

FLORIDA PUBLIC SERVICE COMMISSION

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1 PROCEEDINGS 2 (Hearing reconvened at 9:30 a.m.) 3 (Transcript follows in sequence from Volume 3.) 4 5 CHAIRMAN JOHNSON: We're going to go back on the record. Counsel, any preliminary matters? 6 7 MR. PELLEGRINI: No, Chairman Johnson. Ι think we can begin with Ms. Young. I know of no 8 9 preliminary matters. 10 CHAIRMAN JOHNSON: Okay. Weren't we going 11 to --MR. PELLEGRINI: Yes. The parties have 12 stipulated the testimony of Staff Witness Ruth Young 13 14 || into the evidentiary record. CHAIRMAN JOHNSON: So should we at this 15 point in time insert it as though read? 16 II MR. PELLEGRINI: Yes, that's what I would 17 like to do. 18 CHAIRMAN JOHNSON: Okay. 19 MR. PELLEGRINI: That testimony consists of 20 direct testimony of two pages, and there are no 21 corrections. I would ask that that testimony be 22 || admitted into the record as though read. 23 CHAIRMAN JOHNSON: Okay. We'll insert that 24 into the record as though read. 25

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1	MR. PELLEGRINI: In addition, attached to
2	that testimony, there are three exhibits, RKY-1, RKY-2
3	and RKY-3. There are no changes to them, and I would
4	ask that they be marked for identification as a
5	composite exhibit and admitted.
6	CHAIRMAN JOHNSON: They will be marked as
7	Composite Exhibit 20 and admitted without objection.
8	(Exhibit 20 marked for identification and
9	received in evidence.)
10	MR. PELLEGRINI: And, lastly, Staff proffers
11	Exhibit RKY-4 which consists of Ms. Young's March 3,
12	1998 deposition transcript as well as Deposition and
13	Late-filed Deposition Exhibit Numbers 1, 1B, 2 and 3,
14	and ask that it be marked for identification and
15	admitted.
16	CHAIRMAN JOHNSON: It will be marked as
17	Exhibit 21, RKY-4, and it will be admitted without
18	objection.
19	(Exhibit 21 marked for identification and
20	received in evidence.)
21	MR. PELLEGRINI: And that is everything
22	connected with Ms. Young.
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1	DIRECT TESTIMONY OF RUTH YOUNG
2	Q. Please state your name and business address.
3	A. My name is Ruth Young, and my business address is 3625 N.W. 82nd
4	Avenue., Suite 400, Miami, Florida 33166.
5	Q. By whom are you presently employed and in what capacity?
6	A. I am employed by the Florida Public Service Commission as a Professional
7	Accountant Specialist in the Division of Auditing and Financial Analysis.
8	Q. How long have you been employed by the Commission?
9	A. I have been employed by the Florida Public Service Commission for
10	approximately nineteen years.
11	Q. Briefly review your educational and professional background.
12	A. I have a bachelor of Business Administration degree from Adelphi
13	University in New York. I am a Certified Public Accountant licensed in the
14	State of Florida. I am also a Certified Fraud Examiner.
15	Q. Please describe your current responsibilities.
16	A. Currently, I am a Professional Accountant Specialist with the
17	responsibilities of planning and directing audits of regulated companies, and
18	assisting in audits of affiliated transactions. I am also responsible for
19	creating audit work programs to meet a specific audit purpose, and I have
20	specific authority to direct and control assigned staff work, as well as,
21	participate as a staff auditor and audit manager.
22	Q. Have you presented expert testimony before this Commission or any other
23	regulatory agency?
24	A. Yes, I have testified in a water and sewer rate case for Century
25	Utilities, Inc., Docket No. 800170-WS.

1 Q. What is the purpose of your testimony today? 2 Α. I am sponsoring the staff audit performed in this docket and will 3 testify regarding the audit opinions and observations. The staff audit report 4 is identified as Exhibit RKY-1. Are you sponsoring any other exhibits? 5 0. Yes, I am sponsoring RKY-2 which are the 46-3 work papers from the audit 6 Α. and support portions of Audit Disclosure 2. I am also sponsoring RKY-3 which 7 8 are selected work papers from the 44 series which help support my work 9 regarding non-recurring costs. 10 Does this conclude your testimony? Q. 11 Α. Yes, it does. 12 13 14 15 16 17 18 19 20 21 22 23 24 25

1 CHAIRMAN JOHNSON: Okay. Are we prepared 2 then for BellSouth? MS. WHITE: Yes. BellSouth would call 3 Mr. Varner. 4 5 6 ALPHONSO J. VARNER 7 was called as a witness on behalf of BellSouth Telecommunications, Inc. and, having been duly sworn, 8 testified as follows: 9 DIRECT EXAMINATION 10 BY MS. WHITE: 11 Mr. Varner, would you please state your full Q 12 name and address for the record? 13 My name is Alphonso Varner, and my business 14 Ά address is 675 West Peachtree Street in Atlanta, 15 Georgia. 16 By whom are you employed? 17 Q BellSouth Telecommunications. A 18 Have you previously caused to be prepared 19 Q and prefiled in this case direct testimony consisting 20 of 22 pages, and rebuttal testimony consisting of 17 21 pages? 22 23 A Yes. Do you have any changes or corrections to 24 0 make to that testimony at this time? 25

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1 Ά Yes. To the direct testimony on Page 8, 2 Line 23, after the word "same" there's a phrase that got omitted. It should say "the same as resold 3 services." 4 CHAIRMAN JOHNSON: Where was that? 5 6 WITNESS VARNER: On Page 8, Line 23. The 7 line reads "recreate a BellSouth service". That 8 should be "priced the same regardless." Between 9 "same" and "regardless" the phrase "as resold services" should be there. 10 11 0 Do you have any other changes? The other changes are a result of the 12 A Yes. revision to the deposition exhibit. 13 Okay. We'll get there. 14 Q And those are on Page 11. On Line 20, the 15 A number \$31.52 should be \$32.77. 16 CHAIRMAN JOHNSON: What are you referring 17 to? 18 WITNESS VARNER: Page 11, Line 20. 19 COMMISSIONER CLARK: Of the rebuttal? 20 WITNESS VARNER: The number 31.52, \$31.52. 21 MS. WHITE: No, it's of the direct, I 22 believe. 23 24 Q (By Ms. White) Is it Page 11 of the direct? 25

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1 Yes, it's in the direct. A 2 CHAIRMAN JOHNSON: Instead of -- 11 in the 3 direct, Line --4 WITNESS VARNER: 20. 5 CHAIRMAN JOHNSON: Okay. What was the 6 number again? 7 WITNESS VARNER: It should be \$32.77. CHAIRMAN JOHNSON: Thanks. 8 WITNESS VARNER: And that means the Line 24 9 where it says "55.4%," should be "53.66%". 10 11 Similar type changes on the next page, Page 12. Line 2 it says "57.4". It should just say 12 "56". 13 Line 9 says "19.3". It should say "16.2". 14 Those are -- that's it. 15 (By Ms. White) If I were to ask the you 16 Q the same questions that were in your direct and 17 18 rebuttal testimony today, would your answers be the same with the revisions you made? 19 Yes. 20 A MS. WHITE: Madam Chairman, I would like to 21 have the direct and rebuttal testimony of Mr. Varner 22 inserted into the record as if read. 23 CHAIRMAN JOHNSON: It will be so inserted. 24 25 (By Ms. White) Did you have prepared and Q

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attached to your direct testimony two exhibits labeled 1 AJV-1 and AJV-2? 2 3 Ά Yes. 4 And did you revise AJV-1? Q Yes. 5 A Were those exhibits prepared by you or under 6 Q 7 your direction and supervision? 8 Α Yes. Do you have any changes or corrections to 9 Q make to that -- those exhibits? 10 Ά 11 No. MS. WHITE: And, Madam Chairman, AJV-1 was 12 revised and copies were provided to the Staff and the 13 parties and, I believe, the Commission as well. 14 CHAIRMAN JOHNSON: Okay. 15 MS. WHITE: I'd like to have the exhibits 16 attached to Mr. Varner's direct testimony be marked 17 for identification. 18 CHAIRMAN JOHNSON: It will be marked as 22, 19 and that was AJV-1 and 2? 20 MS. WHITE: Right. 21 (Exhibit 22 marked for identification.) 22 23 24 25

1		BELLSOUTH TELECOMMUNICATIONS, INC.
2		DIRECT TESTIMONY OF ALPHONSO J. VARNER
3		BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
4		DOCKET NO. 971140-TP
5		JANUARY 29, 1998
6		
7	Q.	PLEASE STATE YOUR NAME, AND BUSINESS NAME AND
8		ADDRESS.
9		
10	Α.	My name is Alphonso J. Vamer. I am employed by BellSouth as Senior
11		Director for State Regulatory for the nine-state BellSouth region. My
12		business address is 675 West Peachtree Street, Atlanta, Georgia
13		30375.
14		
15	Q.	PLEASE GIVE A BRIEF DESCRIPTION OF YOUR BACKGROUND
16	•	AND EXPERIENCE.
17		•
18	A .	I graduated from Florida State University in 1972 with a Bachelor of
19		Engineering Science degree in systems design engineering. I
20		immediately joined Southern Bell in the division of revenues
21		organization with the responsibility for preparation of all Florida
22		investment separations studies for division of revenues and for
23		reviewing interstate settlements.
24		
25		Subsequently, I accepted an assignment in the rates and tariffs

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1		5 8 3 organization with responsibilities for administering selected rates and
2		tariffs including preparation of tariff filings. In January 1994, I was
3		appointed Senior Director of Pricing for the nine state region. I was
4		named Senior Director for Regulatory Policy and Planning in August
5		1994, and I accepted my current position as Senior Director of
6		Regulatory in April 1997.
7		
8	Q.	WHAT IS THE PURPOSE OF YOUR TESTIMONY?
9		
10	A .	The purpose of my testimony is to address fully Issues 3, 6 and 8 in
11		this proceeding. In addition, both Mr. Hendrix and I address varying
12		aspects of Issues 7, 9 and 10. I intend to outline BellSouth's position
13		with regard to the appropriate price to be applied to combinations of
14		unbundled network elements ("UNEs"). I also intend to define the
15		appropriate non-recurring charges to be applied to specific elements
16		when requested at the same time on the same order.
17		
18	Q.	PLEASE PROVIDE THE BACKGROUND EVENTS THAT
19		INFLUENCED BELLSOUTH'S RESPONSES TO THE ISSUES IN THIS
20		DOCKET.
21		
22	А.	On June 19, 1997 the Florida Public Service Commission (the
23		"Commission") issued orders approving both the MCI and AT&T
24		interconnection agreements signed with BellSouth. At that time, the
25		pricing provisions of the FCC's Interconnection Rules established in

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CC Docket No. 96-98 (FCC's Rules) were stayed by the United States 1 Court of Appeals for the Eighth Circuit ("Eighth Circuit"). However, the 2 FCC's Rules that required BellSouth to provide combinations of UNEs 3 to alternative local exchange companies ("ALECs") remained in effect. 4 Due to the Eighth Circuit's October 15, 1996 stay, the Commission 5 could set prices for UNEs and any UNE combinations without guidance 6 7 from the FCC. The Commission, however, did not rule on the price of 8 UNE combinations within the proceedings that ultimately produced the 9 arbitrated agreements between BellSouth and MCI and BellSouth and 10 AT&T.

11

12 Subsequent to those events, on July 18, 1997, the Eighth Circuit 13 vacated the FCC's pricing rules affirming that state commissions held . 14 jurisdiction over intrastate pricing. In addition, the Eighth Circuit ruled that incumbent local exchange companies ("ILECs"), such as 15 16 BellSouth, did not have to combine UNEs for ALECs, ruling that it is the 17 ALEC's responsibility to perform the combination function. The Eighth 18 Circuit stated in its Order under Section II.G.1.f, "While the Act requires incumbent LECs to provide elements in a manner that enables the 19 20 competing carriers to combine them, unlike the Commission, we do not believe that this language can be read to levy a duty on the incumbent 21 22 LECs to do the actual combining."

23

24 On October 14, 1997 the Eighth Circuit reiterated its July 18, 1997 25 decision with regard to the combination of UNEs stating that the

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Telecommunications Act of 1996 (the "Act"), "does not permit a new
entrant to purchase the incumbent LEC's assembled platform(s) of
combined network elements (or any lesser existing combination of two
or more elements) in order to offer competitive telecommunications
services." The Eighth Circuit was very specific that requesting carriers
will combine the unbundled elements themselves.

- On January 16, 1998 the United States Supreme Court ("Supreme 8 9 Court") granted certiorari to review the Eighth Circuit's decision 10 regarding pricing including recombination of network elements. 11 Nevertheless, with respect to the interconnection agreements 12 BellSouth signed with MCI and AT&T, language requiring BellSouth to 13 combine UNEs will remain in those agreements only until such time as. • 14 the Supreme Court has completed its review, assuming the Supreme Court upholds the Eighth Circuit's decision. The interconnection 15 16 agreements today contain language requiring that, should "...any final 17 and nonappealable legislative, regulatory, judicial or other legal action 18 materially affects any material terms of the Agreements, the parties will 19 renegotiate mutually acceptable terms as may be required." (emphasis 20 added) Therefore, assuming the issues now before the Supreme Court 21 become final, BellSouth will, at that time, renegotiate with MCI and 22 AT&T the portion of the agreements relating to combinations of UNEs.
- 23

7

Currently, language in the interconnection agreements obligates
 BellSouth to provide combined UNEs. However, the interconnection

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1		agreements do not contain the price that BellSouth will charge for
2		combining UNEs during the period before the Eighth Circuit's decision
3		is final.
4		
5		It is with this frame of reference that BellSouth is responding to the
6		issues in this docket. BellSouth's responses deal primarily with the
7		situation during the interim period before the Supreme Court rules on
8		decisions made by the Eighth Circuit.
9		
10	Q.	DID THE COMMISSION STAFF ACKNOWLEDGE THE EIGHTH
11		CIRCUIT'S RULING IN ITS NOVEMBER 20, 1997
12		RECOMMENDATION IN THIS DOCKET?
13		•
14	A .	Yes. At page 12, the Staff cites the Eighth Circuit's decision and the
15		recommendation states, "Staff believes that the current state of the law
16		does not require incumbents to provide combined network elements (or
17		assembled platforms) to requesting carriers, whether presently
18		combined or to be combined by incumbents."
19		
20	Q.	IS IT BELLSOUTH'S POLICY TO PROVIDE COMBINATIONS OF
21		UNES TO ALECS AT UNE PRICES?
22		•
23	Α.	No. It is not BellSouth's policy, nor has it ever been BellSouth's policy
24		to provide combinations of UNEs that replicate retail services at UNE
25		prices.

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1		
2		Throughout the numerous arbitration proceedings in the BellSouth
3		region, including in BellSouth's Petition for Reconsideration in the MCI
4		and AT&T arbitration proceedings in Florida, BellSouth's policy has
5		been that when BellSouth combines UNEs for an ALEC that recreate
6		existing BellSouth services, those combinations should be priced at the
7		retail service rate minus the applicable wholesale discount. Those
8		positions presented to the commissions in Alabama, Georgia,
9		Louisiana, Mississippi, North Carolina, South Carolina and Tennessee
10		resulted in arbitration orders consistent with BellSouth's position.
11		,
12		Based on the Eighth Circuit's decision, BellSouth is no longer obligated
13		to combine UNEs, but can do so if it desires. As such, should an ALEG •
14		request BellSouth to combine UNEs, BellSouth will negotiate with that
15		ALEC for appropriate rates, terms and conditions for such
16		combinations.
17		
18		Issue # 3: If the answer to either part or both parts of Issue # 1 is
19		no, how should the price(s) be determined?
20		Issue # 6: If the answer to either part or both parts of Issue # 4 is
21		no, how should the price(s) be determined?
2 2		
23	Q.	HOW SHOULD PRICES BE DETERMINED FOR COMBINATIONS OF
24		UNES WHICH DO NOT RECREATE AN EXISTING BELLSOUTH
25		RETAIL SERVICE?
		×.

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Assuming the Supreme Court upholds the Eighth Circuit's ruling, no 2 A. distinction needs to be made between whether combinations recreate services or not. Based on the Eighth Circuit's ruling, BellSouth is not required to offer combinations. To the extent such combinations are offered, pricing standards of the Act do not apply. Since provision of UNE combinations is not required under Section 251 of the Act, negotiation and arbitration under Section 252 is not applicable. On the

9 other hand, combinations of UNEs when combined by MCI and AT&T 10 should be priced at the individual UNE prices.

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12 It is BellSouth's position that prices for UNE combinations which do not 13 recreate an existing BellSouth retail service, should be negotiated • 14 between the parties. These prices should be market based to reflect 15 the increased risk associated with the use of UNEs outlined by the 16 Eighth Circuit. Specifically, the Eighth Circuit, in its July 18, 1997 17 Order at Section II.G.1.g. stated, "Although a competing carrier may 18 obtain the capability of providing local telephone service at cost-based rates under unbundled access as opposed to wholesale rates under 19 20 resale, unbundled access has several disadvantages that preserve 21 resale as a meaningful alternative. Carriers entering the local 22 telecommunications markets by purchasing unbundled network 23 elements face greater risks than those carriers that resell an incumbent 24 LEC's services." The Order further states, "A carrier providing services through unbundled access, however, must make an up-front 25

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investment that is large enough to pay for the cost of acquiring access 1 to all of the unbundled elements of an incumbent LEC's network that 2 3 are necessary to provide local telecommunications services without knowing whether consumer demand will be sufficient to cover such 4 5 expenditures. Moreover, our decision requiring the requesting carriers 6 to combine the elements themselves increases the costs and risks associated with unbundled access as a method of entering the local 7 8 telecommunications industry and simultaneously makes resale a 9 distinct and attractive option."

10

11 Q. HOW SHOULD PRICES BE DETERMINED FOR COMBINATIONS OF
12 UNEs WHICH DO RECREATE AN EXISTING BELLSOUTH RETAIL
13 SERVICE WHERE THE COMBINATION IS PERFORMED BY MCI OR•
14 AT&T?

15

16 A. As previously discussed, assuming the Eighth Circuit's decision is 17 upheld, a distinction between whether combinations recreate services or not will not be necessary. In addition, when MCI or AT&T combine 18 UNEs themselves to provision services, whether or not they recreate 19 an existing BellSouth service, prices for such combinations of UNEs 20 21 should be the individual UNE prices. In the interim period, until the contracts are revised to reflect that decision, UNE combinations that 22 as resold service recreate a BellSouth service should be priced the same fregardless of 23 24 whether BellSouth or the ALEC does the combining.

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Q. HOW SHOULD PRICES BE DETERMINED FOR COMBINATIONS OF
 UNES WHICH DO CREATE AN EXISTING BELLSOUTH RETAIL
 SERVICE WHERE THE COMBINATION IS PERFORMED BY

4 BELLSOUTH?

5

As discussed in the previous answer, BellSouth will not be required to 6 Α. 7 perform UNE combinations assuming the Eighth Circuit's decision is 8 upheld. If BellSouth offers combinations, BellSouth may negotiate a 9 price (sometimes referred to as a "glue charge") with MCI or AT&T for 10 that combination function. Such negotiations would be outside the 11 scope of BellSouth's responsibility under the Act. As noted, provisions for combining UNEs are not required by Section 251 of the Act; 12 13 consequently, negotiations and arbitration provisions of Section 252 do-14 not apply. Thus, if BellSouth and MCI or BellSouth and AT&T are unable to agree on terms and conditions and prices, then BellSouth 15 would not perform the combining function. 16

17

However, the Commission is addressing this issue based on the
current contract. BellSouth's position is that, until the current contracts
are revised, when BellSouth provisions combinations of UNEs that
recreate existing BellSouth retail services, the price to the ALEC will be
the retail price of that service minus the applicable wholesale discount.

