list
21 like, for example, each binder is interconnected with
22 the checklist item, and it says like, for example, if
23 you look under Checklist Item 7, nondiscriminatory
24 access to 911 directory assistance service and
25 operator call completion services, under that, like

1 from 71 to 77 that's everything we're providing,
2 that's a list right there of everything we're
3 providing under Checklist 7. And if you look at
4 operator call processing in Binder 71, you will see a
5 description of that item, you will see what activity
6 we've had on that item, you'll see the testing we have
7 performed on that item, you will have a copy of the
8 ordering procedures, the provisioning procedures, the
9 maintenance procedures, and anything else that's
10 relevant about that item.

11 **CHAIRMAN JOHNSON:** Okay. Now --

12 **MS. WHITE:** You know, essentially, I mean,
13 you can do a narrative that takes all of the 87
14 binders and takes the binder parts out and just writes
15 it, and then you're going to end up with what, 40,000,
16 80,000 pages?

17 **CHAIRMAN JOHNSON:** Okay. Mr. McGlothlin,
18 could you respond to that point as to the way she just
19 walked through that suggesting that this attachment --
20 and let's use her Checklist Item 7, as to how you
21 could walk through this that they've categorized it
22 and that if you go to that particular element it
23 provides the information that you requested. Why
24 isn't that sufficient? Or do you agree with that?

25 **MR. MCGLOTHLIN:** I disagree. In Attachment

1 A there's a three-page index to the 86, 87 binders.
2 All it does is it relates by a one-line subject matter
3 reference, relates the number of the volume to the
4 subject of the contents. And it's no more than a very
5 cryptic table of contents to 87 binders. There's no
6 narrative there. And I don't have in front of me the
7 particular volume she referred to, but they are all
8 very similar. And, again, looking at Section 43, the
9 network interface device, it is roughly, I'm guessing,
10 maybe -- one volume is about 500 pages, and it has a
11 section on testing, yes, and test results. By the
12 way, the testing is included according to the witness
13 to support the proposition that it's available even if
14 not requested, a SGAT type of a content as opposed to
15 anything responsive to our interrogatory.

16 Yes, there are procedures, and having been
17 through the recent docket involving the intraLATA
18 business practices, you've seen similar internal
19 documents, manuals, procedures, routines that are
20 prepared for their internal use as opposed to being
21 descriptive and explanatory of what goes on. There
22 are forms, there are computer printouts, there's a
23 section called provisioning procedures, and, again, an
24 internal document that contains matrixes. There's a
25 section called temporary work instructions, again, for

1 the internal purposes and containing some matrixes
2 that are unintelligible without explanation.

3 So a quick and cursory review of any of
4 these documents will belie the claim that this is a
5 narrative, descriptive body of material. And for that
6 reason we think it is not responsive to the
7 interrogatory.

8 **CHAIRMAN JOHNSON:** Okay. Thank you. Staff,
9 do you have a question?

10 **MS. BARONE:** Yes. Mr. McGlothlin, I have a
11 question for you. Are you basically saying that you
12 want BellSouth to work from the agreements themselves
13 where Bell is actually, presently providing services
14 and then describe from that agreement with that
15 company the actual qualitative, technical,
16 geographical and pricing information based on that
17 agreement?

18 **MR. MCGLOTHLIN:** The Interrogatory No. 3
19 does tie to the first interrogatory, which asks
20 BellSouth to identify the agreements in place on which
21 it relies for the proposition that it implemented
22 checklist items. Yes, and we're not asking that they
23 specify who the agreement is with or the location of a
24 particular item, but that is a starting point for
25 developing the information bearing on the checklist

1 items that BellSouth contends has actually implemented
2 and is presently providing.

3 **MS. BARONE:** Okay. I'm trying to
4 understand, then. So you're not interested in
5 specific agreements per se, but you want that
6 information in a aggregate form? I'm trying to
7 understand exactly what you're wanting.

8 **MR. McGLOTELIN:** I think we are talking past
9 each other. I'm not sure what you mean by "aggregate
10 form."

11 With respect to each checklist item that
12 BellSouth claims it has implemented by virtue of an
13 agreement that has been implemented, we would like
14 BellSouth to describe how it has accomplished that
15 implementation, what facility is being used, that type
16 of information.

