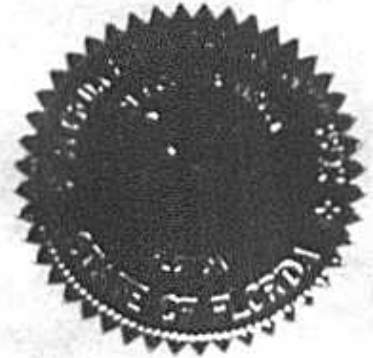


BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

-----  
 In the Matter of : DOCKET NO. 971056-TX  
 Application for certificate :  
 to provide alternative local :  
 exchange telecommunications :  
 service by BellSouth BSE, Inc. :  
 -----

VOLUME 2

Page 145 through 235



PROCEEDINGS: HEARING

BEFORE: CHAIRMAN JULIA L. JOHNSON  
 COMMISSIONER J. TERRY DEASON  
 COMMISSIONER SUSAN F. CLARK  
 COMMISSIONER JOE GARCIA  
 COMMISSIONER E. LEON JACOBS, JR.

DATE: Monday, April 27, 1998

TIME: Commenced at 1:00 p.m.  
 Concluded at 5:10 p.m.

PLACE: Betty Easley Conference Center  
 Room 148  
 4075 Esplanade Way  
 Tallahassee, Florida

REPORTED BY: JOY KELLY, CSR, RPR  
 Chief, Bureau of Reporting

APPEARANCES:  
 (As heretofore noted.)

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2 (Transcript continues in sequence from Volume 1.)

3 - - - - -

4 JOSEPH GILLAN

5 continues his testimony under oath from Volume 1

## 6 CONTINUED CROSS EXAMINATION

7 COMMISSIONER DEASON: Now, you said that  
8 there's an incentive for BellSouth to reduce its  
9 margin to be -- what's the incentive for BellSouth to  
10 reduce its margin?

11 WITNESS GILLAN: Let me take you through the  
12 following scenario.

13 LCI -- just to take the focus off AT&T and  
14 MCI for a moment, LCI enters the -- let's go down to  
15 the residential box for a moment.

16 MR. McGLOTHLIN: Before we begin,  
17 Mr. Gillan. Commissioner Deason, you said BellSouth  
18 reduces its margin. Could you clarify which BellSouth  
19 entity you're referring to in your question?

20 COMMISSIONER DEASON: Yes. I'm referring to  
21 BellSouth, the corporate entity, the parent; not BST,  
22 not BSE.

23 WITNESS GILLAN: You're referring over in  
24 the right-hand column. On the residential customer  
25 BellSouth today gets \$9 a month in gross margin from a

1 customer, correct?

2 COMMISSIONER DEASON: I'm sorry. You're  
3 doing it in business or residential?

4 WITNESS GILLAN: I'm going down to  
5 residential just to change the discussion a little  
6 bit.

7 COMMISSIONER DEASON: Fine. Yes.

8 WITNESS GILLAN: And your question is if  
9 BellSouth gets \$9 today, why should it accept less?

10 COMMISSIONER DEASON: Right. There's some  
11 motivation. And I assume it's go get another revenue  
12 stream -- or to assure some other revenue stream; is  
13 that correct?

14 WITNESS GILLAN: Well, no. I would argue to  
15 retain this revenue stream. And let me take you  
16 through the following dynamic.

17 A company -- I'll use LCI as an example  
18 because it's a company that has a large residential  
19 base and has been trying to do service resales around  
20 the country, I think in the BellSouth region but I'm  
21 not sure. They enter the market in Florida.

22 So they are going after this customer that  
23 pays, on average, \$25 a month in rates, or \$24.69 a  
24 month. Now, for LCI to attract that customer, they  
25 have got to offer them lower rates. There's just no



1 question about it.

2           So LCI, whose economics ... look down here in  
3 the lower right-hand corner -- only has \$4.63 to begin  
4 with. So let's say that it decides to really cut this  
5 very, very narrow, and what it's going to do is offer  
6 the customer \$2 less in rates. So LCI is going to  
7 offer this customer service for 22.69.

8           BellSouth looks and says, "Geez. We're  
9 starting to see customers leave us and go to LCI for  
10 \$22." Well, they've got two choices. They can reduce  
11 their rates, or, they can just have --

12           **COMMISSIONER DEASON:** They get the same  
13 revenue stream regardless of what LCI -- whether they  
14 charge 24 or 22 and they get customers, BellSouth, the  
15 corporate entity, is still getting the same revenue.

16           **WITNESS GILLAN:** That's true. But if they  
17 have BSE reduce the price, they get the same revenue  
18 and they keep the customer and there's no local  
19 competition, and that fact --

20           **COMMISSIONER DEASON:** They don't get the  
21 same revenue. They get \$2 less.

22           **WITNESS GILLAN:** No. If they are losing  
23 customers, then they can respond with their price  
24 decrease through BSE, get those customers back. So it  
25 wasn't -- so that now they are indifferent between the

1 customer going to LCI or staying with BSE in a strict  
2 financial sense, but they've now succeeded in  
3 recapturing the customers, giving those people a rate  
4 decrease -- which they could do though BSE, through  
5 price list, through some sort of promotion, win-back  
6 promotion, all kinds of things that aren't subject to  
7 the resale at discount requirement that would  
8 otherwise apply if they did it as BellSouth.

9           And I don't believe the consumers are going  
10 to ever distinguish -- understand a distinction  
11 between BellSouth-T and BellSouth-some-other-letter  
12 group, because realistically BellSouth is BellSouth.  
13 That's all they really market anyway.

14           **COMMISSIONER DEASON:** I'm having difficulty.  
15 In your hypothetical you assume that LCI reduced its  
16 rate by \$2.

17           **WITNESS GILLAN:** Yes.

18           **COMMISSIONER DEASON:** And reducing its  
19 margin by \$2.

20           **WITNESS GILLAN:** Correct.

21           **COMMISSIONER DEASON:** And that this resulted  
22 in customers leaving BellSouth to get their local  
23 service from LCI.

24           **WITNESS GILLAN:** All right.

25           **COMMISSIONER DEASON:** Okay. Now --

1           WITNESS GILLAN: I actually --

2           COMMISSIONER DEASON: -- when LCI does that,  
3 that does not affect -- what they charge their  
4 customers does not affect BellSouth's margin, correct?  
5 By having -- because those customers, they are still  
6 going to take it same margin as to whether BellSouth  
7 provides the service to that customer or whether LCI  
8 provides that service to the customer; isn't that  
9 correct?