23

24 It is expected that the typical request by MCI or AT&T would be for
25 BellSouth to provide a combination of UNEs (as a preassembled

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combination, or on a switch "as is" basis) without the physical work of combining the elements. This exemplifies the situation over which the Commission has expressed concern. In essence, MCI or AT&T would order a BellSouth retail service simply by placing the order as a series of UNEs. This situation is, quite frankly, the one most likely to exist and is the one MCI and AT&T have actually demanded. This migration of a customer's service or switch "as is" is simply resale, since MCI and

AT&T are not purchasing UNEs, but are, in fact, purchasing a finished retail service. In such cases, BellSouth will bill the retail service rate minus the applicable wholesale discount.

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12 Q. PLEASE ILLUSTRATE THE EFFECTS OF APPLYING UNE PRICES
13 FOR BELLSOUTH PROVIDED UNE COMBINATIONS TO MCI AND
14 AT&T THAT RECREATE BELLSOUTH'S LOCAL EXCHANGE
15 SERVICE.

16

17 I have prepared and attached my Exhibit AJV-1 which illustrates the Α. 18 consequences of pricing certain UNE combinations at UNE prices versus the wholesale pricing standard which is the appropriate 19 20 standard to apply. Exhibit AJV-1 contains three charts; Chart A 21 displays a typical business customer. Chart B displays a typical PBX customer and Chart C displays a typical residential customer. Each 22 23 chart contains three pricing scenarios comparing the tariffed retail rates and related charges to retail rates minus the wholesale discount and 24 25 corresponding UNE rates and related charges.

•

Using Chart A, this typical business customer has two lines with
hunting and a single vertical feature on each line. Based on these
assumptions, this customer pays BellSouth \$70.68 per month for each
line.

- Now consider that this business customer decides to purchase local
 service from MCI or AT&T. If, when MCI or AT&T order the service,
 they request BellSouth's service to resell to their customer, MCI and
 AT&T would pay BellSouth \$62.36 per month for each line. This price
 is the retail rate less the wholesale discount approved by this
 Commission. BellSouth would continue to receive access charges
 associated with this line.
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15 Next, consider that when MCI or AT&T order service, they request that the customer be switched "as is" to UNEs. The service would be 16 provided in the same manner as resale with the capabilities and 17 functions also being the same. Simply by changing the words they use 18 when the service is ordered, the revenues paid to BellSouth, based on 19 32.77 the UNE rates ordered by the Commission, would drop to \$31.52 for 20 21 this line. Not only does BellSouth lose significant revenue, but MCI 22 and AT&T are not subject to the joint marketing restriction on resold services, as I will discuss in more detail later. In effect, MCI and AT&T 23 53.6 receive an effective discount from retail rates of 55.4% simply because 24 they place the order as UNEs instead of resale. Chart B displays a 25

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Chart C, which illustrates the same scenario for a typical residential 4 customer, shows that use of UNEs to provide service results in a 5 6 significantly lower discount from retail than using UNEs for business 7 customers. However, it is still economically more advantageous than 8 ordering service as resale. Once again, not only do MCI and AT&T 9 receive a 19.3% discount over retail prices, but they avoid paying 10 interstate access charges and also avoid the joint marketing 11 restrictions associated with resold services outlined in the Act. 12

In all three scenarios, if MCI and AT&T are allowed to receive UNE combinations at UNE prices, there is ample reason for MCI and AT&T to always order services using UNEs. It is difficult to conceive of a situation in Florida in which an ALEC would choose to use the resale option, when they can effectively bypass that option through sham unbundling. Thus, if sham unbundling is allowed to occur, it would render useless the resale pricing standard of the Act.

20

Q. YOU MENTIONED THAT ALLOWING MCI AND AT&T TO USE SHAM
UNBUNDLING WOULD PERMIT THEM TO AVOID THE JOINT
MARKETING RESTRICTIONS OF THE ACT. PLEASE EXPLAIN.

25 A. Congress included language in the Act that created a balance between

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1 a Bell Operating Company's ("BOC's") ability to enter the long distance market and a large interexchange carrier's ("IXC's") ability to jointly 2 market its interLATA services with services obtained from the BOC 3 4 through resale. Section 271(e)(1) of the Act states, "Until a Bell 5 operating company is authorized pursuant to subsection (d) to provide 6 interLATA services in an in-region State, or until 36 months have 7 passed since the date of enactment of the Telecommunications Act of 1996. whichever is earlier, a telecommunications carrier that serves 8 9 greater than 5 percent of the Nation's presubscribed access lines may not jointly market in such State telephone exchange service obtained 10 11 from such company pursuant to section 251(c)(4) with interLATA services offered by that telecommunications carrier." Section 251(c)(4) 12 .• 13 describes the resale of existing services.

14

15 The Act's purpose in imposing this restriction was to prevent a large 16 IXC from exercising an unfair marketing advantage over the BOC until the BOC was either permitted to enter the long distance market or until 17 18 36 months had passed since enactment of the Act. If MCI and AT&T 19 are allowed to order BellSouth's existing retail services using UNE 20 rates, versus the resale situation that it actually is, and avoid complying 21 with the joint marketing restrictions, the joint marketing restrictions of the Act no longer have meaning. MCI and AT&T would effectively have 22 23 the ability to manipulate the Act's pricing standards to their best advantage and thumb their noses at the Act's joint marketing 24 25 restrictions that were specifically intended to apply to MCI, AT&T and

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3 The Commission appears to be concerned about this area as evidenced in a statement contained in the Commission's December 31, 4 5 1996 Order in the AT&T and MCI arbitration proceeding. In that Order, 6 the Commission expressed concern, "...about the possibility that the 7 joint marketing prohibitions in Section 271(e)(1) could be 8 circumvented." BellSouth requests the Commission act on that 9 concern and deny MCI and AT&T's demand for sham unbundling. 10 PLEASE EXPLAIN MORE FULLY THE CONSEQUENCES THAT 11 Q. 12 WOULD RESULT, IF BELLSOUTH WERE REQUIRED TO PRICE BELLSOUTH PERFORMED COMBINATIONS THAT CREATE 13 EXISTING RETAIL SERVICES AS UNES INSTEAD OF RESALE? 14 15 As just described, such a requirement would nullify the Act's two 16 A. 17 pricing standards as they apply to MCI and AT&T. MCI and AT&T 18 would be able to obtain a BellSouth retail service at UNE prices 19 allowing them to manipulate the pricing standards of the Act in a manner not contemplated by Congress. In Section 252(d) of the Act, 20 21 Congress established two pricing standards, one for interconnection and UNEs and one for the resale of existing services. 22 23 If allowed to obtain a BellSouth retail service at UNE prices, MCI and 24 AT&T could choose a pricing standard based simply on the manner they 25

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1		order the service, as opposed to the appropriate pricing standard being
2		applied to the local exchange service being provisioned. In this
3		manner, and as demonstrated in Exhibit AJV-1, MCI and AT&T would
4		purchase BellSouth combined UNEs for provision of service when
5		selling to their customers because it would be economically
6		advantageous to MCI and AT&T. Congress could not have intended
7		that an ALEC market its services to its customers simply through
8		manipulation of the Act's pricing standards that are intended to
9		distinguish between provision of services through resale or through
10		purchase of UNEs. Neither should this Commission allow MCI and
11		AT&T such latitude.
12		
13	Q.	HAS THE COMMISSION EXPRESSED CONCERN ABOUT THIS
14		SHAM UNBUNDLING?
15		
16	Α.	Yes. In its December 31, 1996 Order in the AT&T and MCI arbitration
17		proceeding (Order No. PSC-96-1579-FOF-TP), the Commission stated,
18		"We note that we are concerned with the FCC's interpretation of
1 9		Section 251(c)(3) of the Act. Specifically, we are concerned that the
20		FCC's interpretation could result in the resale rates we set being
21		circumvented if the price of the same service created by combining
22		unbundled elements is lower."
23		
24		Unfortunately, as Mr. Hendrix has noted, when BellSouth attempted to
25		include language in the interconnection agreements with MCI and

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1 AT&T to address this concern, the Commission denied its inclusion. 2 Specifically, on page 7 of the May 27, 1997 Order in the AT&T 3 arbitration docket, the Commission stated, "We find BellSouth's 4 proposal to include this language and refusal to sign the Agreement 5 without such language completely unacceptable." 6 7 Q. WHAT ARE THE CONSEQUENCES TO CONSUMERS, IF MCI AND 8 AT&T ARE PERMITTED TO ENGAGE IN SHAM UNBUNDLING? 9 10 A. There are substantial margins in business vertical services and access 11 prices. That is no surprise. As a matter of public policy, this 12 Commission originally set these prices to support local residential 13 rates. If MCI and AT&T are permitted to capture or eliminate those 14 margins immediately, residential, principally rural, customers will be harmed. It is the customers that MCI and AT&T do not want to serve 15 16 who will fund the multi-million dollar price breaks that MCI and AT&T 17 will receive. As stated, this revenue windfall will be achieved by simply 18 changing the way services are ordered. MCI and AT&T will simply request combined elements instead of resold service. Nothing else is 19 20 different. Even on an interim basis, to protect consumers, the price for 21 combined elements should not equal the sum of unbundled element 22 prices when the combined elements and resold services are equivalent. 23 24

25 Q. YOU INDICATED EARLIER THAT THE EIGHTH CIRCUIT FOUND

-16-

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5 Α. No. As stated earlier, BellSouth does not generally offer to combine 6 network elements. However, there are certain combined elements that 7 BellSouth offers in order to fulfill its obligations under some existing 8 agreements. For example, BellSouth offers common transport. The 9 only technically feasible method of offering common transport is to 10 combine it with the port. Consequently, BellSouth will combine the port 11 and common transport. The table below identifies these exceptions and indicates those combined elements for which order coordination is 12 13 available. Until the Eighth Circuit's Order is final (assuming it is upheld * 14 by the Supreme Court), the agreements with MCI and AT&T obligate 15 BellSouth to provide other UNE combinations as well. As noted earlier, 16 however, such combinations that replicate retail services will be treated 17 for the purposes of provisioning and billing as resale.

UNES	Combine	Coordinat e
Loop + Cross Connect	X	X
Port + Cross Connect	X	X
Port + Cross Connect + Common Transport	X	X
Loop Distribution + NID	X	X
Port + Vertical Features	X	X
Loops with loop concentration	X	X
Port + Common Transport	X	X
Loops + LNP	N/A	X

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The price for each of the combinations in the above chart is the sum of
the individual element prices.

Issue # 7: What standards should be used to identify what
combinations of unbundled network elements recreate existing
BellSouth retail telecommunications services:

9 Q. WILL STANDARDS OR CRITERIA FOR DETERMINING WHAT
10 COMBINATIONS OF UNES RECREATE EXISTING BELLSOUTH
11 SERVICES BE NECESSARY IF THE EIGHTH CIRCUIT'S DECISION
12 IS UPHELD?

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A. No. Assuming the Eighth Circuit's decision is upheld, this issue will be
moot. The Eighth Circuit determined that BellSouth is not required to
combine UNEs. If BellSouth does agree to combine UNEs, it will be
through negotiations between the parties and be bound by the terms of
a contract, not by a decision of this Commission. Mr. Hendrix is
addressing the criteria to be used in the interim period under the AT&T
and MCI contracts until the Eighth Circuit's decision is final.

21

Issue # 8: What is the appropriate non-recurring charge for each
 of the following combinations of network elements for migration
 of an existing BellSouth customer; (a) 2-wire analog loop and
 port; (b) 2-wire ISDN loop and port; (c) 4-wire analog loop and

-18-

- port; and (d) 4-wire DS1 and port?
- 2

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3 Q. HOW HAS BELLSOUTH ADDRESSED THIS ISSUE?

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5 Α. BellSouth's response to this issue conforms to the Commission's 6 requirement to provide non-recurring charges for individual UNEs when 7 ordered at the same time on the same order. That requirement was 8 described in the Commission's March 19, 1997 Order, No. PSC-97-9 0298-FOF-TP (Final Order on Motions for Reconsideration and 10 Amending Order No. PSC-96-1579-FOF-TP). In that Order, the 11 Commission stated, "[W]e hereby order BellSouth to provide NRCs that 12 do not include duplicate charges or charges for functions or activities 13 that AT&T does not need when two or more network elements are .• combined in a single order." The Commission also stated that the 14 same requirement is applicable to MCI. 15

16

17 The use of the word "migration" in Issue # 8 could lead to confusion in 18 the interpretation of issues in this docket. Specifically, Issue # 8 calls 19 for non-recurring charges ("NRCs") for each combination for "migration of an existing BellSouth customer." In the telecommunications 20 21 industry, the term "migration" typically applies to a switch "as is." A switch "as is" pertains only to a resale environment. This is not a 22 23 resale proceeding. BellSouth is focusing on NRCs as applied to 24 unbundled network elements that are ordered simultaneously, which is 25 consistent with the Commission's decision in the AT&T and MCI

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1		arbitration orders. BellSouth's discounted NRCs are not intended to
2		accommodate a switch "as is."
3		•
4	Q.	WHAT RATES HAS BELLSOUTH PROPOSED?
5		
6	Α.	BellSouth's proposed NRCs are listed in my Exhibit AJV-2. This exhibit
7		demonstrates discounts on NRCs for UNE loops and ports when the
8		elements are ordered at the same time. The testimony of Mr. Landry
9		and Ms. Caldwell explain the duplicate charges that, when eliminated,
10		determine the discounts used in the exhibit.
11		
12	Q.	WHAT DO THE NEW NRCs REFLECT?
13		•
14	Α.	The discounted NRCs, listed on AJV-2, reflect the elimination of any
15		duplicate costs. The discounted NRCs were developed as follows:
16		BellSouth considered; (1) the non-recurring costs for each of the
17		applicable elements on a stand-alone basis, and then (2) the total that
18		would apply if the NRCs for the stand-alone items were added together
19		without considering duplicate costs. BellSouth then compared the
20		result for item 2 above to (3) the costs for the combination when any
21		duplicate charges have been removed. The comparison between
2 2		figures (2) and (3) provide a percentage difference that BellSouth will
23		use as the basis to discount the NRC for the specific combination. To
24		summarize, the new NRCs that BellSouth proposes for the combined
25		orders are specific numbers that are based on a percentage discount

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that eliminates duplicate charges. All of these NRCs also include
shared and common costs.

3

Issue # 9: Does the BellSouth-MCIm interconnection agreement
require BellSouth to record and provide MCIm with the switched
access usage data necessary to bill interexchange carriers when
MCIm provides service using unbundled local switching
purchased from BellSouth either on a stand-alone basis or in
combination with other unbundled network elements?

10

11Issue # 10: Does the AT&T-BellSouth interconnection agreement12require BellSouth to record and provide AT&T with detail usage13data for switched access service, local exchange service and long-*14distance service necessary for AT&T to bill customers when AT&T15provides service using unbundled network elements either alone16or in combination?

17

18Q.MR. HENDRIX HAS ADDRESSED ISSUE NOS. 9 & 10 FROM THE19PERSPECTIVE OF THE AGREEMENTS WITH AT&T AND MCI. DO20THESE ISSUES, HOWEVER, REQUIRE FURTHER DISCUSSION?

21

A. Yes. The interconnection agreements require that BellSouth record all
billable usage events and send the <u>appropriate</u> recording data to AT&T
and MCI. It is important to note that this data will not include intrastate
interLATA data. Whereas the FCC has determined that interstate

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1 access is to be billed by the ALEC when the ALEC provides service to its customers using BellSouth's unbundled elements, this Commission 2 3 has not made a similar determination on intrastate, interLATA access. 4 This is a pricing decision for the state commissions to make. Since the FCC has chosen to eliminate access charges for these services, a 5 6 source of contribution to support intrastate rates has been removed. 7 Consequently, this Commission should consider what action should be taken to offset any loss of contribution previously provided by interstate 8 9 access charges.

10

11 Because the Eighth Circuit affirmed that the state commissions have jurisdiction over intrastate pricing, it is up to this Commission to 12 13 determine the issue of intrastate, interLATA billing. BellSouth believes.* it is appropriate for BellSouth to continue to bill and collect intrastate, 14 15 interLATA access charges and will do so until such time as this Commission rules otherwise. As previously discussed, when MCI or 16 AT&T simply order local service through switch "as is" or UNE 17 combinations, through the artifice of claiming they are offering retail 18 19 services, such service should be priced as resale. Under resale, BellSouth will continue to bill the applicable access charges, therefore, 20 21 it is not necessary to provide this data to MCI.

22

23 Q. DOES THIS COMPLETE YOUR TESTIMONY?

24 A. Yes.

25

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1		BELLSOUTH TELECOMMUNICATIONS, INC.
2		REBUTTAL TESTIMONY OF ALPHONSO J. VARNER
3		BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
4		DOCKET NO. 971140-TP
5		FEBRUARY 20, 1998
6		
7	Q.	PLEASE STATE YOUR NAME, AND BUSINESS NAME AND
8		ADDRESS.
9		
10	Α.	My name is Alphonso J. Varner. I am employed by BellSouth as Senior
11		Director for State Regulatory for the nine-state BellSouth region. My
12		business address is 675 West Peachtree Street, Atlanta, Georgia
13		30375.
14		
15	Q.	HAVE YOU PREVIOUSLY FILED TESTIMONY IN THIS DOCKET?
16		
17	Α.	Yes. I filed direct testimony and two exhibits on January 29, 1998.
18		
19	Q.	WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?
20		
21	Α.	My rebuttal testimony responds to the direct testimony filed by AT&T
22		and MCI witnesses on January 29, 1998. In responding to these
23		witnesses, my testimony refutes erroneous positions and assertions
24		found in their testimony.
25		

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Q. DO YOU HAVE ANY GENERAL COMMENTS ON THE TESTIMONY FILED BY AT&T AND MCI?

3

4 Α. Yes. It appears that witnesses for AT&T and MCI are attempting to 5 confuse the issues in this case. The goals of this proceeding are to 6 determine the appropriate prices to be applied to combinations of 7 unbundled network elements ("UNEs"), and to eliminate duplicate cost 8 recovery in nonrecurring charges ("NRCs") for stand alone elements 9 when requested at the same time on the same order. This case is not 10 about provisioning issues or terms and conditions issues; it is about 11 pricing issues.

12

AT&T and MCI are asking this Commission to take two diametrically opposite positions simultaneously. They are requesting that the Commission confirm that prices for combinations of UNEs are mandated by their agreements while simultaneously asking this Commission to ignore prices that they claim are mandated by their agreements.

19

20 When MCI or AT&T request that the customer be switched "as is" using 21 UNEs, the service is the same as resale with the capabilities and 22 functions also being the same. Essentially, AT&T and MCI want to 23 order the functional equivalent of a BellSouth retail service simply by 24 changing the words they use when the service is ordered. This would 25 allow them to receive huge effective discounts from retail simply by

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placing the order as UNEs instead of resale and would make the
 concept of resale obsolete. In my testimony, I refute statements that
 stir such confusion as well as correct errors that the intervenors'
 attempt to provide as factual evidence. Mr. Hendrix addresses contract
 issues, Mr. Landry discusses the provisioning of UNEs, and Ms.
 Caldwell addresses cost issues.