17 **MS. WHITE:** And I have to interject one more
18 time, that is exactly what is in the binders.

19 **MS. BARONE:** I have a question for
20 BellSouth.

21 **MS. WHITE:** Sure.

22 **MS. BARONE:** Can you point to me which
23 tab -- because I have the list of sections for each
24 binder -- can you point to me which tab contains the
25 geographical data?

1 **MS. WHITE:** Nancy, can you help me out on
2 that? I don't have the binder in front of me.

3 **MS. SIMS:** Well, the problem -- we've got
4 the technical description up front, and that gives you
5 a description of what the service is and briefly how
6 it's provisioned. And then we have the live activity.

7 Now, we've been really, really restricted in
8 how much information we can give about the live
9 activity because of the customer-specific information,
10 and all of the live activity gives is how many we have
11 in service at this time and how many we've provided.

12 **MS. WHITE:** But it does say in Florida,
13 right?

14 **MS. SIMS:** Right. This is all
15 Florida-specific, yes.

16 **MS. WHITE:** So if you're asking is there
17 information broken down into like cities of Florida or
18 parts of Florida, the answer is not at this time.
19 It's not in the binders right now because the ALECs
20 consider that proprietary information.

21 **MS. SIMS:** Right. We have been trying to
22 stay away from having it, you know, located like
23 Orlando, Miami. I think we that probably have some
24 specific examples in testimony in some areas. But in
25 the binders we've done total Florida. But it does

1 show how many are in service or how many are being
2 provided.

3 MS. BARONE: Okay. And then in each
4 section, do you -- you break it down into actually
5 what's actually being provided in Florida. Of course,
6 you know, we just got the binders, so we haven't been
7 able to look through those.

8 MS. WHITE: Yes. You mean like.

9 MS. BARONE: Can you point to a section now,
10 because we have --

11 MS. SIMS: Live activity. Look at live
12 activity.

13 MS. BARONE: Okay. We have Book 7,
14 checklist item, operator services and directory
15 assistance. So we're going to look at live activity
16 right now.

17 MS. SIMS: Okay.

18 MS. BARONE: And I see that in Florida you
19 have 11 inward trunks. Is that correct?

20 MS. SIMS: I don't have the binder in front
21 of me. I mean, I'll take your word for it.

22 MS. BARONE: That's what we have here.

23 MS. SIMS: Yeah. I mean, that's
24 Florida-specific information. In each binder behind
25 the tab of live activity, it's how many we have in

1 service or how many we've provided. And then the
2 technical description gives the description of what
3 the service is and how it's provisioned. And I guess
4 I'm kind of at a loss as to what else that we can
5 provide.

6 MS. BARONE: Okay. Mr. McGlothlin, have you
7 had a chance to look at the binder?

8 MR. MCGLOTHLIN: I have not. I don't have
9 that one available to me at the moment.

10 MS. BARONE: Is the type of information that
11 we've just described the type of information that
12 you're seeking in this request?

13 MR. MCGLOTHLIN: Same as to the number
14 installation, I suppose would fit into the response,
15 but it doesn't describe how it was being provided and
16 to what extent or what facilities are being used.

17 MS. WHITE: That's the technical description
18 does that. That should be in the front.

19 MS. SIMS: That should be in --

20 MS. WHITE: In the front.

21 MS. SIMS: -- the front. There's a tab that
22 says technical description.

23 MS. BARONE: Okay. We're turning to that
24 right now.

25 MS. SIMS: Okay.

1 **MS. BARONE:** Mr. McGlothlin, does that
2 answer the --

3 **CHAIRMAN JOHNSON:** He doesn't have it.

4 **MS. BARONE:** He doesn't have that? I guess
5 we're still trying to find out, Mr. McGlothlin, what
6 information that you still need so that we can help
7 you here.

8 **MR. MCGLOTHLIN:** Monica, I have not had a
9 chance to do these binders to answer the question is
10 the information here. But assuming it is here, it's
11 here on July 7th instead of June 16th. Assuming for
12 the sake of argument for a moment that the information
13 is in the live activity and the technical description,
14 the binder I have, again, 4-3, that's about -- looks
15 like maybe nine pages of about 500. So for that
16 reason I contend that their answer was not appropriate
17 at that time.