10           WITNESS GILLAN: No. Only if -- when they  
11 lose the customer, their revenue associated with the  
12 customer drops from their retail rate to the \$20,  
13 right? So when they lost the customer, they'd lose in  
14 revenue the full \$4.60. From 24.69 to 20.06 -- if the  
15 customer went to LCI. If they win the customer back  
16 at \$22, now they get \$22 instead of \$20.06.

17           COMMISSIONER DEASON: So you're assuming,  
18 then, that the customer transfers from BellSouth to  
19 LCI, not from BSE to LCI?

20           In other words, it's an existing BellSouth  
21 customer, so then the margin is not 8 -- what is the  
22 margin then if it's a BellSouth customer and not a BSE  
23 customer?

24           WITNESS GILLAN: If it's a BellSouth  
25 customer and it went to -- I'm sorry. If it was a

1 BellSouth customer and went to LCI, BellSouth's margin  
2 would reduce by the difference between the resold  
3 rate -- or the retail rate of 24.69 and the resold  
4 revenues of 20.06.

5 COMMISSIONER DEASON: And then you're --  
6 you're saying, then, that a possible competitive  
7 reaction to that then would be for BSE then to reduce  
8 its rate to get the customer back from LCI to BSE  
9 under the BellSouth corporate umbrella.

10 WITNESS GILLAN: Yes. And, in fact, if I  
11 were BellSouth, I would begin housing all of my  
12 competitive reactions and all of my new services in  
13 BSE, both for purposes of they are not subject to the  
14 resold discount, and for purposes of they are not  
15 subject to so many of the Commission's regulations,  
16 including they're price lists, no tariffs. You can  
17 do contract service arrangements without filing.  
18 Contract service arrangements aren't subject to the  
19 wholesale rate.

20 COMMISSIONER JACOBS: In that event, if BSE  
21 is not subject to the wholesale rate, is BSE going to  
22 be able to price -- to take advantage of the  
23 differences here in margins to negotiate those  
24 contracts?

25 WITNESS GILLAN: Yes. I mean, they wouldn't



1 have to file them.

2           It's my understanding the way he rules  
3 would be, if BellSouth-T went to that customer and had  
4 a contract arrangement, they'd have to both file the  
5 contract here and allow others to resell it at a  
6 discount. If BellSouth BSE goes to that same customer  
7 and negotiates the same exact contract, neither of  
8 those two statements would be true. It wouldn't be on  
9 file here, and if people discovered it, it wouldn't be  
10 subject to any wholesale discount.

11           **COMMISSIONER JACOBS:** Could elements of it  
12 be below BSE's costs?

13           **WITNESS GILLAN:** It could be. It would be a  
14 very complicated thing to try and figure out.

15           **COMMISSIONER DEASON:** Why is it improper or  
16 unfair under your scenario, then, for BSE to reduce  
17 its rate by \$2 and try to win that customer back from  
18 LCI?

19           **WITNESS GILLAN:** Because I believe that  
20 subverts two purposes of the Act. One, to allow  
21 resale to occur at a wholesale discount. Because I  
22 believe that was written for -- to apply to BellSouth  
23 or the entity the consumers perceived as BellSouth,  
24 and I believe that that will be a single entity out  
25 there in the marketplace. So they would be able to

1 subvert the wholesale discount requirements of the  
2 Act.

3 And, secondly, they would be able to  
4 continue to compete, keeping these customers, moving  
5 customers into a deregulated mode, without ever really  
6 opening up the market to competition, as I think the  
7 Act intended.

8 So they have a vehicle here that simply has  
9 different ramifications and economics for them than  
10 anybody else, which would be used to both keep the  
11 market and subvert the wholesale rate relationships.

12 COMMISSIONER GARCIA: What if we allowed  
13 them, but then said they had to apply the discount  
14 rate to whatever they offered?

15 WITNESS GILLAN: That would be the second  
16 best solution. Actually that may be the same. I'd  
17 have to think that's through more.

18 You know, in effect, that's what we're  
19 asking you to do. If you do, in fact, give them the  
20 certificate, then just have them be subject to the  
21 same requirements as if it was BellSouth-T in terms of  
22 the wholesale discount. They'd have to file the CSA  
23 with you, so when they did those things we'd know  
24 about it and be able to take it. That's in effect  
25 what we're asking you to do.

1           **COMMISSIONER GARCIA:** And that would  
2 probably dovetail well with what Mr. S Lye said, that  
3 their interest was just simply to offer new services  
4 to different customers, right?

5           **WITNESS GILLAN:** Yes.

6           **COMMISSIONER GARCIA:** Somehow I thought  
7 you'd say yes to that.

8           **WITNESS GILLAN:** Well, I mean I've never --  
9 quite frankly, BellSouth could do this exact same  
10 thing, setting up BSE as an operating division or a  
11 business unit or anything else. They chose to make it  
12 a separate legal entity for legal reasons, not  
13 business or economic ones, or, you know, not keeping  
14 them focussed on packages.

15           **COMMISSIONER GARCIA:** What would happen if  
16 -- if we would approve this, what would happen? What  
17 would your -- those who hire you be forced to do? I  
18 know you can't tell me exactly because you have a lot  
19 of divergent customers in this, but what would you be  
20 forced -- would you have to come in and say, "This is  
21 anticompetitive." Would you have to file -- what  
22 would our rules allow you to do?

23           **WITNESS GILLAN:** I don't actually know that  
24 they would allow us to do anything meaningful, quite  
25 frankly. If you were allow us to go through --

1 basically we've tried to explain to you what we think  
2 they would do. What I think what they would admit  
3 that they would do.

4           If you allowed that to go forward, I don't  
5 really know what basis we would come back later and  
6 say, "Hey, look what they are doing." Because what  
7 they would use this authority to do doesn't appear to  
8 me to be in dispute. The only thing that's really in  
9 dispute is whether you should let them have this  
10 authority.

11           I don't think that -- I'll just leave it at  
12 that. I don't know what people would do otherwise.

13           COMMISSIONER JACOBS: Didn't I understand  
14 you earlier to say that you would recommend  
15 restricting BSE from competing on a resale basis; that  
16 they'd have to do it on an unbundled network element  
17 basis?

18           WITNESS GILLAN: That to me would at least  
19 make it so that you could theoretically put these  
20 people on the same footing. And if you could put them  
21 on the same footing, then my objections to it would  
22 scale back considerably.