- 8 Q. MCI WITNESS PARKER, ON PAGE 7 OF HIS TESTIMONY, STATES
 9 THAT THE BELLSOUTH/MCI AGREEMENT "GIVES ONLY ONE
 10 PRICING STANDARD FOR UNE COMBINATIONS AND CREATES
 11 NO EXCEPTIONS." DO YOU AGREE?
- 12

19

7

- A. No. BellSouth has not agreed to the pricing for UNE combinations in
 either the AT&T or MCI agreements. BellSouth's agreement with MCI
 sets forth prices for UNEs, but not for combinations of UNEs. MCI and
 AT&T have attempted to torture wording of other parts of the
 agreements to imply that BellSouth has agreed to a pricing scheme
 that BellSouth has repeatedly and consistently opposed.
- AT&T and MCI have incorrectly stated that BellSouth has agreed to price combinations of UNEs at the sum of UNE prices. As I stated in my direct testimony, BellSouth has repeatedly and vociferously opposed pricing of UNE combinations as the sum of the individual UNE prices as AT&T and MCI have proposed. BellSouth has consistently maintained that position in all of its arbitration proceedings, interLATA

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1 compliance proceedings and in the courts. It is ludicrous to believe that 2 BellSouth would have agreed to pricing UNEs as suggested by AT&T 3 and MCI while concurrently opposing this view in every possible arena. 4 5 Q. YOU STATED THAT AT&T AND MCI PROPOSE THAT THE 6 COMMISSION SIMULTANEOUSLY TAKE TWO DIAMETRICALLY 7 OPPOSITE ACTIONS. PLEASE ELABORATE. 8 9 Α. As I stated, AT&T and MCI claim that their agreements mandate that 10 UNE combinations be priced at the sum of UNE prices. They have 11 made no attempt to show whether such pricing would be appropriate. 12 Their sole basis for the validity of their pricing proposal is that such 13 pricing is dictated by their agreements. However, their own arguments 14 contradict this contention. 15 16 If prices for UNE combinations were dictated by their agreements as 17 they claim, the agreements would dictate both the recurring and non-18 recurring prices for UNEs. None of the agreements' provisions that AT&T and MCI use to support their contention distinguish between 19 20 recurring and non-recurring prices. If this language governs recurring 21 prices, it would also govern the non-recurring prices. However, AT&T and MCI are requesting this Commission to decide that the contract 22 23 language mandates the recurring prices only. Simultaneously, they 24 want the Commission to ignore this same language - the basis for their 25 recurring pricing request - and determine that their agreement does not

1		establish non-recurring prices. The motivation for this blatantly
2		contradictory position is obvious. They like the recurring prices but
3		don't like the non-recurring prices. However, the same language in the
4		agreement can't be used to both dictate prices and not dictate prices.
5		The fact is that the agreements do not contain any prices for UNE
6		combinations. AT&T and MCI have confirmed this fact by their own
7		arguments.
8		
9	Q.	YOU MENTIONED THAT AT&T AND MCI WANT TO ORDER THE
10		"FUNCTIONAL EQUIVALENT OF A BELLSOUTH RETAIL SERVICE"
11		SIMPLY BY CHANGING THE WORDS THEY USE WHEN THE
12		SERVICE IS ORDERED. PLEASE ELABORATE.
13		
14	Α.	Certainly. As background, the alternative local exchange company
15		("ALEC") makes the determination of how to serve a customer. If the
16		competitor chooses resale, prices are available, and these prices
17		reflect provisioning of a retail service. If the competitor decides to
18		serve a customer by ordering a preassembled combination of UNEs (a
19		combination of UNEs that provides the same functionality as a retail
20		service), the provisioning process is the same as resale. Witnesses for
21		AT&T and MCI have attempted in their testimony to create a difference
22		between UNE combinations and resale, where none exists. This is
23		clear from the Nonrecurring Cost Model sponsored by AT&T which
24		purports to establish the nonrecurring costs of: (1) "Total Services
25		Resale," which the model defines as the wholesale provision of local

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1		telephone service by an incumbent to an ALEC, which then resells the
2		service to end user customers; and (2) "Unbundled Network Elements
3		Platform," which the model defines as the purchase by an ALEC of
4		"unbundled network elements in combination from the ILEC at cost-
5		based rates." The nonrecurring costs developed by the AT&T model
6		for resale and the "platform" are identical. As a result, the model must
7		assume that the purchase of services for resale and the purchase of
8		the "platform" are the same thing.
9		
10		Despite this acknowledgment, AT&T and MCI attempt to persuade the
11		Commission to give them the best of all conceivable worlds; they want
12		to purchase what is the equivalent of a resold service at UNE recurring
13		rates and at nonrecurring rates which are lower than those that would
14		apply to UNEs or resale.
15		
16	Q.	WHAT WOULD BE THE IMPACT ON FLORIDA CONSUMERS IF
17		AT&T AND MCI COULD PURCHASE RECREATED BELLSOUTH
18		LOCAL EXCHANGE SERVICE AT THE PRICES THEY PROPOSE?
19		
20	Α.	Exhibit AJV-1 of my direct testimony illustrates the consequences of
21		pricing certain UNE combinations at UNE recurring prices versus the
22		wholesale pricing standard, which is the appropriate standard to apply.
23		The charts in Exhibit AJV-1 show how MCI and AT&T receive
24		substantial discounts over retail prices through the artifice of renaming
25		resale as UNE combinations. Additionally, they avoid paying interstate

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access charges and also avoid the joint marketing restrictions
 associated with resold services outlined in the Telecommunications Act
 of 1996 (the "Act").

5 There are substantial margins in business vertical services and access 6 charges. That is not a surprise to anybody. As a matter of public 7 policy, this Commission put them there to support local residence rates. 8 If new entrants are permitted to capture or eliminate those margins 9 immediately, Florida's residential customers, principally rural 10 customers, will be harmed. It is the customers that AT&T and MCI do 11 not want to serve who will fund the multi-million dollar price breaks that 12 AT&T and MCI seek to receive. Further, if AT&T and MCI receive this windfall, it will simply be by virtue of changing the way they ask for the 13 14 service. They will simply request UNE combinations instead of resold 15 services. Nothing else is different. What they can add to the service, 16 what they can do with the service, their ability to innovate and serve the 17 customer are all the same under either circumstance.

18

4

One attempt to distinguish between UNE combinations and resale has
been to contend that UNE combinations present a different business
opportunity than resale. The only different business opportunity is that
AT&T and MCI pay less for the resold service, they do not pay access
charges, and they avoid the joint marketing restriction.

24

25 Another baseless reason AT&T and MCI offer to support their

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1		contention of a difference between resale and UNE combinations is the
2		need to bill for access services. Under either scenario, BellSouth
3		provides the access service to AT&T and MCI. End users do not pay
4		carrier access charges; carriers do. If AT&T is the end user's long-
5		distance provider, AT&T will not bill access to anyone, it will simply stop
6		paying access to BellSouth, even though it will continue to use the
7		same BellSouth equipment that it was using before.
8		
9		If an AT&T end user that was served by UNE combinations decides to
10		use MCI, AT&T would propose to bill MCI for access, but that is
11		unnecessary. BellSouth does not need AT&T to bill MCI for the access
12		service that it provides; BellSouth is perfectly capable of doing its own
13		billing. And, by the way, AT&T also wants to keep the revenue in this
14		case. Somehow AT&T and MCI believe that it is appropriate for
15		BellSouth to provide all of the investment and for AT&T and MCI to get
16		all of the revenue. Instead of using their ample resources to benefit
17		Floridians, AT&T and MCI would have their entry funded largely by the
18		Floridians that they do not want to serve.
19		
20	Q.	HAS THE COURT OF APPEALS FOR THE EIGHTH CIRCUIT
21		("EIGHTH CIRCUIT") ADDRESSED THE PRICING PROPOSAL THAT
22		AT&T AND MCI HAVE SUBMITTED?
23		
24	Α.	Yes. In its Order issued on October 14, 1997, the Eighth Circuit stated
25		as follows:

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Section 251(c)(3) requires an incumbent LEC to provide access to the elements of its network only on an unbundled (as opposed to a combined) basis. Stated another way, §251(c)(3) does not permit a new entrant to purchase the incumbent LEC's assembled platform(s) of combined network elements (or any lesser existing combination of two or more elements) in order to offer competitive telecommunications services. <u>To permit such</u> an acquisition of already combined elements at cost based rates for unbundled access would obliterate the careful distinctions Congress has drawn in subsections 251(c)(3) and (4) between access to unbundled network elements on the one hand and the purchase at wholesale rates of an incumbent's telecommunications retail services for resale on the other.

14 telecommunications retail services for resale on the

15 (Emphasis added)

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The emphasized portion of the quote shows that the Eighth Circuit's view was that pricing UNE combinations as proposed by AT&T and MCI would violate the Act. Congress intended for two different pricing standards to exist. AT&T and MCI would have this Commission ignore that intent so they can receive the benefits of resold services at more advantageous prices than Congress intended. During the appeal of the FCC's interconnection rules, BellSouth was a strong advocate for the

1		action eventually taken by the Eighth Circuit which was to maintain the
2		integrity of these two different pricing standards. Given this position, it
3		would be preposterous to conclude that BellSouth also agreed to price
4		UNE combinations at UNE rates in its agreement with AT&T and MCI.
5		This Commission should reject any such claims.
6		
7	Q.	AT&T WITNESS LYNOTT, ON PAGE 2 OF HIS TESTIMONY,
8		ASSERTS THAT "MIGRATION OCCURS WHEN A CUSTOMER WITH
9		EXISTING SERVICE REQUESTS A CHANGE IN ITS LOCAL
10		SERVICE PROVIDER (I.E., MOVING AN EXISTING BELLSOUTH
11		CUSTOMER TO AT&T)." ON PAGE 3, MR. LYNOTT FOLLOWS BY
12		EXPLAINING THAT "THE PROCESS OF MIGRATING A BELLSOUTH
13		CUSTOMER TO A CLEC UTILIZING UNBUNDLED NETWORK
14		ELEMENTS IS AN UPDATE OF OSS DATABASE RECORDS TO
15		IDENTIFY THE NEW SERVICE PROVIDER AS THE CUSTOMER OF
16		RECORD." DO YOU AGREE?
17		
18	Α.	No. As I explained in my direct testimony, the use of the word
19		"migration" leads to confusion in the interpretation of issues in this
20		docket. The term "migration" applies here to a switch "as is." For
21		example, a BellSouth customer requests to change service providers,
22		to AT&T, but retain the same functionality of service. If this customer is
23		switched "as is," the customer's account is transferred to the new
24		provider with no changes in the technical specifications of the service
25		that is being provided. A switch "as is" pertains only to a resale

-10-

- 1 environment.
- 2 3 As a result, the recurring and nonrecurring rates that should apply 4 when a customer is migrated "as is" are the nonrecurring rates 5 applicable to resale. Even though MCI and AT&T acknowledge that no 6 distinction exists between UNE combinations and resale, they do not 7 want to pay the nonrecurring rates associated with either. Rather, they 8 have concocted new nonrecurring charges (discussed by Mr. Lynott 9 and Mr. Hyde), completely disregarding the nonrecurring charges 10 established by this Commission for resale and for UNEs. 11 12 Q. YOU CONTEND THAT UNE COMBINATIONS MIGRATED THROUGH 13 A SWITCH "AS IS" IS RESALE. WHAT ARE MCI'S AND AT&T'S 14 CONTENTIONS ON THIS ISSUE? 15 16 Α. They seem to agree on this point. This is evident in the AT&T/MCI 17 NRC Model, sponsored by Mr. Lynott in this proceeding, which 18 assumes that provisioning UNE combinations and provisioning resale is 19 the same thing. The AT&T/MCI NRC Model assumes conversion of an 20 existing service to UNEs, which BellSouth has combined for the ALEC, 21 with little or no human intervention. This is entirely incorrect, because 22 for example, connecting UNE loops to an ALEC requires, at a 23 minimum, activity to physically move connection of the loop from the 24 existing connections at BellSouth's switch to the ALEC's connecting
- facility. Thus, the model's assumption of 98% flow through is invalid on

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its face. Such an assumption includes migration of an existing
 customer which is a resale function, and not an appropriate assumption
 for the provision of UNEs.

If an ALEC orders unbundled elements, BellSouth will provide them in 5 a manner that allows the ALEC to combine them. If, however, AT&T, 6 MCI or any other ALEC wishes to migrate a customer's service on a 7 switch "as is" basis, which does not involve disruption of a customer's 8 9 service, this can be done only through resale. BellSouth is willing and able to transition existing services to an ALEC on a switch "as is" basis, 10 11 and in doing so, BellSouth will bill the ALEC for the retail service minus 12 the applicable wholesale discount

13

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Q. MCI WITNESS HYDE MAKES ADJUSTMENTS TO THE BELLSOUTH
NRC MODEL IN ORDER TO "REMOVE FUNCTIONS THAT ARE NOT
NEEDED WHEN A COMBINATION OF LOOP AND PORT ARE
PROVIDED TO MIGRATE AN EXISTING BST CUSTOMER TO AN
MCI SERVICE USING UNBUNDLED NETWORK ELEMENTS." DO
YOU HAVE ANY COMMENTS REGARDING HIS METHODOLOGY
OR CONCLUSIONS?

21

A. Yes. Mr. Hyde makes adjustments to the BellSouth NRC model as if
he is provisioning a retail service. BellSouth's NRC model was
designed to include functions that are necessary in the provisioning of
UNEs, not retail services.

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416

2 This Commission required BellSouth to provide NRCs for individual 3 UNEs when ordered at the same time on the same order. That 4 requirement was described in the Commission's March 19, 1997 Order, 5 No. PSC-97-0298-FOF-TP (Final Order on Motions for Reconsideration 6 and Amending Order No. PSC-96-1579-FOF-TP). In that Order, the 7 Commission denied BellSouth's petition for reconsideration on the 8 pricing of UNE combinations stating, "[W]e were not presented with the 9 specific issue of the pricing of recombined elements when recreating 10 the same service offered for resale." The Commission further stated, 11 "Thus, it is inappropriate for us to make a determination on this issue at 12 this time." In the Nonrecurring Cost Studies section of that same 13 Order, the Commission stated, "[W]e hereby order BellSouth to provide 14 NRCs that do not include duplicate charges or charges for functions or 15 activities that AT&T does not need when two or more network elements 16 are combined in a single order." Given that the Commission said that it 17 had not, and would not, address the issue of prices for UNE 18 combinations, the language in the Nonrecurring Cost Studies section of 19 the Order could not possibly be ordering BellSouth to file prices for 20 such combinations. This section is obviously intended to address 21 duplicate cost recovery when multiple stand alone UNEs are ordered at 22 the same time on a single order. 23

1

Q. PLEASE DESCRIBE MR. EPPSTEINER'S CHARACTERIZATION OF
 THE PREVIOUSLY MENTIONED ORDER ON PAGE 8 OF HIS

-13-

- 1 TESTIMONY.
- 2
- A. Mr. Eppsteiner misconstrued this Commission's Order. He states that
 the Commission's Order applies to UNEs that are "already combined".
 This is incorrect. The Commission's Order applied to stand alone
 UNEs purchased on the same order, not UNE combinations.
- 7

8

- Q. MR. LYNOTT, ON PAGE 8, CLAIMS THAT BELLSOUTH IS
- 9 PROPOSING TO CHARGE ALECs UNE NON-RECURRING
- 10 CHARGES WHEN THEY ORDER COMBINATIONS OF UNEs.
- 11 PLEASE RESPOND.
- 12
- A. Mr. Lynott is incorrect. BellSouth proposes to charge the recurring and
 non-recurring charges applicable for resale when an ALEC orders UNE
 combinations. In fact, the order for such UNE combinations has to be
 submitted as a resale order. The service is provisioned and priced the
 same as resold service. Mr. Lynott makes an impassioned plea for
 BellSouth to do what it is already doing, while contradicting something
 BellSouth is not doing.
- 20
- 21 Q. AT&T WITNESS GILLAN DECLARES THAT "IT IS SIMPLY NOT
- 22 POSSIBLE FOR AN ENTRANT TO RECREATE A BELLSOUTH
- 23 SERVICE, NO MATTER WHAT COMBINATION OF NETWORK
- 24 ELEMENTS ARE USED TO ACCOMPLISH THE TECHNICAL
- 25 SWITCHING AND TRANSMISSION INVOLVED." HOW DO YOU

1 RESPOND?

2

3 Α. Mr. Gillan's conclusion is far-fetched at best. Using resale permits 4 carriers to offer services they can also offer with combined UNEs. 5 Since the services are equivalent, whatever a carrier can do with one 6 arrangement, they can also do with the other. In fact, combined 7 elements have been provisioned the same as the resold service where 8 applicable. Nothing about this approach prevents carriers from 9 developing billing or other administrative systems to serve their end 10 user customers.

11

12 BellSouth maintains its position that when BellSouth's unbundled 13 network elements are combined to recreate a retail service offering, it is 14 considered resale. As BellSouth witness Hendrix explained in his direct 15 testimony, there are factors that should be considered by this 16 Commission in determining whether or not a requested combination of 17 UNEs is recreating a retail telecommunications service offering. The 18 real test is to look at the core functions of the requested combinations 19 to see if the functions mirror the functions of the retail service offering. 20 If the combined elements create a service identical to an existing retail 21 service with respect to the functions, features, and attributes of that 22 retail offering, the combination should be considered resale and priced 23 accordingly.

24

25

Mr. Gillan's attempts to distinguish a resold service, through "soft"

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1 dimensions such as billing and packaging, are merely attempts to 2 justify another pricing standard. Such "soft" dimensions are irrelevant 3 in determining the prices for UNE combinations. Whether AT&T calls it 4 "UNE combinations" or resale, AT&T is asking for the exact same 5 functionality in each case. 6 7 Q. WHY ARE MR. GILLAN'S "SOFT" DIMENSIONS IRRELEVANT TO 8 THE PRICING OF UNE COMBINATIONS? 9 10 Α. Mr. Gillan asserts that these "soft" dimensions differentiate the product. 11 In reality, his "soft" dimensions amount to distinctions without a 12 difference when one considers that the technical functionality of the 13 service is identical to that provided through a BellSouth retail service. If 14 a UNE combination has the same functionality as a BellSouth tariffed 15 service, it is the same as resale, no matter what "soft" dimensions that AT&T mixes in later. 16 17 18 If AT&T were to use unbundled elements combined with facilities of its 19 own, unique local services could be developed. However, by simply 20 using combined UNEs that recreate retail services, no additional capabilities beyond resale can be gained. AT&T gets the same 21 capabilities of the BellSouth network that are provided through resold 22 services. What AT&T can add to the service, what AT&T can do with 23 the service, AT&T's ability to innovate and serve the customer are all 24 the same under either circumstance. 25

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1		
2	Q.	ON PAGE 2, AT&T WITNESS EPPSTEINER ASSERTS THAT UNE
3		COMBINATIONS "WHETHER OR NOT THEY RECREATE AN
4		EXISTING BELLSOUTH SERVICE, MUST BE PRICED AT THE
5		COST-BASED RATES SET FORTH IN PART IV OF THE GENERAL
6		TERMS AND CONDITIONS OF THE AGREEMENT." HOW DO YOU
7		RESPOND?
8		
9	Α.	As previously stated, BellSouth has not agreed to prices for UNE
10		combinations. Mr. Eppsteiner's assertion is yet another attempt to
11		confuse the issues in this case. Again, when a UNE combination
12		recreates a BellSouth service, it is exactly the same as a retail service
13		and should be priced as resale. Resold services are priced by applying
14		the Commission's approved wholesale discount to the retail rate for the
15		specified service.
16		
17	Q.	DOES THIS CONCLUDE YOUR TESTIMONY?
18		
19	Α.	Yes.
20		

1 (By Ms. White) And, Mr. Varner, you had no 0 2 exhibits attached to your rebuttal testimony, did you? 3 A No. 4 Q Would you please give a summary of your 5 testimony, Mr. Varner? Yes. Good morning. We're here today to 6 Ά 7 resolve a very important dispute between BellSouth and This Commission has conducted MCI and AT&T. 8 comprehensive proceedings and through diligence has 9 10 caused to be signed interconnection agreements between these parties. 11 The Commission must now take another step 12 13 toward ensuring that Florida's consumers receive the 14 benefits of the Telecommunications Act of 1996. The importance of this step cannot be overemphasized. 15 Although important, the issues are not nearly as 16 17 complicated as the testimony would suggest; the complexities introduced by attempts to establish 18 distinctions without a difference. 19 20 If the Commission simply focuses on the basic facts that are in the dispute, the correct 21 answers become pretty clear. 22 Now, my testimony focuses on three points, 23 or questions, if you will. First, what do the 24 25 interconnection agreements require regarding

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combinations of unbundled network elements; second,
 what should be the price of those combinations; and,
 third, what should be the price of certain stand-alone
 elements when ordered simultaneously on the same
 order.