18 **CHAIRMAN JOHNSON:** Could you say that again?
19 You faded out for a while, but why do you believe the
20 answer was not appropriate? And I know you were
21 referring to a specific volume that we aren't looking
22 at, but why was the answer inappropriate?

23 **MR. MCGLOTHLIN:** They refer to 87 binders,
24 each of which have several hundred pages. And if now
25 the contingent is that within those 500 or 600 pages,

1 there's nine or ten that contain the information, then
2 it was inappropriate for BellSouth to say, "Come to
3 Atlanta to see it."

4 **CHAIRMAN JOHNSON:** But it appears as if --
5 and I'm just trying to follow this and see how it
6 works and this has been helpful to look through one of
7 the particular binders. But how else would you do it?
8 Because you want the follow-up information and you
9 want the summary. I guess you're suggesting they
10 should have just sent you the summary, but then that
11 would have been out of context because you would have
12 then needed to have the background information, also,
13 to view it in a comprehensive manner, I would think.

14 **MR. McGLOTHLIN:** We asked for the narrative
15 description and that's what -- you know, if you want
16 to make the case that that's all they had to give us,
17 fine and good, but we deserved it, we were entitled to
18 it and on June 16th.

19 **MS. WHITE:** And I'm sorry I have to speak up
20 again, but that is not all they asked for. They asked
21 for a narrative description. It's sufficient
22 technical, geographic, qualitative and quantitative
23 detail.

24 **MR. McGLOTHLIN:** Yes, the narrative
25 description was to include enough detail.

1 **MS. WHITE:** Well, that means the whole
2 binder, not just a technical description.

3 **MR. MCGLOTHLIN:** Well, I disagree.

4 **MS. WHITE:** Well, a technical description
5 doesn't give you the qualitative; it doesn't give you
6 the quantitative.

7 **CHAIRMAN JOHNSON:** Mr. McGlothlin, we're
8 really -- and I know Staff is also, and I'm trying to
9 figure out, first of all -- and we'll address when you
10 got the information later, but we're still trying to
11 address whether or not this information is adequate.
12 You know, whether it was available on the 7th or the
13 24th, that's a separate issue that I'll handle
14 separately, but I want to ensure that we have all of
15 the discovery items that have been requested.

16 And I'm still trying to better understand,
17 if I -- after reviewing this, if I determined that
18 something else needed to be provided, I'm having
19 difficulty right now determining what that something
20 else would be. So let's try to, one more time, for my
21 edification and for something for me to reflect on.

22 In addition to what you have now, the
23 binders with the tabs, and the explanation as
24 provided, what else do you believe that BellSouth
25 should be providing to you?

1 **MR. McGLOTHLIN:** Chairman Johnson, bear with
2 me as I explain that. I'm not in a position this
3 morning to say whether the binders do or do not
4 contain the information that would satisfy the
5 interrogatories. I simply have not had an opportunity
6 to work with them to the extent that it's fair to
7 answer that question. But for the sake of argument,
8 if we want to assume that the information that is
9 responsive to the question can be found and distilled
10 from the 87 binders, and that BellSouth need not
11 provide any in addition, I would contend that seeing
12 it now instead of being told to come to Atlanta to
13 find it in 87 binders on June 24th is not responsive
14 to the interrogatory. It was not sufficient to meet
15 their obligations under the rules of discovery and
16 that we have been injured in our ability to prepare
17 the case in time.

18 **CHAIRMAN JOHNSON:** Okay. So let's explore
19 that a little more. You are stating that BellSouth,
20 in responding, when they stated that -- that because
21 of the voluminous nature of the documents that you
22 should come to Atlanta, that that was inappropriate?

23 **MR. McGLOTHLIN:** Yes. Yes. Because
24 BellSouth had an obligation to provide the narrative
25 explanatory descriptive response to our interrogatory

1 that would have made it unnecessary to travel to
2 Atlanta and review 87 binders.

3 I reject categorically the proposition that
4 the 87 binders are the answer to the interrogatory.
5 Perhaps the answer can be distilled from the
6 information in those binders. But, again, if you look
7 at the nature of that information, I think you'll
8 agree readily that the bulk of the materials are
9 internal documents that do not correspond or do not
10 answer the interrogatory.