23           There would still be the issue of BellSouth  
24 already has an ALEC certificate. They already can do  
25 what they want to do. But aside from that, if they



1 were offering to compete on network elements and  
2 really make those on a commercially viable basis, then  
3 I think you would be putting them on -- in the interim  
4 on, at least in theory, the same footing. There may  
5 be disputes about how true that statement is, but at  
6 least in theory it could be done.

7           COMMISSIONER JACOBS: Is there a cumulative  
8 effect here? What I hear you saying is that in terms  
9 of incremental revenue, there are inherent advantages  
10 to BSE and to BellSouth by allowing them to compete as  
11 this proposal says.

12           When I say "incremental affect" -- I'm  
13 sorry, "cumulative effect," what I'm thinking of is --  
14 I can't think of the name of the proper term now,  
15 where customers flow towards one particular provider  
16 in response to favorable pricing trends or practices.  
17 There's a formal economic term, which I can't grab  
18 ahold of right now. But the bottom line is a new  
19 entrant could come in, and this strategy to enter the  
20 market is to develop price-effective packages that go  
21 against the rest of the market. And that basically --  
22 there's a stimulation to them, and an effect of  
23 leaving other competitors in the market.

24           And here's my theory. Let me just lay this  
25 out for you. My thought is there aren't many

1 companies out there who are offering the kinds of  
2 packages that BSE has indicated it would offer. And  
3 so for that reason, it does not appear to me that  
4 there are going to be a lot of customers that are  
5 going to be taken away, at least on equal footing.  
6 Correct me if I'm wrong.

7           WITNESS GILLAN: I think in that sense  
8 you're wrong. You don't need to have multiple  
9 companies out there offering packages of local and  
10 long distance for BellSouth BSE to be very successful  
11 at this. In fact, if you look in Connecticut where  
12 SNET has been able to offer integrated packages of the  
13 kind that BSE wants to offer, they've captured, I  
14 believe, about 40% of the market in a couple of years.  
15 So this is not a trivial event. They went out and got  
16 40% of the market.

17           The reverse statistic is that others, which  
18 would require adding local to their product line, have  
19 captured about 1% of the market. But I don't -- I  
20 personally believe that if BellSouth -- if you were to  
21 approve this application, you could sit here a year  
22 from now, look out at the market, and the largest  
23 local telephone company in BellSouth's territory would  
24 still be BellSouth-T and the second largest would be  
25 BellSouth-E. And then way, way, way, way down there

1 might be some other providers. But absent any kind of  
2 real change, that's what you would see. And the  
3 reason would be because BellSouth BSE would be using  
4 something that wasn't really available to other  
5 entrants. And they would not really be a competitor  
6 like those other carriers.

7           **COMMISSIONER JACOBS:** And it's your  
8 contention that that market share that BSE gains would  
9 be, in large measure, those customers who left  
10 BellSouth, or would it be customers who left some of  
11 the other companies?

12           **WITNESS GILLAN:** I would expect this to be  
13 predominantly BellSouth customers. That BellSouth  
14 BSE's success in attracting customers in competition  
15 with the other incumbent LECs would be far, far, far  
16 lower than what they were experiencing in their own  
17 territory. This isn't really about them competing in  
18 Tampa, and it's not about them competing in Winter  
19 Park, which, I guess, is the United territory. This  
20 is about them getting customers in their own  
21 territory. The other stuff is sort of tangential.

22           **Q**           **(By Mr. Early)** Mr. Gillan, just a second  
23 ago you said something, and I have to challenge you on  
24 it.

25                           I believe you said that this type of

1 activity that you believed that BSE would engage in;  
2 is that not correct?

3 A You mean offering integrated packages? Yes.

4 Q No. This kind of pricing activity that  
5 you've outlined in your exhibit. You believe BSE will  
6 price its services something like this type of example  
7 that you've given here.

8 A This doesn't actually assume that BSE prices  
9 its services in any particular way. This is the  
10 typical customer profile for a BellSouth business and  
11 residential customer today and shows what the  
12 available margins would look like.

13 Q You said you believed that the type of  
14 anticompetitive pricing activity that you are  
15 discussing with the Commission was the type of  
16 activity that BellSouth BSE would engage in; did you  
17 not?

18 A Yes. I don't want to mince words. I just  
19 want you to understand that what I was showing is that  
20 this is inherently anticompetitive. It doesn't really  
21 presume any particular pricing behavior on the part of  
22 the BellSouth BSE. Although I would expect BellSouth  
23 BSE, to the extent it faces competition, responding  
24 with price reductions through BellSouth BSE. I think  
25 that was the only real assumption I made, that that



1 would be the vehicle that they used.

2 Q And then you said that you believed that  
3 BellSouth BSE would admit that it would engage in this  
4 type of anticompetitive pricing activity?

5 A Yes. Although, I'm not sure -- I never I  
6 don't think I referred to it in that particular  
7 example. I was really just trying to say that you  
8 would admit that you intend to offer packages, and  
9 that you intend to market -- to the portion of the  
10 population who wants packaged services, you intend to  
11 use BSE to address that portion of the market. And  
12 that is, in my opinion, the future. I'm not sure that  
13 you'd agree that that's the future, but I think that's  
14 what your Annual Report says, anyway.

15 Q So then what your saying to the Commission  
16 -- you have not heard anybody, either myself or  
17 anybody testifying on behalf of BellSouth BSE admit it  
18 would engage in anti-competitive activity?

19 A No. That's absolutely true.

20 Q Now, with regard to the contract service  
21 arrangement example, Mr. Gillan, that you talked about  
22 earlier, I believe, with one of the Commissioners,  
23 with regard to the large business customer that is the  
24 example that Mr. Scheye used and that you were  
25 discussing, which do you suppose is the larger revenue

1 stream to the appropriate carrier with regard to those  
2 type of residence, the local exchange revenue or the  
3 long distance revenues?

4 A It depends on the business.

5 Q With regard to the typical large business?

6 A I'd expect it's the local revenues.

7 Q Your testimony is with respect to the  
8 typical large business customer, that local revenues  
9 are a larger portion of their telecommunications bill  
10 than long distance revenues.

11 A A typical business?

12 Q Would you admit --

13 A I'm not sure that the statistic is  
14 meaningful, but, yes, when the FCC introduced the  
15 PIC-C, which was a charge per line, the carriers that  
16 focussed on the medium and large business market, the  
17 long distance carriers, discovered that their costs  
18 went up dramatically relative to the kind of access  
19 savings they enjoy. And the reason for that was --

20 COMMISSIONER CLARK: Mr. Gillan, would you  
21 answer his question, please?

22 WITNESS GILLAN: Commissioner, I --

23 COMMISSIONER CLARK: He just was asking from  
24 which service typical large customers -- what revenues  
25 is the company likely to get most of its revenue, from

1 local or long distance? Can you answer that?