In discussing the first two points, I prepared exhibits to compare AT&T and MCI's position to BellSouth's position and the 8th Circuit's ruling.

9 This exhibit shows that the nature of dispute is pricing. There are two parts to it. 10 The 11 first part has to do with the obligation to combine elements, and the second has to do with pricing. 12 13 Under the obligation to combine, what it says is that the 8th Circuit requires BellSouth to allow ALECs to 14 15 combine unbundled network elements in any way that they choose. 16

17 BellSouth, however, is not required to combine those elements. Under the interconnection 18 19 agreements, AT&T and MCI say that they are -- should 20 be allowed to combine them in any way that they want, and also that BellSouth has to combine them for them; 21 and BellSouth agrees. As you can see, there's no 22 dispute on what BellSouth is obligated to do under the 23 interconnection agreements. 24

COMMISSIONER CLARK: Mr. Varner, when you

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say required under the 8th Circuit, ALECs combine 1 required, it's allowed; it's not required, right? 2 They -- we're required to 3 WITNESS VARNER: allow them to do it is what I was trying to convey 4 5 with that. 6 COMMISSIONER CLARK: Okay. 7 WITNESS VARNER: And we are not required to combine them ourselves. That's what I was attempting 8 to convey. And under the agreement, you know, we're 9 required to allow them to do it. All right. 10 11 Going to the pricing section, the 8th Circuit says that when ALECs combine the elements 12 themselves that the prices will be the unbundled 13 network element prices. 14 With -- BellSouth combines them, the 15 8th Circuit says it's our decision what the price is, 16 because we have no obligation to combine those 17 18 elements. 19 Under the interconnection agreement, AT&T and MCI say that the agreements require that whether 20 they combine them or BellSouth combines them, it's 21 still unbundled network elements prices. BellSouth 22 maintains that the agreement does not address the 23 prices under either case. As a result BellSouth has 24 made an interim proposal that those prices would be 25

1 resale. And when I say interim, I mean interim until
2 the 8th Circuit decision becomes final.

AT&T and MCI have not made an interim proposal because their view -- in their view, the contract already contains the price, so there is no need for an interim proposal.

7 This highlights the nature of the dispute. The nature of the dispute in this case is pricing. 8 9 It's not technical capabilities or marketing 10 advantages or anything like that; it's just pricing. 11 We say that the agreements do not contain the prices 12 for unbundled network elements -- I mean, for 13 combinations of elements. They say they do. And we 14 say that in the interim until the 8th Circuit order 15 becomes final, that the price for those situations should be resale. 16

Now, as I said, AT&T claims that the prices for unbundled element combinations are specified in the agreements; and it's pretty obvious that they're incorrect. Now, regarding their claim, I'm reminded of the immortal question by Clara Peeler, "Where's the beef?" Well, let's see if we can find it. There are only two possible ways that these

24 prices could be in the agreement; either BellSouth 25 voluntarily agreed to them, or the Commission ordered

1 them. Neither could possibly be true.

I can tell you with absolute assurance that BellSouth has never agreed to allow pricing of combinations at the sum of the unbundled network element prices for any ALEC. We've never voluntarily agreed to that with anybody.

7 BellSouth has fought this proposal through every state arbitration proceeding, the Section 271 8 9 proceedings, as well as at the FCC. We've also fought this proposition in the courts. It's absolutely 10 inconceivable that BellSouth would have voluntarily 11 agreed to offer combinations of unbundled elements at 12 unbundled element prices while consistently and 13 vehemently opposing this same proposal in every 14 15 possible venue.

16 CHAIRMAN JOHNSON: Let me ask you a 17 question. Before the 8th Circuit decision, what did you think was required in terms of -- or did BellSouth 18 believe that there was a requirement to rebundle? 19 20 WITNESS VARNER: Yes, because the FCC had 21 rules in effect that required us to offer the 22 combinations. 23 CHAIRMAN JOHNSON: And as it related to

24 price, what was BellSouth's position? That you had to 25 rebundle, but -- when we first started hearing about

the glue charges, did you think that you had the 1 ability to apply the glue charges even under the FCC's 2 3 rule? WITNESS VARNER: Let me put this in 4 5 somewhat -- in a different context. Actually, the issue of glue charges came up after the 8th Circuit. 6 7 CHAIRMAN JOHNSON: That wasn't --8 WITNESS VARNER: It was after. 9 CHAIRMAN JOHNSON: Okay. WITNESS VARNER: Prior to the 8th Circuit's 10 ruling, the situation was like this: We had the FCC's 11 rule in effect that obligated us to combine the 12 elements. The FCC's pricing rules, however, had been 13 14 vacated. 15 CHAIRMAN JOHNSON: Okay. 16 WITNESS VARNER: So we had the obligation to do it, but there were no rules as to what the price 17 18 should be. Our position was that the price should be 19 resale, the same as the position that we have here in 20 both instances. After the 8th Circuit rule, the 21 8th Circuit said that, look, we have no obligation to 22 combine them at all. So it vacated the FCC's rules 23 that gave -- that mandated that obligation, and it 24 25 also vacated the pricing rules as well.

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So suddenly we had no obligation to combine 1 them at all. That's when you started hearing about 2 3 this glue charge as being a charge that we would levy if, in fact, we were going to combine the elements for 4 5 them voluntarily, because we no longer had to do it. CHAIRMAN JOHNSON: Okay. But it's Bell's 6 position that even if AT&T or MCI, even if they were 7 willing to pay a price, a glue charge, that you all 8 still didn't have to rebundle? 9 10 WITNESS VARNER: That's right. We don't have to. Our position with respect to the 8th Circuit 11 decision is really pretty simple. If they want the 12 8th Circuit deal in their contract, we're willing to 13 give it to them. We're willing to put in exactly what 14 the 8th Circuit says. 15 That is two parts. Relieve us of the 16 obligation to do the combining. We'll negotiate with 17 you, but that's an issue outside of the contract, 18 outside of the 251/252 process. And, in fact, we are 19 negotiating with some ALECs in that regard. And we 20 will also put in that if you combine them, you will 21 get them at the unbundled network element prices. 22 That's what the 8th Circuit order called 23 We're perfectly willing to put that in the 24 for. contracts, and if -- when that order becomes final, 25

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1	assuming it's, you know, upheld by the Supreme Court,
2	that's what we would go back to the contracts and do,
3	because all the contracts give us the ability to
4	introduce any final, nonappealable order. And the
5	order is not final yet because it's under appeal at
6	the Supreme Court. But once it is, we're perfectly
7	willing to go ahead and put that arrangement in the
8	contracts.
9	
10	CHAIRMAN JOHNSON: Okay. Thank you.
11	WITNESS VARNER: Now, in this interim period
12	I want to address the issue of what course of action
13	the Commission should take regarding this pricing
14	dispute, and I see there are two possible ways to
15	address it.
16	First, the Commission could decide to set
17	the price for unbundled elements when they're combined
18	by BellSouth or when they're combined by AT&T and MCI.
19	Of course, this decision would only be applicable
20	until the 8th Circuit's order becomes final, because
21	once it becomes final, then it would we would propose
22	to put that in the agreement.
23	Now, during this period I submit the
24	appropriate price to charge is the resale price in
25	both cases, and as I've already discussed, we're

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perfectly willing to give them the 8th Circuit deal.
 Both parts of the deal, I might add.

What we object to is giving AT&T and MCI their half of the deal, which is unbundled network element prices when they do the combining, but not giving us our half of the deal, which is relief from the obligation to combine.

The 8th Circuit actually used the fact that 8 we no longer had the obligation to combine as part of 9 their justification for allowing them to receive the 10 elements at the unbundled network element prices when 11 they combined them. So we believe that so long as 12 we're obligated to offer the combinations, the 13 combinations should be priced at resale, regardless of 14 15 who does the combining.

16 COMMISSIONER CLARK: Mr. Varner, I 17 understood your position to be that when you order 18 unbundled network elements that duplicate a service 19 that you resold, then you get it at resold prices.

WITNESS VARNER: Yes.

20

21 **COMMISSIONER CLARK:** But now you seem to be 22 saying if you order combination of elements, whatever 23 that combination may be and regardless of whether they 24 duplicate a service, you're going to sell it at -- you 25 have to sell it -- it's priced at resale.

Okay. Let me if I can 1 WITNESS VARNER: clear that up. The only way it can be priced as 2 resale is that it has to replicate a resale service, 3 because resale is retail minus the wholesale discount. 4 It's the retail price minus the wholesale discount. 5 So if it doesn't replicate a retail service, it can't 6 be offered at resale because you can't come up with 7 the resale price if there is no retail analog. 8 9 COMMISSIONER CLARK: All right. So --10 WITNESS VARNER: Right now. COMMISSIONER CLARK: Okay. Go ahead. 11 WITNESS VARNER: If there is a combination 12 that they want that is not an analog, if you will, for 13 a retail service, then our position for those would be 14 that we would just negotiate the prices with them and 15 try to come up with a market price that properly 16 reflects what that combination would be. 17 COMMISSIONER CLARK: Well, then does the 18 19 contract language that says it's the price of the individual units less any duplicate charges for --20 WITNESS VARNER: Yeah, I think I know where 21 you're --22 -- now, is that what COMMISSIONER CLARK: 23 applies? 24 That has to do with a WITNESS VARNER: No. 25

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totally different issue, as we understand it. When 1 2 they purchase a combination of elements, okay -- and let me take the simplest case, which is going to be 3 the most prevalent case -- it is that -- is a 4 combination of elements that replicates a retail 5 6 service. We say that the --7 COMMISSIONER CLARK: I understand your 8 position is when it's recombined and it replicates resale service --9 10 WITNESS VARNER: Okay. I was --11 COMMISSIONER CLARK: -- you're going to 12 charge a --WITNESS VARNER: I kind of needed to go 13 through that one to set up what I -- what the other 14 one means. 15 16 COMMISSIONER CLARK: Okay. WITNESS VARNER: We say in that case that 17 both the recurring and the nonrecurring charges should 18 be at the resale price, which is the recurring charges 19 for retail less the wholesale discount and the 20 nonrecurring charges for retail less the wholesale 21 discount. 22 The issue on the duplicate charges comes in 23 when they order stand-alone elements but they just 24 happen to put them on the same order, and in 25

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processing that order for multiple elements at the
 same time, we do experience some cost savings because
 they happen to order them at the same time.

4 So if we just were to apply the individual 5 charges for each one of those elements, there would be some duplicate cost recovery. And that's what we 6 7 propose to take out in I think it's Issue 10 or 6 or somewhere, where we've done a cost study to say that, 8 okay, if you were to order a 2-wire analog loop and a 9 2-wire analog port, if you just add together the 10 11 nonrecurring charges, it would give you one number.

We went in and did a study and said, okay, 12 if you order both of those on the same order, okay, 13 they're not a combination, they're stand-alone 14 elements, but you just ordered them on the same order 15 at the same time, would there be any cost savings for 16 us in working that order that way. And we found out 17 that there would be, and it ranged anywhere from 1 to 18 7% of the nonrecurring charges. 19

So we proposed that if you ordered the stand-alone elements on the same order, you would get a discount off the nonrecurring charges to take out any duplicate cost recovery might -- that might occur if you did that, but that has nothing to do with the ordering of combinations.

1 If you order the combinations, the 2 nonrecurring charge for that is the retail 3 nonrecurring charge less the wholesale discount. COMMISSIONER CLARK: But only if the 4 5 combination replicates a service that is resold. WITNESS VARNER: Right. 6 If the combination 7 does not replicate a service that is resold, then our 8 proposal is that in that case what we would do is we 9 would negotiate recurring and nonrecurring charges for that combination. 10 11 Now, there are a few combinations that we 12 already offer, which I identified in my testimony. 13 There are about eight of them, and we offer those at just the sum of the unbundled network element prices. 14 There's no glue charges. There's nothing else. 15 You just add up the --16 17 COMMISSIONER CLARK: There's no subtraction 18 either. No subtraction either. WITNESS VARNER: 19 COMMISSIONER CLARK: Why not? 20 I don't think we've ever 21 WITNESS VARNER: even looked to see if there's a duplicate cost in 22 those. But the reason we offer those that way is that 23 it -- that's the only practical way that we can offer 24 25 the unbundled network element.

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An example is we offer the port with common transport, and the reason we combine those two elements is because you cannot get common transport without buying a port. So if we said we were not willing to provide a combination of port and common transport, we wouldn't be able to offer them common transport at all.

8 Loop and cross-connect is another example. 9 The only way we can offer them an unbundled loop is we 10 have to give them the cross-connect to get the loop 11 from the frame to their space. If we wasn't willing 12 to combine those elements, there would be no way to 13 offer them the loop.

14 So these are the kinds of elements we've 15 said, okay, we will combine those elements and we'll 16 combine them at just the sum of the unbundled network 17 elements prices, because there's no practical way to 18 offer some of the elements without doing that. And 19 I've identified those. There are about -- if I 20 remember right, there are eight or nine of them in my 21 testimony.

22 COMMISSIONER CLARK: Thank you.
 23 COMMISSIONER JACOBS: That was a point that
 24 was raised. There is this distinction that there's
 25 certain elements that do not come with just standard

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loop and port, which, by the fact of their absence,
 automatically establish that they're not replicating
 one of your services.

4 WITNESS VARNER: Yeah, I recall that, but --5 and I'd like to respond to that if I could.

Basic exchange service is replicated when 6 7 you purchase the loop and port. I remember the chart up there where it showed things like operator services 8 9 and installation systems and so forth. But think about it. When you purchase basic local exchange 10 service, you don't purchase operator services; you 11 purchase the ability to get to operator services. 12 When you use the operator services, you pay an extra 13 charge for that. That's not included as part of your 14 basic local exchange service price. 15

When you go in and utilize these signaling systems, these databases, you only utilize those if you purchase features or utilize services that require the use of those databases. When you utilize those, you pay an extra charge for that. That's not included as part of your basic service.

What's included as part of your basic service is the ability to get to those databases, to get to those operator services, to get to DA. It's not the services themselves. They're offered at an

1 additional charge.

2 COMMISSIONER CLARK: When a reseller resells
3 your service, what do they get?

WITNESS VARNER: You say -- are you talking
about just the basic service?

6

COMMISSIONER CLARK: Right.

7 WITNESS VARNER: What they get is they get 8 the same service that we offer to a retail customer. 9 They get the -- and if we talk about just plain, old 10 basic telephone service, they get, you know, the connection to the wire center, the equivalent of the 11 loop and a port, the ability to call within whatever 12 13 that local calling area is that that basic service covers. They get access to operator services. 14 They get access to DA. They get access to an IXC. They 15 get access to 911. I can't remember what all else 16 17 goes in that. They get a white pages listing.

18 COMMISSIONER CLARK: When AT&T comes in and 19 buys your loop and port, do they get access to your 20 operator systems?

WITNESS VARNER: Yes, they do; or theirs.
They get access to an operator system. They can
decide whether they want it to be ours or whether they
want it to be theirs. It can be either one, because
that's all we offer is we offer access to an operator

1 || system.

25

When you pay, for example, \$10.65 in Miami, 2 3 you do not get the use of operator services for that If you use operator services, you'll pay an 4 price. 5 additional amount every time you use the operator services. What you get is the ability to get to an 6 7 operator services platform. 8 COMMISSIONER CLARK: All right. When 9 somebody purchases a loop, an unbundled network 10 element loop, do they get the network interface device? 11 12 WITNESS VARNER: Yes, that's part of the loop. On that chart up there -- I don't have the 13 charts -- but Items 1 through 4 were the loop. Those 14

15 were if you wanted the -- you can buy subparts with 16 the loop if you want to, but if you just buy the loop, 17 you gets Items 1 through 4, and then the switch was 18 Item 5.

19 COMMISSIONER CLARK: And you don't offer as 20 a separate unbundled network, network interface 21 device --

WITNESS VARNER: Yes, we do. We offer that as a separate subloop element, that they can buy that without buying any other parts of the loop.

COMMISSIONER CLARK: So the distinction

1 you're making is that that is a subloop element.