11 **CHAIRMAN JOHNSON:** Ms. White, any closing
12 comments?

13 **MS. WHITE:** Yes. I guess I'm still lost.
14 Green, but the bottom line is if -- and this has been
15 the rule of thumb as long as I have been practicing at
16 this Commission -- that if you have voluminous amount
17 of documents that are responsive to the question you
18 can ask the party to come see them. That's never been
19 a problem that I've known of. I think it goes back to
20 whether or not you consider the 87 binders to be an
21 error. I think absolutely it is. The problem seems
22 to be some of it is very technical, and I'm sure FCCA
23 has experts that can look at that. I don't pretend to
24 understand every single thing that is in the 87
25 binders, but if what Mr. McGlothlin and the FCCA is

1 looking for is a, you know, step by step brought down
2 into you know high school English of exactly what is
3 going on I don't think that that's a requirement that
4 BellSouth has to meet. I think we've met the
5 discovery requirements and we should not be penalized
6 and they issue not be begin extra time.

7 **CHAIRMAN JOHNSON:** Staff, any closing
8 questions?

9 **MS. BARONE:** Yes, Mr. McGlothlin, in your
10 motion you requested an extension of time to file
11 testimony. You didn't indicate which testimony. Do
12 you mean direct and rebuttal, or direct, just
13 rebuttal, which one?

14 **MR. MCGLOTHLIN:** Perhaps I'm not clear on
15 the distinction being made there. Our working
16 assumption is that the direct testimony deadline would
17 be for the purpose of submitting testimony. We were
18 in a position to -- on that day because we knew of the
19 issues and that the rebuttal deadline had the
20 opportunity to include any additional testimony that
21 is responsive to the filing that BellSouth made on
22 July 7th; is that correct?

23 **MS. BARONE:** Right.

24 **MR. MCGLOTHLIN:** Okay. And we're talking
25 about the rebuttal deadline.

1 **CHAIRMAN JOHNSON:** Okay.

2 **MS. BARONE:** Thank you.

3 **CHAIRMAN JOHNSON:** Any closing comments?

4 **MR. McGLOTHLIN:** If I may, just one very
5 quick one.

6 I think Ms. White in her last remarks went
7 to the crux of the question. She said that the rule
8 of thumb is when you have a voluminous number of
9 documents, you can call the party to come see them.
10 Well, that is the case when we're talking about a
11 request to produce documents. It's not the case where
12 we have posed interrogatories that the other side has
13 an obligation to answer. And since BellSouth and the
14 other parties are not in equivalent positions in terms
15 of their ability to distill answers from underlying
16 documents, BellSouth has an obligation to answer these
17 interrogatories.

18 **CHAIRMAN JOHNSON:** Okay. Staff, do you have
19 --

20 **MS. BARONE:** Yes. Mr. McGlothlin, are you
21 still asking for a narrative in addition to what has
22 been filed?

23 **MR. McGLOTHLIN:** Monica, again, I can't
24 request -- if, in fact, these binders are containing
25 information that we can work with. But I don't know

1 that to be the case and so I am asking at this point.

2 **CHAIRMAN JOHNSON:** I'm going to rule on this
3 later, but I'm still trying -- particularly based on
4 Mr. McGlothlin's last point that you haven't had an
5 opportunity to make a determination. You haven't had
6 an opportunity to review all of the volumes to
7 determine whether or not the narrative in the volumes
8 is sufficient.

9 I'll tell you what, we're going to look at
10 the information that's been provided and review the
11 arguments that have been made today and make a
12 determination as to the sufficiency of the response.
13 We will also make a determination as to -- even if it
14 is sufficient, whether or not it was timely provided
15 and whether or not anything else would need to be done
16 if it was not provided in a timely manner.

17 We will get back with the parties within --
18 probably by tomorrow on that.

19 Any final comments?

20 **MR. MCGLOTHLIN:** None from me, Commissioner.
21 Thank you.

22 **CHAIRMAN JOHNSON:** Okay. Any from you
23 Ms. White?

24 **MS. WHITE:** No, thank you.

25 **CHAIRMAN JOHNSON:** Okay. Then we'll issue a

1 ruling sometime tomorrow probably. Take care. Bye.

2 (Thereupon, the hearing concluded at

3 10:25 a.m.)

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