2 WITNESS GILLAN: I'm sorry. My answer was  
3 local. And then what I was offering was the  
4 explanation factually as to why I believe that to be  
5 the case.

6 Q (By Mr. Early) Well, would you deny that  
7 with the typical large business customers that there  
8 are both local and long distance revenues?

9 A No. You said I would deny that.

10 Q So your testimony is that somehow BellSouth  
11 BSE would be able to move a large business customer to  
12 a contract arrangement without anybody knowing about  
13 it, including their own long distance carrier?

14 A No. I think my testimony -- my testimony  
15 intended to convey that it would begin to happen,  
16 sales people would be the first ones to notice, and  
17 that it would take quite a few of these before there  
18 was any kind of systemic knowledge about it.

19 Q Now, you testified in Kentucky on behalf of  
20 many of these intervenors on Friday, did you not?

21 A Yes.

22 Q Okay. And you testified in response to  
23 Staff questions that you did not believe that there  
24 were any safeguards that the Kentucky Commission could  
25 implement which would protect against the kind

1 anticompetitive activity that you allege BellSouth BSE  
2 might engage in; is that not correct?

3       A     I don't recall that it was so broad that  
4 there were no safeguards. We were talking about some  
5 items in the Georgia order specifically that -- which  
6 were really reporting requirements that I didn't  
7 believe were effective. But I do believe we talked  
8 about making network elements available as a potential  
9 safeguard, so I don't think you're characterization is  
10 accurate.

11       Q     Okay. Mr. Gillan, it's your testimony  
12 before this Commission that BellSouth BSE would be  
13 able to engage in the kind of anticompetitive activity  
14 which would basically foreclose the entire local  
15 market to competition in the state of Florida, and  
16 neither this Commission nor any of the competitors  
17 would know about it or be able to do anything about  
18 it. Is that correct?

19       A     No. But I don't know -- I am testifying  
20 that it would take time to know about it, and I don't  
21 know what the remedies would be afterwards short of  
22 perhaps bringing BellSouth BSE back in as an incumbent  
23 and implementing the requirements that we're asking  
24 for today.

25               MR. EARLY: Thank you, Madam Chairman.



1 That's all I have.

2 CHAIRMAN JOHNSON: We're going to take a  
3 10-minute break.

4 (Brief recess taken.)

5 - - - - -

6 CHAIRMAN JOHNSON: We're going to go back on  
7 the record. Staff.

8 CROSS EXAMINATION

9 BY MS. BEDELL:

10 Q Mr. Gillan, good afternoon.

11 A Good afternoon.

12 Q On Page 5 of your testimony, at Lines 1  
13 through 2, you state that if BSE is granted a  
14 statewide certificate, then BellSouth  
15 Telecommunications has effectively avoided its  
16 obligations under the federal act?

17 Could you explain to us exactly how it is  
18 that BellSouth Telecommunications avoids its  
19 obligations under the federal act?

20 A That portion was referring to the obligation  
21 to have retail services available at a wholesale  
22 discount. By offering services through BellSouth BSE,  
23 it's not subject to its obligations, and those prices  
24 would become the market price.

25 Q That's what is in your numbers sheet that

1 you handed out?

2 A Partially that, yes.

3 Q And would those same obligations be avoided  
4 if BellSouth Telecommunications, the ALEC, were to  
5 begin providing service within the ILECs territory?

6 A No.

7 Q And why?

8 A They would still be subject to the  
9 requirements of Section 251. They would be required  
10 to provide their services at a wholesale discount.

11 Q And do you know whether there are any  
12 restrictions that preclude BellSouth  
13 Telecommunications ALEC from providing the services --  
14 from providing services within the ILEC territory?

15 A None that I'm aware of.

16 Q And in your opinion what difference does it  
17 make if BSE also enters BellSouth Telecommunications'  
18 ILEC territory?

19 A The reasons contained in my testimony and  
20 explained this morning. It would give them an  
21 opportunity to avoid the wholesale discount and  
22 effectively end up at the end of the day being the  
23 dominant LEC because they would be the provider of  
24 packages. And I believe that's where the market is  
25 headed, only they would be there without any

1 regulation of any kind. In particular, though, in the  
2 short-term would be the effect on wholesale rates and  
3 the CSAs.

4 Q At Page 7 of your testimony you state that  
5 BSE will have lower regulatory obligations than the  
6 affiliate ILEC. Can you describe what those lower  
7 regulatory obligations are?

8 A The two -- there's a couple. There are all  
9 of the obligations under Section 251 of the Act, such  
10 as making services available for resale and wholesale  
11 discount. In addition, there are the regulatory  
12 obligations that this Commission has that applies to  
13 the BellSouth-T out of the state law to have tariffs,  
14 to file any contract service arrangements with the  
15 Commission. Those are a higher level of regulation  
16 than applies to ALECs. Those regulatory obligations  
17 would be lessened as well.

18 Q And do you believe that lessening those  
19 would make BSE's entry into the market unfair to the  
20 other ALECs?

21 A I believe that those reduced regulatory  
22 obligations are designed for a firm that doesn't have  
23 any kind of market advantage, and I believe that  
24 BellSouth BSE is nothing more than BellSouth under a  
25 different footnote, if you will. To me BSE stands for

1 "Bell shadow entrant." It is BellSouth.

2 Q On Page 6 of your testimony you state that  
3 you do not believe that BSE and BellSouth  
4 Telecommunications will interact in an arm's-length  
5 basis.

6 If BSE uses the same interfaces and  
7 operational support systems available -- made  
8 available by BellSouth Telecommunications to all of  
9 the ALECs, and if BSE maintains separate books,  
10 records and accounts separate from BellSouth  
11 Telecommunications, would that constitute operating in  
12 an arms-length basis?

13 A No. I believe that you would have to have a  
14 requirement that the only things they could purchase  
15 were items at a cost-based rate. The arithmetic  
16 example we talked about at such length before showed  
17 there is no real arm's length economic relationship  
18 between these two entities with a single stockholder.

19 Q I think it's fairly undisputed in this  
20 proceeding that there are several ILECs that have ALEC  
21 certificates that allow those ALECs to operate in the  
22 ILEC's service area. For those that are operating in  
23 that fashion, are you aware of any instance where the  
24 harms that you've described in your testimony have  
25 actually occurred?