WITNESS VARNER: When you purchase the loop, 2 when you come to BellSouth and you purchase the loop 3 at the price of -- at the \$17 that you ordered, you 4 get everything from Item 1 through 4 on that chart. 5 6 COMMISSIONER CLARK: All right. Suppose you 7 just purchase the network interface device. How much do you pay? 8 9 WITNESS VARNER: I don't have the pricings with me from -- but -- and I just don't remember. 10 11 COMMISSIONER CLARK: Well, let me ask you 12 this: Is the sum of unbundled network elements 1, 2, 3 and 4 more than if you buy the port -- I mean, the 13 14 loop element itself with those things combined? WITNESS VARNER: I think that it is. 15 It 16 typically is, and the reason for that is that it costs more to take all those individual piece parts of the 17 18 loop apart and offer them separately. 19 If somebody just wanted to buy 11 through 44, they should just buy the loop. 20 The reason 1 through 4 are offered is for somebody who 21 22 doesn't want the whole loop. They just want a piece of it. They just want the NID, for example, and then 23 they want to run their own wire into the NID. 24 COMMISSIONER CLARK: Okay. Thanks. Well, 25

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let me ask you one other thing. When do you get the 1 2 tandem switch? WITNESS VARNER: Tandem switch is a part of 3 4 transport. COMMISSIONER CLARK: So if you buy the port, 5 6 you get the tandem switch. 7 WITNESS VARNER: Yeah. You're going to 8 get -- well, transport is a separate unbundled network 9 element. Remember, that was the one I talked about, one of the combinations we offer, port and common 10 11 transport. COMMISSIONER CLARK: I thought you said you 12 13 couldn't separate them. WITNESS VARNER: You can't get common 14 15 transport without the port, okay. When you purchase 16 the port, when an ALEC purchases a port from us, they 17 have to tell us -- they have to purchase some form of 18 transport. So when you talk about -- when you say the 19 20 loop and the port, they're going to purchase some form of transport, either common transport or dedicated 21 22 transport, but they've got to purchase one form or the other, otherwise the calls are not going to go 23 anywhere outside of the central office. 24 Okay. 25 COMMISSIONER CLARK:

	1
1	WITNESS VARNER: So when they purchase the
2	port, they'll tell us, I want common transport or I
3	want dedicated transport, and we will set up the port
4	with one of those two forms of transport.
5	If they purchase common transport, then in
6	large, local calling areas, you will we will
7	probably have a tandem switch somewhere in that
8	transport arrangement.
9	COMMISSIONER CLARK: All right. And your
10	position is that service control point, signaling
11	transfer point and signaling link transfer are
12	things access to those are offered.
13	WITNESS VARNER: As part of basic service,
14	yes. And one sort of a way of looking at that is
15	those databases there are several of them in
16	there but one of them is the line information
17	database, which is the one that's used for calling
18	card verification, okay.
19	So when you place a calling card call, that
20	database is utilized to verify the calling card
21	number, all right. But unless you place a calling
22	card call, you're not going to utilize that database.
23	When you do place a calling card call, however, you're
24	going to be charged for that calling card call.
25	COMMISSIONER CLARK: Well, let me ask you

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I	1
1	this: If you purchase a loop and a port from
2	BellSouth, do you automatically get access to your
3	operator system, signal link transport, signal
4	transfer point, and service control point?
5	WITNESS VARNER: Yes, you do. That's set up
6	when you buy the point. And, you know, and they have
7	to specify to us, you know, which how they want
8	that set up.
9	We put that in the routing tables in the
10	switch when they buy the port. And, for example, if
11	it's operator, they tell us, okay, I want it to be
12	yours or ours. We tell the port, okay, send it to
13	theirs or ours. But they get access to an operator
14	system. You get access to all of those things when
15	they buy the loop and the port.
16	COMMISSIONER CLARK: And it's your view that
17	the unbundled network element is the service itself,
18	not the access.
19	WITNESS VARNER: When you say are you
20	talking about like operator services?
21	COMMISSIONER CLARK: Right.
22	WITNESS VARNER: Right. That is a separate
23	unbundled network element. That's not part of basic
24	service.
25	COMMISSIONER CLARK: But the access is part
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1 of basic --

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2 WITNESS VARNER: The access to it is part of
3 basic service.

COMMISSIONER CLARK: Okay. Thanks.

COMMISSIONER JACOBS: So if someone orders a 5 6 loop and they get access, but they choose not to use 7 your operator services, they choose -- in lieu of 8 their own, and they choose not to use your directory 9 assistance in lieu of their own, if they then formulate a product that uses your access but with 10 11 their version of those services, is that replicating a 12 product that you offer?

WITNESS VARNER: Yes, it is, because what we offer as basic local exchange service is access to an operator system, or access to DA. If they decide to offer, let's say, their own DA platform and offer their own DA service, then they're not replicating our BA service, they're doing their own DA service.

19

COMMISSIONER JACOBS: Right.

WITNESS VARNER: But for basic local
exchange service, they're not getting DA service
anyway. That's not part of basic local exchange
service. So what they do in DA service, operator
services or signaling doesn't affect whether or not
that basic loop and port replicates basic local

exchange service, because all that is is access to 1 these things. 2 It's not -- you know, the functions 3 themselves is not the operator services. It's not the 4 5 DA. It's not the signaling, you know, signaling control point. All it is is access to them. That's 6 7 all you get with basic local exchange service, for 8 example, the \$10.65 in Miami. 9 COMMISSIONER CLARK: Don't you get some directory assistance; don't you get some amount free 10 11 each month? WITNESS VARNER: Yes, and we include that as 12 part of directory assistance. That's part of your 13 directory assistance. 14 15 COMMISSIONER CLARK: Is that part of access to directory assistance, or is it part of directory 16 assistance? 17 WITNESS VARNER: Part of directory 18 19 assistance. COMMISSIONER CLARK: So when a reseller 20 purchases your service and just resells your local 21 exchange service, do they likewise get the three free 22 calls, or whatever it is? 23 24 WITNESS VARNER: Yes, they get three free calls to our DA. If they decide to also resell our 25

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1	DA, they would get the three free calls. But let's
2	say they purchased our basic local exchange service
3	and they provided their own DA. Then it's up to them
4	how many they give free, if any.
5	COMMISSIONER CLARK: Well, it sounds like
6	that's a different service.
7	WITNESS VARNER: Which one?
8	COMMISSIONER CLARK: That they purchased.
9	WITNESS VARNER: Which one is?
10	COMMISSIONER CLARK: The two are
11	WITNESS VARNER: Because you talked about
12	two. That's what I'm confused about.
13	COMMISSIONER CLARK: The two are different
14	from each other. In one instance when you resell the
15	service, it means you get not only access, but you get
16	the service from BellSouth and you get the three free.
17	WITNESS VARNER: Okay. Let me see if I can
18	explain it. If a reseller comes to us and says, okay,
19	I want to resell your basic local exchange service,
20	all right. We'll say okay that's \$10.65 a month less
21	the wholesale discount, all right. Assuming it's
22	residence, that's the wholesale discount.
23	All right. Now, when they purchase that and
24	resell that, if he they also want to resell the
25	directory assistance, they can do that too, and we
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will charge them whatever the directory assistance 1 charge is when their end user calls DA; and their end 2 user will get three free calls to DA, just like any 3 another end user that we provide DA service to. But 4 once they pass the three, they'll get charged whatever 5 the DA charges less the wholesale discount, because 6 they're reselling the DA service, okay. 7 So the three free calls as well as the 8 9 charge for, you know, when you get beyond the three 10 less the wholesale discount, is sale of DA service, 11 which they can do if that's what they want to do. 12 COMMISSIONER CLARK: Okay. 13 WITNESS VARNER: That took care of most of my summary, actually. I think there really is only 14 one last point that I wanted to make. 15 COMMISSIONER CLARK: Let me ask you one 16 17 other thing. If you resell a BellSouth service, who 18 gets the access charges? 19 WITNESS VARNER: If they resell it? COMMISSIONER CLARK: 20 Yes. 21 WITNESS VARNER: We do. Now, if they use UNEs, 22 COMMISSIONER CLARK: who gets the access charges? 23 WITNESS VARNER: If they utilize unbundled 24 network elements, then the CLEC gets the interstate 25

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access charges, and we get the intrastate access
 charges.

3 COMMISSIONER CLARK: And why do you get the 4 intrastate access charges?

5 WITNESS VARNER: The access charge, I guess, 6 rules the regime, if you will, authorizes us to charge 7 access charges on the use of our services. The FCC, 8 in their access reform order, revised their rules for 9 interstate and said that on unbundled network elements 10 access charges do not apply.

I think Florida is either about to or 11 shortly will deal with access reform in its own right 12 13 with respect to intrastate, and when they do, they'll make a decision about how that's supposed to happen. 14 But until the Florida Commission deals with that and 15 16 makes that decision, the access charge regime stays like it is, which would be us charging intrastate 17 access. 18

The FCC dealt with that, made a decision that interstate doesn't apply. That's why interstate doesn't apply. Had they not done that in their access reform order, interstate would still apply.

23 **COMMISSIONER DEASON:** You indicated that we 24 would have to take a look at access and make that 25 change if we thought that was the appropriate thing to

1 do. WITNESS VARNER: Yes. 2 COMMISSIONER DEASON: Do you think it's 3 appropriate to make that change? 4 WITNESS VARNER: No, I don't. 5 6 **COMMISSIONER DEASON:** Why not? 7 WITNESS VARNER: I don't agree with the FCC 8 making that change. 9 **COMMISSIONER DEASON:** Why not? WITNESS VARNER: Well, for a couple of 10 In fact, that brings me to the point I was 11 reasons. 12 going to make on my summary, the last point on my 13 summary, as a matter of fact. 14 If you look at this chart -- you saw a 15 similar sort of chart like this for residence 16 customers. This one is business customers, and this 17 was Chart A in my testimony, and this is a single-line 18 business customer. And if you run down the left --19 the first column, you see on the exchange line he's 20 got "hunting," he's got "feature," and he's using some 21 tolls, so there's some access charges, and he's got also got "subscriber line charge". 22 Total charge for service in that case is 23 If you apply the resale discount to that, it's 24 \$70. \$62.36, and if you'll notice on that, the resale 25

discount does not apply to any of it -- to any of the
 access charges. It only applies to the toll and the
 local services.

Now, if they order a combination of Okay. 4 unbundled network elements, the way that they want to 5 6 order a combination of unbundled network elements, the 7 charges in the right side are what apply. They get the loop for 17, the port for \$2. They would have to 8 9 pay some local usage charges, including transport and use of the switch. 10

The interstate access charge you see there goes from \$7.87 to a dollar and a quarter, okay. Intrastate doesn't change. It stays at the \$5.15. But their proposal is, is that you would drop that one, too, to about 35 cents.

16 Now, the reason I don't agree with that is 17 that when they purchase this combination, if you will, 18 of unbundled network elements, they haven't purchased 19 anything different than basic local exchange service. It's the same thing. All it is is it's just been 20 relabeled and renamed to get out of paying access 21 22 charges. So I don't think that that kind of a rule should be allowed to affect the level of access 23 charges and how they should apply. 24 25 They're purchasing the identical same thing

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when they purchase those combinations of unbundled elements as they are when they're purchasing resold service. BellSouth is still providing all of the same facilities. It's still the same service. The only thing that's different about it is the price that they pay for it. That's the only difference.

They can do the same things with it, offer 7 8 it to their customers the same way, do whatever -- the 9 same amount of marketing they want to do, add the same 10 capabilities, subtract the same capabilities; all of 11 the same stuff either way. The only thing that's 12 different is the price, and I don't believe that when they do that, that they ought to be allowed to just 13 evade the access charges. 14

15 COMMISSIONER CLARK: Let me ask a question: Do you agree with the FCC concluding that for purposes 16 17 of determining when BellSouth can enter the long distance market, that in the definition of 18 facilities-based provider, that it can be a provider 19 20 that totally uses UNEs? 21 I agree with that. WITNESS VARNER: 22 COMMISSIONER CLARK: So it seems to say

23 you're a virtual facilities-based provider.

24 WITNESS VARNER: That's a good way to put 25 it.

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1 COMMISSIONER CLARK: If you were a real 2 facilities-based provider, wouldn't you get the access 3 charges? Yes, and you would be 4 WITNESS VARNER: 5 providing all of the equipment, too. 6 COMMISSIONER DEASON: That leads me to my 7 question, then. Are you saying, then, that the cost 8 of the unbundled network elements does not include the 9 cost of providing access? There is a cost to 10 providing access --11 WITNESS VARNER: Yes, it --12 COMMISSIONER DEASON: The rate is way above cost, but there is a cost. Is the unbundled 13 elements -- does that price reflect the cost of 14 15 providing access? 16 WITNESS VARNER: Yes, it does. And on the 17 interstate access line that I have up there, interLATA, interstate access, you notice I have a 18 charge there of a dollar and a quarter even if they 19 20 buy the unbundled network elements. What that is, is that would be -- you would 21 price their access usage the same as local usage, same 22 cost-based price that you would price local usage. So 23 yes, there is a cost, and what you would do is, the 24 contribution that's in access above cost is what would 25

1 go away. It would just immediately go to whatever the 2 cost-based price is.

3 The important point to remember in that, though, is this: Is that those contributions in 4 access didn't get there by accident. 5 I mean, those were conscious decisions to put contributions in 6 access and vertical services and so forth in order to 7 be able to offer basic service in Miami, if you will, 8 9 for \$10.65. 10 So if you come along now and say all of a 11 sudden, I'm just going to let those contributions 12 evaporate, I'm just going -- you know, just going to remove those in their entirety, then what are you 13 going to do about dealing with the services that those 14 contributions are subsidizing? And that's our 15 16 concern. COMMISSIONER DEASON: Create a universal 17 service --18 19 WITNESS VARNER: Exactly. 20 COMMISSIONER CLARK: So you would agree that 21 they really should get access. They are, in fact, providing the access, they should get the charges; but 22 the rub is here is because you don't get the 23 24 contribution that you previously got. 25 WITNESS VARNER: The rub is the price;

that's right. It's the -- whether the access should 1 2 be priced at access prices or local usage prices. 3 COMMISSIONER CLARK: Well, the Act tells us 4 we have to price at cost, right? 5 WITNESS VARNER: On unbundled network 6 elements. 7 COMMISSIONER CLARK: Right. And you just said that we are covering the cost; what we're not 8 covering is the contribution. 9 10 WITNESS VARNER: No, I misspoke. The access 11 you have to price based on cost. It doesn't say you have to price at cost. It says you have to price it 12 based on cost, but the Act does not say that you have 13 14 to go in and reduce your access prices to cost. 15 COMMISSIONER CLARK: Okay. 16 WITNESS VARNER: That was the last point on 17 my summary. MS. WHITE: Madam Chairman, I'd like to have 18 the two pages that were handed out as exhibits for 19 Mr. Varner's summary marked for identification as the 20 next exhibit. 21 CHAIRMAN JOHNSON: They will be marked as 22 composite Exhibit 23. And a short title? 23 MS. WHITE: "Comparison of pricing and 24 25 positions."

1	CHAIRMAN JOHNSON: Pricings and what?
2	MS. WHITE: Pricings and positions.
3	(Exhibit 23 marked for identification.)
4	MS. WHITE: And Mr. Varner is available for
5	cross-examination.
6	MR. PELLEGRINI: Chairman Johnson, before
7	Mr. Varner's cross-examination proceeds, Staff would
8	offer Exhibit AJV-3, which consists of Mr. Varner's
9	February 26th, 1998, deposition transcript, as well as
10	Deposition and Late-filed Deposition Exhibit
11	Numbers 1 through 5, and we ask that it be marked for
12	identification.
13	CHAIRMAN JOHNSON: It will be marked for
14	identification as 24, and that's AJV-3.
15	(Exhibit 24 marked for identification.)
16	CHAIRMAN JOHNSON: Mr. Varner, let me ask
17	you a question before they start the examination. I
18	still may be a little confused. And I don't have my
19	notes from Monday with me, but I'm going refer you
20	back to I think it was one of Mr. Gillan's exhibits,
21	16. Counsel, do you have that exhibit? I think
22	Gillan did the gross margin analysis. He did the
23	network element combinations and the service resale.
24	WITNESS VARNER: Yes.
25	CHAIRMAN JOHNSON: Do you have that?

WITNESS VARNER: I don't have that. 1 Ι 2 remember seeing it, but I don't have it. 3 CHAIRMAN JOHNSON: Okay. And I remember 4 when he testified that he said these were your numbers, that he had taken these numbers from you 5 all's submittal. 6 7 Do you agree with -- on the first one where 8 he does the gross margin analysis of network element 9 combination, do you agree with the total revenues in that column? Based on what you said, you don't agree 10 with the access, that they would receive the access 11 revenues from inter and intrastate access? 12 13 WITNESS VARNER: Okay. Which part? CHAIRMAN JOHNSON: Oh, I'm sorry; the top. 14 15 WITNESS VARNER: The revenue analysis? CHAIRMAN JOHNSON: The revenue analysis. 16 17 And I thought that he was saying if they bought the unbundled network elements and recombined them, he has 18 the cost on the right-hand side and the revenues on 19 the left-hand side. 20 WITNESS VARNER: Right. Yeah, the revenue 21 analysis is --22 CHAIRMAN JOHNSON: Do you agree that --23 -- the retail prices. WITNESS VARNER: 24 That's just the retail prices. In fact, what he got 25

this from was Chart C on my direct testimony, and the
 \$35.30 is for a residence customer, rate group 12, who
 purchases these services, okay. That's the retail
 price for that customer.

5 CHAIRMAN JOHNSON: But I thought he was 6 saying that these are the revenues that would be 7 generated for whoever had these -- whoever rebundled 8 these services.

9 WITNESS VARNER: No. That's what we charge 10 the customer at retail. All right. Now, the right of -- column that he has cost analysis is what he 11 12 would propose -- what he's saying is that what they would pay BellSouth for the unbundled network elements 13 that replicated this group of services on the left. 14 COMMISSIONER CLARK: Well, I think it's 15 assuming he would get the same revenues from the end 16 user that you would. 17

18 CHAIRMAN JOHNSON: That's what I would -19 WITNESS VARNER: I'm assuming he's going
20 to -- I think that's what he's saying is, okay, if I
21 charge the same thing as BellSouth, this would be my
22 revenue.

23 CHAIRMAN JOHNSON: I thought that's what he
24 was saying, too, but you're saying he wouldn't get
25 those revenues, aren't --

It's up to him whether he 1 WITNESS VARNER: charges that or charges something different. This is 2 3 what BellSouth charges. He can charge whatever he wants to charge. 4 5 CHAIRMAN JOHNSON: Then I quess I'm still a little confused. When you were having the discussion 6 7 about who receives the access revenues --8 WITNESS VARNER: Okay. That's really the 9 cost analysis part of it. That's where that comes in. 10 And what he's assumed on his cost analysis is that they don't continue to pay intrastate access as well 11 as interstate. See, on my Chart C, I show that -- the 12 cost analysis, he's got \$26.33 --13 CHAIRMAN JOHNSON: Okay. Which one of your 14 15 charts? WITNESS VARNER: Chart C of my direct 16 testimony. It's Exhibit AJV-1. 17 CHAIRMAN JOHNSON: Okay. Now, how are you 18 explaining that? 19 WITNESS VARNER: Let's go through -- the 20 first document you see the \$35.30 that's just the 21 retail price, all right. 22 CHAIRMAN JOHNSON: Okay. 23 The next column is the FCC WITNESS VARNER: 24 ordered resale discount. He doesn't show that one on 25

his chart, so just forget about that one. 1 2 CHAIRMAN JOHNSON: Okay. 3 WITNESS VARNER: The third column is PSC 4 ordered unbundled rates, and I show \$29.59, okay. 5 CHAIRMAN JOHNSON: You show \$28.47? Am I 6 looking at the wrong chart? Which chart did you say? 7 WITNESS VARNER: Okay. Do you have the 8 revised one? 9 CHAIRMAN JOHNSON: Oh, I probably don't have 10 the revised ones here, but let's go with that number. 11 WITNESS VARNER: All right. The revised one has \$29.59 in that column. There's another \$1.12 in 12 there for interstate access is what the difference is. 13 14 COMMISSIONER DEASON: And why is the \$1.12 included? 15 16 WITNESS VARNER: Because what happens is, is that if they buy the unbundled switching element from 17 us, when they utilize it for access it's going to look 18 like a local call to us, or any other call. 19 There's no distinction between whether it's an access call or 20 a local call, so they will get billed the local usage 21 price for that access call. 22 And that's what happened. That should have 23 been included in the local usage line on this exhibit. 24 It wasn't. We noticed that it hadn't, so I had to 25

1 revise it, and I just showed it on the interstate 2 access line; but it's priced the same as local usage. 3 COMMISSIONER DEASON: So you just as easily as -- you could have just included the \$1.12 with the 4 5 \$4.78. WITNESS VARNER: Exactly. I could have just б as easily done it that way, but since I was revising 7 the exhibit, I wanted the revision to stand out. 8 9 COMMISSIONER DEASON: And this is the usage that shows -- even though it's going for an interstate 10 11 call, it shows up as usage and --12 WITNESS VARNER: Look at --13 COMMISSIONER DEASON: -- it has to be a recovery of that usage cost. 14 15 WITNESS VARNER: Right, and that's what the \$1.12 is. So in that column I have \$29.59. He shows 16 The difference between the two is he's saying 17 \$26.33. he's not paying the intrastate access. 18 19 CHAIRMAN JOHNSON: And you have him paying 20 that. 21 WITNESS VARNER: I have him paying the 22 intrastate. He has him not paying it. CHAIRMAN JOHNSON: Okay. So, therefore, 23 that's how his gross margin is --24 WITNESS VARNER: Is a little higher. 25

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1	CHAIRMAN JOHNSON: Okay.
2	WITNESS VARNER: Because he shows as he
3	said, he says he shouldn't have to pay the intrastate
4	access.
5	CHAIRMAN JOHNSON: Right.
6	WITNESS VARNER: I'm saying, well, no, until
7	the Commission says you don't have to pay the
8	intrastate access, you do.
9	CHAIRMAN JOHNBON: Okay. I've got you. And
10	I was having a problem reconciling those, but that did
11	it. Okay. Thanks. Mr. Melson?
12	MR. MELSON: The Commissioners' questions
13	probably shortened his summary, but I think they
14	lengthened my cross-examination.
15	CROSS EXAMINATION
16	BY MR. MELSON:
17	Q Mr. Varner, could you start by putting back
18	up what was marked as Exhibit 23, which is the handout
19	you had this morning?
20	A Yes.
21	CHAIRMAN JOHNSON: Let me go back and follow
22	up on that. Going back to that 16, Exhibit 16, if you
23	add it back in, you said intrastate access, how much
24	would you add back in?
25	WITNESS VARNER: Probably about three

dollars and a quarter maybe. I'm just guessing,
 because I haven't repriced it. It would be about six,
 seven, so \$3.56 is what it would amount to.