1           A     No, but only because there hasn't been any  
2 real world experience -- to my knowledge any real  
3 world experience with that.

4                     And on that point, I know PacBell tried to  
5 do the same thing. And because of opposition at the  
6 California Commission, my understanding is they  
7 withdrew the application. So there's no finding from  
8 the California Commission because the application was  
9 withdrawn.

10                    I would disagree with Mr. Scheye's  
11 interpretation of the Texas example. The Texas  
12 proceeding was about the dangers of GTE participating  
13 in this way in the marketplace. And while it is true  
14 that the Commission's order cited the legal rationale  
15 for rejecting GTE's application, it's press release  
16 made clear they were rejecting it for the legal  
17 rationale and the policy rationale, that it made a  
18 mockery of the entire regulatory system for GTE.

19                    In terms of those other ones that BellSouth  
20 offers up, I have not read those orders. But it seems  
21 to me that in most instances what those are, are  
22 states where the small ILEC asked for a certificate.  
23 I have no way, base on that list, of knowing whether  
24 or not those examples are like this example, or  
25 whether or not those are legitimate requests by the

1 ILECs in those states to enter the Bell Operating  
2 Company territory and actually compete. And it's just  
3 a coincidence that it was a request for a statewide  
4 certificate.

5 Base on that list, I don't know if it's like  
6 this example or whether or not those are truly ILECs  
7 asking for certificate with a principal intention of  
8 competing with a neighboring or an adjacent LEC. It's  
9 just impossible -- it could be either way. I don't  
10 know.

11 Q I think you may have answered this question  
12 in another fashion, but I'm going to ask it.

13 Why is the granting of this particular  
14 certificate for BSE to serve in its ILEC territory  
15 more objectionable than the ALEC certificate that  
16 we've already issued to BST?

17 A Principally because this certificate  
18 application creates an entity that would not be  
19 subject to Section 251, and would now be subject to  
20 other rules that would otherwise apply to BST. So I  
21 think this one raises different issues in terms of the  
22 threat of competitive danger is higher here in terms  
23 what is in it for BellSouth. I mean, they have  
24 already have a ALEC certificate.

25 COMMISSIONER DEASON: What restrictions are

1 | those? Joint marketing and the requirement to offer a  
2 | discount for resold services?

3 |           WITNESS GILLAN: Well, the services that are  
4 | resold discount is one requirement; the tariff, the  
5 | requirement to make CSAs available.

6 |           Quite frankly, after listening to  
7 | Mr. Scheye, I haven't a clue what he was talking about  
8 | in terms of the joint marketing aspect of this. And,  
9 | in fact, it seemed to me when you distilled it down he  
10 | was saying that they were afraid the FCC will apply a  
11 | rule to them, and that this will circumvent it ahead  
12 | of time. I'm not aware of a rule that is actually --  
13 | a joint marketing restriction that would be affected  
14 | by this.

15 |           COMMISSIONER DEASON: So BST ALEC, they have  
16 | the requirement to offer a discount on resold services  
17 | and the requirement to provide tariffs or price lists?

18 |           WITNESS GILLAN: Correct. Because they are  
19 | the still the incumbent LEC, is my understanding, yes.  
20 | But they would still be able to compete outside of  
21 | their territory as an ALEC doing whatever they wanted  
22 | because they would still be competing against GTE or  
23 | United.

24 |           Q           (By Ms. Bedell) Can you cite to us any  
25 | provisions in either the federal act or the Florida

1 Statutes which prohibit BSE's entry as an ALEC into  
2 the service territory of BellSouth Telecommunications?

3 A I don't believe that there are provisions  
4 which I can cite and say, "There, that prohibits it,  
5 you must prohibit it. I believe that you have the  
6 authority to put these restrictions on, and so it's a  
7 question open to the Commission. It's not dictated by  
8 statute, but it's open to it.

9 For instance, I know that I cited one  
10 statutory provision where the state statute recognized  
11 the notion that there would be different -- that they  
12 were directing the Commission -- the legislature  
13 directed the Commission to promote competition by  
14 subjecting new entrants to a lesser level of  
15 regulatory oversight than incumbent local carriers.  
16 So I think that intrinsic in the statute is the notion  
17 that there should be a distinction between legitimate  
18 entrants and incumbents. But there's nothing that  
19 specifically tells you to reject this, although I  
20 think there's statutory authority to do so.

21 Q And you would rely on that statute you cited  
22 in your testimony?

23 A That, and whatever it is my lawyers put in  
24 the brief.

25 MS. BIDELE: Staff doesn't have any further



1 questions.

2 CHAIRMAN JOHNSON: Commissioners? Redirect.

3 MR. MCGLOTHLIN: No redirect, Chairman

4 Johnson.

5 CHAIRMAN JOHNSON: Exhibits.

6 MR. MCGLOTHLIN: I move Exhibit 5.

7 CHAIRMAN JOHNSON: Show that admitted

8 without objection.

9 (Exhibit 5 received in evidence.)

10 CHAIRMAN JOHNSON: Thank you Mr. Gillan.

11 And we have additional documents to take  
12 official recognitions. Let the record reflect -- I  
13 don't know if I did this before, that the documents  
14 that were listed before the witness, that the  
15 Commission will take official recognition of those  
16 listed documents. And now, Mr. Early.

17 MR. EARLY: Yes, ma'am. I've given each  
18 Commissioner a list of 11 orders from seven individual  
19 states, and have included copies of the orders. And I  
20 would ask the Commission to take official recognition  
21 of those as well as.

22 CHAIRMAN JOHNSON: Okay. We'll take  
23 official recognition of the orders that are listed --  
24 do you want this as an exhibit and that way we don't  
25 have to go through them?

1 MR. EARLY: Yes.

2 CHAIRMAN JOHNSON: Okay. We'll identify  
3 this as Exhibit 6, and it will be BSE official  
4 recognition list, and we'll show that admitted without  
5 objection.

6 (Exhibit 6 marked for identification and  
7 received in evidence.)