CHAIRMAN JOHNSON: So under his analysis
where he was -- he had assumed -- he was going through
his analysis as to why a provider would want to go the
resale versus the unbundled network element route
because there were higher gross margins, but once you
put back in your access it's almost a wash.

WITNESS VARNER: Yes. Now -- it really is, but there is one other difference that occurs here. They also don't have the joint marketing restriction applicable. So even if you look at the money and say, well, the money is not that much different, you get away from the -- you avoid the joint marketing restriction because that only applies if you resale.

17 If you use unbundled network elements, the 18 joint marketing restriction doesn't apply, which says 19 that they can't joint market local and toll until 20 sometime next year.

The other thing is remember in this, too, is this: He used an example of residence, okay. Residence customers are not the customers that this is designed for; it's business customers.

25 CHAIRMAN JOHNSON: You mean unbundling and

1 || rebundling is more --

2

WITNESS VARNER: Yes.

3 CHAIRMAN JOHNSON: -- designed for business
4 customers?

5 WITNESS VARNER: Yes. And if you go to 6 Chart B, if you will, just the preceding chart here, 7 when you look at the numbers, for example, price of 8 the loop is the same, business or residence. Remember 9 there is no difference when you buy the loop.

Price of the port is the same, business or residence. The prices for the usage are the same, business or residence. The only thing that's different is the volume. When you get down to the totals on business customers, is not a wash. There's a substantial difference when you get down to the totals on business customers.

See, this same arrangement is used for business customers. So when you look at it for residence you say, well, it's not that big a deal; but when you look at it for business, it is a big deal. And it's business customers are the ones that's being targeted.

CHAIRMAN JOHNSON: But I guess if we used
his analysis, there would be a big difference, and
maybe they would target residence customers.

1 WITNESS VARNER: No. 2 CHAIRMAN JOHNSON: No? 3 WITNESS VARNER: Not really. 4 CHAIRMAN JOHNSON: It's not that simple? 5 WITNESS VARNER: No. 6 CHAIRMAN JOHNSON: Explain why. 7 WITNESS VARNER: Because again, residence 8 customers for this type of an arrangement are --9 they're marginal, you know, in terms of what you go 10 after. But when you think about, you know, sort of 11 entering the market, if you will, the margins are in 12 business customers. 13 People are going to go after business 14 customers because that's where the biggest margin is. 15 They'll start after residence customers once the 16 business customers are exhausted. You know, why go 17 and spend the effort to go after a customer you could 18 make \$4 on when you can go after a customer and make 19 \$40 on. You're going to go after the ones you can get 20 \$40 on first. COMMISSIONER GARCIA: But there's not enough 21 22 margin here to make any money. WITNESS VARNER: On the --23 COMMISSIONER GARCIA: Residential. 24 25 WITNESS VARNER: Right. In some cases,

actually, it might even be negative for residence --1 2 COMMISSIONER GARCIA: Yes. 3 WITNESS VARNER: And in that case, what --I would assume in most 4 COMMISSIONER GARCIA: 5 cases. WITNESS VARNER: Yes. 6 What they would do in

7 that case is just resale. When you get out in the 8 rural areas, this rebundling thing is not a issue. 9 See, they always have the option to use either resale 10 or rebundling. So just go -- whichever one is the 11 cheapest one, that's the one that you use. If resale 12 is the cheaper one, you use that one. If rebundling 13 is the cheaper one, you use that one.

For business customers, rebundling is always going to be cheaper. For residence customers, if you get out in the rural areas, resale is probably going to be cheaper.

18 CHAIRMAN JOHNSON: Okay. Thank you.
19 Q (By Mr. Melson) Mr. Varner, looking at
20 your Exhibit 23, which is up on the screen, if I
21 understand correctly, we're not here today to make
22 decisions based on that 8th Circuit opinion; is that
23 correct?

24ANo, I don't think it's based on the258th Circuit opinion. The thing that I was hesitating

about was the issue that deals with multiple ---1 2 duplicate cost recovery when you recover multiple 3 elements on the same order is really a decision that 4 only has effect after the 8th Circuit opinion becomes final. 5 6 That's under your position that until that Q decision becomes final, the price is resale? 7 8 Yes. A 9 So ---Q

10 A Well, back up. Partially, yes. I'm trying 11 to say yes or no here. But remember there are two 12 separate issues. One is what are the charges when you 13 order combinations, or you recombine the elements yourself, all right. What we're saying into that 14 15 situation is that it's resale, all right, and that position would stay until the 8th Circuit order 16 17 becomes final.

18 The other part is -- okay, what if I just 19 order multiple elements on the same order, order -you know, order a loop and port, but they're for two 20 different customers, let's say, but I happen to order 21 them on the same order, and what should be the 22 nonrecurring charges for that so that I do not have 23 24 any duplicate cost recovery in those; okay. 25 Once the 8th Circuit decision becomes final

and you're allowed to rebundle the elements at
 unbundled network element prices, then that decision
 comes in.

But that decision -- the question of the 4 0 5 rate to be charged for a stand-alone loop and a 6 stand-alone port on the same order, that decision does 7 not depend on anything the 8th Circuit has done? 8 In part it does, because if you just order a A stand-alone loop and a stand-alone port on the same 9 order but you're not recombining them, I think this 10 decision still has effect because of the fact that 11 12 there may be some duplicate cost recovery when you do that. 13 14 Q Duplicate cost recovery in duplicate ordering charges, essentially? 15 A 16 Yes.

I quess the question is, if you left the 17 Q 8th Circuit off of this Exhibit 23, it would then 18 outline the positions of the parties; is that right? 19 With respect to the agreements, but it 20 A wouldn't be clear, because one part of our position is 21 an interim proposal, and the 8th Circuit -- you have 22 to have the 8th Circuit on there to show why we're 23 talking about an interim proposal. 24 All right. Let me ask this: Would you 25 Q

1	
1	agree with me that this proceeding is about what
2	happens in the interim between today and some Supreme
3	Court action on the 8th Circuit?
4	A Yes.
5	Q You're familiar with the issue in this case
6	that relates to setting prices that eliminate
7	duplicate charges; is that correct?
8	A Yes. Yes, I am.
9	Q And it's BellSouth's position, if I
10	understand it, that the question being asked is what
11	duplication is there when two unrelated stand-alone
12	elements are ordered on a single order; is that
13	correct.
14	A Two stand-alone elements.
15	Q Two stand-alone elements. And do you
16	understand MCI's position that that issue includes the
17	question of what duplication should be eliminated when
18	a loop/port combination is ordered on a single order?
19	A If you say that's your position. But my
20	understanding is that that issue is covered in the
21	other issues in this case which are, what should be
22	the price for combinations. And the price for
23	combinations would be both recurring and nonrecurring.
24	So that issue is already covered. The issue
25	of nonrecurring charges for combinations is already

covered in the other issues in the case. So that
 leaves for this issue -- as I see it, the issue is
 when you order the stand-alone elements on the same
 order.

5 There are two issues regarding nonrecurring 6 charges, as I see it in this case; one is for 7 combinations, and one is for stand-alone elements 8 ordered on the same order.

9 Q Mr. Varner, would you agree that your
10 interpretation of the contract language and the
11 Commission order language about eliminating
12 duplication relates only to duplication in the
13 ordering process and not any duplication of work times
14 or physical elements?

15 A To the extent it exists, I think it does
16 include that; to the extent there is any duplication
17 in provisioning, but I don't see how there could be.

18 Q So you would agree, then, that if the rates 19 set for UNEs included charges for duplicate charges or 20 charges for services that were not needed beyond the 21 ordering process, that eliminating those duplicate 22 charges is fair game in this proceeding? 23 A When you say "not needed," I have to be

24 clear about that. You need to clarify that. When you
25 say "not needed," my understanding of duplicate

charges is that we have to perform a work function
 when you order a loop; we have to perform a work
 function when we order a port.

If when you order those two together where we would normally have to perform the function twice we only have to do it once, then that's a duplicate charge and it should only be charged once for that amount of work.

When you say things that are not needed, 9 10 it's -- you need to be sure that when you pull out something that you say is a charge that's not needed, 11 12 that you're not changing the service, if you will. For example, if you were to decide to buy a certain --13 14 you know, and I'm not sure that we have these in Florida, but I have to use that -- if we do have them 15 in Florida, that's fine; if we don't, I have to use an 16 17 example from another state.

When you buy our analog loops -- we have two 18 varieties; one has a design layout record, one 19 doesn't. Those are two separate services. So if you 20 21 say, okay, I want an unbundled loop without a design layout record, well, okay, there is an offering for 22 that. If I want one with, that's a different 23 So when you say I'm just pulling out things 24 offering. I don't want, we need to be sure you're not changing 25

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the service, if you will. 1 2 I think I'm going to come back to that a 0 little bit later in a slightly different context. 3 Mr. Varner, you had a discussion with 4 Commissioner Clark about what I believe is Exhibit 13, 5 which is the various unbundled network elements. 6 Do 7 you know whether BellSouth has a separate price in Florida for loop feeder? 8 9 I don't remember whether there is a -- I just don't remember what the subloop elements are in 10 11 Florida. Would you accept, subject to check, the 12 0 Commission set subloop rates only for the network 13 interface device and loop distribution? 14 15 A Yes, I would accept that. Several 16 commissions did that. 17 So when you told Commissioner Clark that the 0 18 rate for adding up the four unbundled subloop elements 19 1 through 4 would probably be greater than that 20 overall loop price, you were assuming that some price had been set for 3 and 4? 21 22 A Yes. You indicated that BellSouth's basic local 23 Q 24 service provides access to operator services, but it doesn't provide the operator services themselves 25

because that's a separate charge to the customer; is 1 2 that right? It's a separate service, and the service is 3 A billed at a separate charge. 4 5 Q If you have only elements 1 through 5 on that chart, the loop through the local switch, do you 6 7 have everything you need to provide access to operator services? 8 9 А Yes. 10 How does the operator service call get from Q the local switch to the operator service center? 11 12 Through a trunk, an operator services trunk. So is it fair to say that in addition to 13 0 1 through 5, you also need an operator services trunk 14 in order to provide access to directory assistance? 15 16 No. All you've done when you provided A access is you have put a translation in the switch 17 that says when that customer dials zero, you send that 18 call to this trunk group. 19 20 If the CLEC has decided to use our operator services, then they would purchase from BellSouth an 21 operator services trunk and they would pay BellSouth 22 for the use of our operators. 23 If the CLEC decided to provide its own 24 25 operator services platform, the switch would direct

that to a trunk group that is a trunk provided by the
 CLEC to its own operator services platform.

3 Q All right. Assume the CLEC did not buy a 4 trunk to your operator services platform and didn't 5 provide or buy a trunk to its own operator services 6 platform. Would it then be providing access to 7 operator services?

8 Yes. It would have the access set up to A provide access to operator services. If it could 9 decide it didn't want to provide operator services, 10 which means that when the customer hit zero there 11 would be nowhere for the call to go, they could decide 12 that, and they could have us set up the port that way, 13 14 if that's what they wanted to do. We would be giving you access to operator services, but you could decide 15 you don't want to provide it. 16

Q So in your mind, the trunk group that runs from the trunk side of the local switch to either the BellSouth operator platform or an MCI operator platform is not an essential part of providing access to operator services?

A No, it doesn't provide access at all. That
is an essential provider -- essential part of
providing operators services.

25

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Does BellSouth's local service include local

1 calling only to customers who are connected to the 2 same local switch, or does it frequently include local 3 calling to customers connected to another local 4 switch?

A It includes both. About 35% of the calls on
average are within the same switch. The other 65% go
7 to another switch.

8 Q All right. If MCI purchased an unbundled 9 loop and an unbundled port and did not either provide 10 or purchase transport between BellSouth's various 11 local switches in the local calling area, would it be 12 able to complete customers' calls -- would it be able 13 to complete a call from that customer to customers 14 served by other switches?

15 A No, you wouldn't. But when you called 16 the -- when you ordered the port, you would specify 17 what type of transport that you want. Now, if you 18 said, I want port with no transport, then what you're 19 doing is you're providing something that -- you're 20 essentially replicating ESSX service.

Q But if I want to replicate -- and I'll use your word "replicate," although let me say I don't agree with it -- if I wanted to offer the same local calling area as BellSouth, then in addition to the loop and the port, I would either have to purchase or

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1	provide some interoffice transport; is that correct?
2	A You would purchase some form of
3	interoffice you would either purchase common
4	transport or dedicated transport and you would tell us
5	at the time you bought the port which one you would
6	set up. And when I say purchase that, what it is is a
7	per-minute charge for the use of the transport.
8	Whenever your customers utilize and place a call
9	outside that wire center, you would get a per-minute
10	charge for the use of the transport if you
11	purchased
12	COMMISSIONER GARCIA: That would be to
13	replicate, to be able to replicate the same calling
14	area that a BellSouth customer would normally
15	WITNESS VARNER: Yes. Or they could set it
16	up to such that it's a different calling area. They
17	could do either one. But the reason when I say loop
18	and port, what you get when you get the loop and port
19	is you get the ability to call every other customer
20	that's served by that wire center.
21	If you think about the simplest case, a
22	1-wire center exchange, it's a direct corollary to the
23	basic exchange service. This is the exact, identical,
24	same thing. All transport is is the capability to
25	allow customers when you have a multiwire center

exchange to be able to call the other customers in
 that exchange. When they buy the port, they'll - they buy a transport to the other offices.

So the transport, to me, is really just 4 5 redundant. When you say the loop and the port, all you're doing when you buy the port is you tell the 6 7 switch, "calls going to some other numbers beyond this switch go here." You put that instruction in the 8 switch. That comes as part of the port. The 9 facilities that take that call from there are either 10 common transport or dedicated transport provided by 11 BellSouth. 12

COMMISSIONER DEASON: Yes. But when you 13 provide that service to your local customer, there's 14 no additional charge when they call a local number 15 16 that just happens to be in another central office. That's correct. WITNESS VARNER: 17 COMMISSIONER DEASON: Now, for MCI to do 18 that, they have to have additional facilities to 19 complete that call, facilities either from you or 20 their own facilities to go from one central office to 21 another; is --22 23 No. The facilities are WITNESS VARNER:

24 from BellSouth. They're either common transport
25 provided by BellSouth or dedicated transport provided

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1 by BellSouth.

2 **COMMISSIONER DEASON:** But there is a charge 3 for that in addition to the port.

WITNESS VARNER: There's an additional usage
charge for that in addition to the charge for the
local switch usage; that's correct.

7 And in my exhibit, the little exhibit we 8 were looking at where I had like \$4.78, that included 9 both the transport -- the usage for the transport and 10 the usage for the local switch.

11 COMMISSIONER DEASON: And the transport is
 12 another -- is that an element, an unbundled - 13 WITNESS VARNER: Yes. It --

14 COMMISSIONER GARCIA: Are you talking about 15 the third page of your attachment?

16 WITNESS VARNER: Yes. That \$4.78 includes 17 the price of the local switching usage and the 18 transport usage.

19 COMMISSIONER GARCIA: And what kind of
20 usage -21 WITNESS VARNER: It's minutes.
22 COMMISSIONER GARCIA: I understand, but on

23 || what did you base it?

24 WITNESS VARNER: Oh. We based it on our 25 customers' calling patterns. We used an -- it's an

1 average of what our customers generate.

2 COMMISSIONER DEASON: And the charge for 3 that unbundled element is a usage based charge? It's a usage charge. It's 4 WITNESS VARNER: 5 a per-minute charge whenever it's utilized. 6 COMMISSIONER DEASON: So when MCI purchases from you the unbundled network elements consisting of 7 the loop and the port, they really cannot replicate 8 your local service until they pay the unbundled 9 10 network element charge for the transport. WITNESS VARNER: Well, when they -- they're 11 replicating it when they purchase the loop and the 12 13 port, because when we establish the port for them, we're going to establish transport; and as their 14 customers use transport, then they're going to be 15 billed for it. 16 COMMISSIONER GARCIA: They won't even have 17 an idea of what their price is going to be --18 19 WITNESS VARNER: Oh, yeah, they -- well, 20 they know what the usage charge for transport is. It's a per-minute charge, so they know what the price 21 is, but they don't know, for example, how many calls 22 23 their customer is going to make that utilized that. COMMISSIONER GARCIA: The rest of these are 24 pretty much fixed, correct? 25

WITNESS VARNER: Yeah. I can go through 1 2 them and tell you which ones are usage and which ones are fixed, if I can just find the exhibits. 3 You're looking at the residence one, chart 4 5 The \$17 is fixed. That's a per-minute charge. C? That's a per-minute charge. All the The \$2 is fixed. 6 7 rest of them are usage charges. COMMISSIONER DEASON: Is there a way that 8 9 MCI can avoid that usage charge? WITNESS VARNER: No, not really. 10 COMMISSIONER DEASON: They cannot have their 11 own facilities in place, so --12 WITNESS VARNER: Not to do common or 13 14 dedicated transport for local, because in order to do that, it's got to go between the BellSouth switches. 15 16 They might be -- every arrangement I can think of that 17 they might utilize that wouldn't do that doesn't make 18 any sense. 19 For example, they could come in and say, all 20 right, now; I want to buy your loop and I want to buy 21 your port, but I don't want any of your transport; I want a direct transport facility to my switch. 22 23 Well, if they're going to do that and take it to their own switch, they don't need our port in 24 the first place. They can just buy the loop and take 25

1 it to their switch. Why buy our port if you're going
2 to provide your own?

3 Q (By Mr. Melson) Mr. Varner, let me go back 4 again to the access to operator systems piece of the 5 chart just to be clear. If MCI wants to use -- wants 6 to provide access to BellSouth's operator service 7 platform and it's purchased a loop and a port, it also 8 has to purchase, from BellSouth, operator trunks; is 9 that correct?

10 A If it wants to use BellSouth's operator
11 platform, yes. As part of the operator services
12 unbundled network element we offer the operator
13 services trunk as well as, you know, the work time of
14 the operators. That's all part of the operator
15 services unbundled element.