8 CHAIRMAN JOHNSON: I think we're prepared,  
9 then, for you to call your witness.

10 MR. EARLY: BellSouth BSE, Inc., would  
11 recall Robert C. Scheye.

12 - - - - -

13 ROBERT C. SCHEYE

14 was called as a rebuttal witness on behalf of  
15 BellSouth BSE, Inc. and, having been duly sworn,  
16 testified as follows:

17 DIRECT EXAMINATION

18 BY MR. EARLY:

19 Q Mr. Scheye, you earlier provided direct  
20 testimony to the Commission in this proceeding; is  
21 that correct?

22 A Yes.

23 Q Have you also filed rebuttal testimony in  
24 this matter?

25 A Yes.

1 Q Do you have any additions or corrections to  
2 your rebuttal testimony?

3 A No, I don't.

4 Q Did your testimony utilize exhibits?

5 A Yes, it did.

6 MR. EARLY: I would like to have  
7 Mr. Scheye's rebuttal exhibits marked for  
8 identification.

9 CHAIRMAN JOHNSON: That will be marked as  
10 Composite Exhibit 7.

11 MR. EARLY: And I would ask that  
12 Mr. Scheye's testimony and the exhibits attached be  
13 introduced into the record.

14 CHAIRMAN JOHNSON: I'm sorry.

15 MR. EARLY: That his rebuttal testimony and  
16 the attached exhibits be introduced as part of the  
17 record of this proceeding.

18 (Exhibit 7 marked for identification.)

19 CHAIRMAN JOHNSON: We'll admit his testimony  
20 as though stated. We'll save admitting the exhibits  
21 until the end. So we'll insert your testimony into  
22 the record as though read.

23

24

25

1 BELL SOUTH BSE, INC.  
2 REBUTTAL TESTIMONY OF ROBERT C. SCHEYE  
3 BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION  
4 DOCKET NO. 97-1056  
5

6 Q. PLEASE STATE YOUR NAME AND ADDRESS.  
7

8 A. My name is Robert C. Scheye and my business address is 2727 Paces Ferry Road, Suite  
9 1100, Atlanta, Georgia 30339.  
10

11 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?  
12

13 A. The purpose of my testimony is to address those points raised by Mr. Gillan in his direct  
14 testimony submitted in this proceeding. Mr. Gillan attempts to argue that BSE's certificate  
15 should be denied for that portion of Florida in which BellSouth Telecommunications (BST)  
16 operates.  
17

18 Q. IS THERE ANYTHING IN MR. GILLAN'S TESTIMONY THAT WOULD SUGGEST  
19 THE COMMISSION NOT APPROVE OR PLACE LIMITS ON BSE'S CERTIFICATE  
20 AS AN ALEC IN FLORIDA?  
21

22 A. No. Mr. Gillan presents no new issues. These same issues have been dealt with in other  
23 states and at the FCC. The basis of his argument includes "concerns" over hypothetical  
24 impacts on competition in Florida, as well as the 1996 and the FCC rules. He also cites a  
25 press release issued by the Texas Public Service Commission as a reason for denying BSE's



1 request. An analysis of the issues raised by Mr. Gillan actually provides support for  
2 granting BSE's request.

3  
4 Attached Exhibit 1 (a revised version of the Exhibit 1 attached to my prefiled testimony)  
5 summarizes twenty-three instances where ALECs have been approved in the territory  
6 served by their affiliated ILEC. These include approvals of BellSouth BSE by public  
7 service commissions in South Carolina, Alabama and most recently, Georgia. To my  
8 knowledge, in only two cases (GTE in Texas, mentioned by Mr. Gillan, and GTE in  
9 Michigan) in the country have commissions denied a request by a CLEC affiliate of an  
10 ILEC for authority in the territory served by the ILEC. However, in those cases, unique  
11 circumstances, not applicable here, existed. This difference was even cited by the  
12 Hearing Officer's recommendation to approve BSE in Georgia. "The decision by the  
13 Texas Public Utility Commission (Docket No. 16495, November 20, 1997) cited as  
14 support for denying the Applicant certification, is distinguishable in that that decision was  
15 based upon specific Texas laws." Therefore, the overwhelming weight of authority of  
16 other commissions that have addressed this issue indicates that approval should be granted.

17  
18 Mr. Gillan also states the Commission should deny BellSouth a certificate to "compete  
19 against itself." At least Mr. Gillan recognizes that BSE will be a competitive carrier.  
20 However, by contrast, this argument is the exact opposite of the testimony filed by the  
21 witness for AT&T and MCI in other states where BSE has filed for certification. In the  
22 most recent instance in Tennessee, testimony in opposition to BSE's request was that  
23 "within the home service territory of BST, BSE can not, by any reasonable measure, be  
24 considered a "competitive" carrier." More importantly, companies having several affiliates  
25 or products in direct competition with each other are certainly quite common. Outside our

1 industry, one can think about General Motors or Coca Cola as just two such companies.  
2 Within telecommunications, companies such as MCI have several affiliates in the same  
3 product and market area.

4  
5 Mr. Gillan says we are trying to rewrite the 1996 Act, Chapter 364 and the FCC rules. In  
6 fact (as is discussed below), both the 1996 Act and the FCC's rules fully recognize that  
7 ILECs may wish to establish ALEC affiliates. Thus, safeguards contained in the Act and  
8 the FCC rules under the Act anticipated this situation.

9  
10 Overall, it seems more probable that Mr. Gillan's objections are founded more in the  
11 belief that his sponsors anticipate that BSE will be a viable competitor providing services  
12 that customers may want and, would prefer not to have to deal with such a competitor.

13  
14 Q. DOES THE DECISION OF THE TEXAS COMMISSION SUPPORT DENIAL OF  
15 BELLSOUTH BSE'S APPLICATION IN FLORIDA?

16  
17 A. No. The order of the Texas Commission, mentioned by Mr. Gillan, states that its  
18 decision was based on a Texas statute, in "PURA 54.102(e)", which prohibits affiliated  
19 companies from being certificated as both a ALEC and an ILEC. I am not aware of any  
20 such law applicable to the State of Florida, nor could Mr. Gillan reference any Florida  
21 statute similar in effect to the one in Texas. As discussed previously, the Hearing  
22 Officer's recommendation for approval in Georgia indicated that the Texas decision was  
23 based upon a specific legal requirement in Texas.