16 Q And that's a separate unbundled network 17 element?

18 A Yes, for operator services; and there's also
19 one for DA.

20 Q And if MCI wanted to provide its own 21 operator services, it would have to purchase some sort 22 of trunks, dedicated trunks, from BellSouth from the 23 local switch to MCI's operator platform?

24ANo. It could provide its own trunks.25QAll right. It would either have to purchase

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or provide trunks in order to provide access to 1 2 operator services? In order to provide the operator 3 A No. services -- the access is set up when you purchase the 4 port. All the access is is an instruction in the 5 switch that says when the customer dials zero, send 6 7 the call to this trunk group. COMMISSIONER CLARK: And if you don't have 8 9 the trunk group, you can't get access to the service. WITNESS VARNER: You have access to it, but 10 you can't get the service. 11 COMMISSIONER CLARK: No. You have -- you 12 don't have access if you don't have the trunk. 13 14 WITNESS VARNER: You have access to it, 15 because when you dial zero, the switch is going to send it to whatever trunk group they have instructed 16 us to send it to, okay, because they tell us that when 17 they buy the port. That's what the switch is going to 18 19 do. 20 Now let's assume that they're putting in the 21 trunks themselves and they're using their own 22 platform, all right. It's up to them when they put 23 the trunks in and when they put the platform in. 24 We've provided the access to it the same way that we provide the access to our own customers. If we don't 25

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put the trunks in for our own customers, they're not 1 going to get operator services either. 2 **COMMISSIONER DEASON:** There is an unbundled 3 network element for directory assistance? 4 5 WITNESS VARNER: Yes. COMMISSIONER DEASON: The cost of that 6 7 element, does it include the cost of the trunks? 8 WITNESS VARNER: Yes, there is a -- there's 9 separate parts to the element. There's cost for the use of the operator. There's also the cost -- a 10 11 charge for the trunks as part of the directory 12 assistance unbundled element. Likewise, the same thing is part of the 13 operator services unbundled element. The trunks are a 14 15 part of the unbundled network element for the operator 16 services of the DA, not the port. 17 COMMISSIONER DEASON: And so MCI could have the option of using your trunks and paying an element 18 19 for that, or using their own trunks and avoiding that charge? 20 WITNESS VARNER: 21 Yes. COMMISSIONER DEASON: For both DA and for 22 operator services? 23 24 WITNESS VARNER: Yes. 25 (By Mr. Melson) Mr. Varner, I don't want Q

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to beat a dead horse, but let me ask one more question 1 2 about access to 911 service. 3 Are you aware that ALECs in Florida are required by the Commission to provide access to 911 4 5 service? Ά Yes. 6 7 If MCI purchased a loop and a port from 0

BellSouth and did not buy any 911 trunks, would it be 8 providing access to 911 service? 9

10 Well, you would have to buy the 911 trunks, Ά and that's required as a result of what the Commission 11 12 has ordered you to do, so you're going to have to buy 13 them.

So in order to replicate BellSouth's local 14 Q service which includes access to 911, in addition to 15 Items 1 through 4 on this diagram I would also have to 16 17 purchase 911 trunks?

No. Again, it's the same kind of picture 18 that you drew with operator services and DA service 19 control --20 21 I would either have to --0

It's the same thing, same arrangement. 22 In order to provide access to 911 service, 23 Q would I need to either purchase 911 trunks from 24 BellSouth or provide them myself? 25

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Yes, just like with operator services or DA 1 A 2 or anything else. But the access to the 911 service is provided by the switch translation in the port, 3 4 which you're given when you buy the port. 5 COMMISSIONER GARCIA: You realize you're 6 saying that the plug in the wall gives you electricity, it's just that it must be connected to a 7 generation unit for it to produce any energy? 8 MR. MELSON: Yes. 9 10 WITNESS VARNER: No. No, that's not what I'm saying. That's not what I'm saying. I'm 11 saying --12 COMMISSIONER GARCIA: Well, that's --13 WITNESS VARNER: -- I've given you the plug 14 in the wall, and it's up to you whether you want to 15 put a light or a blender or whatever it is you want to 16 put in the wall. But I've given you the plug in the 17 wall, and --18 COMMISSIONER GARCIA: Yeah, you've given me 19 20 the plug --21 WITNESS VARNER: -- and a working plug in the wall. 22 23 COMMISSIONER GARCIA: No. You've given me a plug in the wall. You just haven't given me 24 25 electricity. And you're saying you're giving me

1 electricity as long as I purchase electricity. In
2 other words, you're saying to me you're giving me the
3 plug-in, but you're not giving me everything -- it's
4 useless to me without the trunk that I have to
5 purchase --

6 WITNESS VARNER: Okay. Let me see if I can 7 turn this around. Not turn it around, but see if I 8 can explain clearly. (Laughter)

9 What I've given you is this. Remember, when you've bought the loop and the port from me, I have 10 given you the connection from the end user all the way 11 up through the switch and the translation in the 12 switch that enables you to plug that into that switch, 13 14 the things that you need to plug into that switch, okay, so that when that customer dials that, all 15 right, it will get to those things. All right. 16

The equivalent in your analogy that I see is 17 that I've given you a plug in the wall, a working plug 18 in the wall. Now it's up to you to plug in the lamp 19 or the blender or whatever it is you want to plug into 20 That's the operator services trunks, the 911 21 that. trunks, the DA trunks and so forth. You can plug 22 23 whatever you want into that, but that's up to you. I've given you a hot plug that when you plug it in 24 there, it's going to work. 25

1 COMMISSIONER GARCIA: Let me ask you about where that goes into the costs that you figure for the 2 3 unbundled service or -- those trunks are provided as 4 part of the resold service? 5 WITNESS VARNER: Which trunks? 6 COMMISSIONER GARCIA: For the 911, for any 7 of those -- yeah, DA services are provided as part of 8 resale. 9 If they resell our DA, yes. WITNESS VARNER: 10 COMMISSIONER GARCIA: Now going to your Chart C, where would I find that cost here? 11 WITNESS VARNER: For resold DA it's not on 12 here. I've just taken a typical --13 14 COMMISSIONER GARCIA: And for 911? 15 WITNESS VARNER: 911, it wouldn't be on here, because the municipality pays that. That's --16 the municipality pays for the 911 service. All I've 17 shown is -- the only charges I've shown are the ones 18 19 for the services that are listed on the left-hand side. 20 21 I could go in and add others and, you know, 22 show what the relevant pieces would be, but I just 23 didn't add in any of the others. Like I could add in 24 DA, I could add in operator calls, I could add in some 25 more vertical features, you know, some of the Touch

Star features, call return and so forth. You could 1 add all of those into it, but I was trying to make it 2 a relatively simple diagram to illustrate the point. 3 COMMISSIONER DEASON: You indicated the 4 municipality would pay the 911 charge. That's revenue 5 6 that BellSouth apparently gets directly from the 7 municipality? Is that what you're saying? 8 WITNESS VARNER: Yes. Or the reseller can resell that service, too, if they want, to the 9 municipality. 10 COMMISSIONER DEASON: Then the reseller gets 11 12 that --WITNESS VARNER: 13 Yes. 14 COMMISSIONER DEASON: -- revenue from the municipality? 15 WITNESS VARNER: Yes. 16 COMMISSIONER DEASON: What about 911 17 charges, surcharges on individual customer bills? 18 If --19 20 WITNESS VARNER: That's what -- what happens in that situation is this: That's a charge not for 21 22 telephone service per se; that's more akin to a levy, almost a tax, if you will, that appears on the 23 phone -- that we bill for the municipality. So we 24 bill it, we remit it. We would continue to bill those 25

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charges for all of our customers even if it was a 1 2 reseller providing it. Now, when you have a CLEC that has some 3 customers, the CLEC -- it's the responsibility of the 4 5 CLEC to bill its customers those charges and remit it 6 back to the municipality. COMMISSIONER DEASON: So if a CLEC is using 7 unbundled elements, then they're responsible for 8 9 collecting that and remitting that to the city? WITNESS VARNER: Yes. And resale, same 10 thing. 11 COMMISSIONER DEASON: And resale. 12 13 WITNESS VARNER: Yes. 14 COMMISSIONER DEASON: But if they do a resale, you're basically -- it's part of your package. 15 WITNESS VARNER: No, because we won't charge 16 them that tax. 17 COMMISSIONER DEASON: Okay. So even for 18 under resale, it's up to, in that case, the reseller, 19 then to levy that, collect it and then remit it to --20 21 WITNESS VARNER: To the municipality. 22 0 (By Mr. Melson) Mr. Varner, I've got a couple of questions about revised Exhibit AJV-1, which 23 is the residential comparison we've been talking 24 about. 25

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1	If I understand correctly, in the right-hand
2	column, which is unbundled rates, which of those items
3	are items that are billed by BellSouth to the ALEC?
4	A That are billed by BellSouth to the ALEC?
5	Q Yes.
6	A In which scenario?
7	Q In the unbundled rates column. Let me ask
8	you this: BellSouth's position is that when an ALEC
9	purchases unbundled local switching, that BellSouth is
10	entitled to the intrastate access charges?
11	A We would bill that to the IXC.
12	Q You bill that to the IXC?
13	A Yes.
14	Q So to the extent the Commission were to
15	accept that position that BellSouth owns the
16	intrastate access charges, the line here shown
17	"interLATA intrastate access" is something you would
18	be billing not to the ALEC, but to an interexchange
19	carrier?
20	A Well and it would be to the interexchange
21	carrier. And to the extent the ALEC and the
22	interexchange carrier were the same, then it's
23	irrelevant. The only people who have ever raised this
24	rebundling issue, to my knowledge, have been IXCs.
25	People who are not IXCs haven't raised this issue, or
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haven't raised this concern. So it appears that the 1 2 people that are interested in this are IXC ALECs, people who are also ALECs and IXCs. 3 Let me ask you this, Mr. Varner: What is 4 0 5 the basis on which you say that the interstate access charges are charges that essentially belong to the 6 7 ALEC? 8 A I didn't -- characterizing who they belong to, it's simply a rule of the FCC that when the ALEC 9 10 buys unbundled network elements that, you know, 11 interstate access is going to be billed as local 12 usage. That's simply an FCC rule. Isn't it correct that the FCC's First Report 13 0 and Order in the interconnection docket and the rules 14 15 adopted there essentially established a framework that 16 when an ALEC purchases an unbundled network element -in this case local switching -- that it is leasing the 17 exclusive use of that element, and any service that 18 element is used to provide is being provided by the 19 ALEC and not by BellSouth? 20 It did, and their attempt to extend that to 21 Ά access charges was vacated by the 8th Circuit. 22 Isn't it true that the rule that was vacated 23 Q by the 8th Circuit was one which created a limited 24 exception to that rule and said that for an interim 25

1 period of time, despite the fact that the ALEC leased 2 the unbundled local switching and owned all of those 3 functions, that it nevertheless for an interim period 4 would have to continue to pay a portion of the access 5 charges to BellSouth?

6 My recollection is, is that the A No. 7 8th Circuit vacated the rule that the FCC -- wherein the FCC stated that access charges would not apply on 8 unbundled network elements. And their rationale for 9 that was that that rule encompassed both interstate 10 11 and intrastate, and the FCC didn't have the authority 12 to instruct the states on how to treat intrastate 13 access charges.

14 Q Are you aware that in setting prices for 15 unbundled local switching, the Florida Commission in 16 its arbitration order said that the port charge and 17 the per-minute charge were the total charges to be 18 applied and that no other charges applied for uses of 19 that unbundled local switching?

A I don't recall the language exactly, but I do recall some language like that which was targeted at features and whether or not the local switching charge as it was stated included features. I don't recall them making any representation with respect to access at all.

1	Q Staying with this exhibit for a moment, the
2	numbers in the middle column for resale, which of
3	those are prices paid by the ALEC and which are prices
4	paid by an interexchange carrier providing long
5	distance service?
6	A I'm sorry. I didn't hear which column.
7	Which column did you say?
8	\mathbf{Q} The middle column, resale.
9	A Under the middle column the charges paid by
10	the ALEC would be the \$8.33 to \$3.13, the \$2.35.
11	Q And none of the
12	A And the 3.50 and the three the 2.77 ,
13	\$3.56 no, \$2.77 would be paid by the ALEC as well.
14	The \$3.56 and \$7.05 would be paid by the IXC.
15	Q Now, the components of that that relate to
16	local service do not vary with usage; is that correct?
17	A The components of what?
18	Q The components of the resale charge that
19	relate to local service do not vary with usage. It
20	doesn't matter how many local calls the resale
21	customer makes, the reseller pays the same price.
22	A If the resold service is a flat rate
23	service, that's correct. If they're reselling a
24	measured service, then it would vary based on the
25	number of calls being made.

	1
1	Q Let's use your example. Your example is
2	flat rate service, isn't it?
3	A Yes, it is.
4	Q In the unbundled elements situation, the
5	amount the ALEC pays does vary with usage; is that
6	correct?
7	A For some things it does, for some it
8	doesn't. For example, the price they pay for the loop
9	doesn't vary with usage or the price they pay for the
10	port itself doesn't vary with usage.
11	Q The price they pay for local usage varies
12	with usage.
13	A Yes, it does.
14	Q How many minutes of local use were assumed
15	in this illustration for a typical residential
16	customer?
17	A I'm going to have to go back into another
18	document to find that out.
19	Q And that would be the notes to your Exhibit
20	AJV-1, which indicated 583 minutes for residence?
21	A Yes.
22	Q And that's what? About 20 minutes a day
23	during the month?
24	A That's about right.
25	Q If the customer had a teenage son who talked

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on the phone for two hours a day, and the ALEC was 1 providing that service using unbundled network 2 elements, it would pay more than the figures you've 3 shown on this typical illustration; is that correct? 4 Maybe, maybe not. The point -- I think your 5 А point is, is that if they use more than 583 minutes, 6 the charge would be more, and if they use less, the 7 charge would be less; that's correct. 8

9 What they're being charged is something --10 well, you can see what the rate is. It's one and 11 three quarters cents for the first minute and half a 12 cent for each additional minute. The 583 is an 13 average. That's the average that we experience with 14 our residence customers. So obviously some are more 15 than that, some are less than that.

16 Q And to the extent that the local customer 17 made a lot of Internet access calls, would that amount 18 paid for local usage vary?

19AYes. As I said, if the customer made more20than 583, it would be -- the charge would be higher.21If he made less than 583, then the charge would be22lower.23QQNow, I think there's some potential talking

past each other in this proceeding because of
different ways that the parties use the word

1 "migration". What does the term "migration" mean to
2 you?

Well, my only definition of it is the one 3 A 4 that comes from the testimony of AT&T and MCI's 5 witnesses. As I understand what they are describing when they talk about migration is the ability to take 6 a customer who has existing retail service and 7 transfer, quote, "transfer" that customer, if you 8 will, to them utilizing unbundled network elements; 9 which says that what they're attempting to do is to 10 11 take the existing service that the customer has, the 12 existing retail service that they have, and just have it repriced as unbundled network elements. 13

There's no doubt that what they're trying to provide here is the same service the customer is already getting. That's what they want transferred over, and they want the unbundled elements to replicate what the customer is already getting.

19 Q And I believe you state in your testimony, 20 don't you, that migration by its very nature equals 21 resale?

A Yes, because that's what you're saying.
You're saying take the retail service that the
customer currently has and make me -- make MCI or AT&T
the customer. That's what resale is, taking retail

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service and simply changing the name of the customer
 from the end user to another -- to the reseller, AT&T
 or MCI.

What I've put up on the board, Mr. Varner, 4 0 5 is a one-page excerpt from Mr. Parker's exhibits, which in turn was excerpts from the MCI/BellSouth 6 7 interconnection contract. And, frankly, the way I've put it up I can't see the page number. Can you tell 8 9 me which page number that is? It's down in the 10 lower --It's Attachment 8, Page 12. There's a 11 A handwritten "19" on it. 12 So that would be Page 19 of Mr. Parker's 13 Q 14 Exhibit 2. Would you read the heading to Section 2.2.2? 15 It says "Service Migrations and New A 16 17 Subscriber Additions." And would you agree that in the subsections 18 Q of 2.2.2 the contract talks about two different types 19 of migration; one type of migration for resale 20 services and another type of migration for use of 21 22 unbundled network elements? I don't know. I haven't read it. 23 λ So I'm going to have to read it. 24 (Pause) I really don't know. 25 The first two

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1	paragraphs, 2.2.2.1 and the next paragraph, clearly
2	deal with the resale, and they talk about migrations.
3	The next paragraph deals with unbundled
4	network elements, and I'm not sure in that you
5	know, this section is labeled "Migrations and New
6	Subscriber Additions." So when you talk about
7	migration, I'm not sure what you're talking about when
8	you say "using unbundled network elements."
9	I think it's getting at both use of
10	unbundled network elements, either as combinations or
11	stand-alone for either migrations or new subscriber
12	additions.
13	Q Let me ask, Mr. Varner, would you agree that
14	as the term "migration" appears to be used in the
15	contract, it would include a situation where a
16	BellSouth customer was migrated to MCI through the use
17	of unbundled network elements such as a loop and a
18	port?
19	A I don't know whether it's that way in the
20	contract, but I would agree that that is the way that
21	MCI and AT&T have attempted to define migration. I
22	mean, that's the definition they put forward in their
23	testimony, even though there really is no such thing.
24	Q Well, Mr. Varner, you've got the page of the
25	contract in front of you and I'm asking you if
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Section 2.2.2.3 of this attachment doesn't say to you
 that migration through UNEs is contemplated by the
 contract?

A (Pause) Oh, yes. I'll say yes, then. I -5 that sentence does -- yeah, it does; which, as I
6 understand it, would be the provision of combinations
7 of unbundled network elements is what you're talking
8 about there, which we've already agreed that the
9 agreement obligates BellSouth to provide.

10 Q Let's talk about that obligation in the 11 agreement as well. Mr. Varner, what I'm showing you 12 now is Page 9 of Mr. Parker's Exhibit CP-2, which 13 again is excerpts from the BellSouth/MCI 14 interconnection agreement.

15 Is the provision that we agree obligates
16 BellSouth to provide MCI with combined elements
17 Section 2.4?

18 A I'm not sure that it is. The expert on what
19 is actually in the contract language is Mr. Hendrix.

That provision could be read that way. It also could be read to mean that we will provide you combinations like the ones that I've already described in my testimony. I do know that we're obligated to provide you the combinations. I can't point to the specific contract provisions that make that

1 obligation. Mr. Hendrix probably can.

2	${f Q}$ Okay. Do you also agree that the contract
3	obligates BellSouth not to pull apart when MCI
4	orders a combination of elements that are already
5	combined in BellSouth's network, that the contract
6	obligates BellSouth not to pull those apart before
7	furnishing them to MCI?
8	A Yes, that's correct. I mean, if we pulled
9	them apart, it would no longer be a combination.
10	${f Q}$ And you would agree with me that the
11	contractual obligation for BellSouth to combine
12	elements applies to loop/port combinations as well as
13	to other types of combinations; is that right?
14	A Yes.
15	Q And MCI would also have the right under the
16	contract, if it wanted to, to purchase loops and ports
17	separately and to do the combining itself?
18	A Yes.
19	Q Now, I believe it's your testimony that even
20	though the contract gives MCI the right to purchase
21	combinations, that it is totally silent on the price
22	for those combinations; is that right?
23	A Yes.
24	Q And you believe the contract is silent about
25	what price MCI would pay when BellSouth does the

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1 combining?