24  
25

1 Q. CAN YOU DESCRIBE HOW OTHER COMMISSIONS IN THE BELLSOUTH  
2 REGION HAVE DEALT WITH SOME OF THESE ISSUES?

3

4 A. Yes. As stated in my direct testimony, with regard to claims of adverse effects on the  
5 public interest and safeguards to forestall anticompetitive activity, the South Carolina  
6 Commission said, "...there is simply no evidence in the record of such adverse effects on  
7 the public...and ...the parties made no showing of the need for the establishment of  
8 safeguards from potential anticompetitive effects." Also, after hearing the same  
9 testimony from AT&T and MCI the Alabama Commission found, "...that the Applicant  
10 has demonstrated that it possesses the technical, managerial and financial resources to  
11 provide the services proposed. It further appears that the Applicant had demonstrated that  
12 the public interest would be best served by its proposed operations." Further, the Georgia  
13 Commission certified BSE on March 5, 1998 and adopted the Hearing Officer's  
14 recommendation 5 to 0. Attached here as Exhibit 2, is the Recommendation of the  
15 Hearing Officer in Georgia Docket No. 8043-U, BellSouth BSE, Inc. Application for  
16 Certification of Authority to Provide Local Exchange Telephone Service. Also attached  
17 as Exhibits 3 and 4 are the Orders granting BellSouth BSE ALEC certificates for the  
18 states of South Carolina and Alabama.

19

20 Q. DOES THE 1996 TELECOMMUNICATIONS ACT SUPPORT THE ABILITY OF AN  
21 AFFILIATE OF AN ILEC TO PROVIDE LOCAL EXCHANGE SERVICE WITHIN  
22 THE SERVING TERRITORY OF THE ILEC?

23

24 A. Yes. As pointed out in my direct testimony, both the 1996 Act and the rules of the FCC  
25 under the 1996 Act specifically address the situation when a company that is an affiliate



1 of an ILEC provides local exchange service in the same serving territory as the ILEC.  
2 Both the 1996 Act and the FCC adopt specific provisions as to how this must be done.  
3 Obviously, if the 1996 Act and the FCC did not agree that such activity might take place,  
4 there would have been no need to adopt such provisions. Section 272(e) of the 1996 Act  
5 states that the ILEC must "fulfill any requests from an unaffiliated entity for telephone  
6 exchange service and exchange access within a period no longer than the period in which  
7 it provides such ...[services]... to itself or to its affiliates." (emphasis added). Further,  
8 Section 272(g) clearly permits the affiliate of a BOC to provide telephone exchange  
9 services if the BOC permits other entities to market and sell its services as well. For the  
10 purpose of applying these type of provisions, BellSouth BSE can be considered to be  
11 such an affiliate.

12  
13 Also as described in my direct testimony, Sections 251 and 252 of the Act require the  
14 ILEC to treat all ALECs on a nondiscriminatory basis. These provisions ensure, despite  
15 Mr. Gillan's assertion of collusion and favoritism, that BST cannot provide any advantage  
16 in the marketplace to BellSouth BSE.

17  
18 Q. DO THE FCC'S RULES ALSO RECOGNIZE THAT AN ILEC COULD HAVE AN  
19 AFFILIATE THAT CAN ALSO PROVIDE LOCAL EXCHANGE SERVICE?

20  
21 A. Yes. The FCC has clearly endorsed the position that the 1996 Act approves the provision  
22 of local exchange services by an ALEC affiliate of an ILEC within the ILEC's territory.  
23 The FCC stated in its Order No. 96-149 (December 23, 1996) that "We find no basis...to  
24 find that a BOC affiliate must be classified as an incumbent LEC under Section 251(h)(2)  
25 merely because it is engaged in local exchange activities." Supra at para. 312. The FCC



1 specifically found that an ALEC affiliate of a BOC or an ILEC is not subject to ILEC  
2 status unless it is a successor or assign of the BOC or ILEC. Id. BellSouth BSE is not a  
3 successor or assign of BellSouth Telecommunications and therefore is not an ILEC.

4 Again, as pointed out in my direct testimony, the FCC found that the same arguments put  
5 forth by Mr. Gillan in opposition to BellSouth BSE's certification in Florida (i.e.,  
6 allowing ILEC affiliates to provide local exchange service provides opportunities for  
7 discrimination and cross-subsidy) to be "speculative" and "non-persuasive." FCC Order  
8 No. 96-149 at para. 314. The FCC concluded "In sum, we find no basis in the record for  
9 concluding that competition in the local market would be harmed if a section 272 affiliate  
10 offers local exchange service to the public that is similar to local exchange service offered  
11 by the BOC" (Emphasis added). FCC Order No. 96-149 at para. 315. Additionally, the  
12 FCC wrote that the "increased flexibility resulting from the ability to provide both  
13 interLATA and local services from the same entity serves the public interest" by  
14 encouraging such an affiliate to "provide innovative new services." Id.

15  
16 These provisions from both the Act and the FCC's Order are only applicable to a situation  
17 such as that presented here, i.e. an ILEC's affiliate seeking certification to provide local  
18 services within the territory served by the ILEC. To suggest that such a situation was not  
19 envisioned is simply ludicrous.

20  
21 Q. IS BELLSOUTH BSE SEEKING ANY ADVANTAGES OVER OTHER ALECS?

22  
23 A. No. Mr. Gillan says we are seeking back door deregulation. Again this is simply not  
24 true. BellSouth BSE will comply with all rules in place for ALECs. Any interconnection  
25 agreement between BSE and BST will be available for review by all interested parties.

1 Similarly, if BSE chooses to operate under the terms of an approved statement of  
2 Generally Available Terms and Conditions ("SGAT"), it too must be publicly available.  
3 In interfacing with BST, we will use the identical Operational Support Systems (OSS)  
4 capabilities as are available to any other ALEC.

5  
6 BSE anticipates reselling BST local wireline service in BST's serving territory.  
7 Therefore, by definition, BSE will not provide any underlying capability that BST does  
8 not have. However, by coupling these resold services with other services and offering  
9 these services across a broader geographic area, the overall services BSE offers to its  
10 customers will differ from those provided by BST. If they want, any other ALEC can  
11 purchase these services from BST at the same discount rate, terms and conditions and do  
12 exactly the same thing as BSE. Therefore, BSE is acting as an ALEC in every possible  
13 way.

14  
15 Q. WILL BELLSOUTH BST BE ABLE TO AVOID ITS OBLIGATIONS UNDER THE  
16 ACT IF THIS COMMISSION APPROVES BSE'S REQUEST FOR CERTIFICATION?

17  
18 A. Absolutely not. Mr. Gillan apparently believes that the certification of BSE will permit  
19 BST to avoid its resale obligations because BSE could price services at or below the  
20 wholesale rates we must pay to BST. BSE will obtain wholesale services from BST and  
21 other ILECs on the same terms as everyone else. We will have to develop new and  
22 innovative ways to sell these and other services to customers in order for BSE to be  
23 profitable, just as all other ALECs must. If we are able to provide services that customers  
24 want at prices they are willing to pay, then, of course, customers benefit.