2	A Yes.
3	Q And you believe the contract is silent about
4	what price MCI would pay when MCI does the combining?
5	A Yes.
6	Q And it's silent whether the elements that
7	are combined do or do not, in your view, replicate an
8	existing BellSouth service?
9	A That's correct.
10	Q I believe, in fact, you said in your
11	summary, if I remember it correctly, that BellSouth
12	has never voluntarily agreed with anybody that when
13	elements are combined, that the price for that
14	combination is the sum of the individual parts.
15	A When they replicate a retail service; that's
16	correct. If they don't replicate a retail service, as
17	I said in my testimony, I've given I've identified
18	certain combinations that we do offer at the sum of
19	unbundled network element prices because of the fact
20	that's the only practical way to offer the unbundled
21	network element.
22	So when they replicate a retail service,
23	we we've been as consistently and steadfastly and
24	vehemently opposed to that in every possible way you
25	can imagine, but when they don't we do have cases

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1	wherein we offer those that don't replicate a retail
2	service. I gave examples of some of those.
3	Q Well, let's turn to Page 17 and look at
4	those examples just quickly. And that's in your
5	direct testimony?
6	A Yes.
7	Q Now, what I'm trying to understand is you
8	list on Page 17 a number of combinations that
9	BellSouth will provide, does provide.
10	A Yes, combinations of elements.
11	Q And for each of those, the price BellSouth
12	charges is the sum of the price for the individual
13	elements that are being combined?
14	A That's correct.
15	Q Is that pricing formula for those
16	combinations included in your contracts?
17	A I don't believe that it is.
18	Q So it's your position that every time
19	BellSouth has offered elements in combination at the
20	sum of the individual element prices, it's sort of
21	done that gratuitously without any contract that says
22	that's the price to be paid?
23	A When you say any contract, I don't I know
24	it's not in the AT&T and MCI contract. I don't know
25	about contracts with other companies. And as I said,

1 the reason for offering all of these is that this is 2 the only practical way to offer -- this has to be done 3 in order to be able to offer the element.

Like a loop and cross-connect; we couldn't 4 5 offer an unbundled loop unless we were willing to connect it to the cross-connect; otherwise you could 6 7 never get to it. And that's the same thing with the port and the cross-connect, the port and common 8 9 transport and a cross-connect. The only way you could get to the common transport is you have to have the 10 port. If you don't have the port, you can't get to 11 12 common transport.

13 COMMISSIONER JACOBS: Was it my understanding from one of the other witnesses that 14 15 your proposal would not do the cross-connect? You 16 were going to go -- I'm sorry. I can't remember the witness, but we had a diagram up here. Do you recall? 17 I think it was Mr. Falcone. WITNESS VARNER: 18 COMMISSIONER JACOBS: Right. 19 20 WITNESS VARNER: If I remember correctly. 21 COMMISSIONER JACOBS: And you were not going 22 to do the cross-connect, you were going to go through 23 an alternative way of providing this loop to an ALEC. 24 WITNESS VARNER: That's not exactly right. 25 I think you heard it exactly right, but what he

1 described wasn't exactly right.

2	What happens the day they come in and they
3	purchase the customer has assume a customer
4	already has service from us, all right. He's already
5	getting basic exchange service. We've obviously got
6	the loop into the office. We've got a cross-connect
7	to the port, and that takes them you know, gives
8	them the switching and the access to all these other
9	things that he might want.
10	Now, when someone comes to us and says, I
11	want an unbundled loop from you, BellSouth, all right,
12	the word "unbundled" is there for a reason. It means
13	that it's something that you typically provide
14	combined with something else that we want to buy
15	separately from the other things that you normally
16	combine it with. I mean, that's what unbundled means.
17	Well, since when we provide local
18	exchange service, you're getting a loop and a port
19	together. If they just want a loop, we have to go
20	into the frame, remove the cross-connect, and then put
21	a new cross-connect on there that takes that loop to
22	wherever they need that loop to go, typically
23	collocation space in the office.
24	They've rented space. They have something
25	in that space. We take the loop. We terminate it in

that space for them. Then now they can put whatever 1 2 they want to put on that loop. COMMISSIONER JACOBS: Okav. 3 Okay. Likewise, if they 4 WITNESS VARNER: 5 buy a port from us, we do the same thing. We take a cross-connect -- the port has a -- may have a 6 7 cross-connect to another loop, it may not. If it's existing service, it does. We take the cross-connect 8 9 that previously existed. It's removed. You put a 10 cross-connect now that routes that port to their location so that they can do whatever they want to do 11 12 with it. The only way that they can do that is we have to take it and put it in their location. 13 COMMISSIONER JACOBS: So this scenario would 14 15 apply when there is not a common order of the loop and 16 the port. 17 WITNESS VARNER: If there's -- not ordered 18 as a combination. If they order it as a combination, 19 a loop/port combination, which they're describing that 20 we're obligated to order, we're not going to take it apart. We're going to leave it exactly like it is and 21 22 we re going to provision it just like a resale order. 23 It's going to be treated the same way as resale in every respect. 24 25 I remember the context COMMISSIONER JACOBS:

1 now --

1	now
2	WITNESS VARNER: We're not going to take
3	we're not going to go through that process when they
4	order a loop/port combination under their agreement.
5	That's another reason why we say it ought to be priced
6	at resale. What we're going to do with it is we're
7	going to do the same thing we would do as if they had
8	sent through a resale order.
9	COMMISSIONER JACOBS: I'm done. Thank you.
10	Q (By Mr. Melson) Mr. Varner, I've got a
11	couple of more questions for you. Let me say a few,
12	not a couple. I don't want to get everybody's hopes
13	up.
14	I'd like you to refer for a moment to the
15	language in Section 2.6 of Attachment 3 of the
16	AT&T/MCI interconnection agreement, and that's
17	A I don't have it.
18	Q Let me get you a copy of it. It's on the
19	board behind you, but let me get you your own personal
20	copy. (Pause) I'd have you have read from the
21	poster, but that pulls you away from the microphone.
22	Does this language say to you that when MCI
23	purchases two UNEs in a combination that the prices
24	for the stand-alone UNEs in Attachment 1 apply and
25	that BellSouth cannot make any additional charge for

1 connecting the two elements together?

2	A No, it doesn't. Mr. Hendrix addresses this
3	in detail in his testimony. This is standard language
4	that MCI has in all of its all of the contracts
5	that I know of with BellSouth. And all this does is
6	say that MCI that the charges in Attachment 1 for
7	unbundled network elements are that all of the
8	charges for unbundled elements are charges in
9	Attachment 1. There aren't charges in a tariff
10	somewhere or something else.
11	MCI wanted all of their charges for
12	unbundled network elements to appear in their
13	agreement, and that's all this is saying. You have
14	this same identical language in all of the other
15	states in BellSouth, and in seven of those eight
16	states you pay resale for it. So this language in and
17	of itself can't mean what MCI says that it means.
18	In addition, this is the language that the
19	Commission approved when the Commission specifically
20	said that they were not addressing the unbundled
21	network element combination pricing issue.
22	Now. If you think that this language
23	addresses that issue, you'd have to simultaneously
24	believe that the Commission in the same order said,
25	I'm not going to address this issue and simultaneously

1	said, I am, in its unbundled network elements prices.
2	And I don't think the Commission would have taken
3	those two opposing positions in the same order.
4	Q Let me ask, Mr. Varner, you said this
5	identical language appears in other states in which
6	UNE combinations are priced at resale; is that
7	correct?
8	A Yes.
9	Q In those other states there is also
10	additional language which specifically says that when
11	combinations replicate a service, they are priced at
12	resale.
13	A That's correct, and that's my point. In
14	order to have language to address what the price
15	should be, there's additional language required. This
16	language doesn't address the price. To put the price
17	in, you need additional language. Whatever that
18	language is whatever that price is going to be,
19	it's required to be in, in addition to this language
20	in order to establish what the price is.
21	Q It's at least required to be in when the
22	other price is going to be a resale price?
23	A It's required to be in regardless of what
24	the other price is going to be.
25	Q Now, this language in Section 2.6 is not
	1

1 language that was ordered or imposed by the 2 Commission, is it?

A It's kind of hard to answer because of the way that it came about. As I said, we've agreed to this language with MCI in other states, so to that respect, I think you could say that, yes, it technically may not have been ordered.

8 However, this is the language that MCI put 9 before the Commission in the last round of discussions 10 that the Commission had. The Commission instructed 11 BellSouth to sign an agreement with this language in 12 it, and it looked at this language specifically. So 13 in that respect I would say the Commission did, in 14 fact, order us -- order this language.

Q Mr. Varner, I think the question of whether
the Commission ordered this language or whether
BellSouth agreed to it may be an important one for
this proceeding.

What I've handed you is a copy of Mr. Martinez's Exhibit RM-1, which consists of excerpts not from the final interconnection agreement, but from the BellSouth version of the proposed interconnection agreement that was submitted to the Commission on January 30 of 1997.

25

Read for me, if you would, Mr. Varner, the

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1 sentence that begins "The language."

2	A "The language that appears in normal print
3	in the proposed interconnection agreement is the
4	language to which the parties have agreed through the
5	course of negotiations over the past several months."
6	Q And then if you'd read the next sentence as
7	well.
8	A "The agreement also contains language marked
9	in bold print that is either disputed or has been
10	successful and negotiated as a result of the
11	arbitration decision."
12	Q Now let me show you Page 7 of that exhibit
13	and ask you whether the language in Section 2.6 of
14	Attachment 3 that we have been talking about is
15	indicated in boldface or not?
16	A It is not.
17	Q And does that indicate, based on the cover
18	letter, that this is language that was agreed to by
19	the parties and not language that was a result of the
20	Commission arbitrations?
21	A I don't think so, because when you go to the
22	Commission's order, you find that same language with
23	language that BellSouth had inserted into it to
24	address the pricing of unbundled network elements,
25	which the Commission told us to remove the part that

addressed the pricing and instructed us to agree to
 this language.

So I don't know whether having it not in bold print is a correct representation of what's in the letter or whether it's just a mistake on the attachment.

Q Are you aware that the cover letter of this
draft contract also contained a matrix which indicated
the sections which either had been arbitrated by the
Commission or which were still in dispute?

11 A No, I'm not. I haven't seen this letter
12 before now.

13 Q If the Commission examines this exhibit, to 14 the extent that there's no indication in the exhibit 15 that this was anything other than agreed language, 16 your testimony is it either was agreed or it was a 17 mistake in the way the language was presented when it 18 was submitted in January?

19ANo. As I've said, I've never seen this20document, and so I can't make any representations21about what's in there. I have seen the Commission's22order, however. And to determine how this language23came about and what role it plays and so forth, you24can just go to the Commission's order.

Q And by that, are you referring to the order

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of the Commission that rejected some additional
 language that BellSouth had proposed for inclusion in
 Attachment 1 to the agreement?

A It did that and some other things. The one
5 I'm referring to I think was in May; 27th, I believe,
6 was the date. It was the final order approving the
7 agreement and did several things.

8 With respect to this particular part, it 9 rejected some language that BellSouth had wanted to 10 put in and was very, very clear that the reason for 11 rejecting the language BellSouth wanted to put in was 12 that the Commission had not arbitrated the issue of 13 prices for combinations. That's why it rejected 14 language that we wanted to put in.

15 COMMISSIONER CLARK: But, Mr. Varner, it was 16 combinations that duplicated services that could be 17 resold, right?

18 WITNESS VARNER: I don't remember that specifically. I think he has it up here, so I can 19 20 see, be able to see. (Pause) Yes, that is what it was. 21 COMMISSIONER CLARK: So it wasn't all 22 combinations. 23 WITNESS VARNER: That's correct. It was 24 combinations that -- I think you used the term 25

"duplicate" or "replicate". I just saw it. Now I 1 can't find it again. (Pause) 2 Duplicate a resold service. It's actually 3 4 not up there. It's a little further down there. It's down there. 5 (By Mr. Melson) Mr. Varner, would you 6 Q 7 agree with me that the language that's shown that the Commission rejected in its May order was not even a 8 gleam in BellSouth's eye on January 30th when it 9 submitted language to the Commission which was 10 represented to the Commission to be language 11 negotiated by the parties over the past several 12 13 months? No, I wouldn't agree with that at all. 14 Ά Τ 15 mean, that language is reflecting BellSouth's position that it's taken on this issue ever since it first 16 17 arose; that the prices for combinations of UNEs that 18 replicate a retail service should be resale. 19 From the very first time that issue arose, 20 which was sometime back in 1996, that's been our 21 position, and all this language does is represent that 22 position. Mr. Varner, would you read for me the 23 Q 24 sentence, Commission language, sentence immediately 25 below that contractual language?

1	A Yes. It says "BellSouth proposes to include
2	the bold language above based solely on our
3	deliberations at our agenda conference on BellSouth's
4	motion for reconsideration in this proceeding. We
5	expressed some concern with the potential pricing of
6	UNEs to duplicate a resold service and the Order
7	reflects that concern in dicta. We stated, however,
8	that the pricing issue associated with the rebundling
9	of UNEs to duplicate a resold service was not
10	arbitrated. Accordingly, BellSouth's proposed
11	language should not be included in the agreement."
12	Q Let me ask you the question again. Isn't it
13	true that this specific language in Attachment 1 that
14	was rejected by the Commission was not a gleam in
15	BellSouth's eye on January 30th because BellSouth's
16	proposal to include the language was based solely on
17	the Commission's deliberations at an agenda conference
18	which had not been held in January?
19	A No. As I said this language represents
20	BellSouth's position that was taken in the
21	arbitration.
22	When the Commission issued its arbitration
23	order, we went in to try to establish an agreement.
24	Well, we filed motions for reconsideration. BellSouth
25	in its motion for reconsideration asked the Commission

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1	to reconsider what we thought the Commission's
2	decision was to establish these prices. The
3	Commission said, "No, we're not going to reconsider it
4	because we did not do it. We did not establish prices
5	for this stuff." So we said, "Well, okay, fine." So
6	we went ahead and went ahead and negotiated an
7	agreement with MCI based on the Commission's order and
8	based on the reconsideration order. We went and tried
9	to negotiate this provision as well as many others.
10	We wanted it to be very, very clear in here
11	that this language did not deal with pricing. And we
12	wanted to establish the price in this agreement. So
13	we put it in and reflected our position, the same one
14	that we've had all along in this language. The
15	Commission came back and told us one more time that
16	"Look, we have not addressed this issue."
17	Now, in this same order the Commission went
18	in and approved the language that MCI keeps referring
19	to that sets prices, when in this order right here
20	they say, in no uncertain terms, it's not been
21	arbitrated and we haven't set them. So how could they
22	possibly have approved language that sets prices in a
23	order when they said that they haven't approved
24	language that sets prices?
25	Q Mr. Varner, do you recall the question you
	l

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1 were answering?

Not at this point. 2 А Neither do I. 3 Q If you would look on the sheet that's in 4 front of you, which is not in bold, the contractual 5 language that's not in bold. And I'm reading from the 6 very top of what is on the screen, "When two or more 7 UNEs are combined, these prices may lead to duplicate 8 charges. BellSouth shall provide recurring and 9 10 nonrecurring charges that do not duplicate charges for functions or activities that MCIm does not need when 11 two or more network elements are combined in a single 12 order." 13 14 Does that imply to you that all other things being equal when two elements were combined in a 15 single order that the price would simply be the sum of 16 the prices for the individual elements? 17 18 A No. 19 Q If it were not the sum of the prices for the 20 individual elements, what duplication would there be 21 to eliminate? What you would have to assume, to assume 22 A what you've said, is that there is somehow represented 23 in here a price to be charged when you order the 24 elements that replicate a retail service. So if there 25

1 is no price then how could this be dealing with 2 anything concerning a price for something that doesn't 3 exist?

4 Q So it's your testimony then that this
5 language essentially has no meaning?

No, I don't agree with that. I think the 6 Ά 7 meaning that it has is the meaning that it -- that came from the Commission's order. And that is that if 8 you order multiple network elements on the same order, 9 and MCI and AT&T raised this issue, that there may be 10 11 some work functions that you perform one time, that if the networks were ordered separately on two different 12 13 orders you might have performed them two times. So to 14 the extent that happens, if you just add up the 15 nonrecurring charges, then there may be some duplicate 16 cost recovery, you need to go in and figure out to 17 what extent that occurs and how the nonrecurring charges need to be modified to take that out when that 18 kind of situation occurs. 19

It was AT&T and MCI that raised that issue, and, in fact, it's covered in their contracts; it's specifically covered in their contracts.

QI believe you've answered my question.24MR. MELSON: Thank you. I'm finished.25CHAIRMAN JOHNSON: We're going to take a

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1 || ten-minute break.

2 Before the -- the attorneys, how much time do the attorneys need here? 3 4 MR. HATCH: Well, at one point I was 5 predicting we'd be done by noon. CHAIRMAN JOHNSON: I had heard that 6 7 prediction. It looks like we're a little off. I have a fair bit yet still to 8 MR. HATCH: It depends to how hard we have to wrestle. My 9 do. 10 best guess, under normal behavior, would probably be the better part of 45 minutes to an hour. 11 CHAIRMAN JOHNSON: 12 For Varner? MR. HATCH: Yes, ma'am. 13 CHAIRMAN JOHNSON: What about Hendrix? 14 15 Probably 35, 45 minutes maybe, MR. HATCH: depending on, again, how hard we'd have to wrestle. 16 17 CHAIRMAN JOHNSON: Mr. Melson. MR. MELSON: We're guessing 20 minutes for 18 19 Mr. Hendrix and 30 minutes for Mr. Landry. 20 CHAIRMAN JOHNSON: Staff? 21 MR. PELLEGRINI: Commissioner Garcia has my 22 license to practice law so I don't know if I can 23 respond. (Laughter) With Mr. Varner, I think, ten minutes will 24 cover it, what we need to do, and it would be a matter 25

of just a few minutes for the remaining witnesses. 1 2 CHAIRMAN JOHNSON: The remaining witnesses. MR. PELLEGRINI: 3 In each case. CHAIRMAN JOHNSON: What are we doing with 4 5 Caldwell? 6 MR. PELLEGRINI: She's going to be 7 stipulated. 8 MS. WHITE: And AT&T, if they need somebody, 9 we could maybe agree to do some kind of late deposition and insert that into the record. 10 CHAIRMAN JOHNSON: Okay. And then we have 11 12 the rebuttal witness, Martinez. MS. WHITE: I just talked to my client. 13 We're willing to stipulate Mr. Martinez to move it 14 along. 15 CHAIRMAN JOHNSON: We'll stipulate --16 MR. MELSON: Staff willing, I assume. 17 MR. PELLEGRINI: Sorry? 18 MR. MELSON: Is Staff willing to stipulate 19 Mr. Martinez? 20 MR. PELLEGRINI: Stipulate Mr. Martinez? 21 MR. MELSON: That's what BellSouth just 22 said, to move things along. The answer is yes, 23 24 Charlie. (Laughter) 25 MR. PELLEGRINI: Sure.

CHAIRMAN JOHNSON: Okay. So we said an hour, Tracy, for Varner, and then maybe about --MR. HATCH: 30 to 45 minutes for. Mr. Hendrix. We probably have about 45 minutes to an hour for Mr. Landry. CHAIRMAN JOHNSON: Okay. Thank you. Thank you all. (Brief recess taken.) - - - -(Transcript continues in sequence in Volume 5.)

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