25

1 Further, on a common sense basis, Mr. Gillan's argument just doesn't make sense. BST is  
2 paid its wholesale rate by any reseller. Therefore, BST is indifferent as to who the  
3 reseller is. In fact, if BSE were to purchase wholesale services and lose money by not  
4 pricing its retail services adequately, then BellSouth Corporation as a whole is actually  
5 worse off than if some unaffiliated reseller is purchasing the wholesale service and paying  
6 BST its wholesale rate. In other words, if BSE priced its retail services as Mr. Gillan  
7 suggests, BellSouth Corporation would be making less money than if a non-affiliate  
8 purchased the resold service. This result is certainly not in accord with prudent financial  
9 and business criteria. Finally, it is probable that if BSE attempted to do what Mr. Gillan  
10 suggests, some other carriers would bring these practices to the attention of this  
11 Commission or the courts.

12  
13 Q. IS MAXIMIZING SHAREHOLDER VALUE INCONSISTENT WITH AN ARMS  
14 LENGTH RELATIONSHIP, AS MR. GILLAN APPARENTLY BELIEVES?

15  
16 A. No, just the opposite. The creation of BSE is intended to grow shareholder value by  
17 providing customers new, innovative services. The creation of a separate affiliate can  
18 foster that effort by allowing it to focus on and provide services different from and in  
19 addition to those that are available from the incumbent. To believe that a company  
20 cannot have two (or more) independently operating units that both contribute to  
21 shareholder value ignore the realities of the marketplace.

22  
23 Q. IS THERE ANY REASON THAT BELL SOUTH BSE SHOULDN'T WANT TO  
24 CAPITALIZE ON THE BELL SOUTH NAME?



1 A. Capitalizing on a corporate brand is very common. The list of companies that  
2 consciously extend their brands is very long, e.g. Coca-Cola, Honda, General Motors,  
3 Harley Davidson, etc. Within the telecommunications industry, GTL, Sprint, AT&T, to  
4 name just a few, have relied on their corporate brands. These companies offer many  
5 products through many entities and their customers are not confused. They spend millions  
6 of dollars on brand recognition. Even in the telecommunications field, companies such as  
7 AT&T and MCI market numerous services under their brand name. Somehow, though,  
8 Mr. Gillan believes this is wrong for BellSouth. Additionally, Congress and the FCC  
9 established rules for the creation of affiliates that assure full and fair competition and  
10 nondiscrimination of treatment of all carriers, including CLECs. Nothing in these rules  
11 prohibit an affiliate from using its corporate name in providing services. Any such  
12 prohibition would seem to 1) limit competition, not foster it, and 2) lead to customer  
13 confusion because the name of the company is not adequately identified.

14  
15 Q. DOES BELLSOUTH BSE PLAN TO PROVIDE DIFFERENTIATED PRODUCTS?

16  
17 A. Yes. Mr. Gillan uses the argument that he believes that BSE is not an independent entity  
18 and therefore could not provide any differentiation. As stated previously, BSE will  
19 package resold services with other services and offer these services to customers within  
20 and beyond the nine state BellSouth region. Mr. Gillan seems to think only in terms of  
21 price issue and ignores service. For example, he concludes that resale can only be  
22 attractive to BSE because the economics of resale do not apply to BSE. This is clearly  
23 not the case, nor does this represent a comprehensive view of the marketplace.  
24 Additional customer convenience and the benefit of customers having additional choices  
25 are meaningful. Providing separate services, customer convenience and service of having



1 one point of contact over a multi-state area and benefits of additional choices will make  
2 BSE distinctive in the marketplace. This benefit was recognized in the Georgia  
3 proceeding, see Exhibit 2. Of course, Mr. Gillan's comments also ignore the fact that  
4 there are resellers already that have created successful businesses.

5  
6 Q. DO YOU HAVE ANY CONCLUDING REMARKS?

7  
8 A. Yes. Mr. Gillan states that the carriers sponsoring his testimony have no objection to  
9 BSE's entry as an ALEC outside BST's territory. This, in itself, says that they agree that  
10 BSE has the technical, financial and managerial capabilities to provide local exchange  
11 services in Florida, the fundamental criteria for certification. To restate Section 364.337  
12 (1), Fla. Stat., "The commission shall grant a certificate of authority to provide alternative  
13 local exchange service upon a showing that the applicant has sufficient technical, financial  
14 and managerial capability to provide such service in the geographic area proposed to be  
15 served.... It is the intent of the Legislature that the commission act expeditiously to grant  
16 certificates of authority under this section and that the grant of certificates not be affected by  
17 the application of any criteria other than that specifically enumerated in this subsection."  
18 (emphasis added). Presumably, after a company was certified, the Commission had ample  
19 authority to deal with any legitimate concerns that arose and that it would not have to deal  
20 with the purely theoretical.

21  
22 As has already occurred in other states, the Commission should apply the same standard  
23 for certification to BSE as it has for the numerous other ALECs already approved in  
24 Florida. The rules of the Florida Public Service Commission, the Federal  
25 Communications Act of 1996 and the rules and regulations of the FCC encourage the

1 type of new and innovative competitive services that BSE will provide as a benefit to  
2 consumers. These same rules and regulations contain adequate safeguards to insure  
3 against any potential harm to competition or to customers that might occur.  
4

5 In addition, Mr. Gillan has attempted to raise several issues attempting to show why the  
6 certificate as requested should not be granted. As has been shown, all these arguments  
7 are without merit. For example, the "sum and substance" of the argument is that BSE  
8 should not favor select customers by offering targeted products (p. 10), can only be  
9 attractive if the economics of service resale do not apply (p. 15), cannot be an  
10 independent entity if it is attempting to maximize shareholder value (p. 6), and is  
11 advantaged if it uses the "BellSouth" name (p. 7). These supposed concerns ignore the  
12 terms of the 1996 Act, the FCC's rules, and this Commission's authority and rules. They  
13 also ignore the telecommunications marketplace. BSE will be offering customers  
14 services and options not currently available. It is this final point that actually appears to  
15 be motivating the intervenors.  
16

17 Apparently, they view BSE as a real potential competitor that they would simply prefer  
18 not to contend with -- an attitude completely opposite the open market policies which  
19 benefit consumers and are the bedrock of the 1996 Telecommunications Act. Therefore, I  
20 respectfully request that the Commission approve BSE's application for certification as an  
21 ALEC.  
22

23 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

24  
25 A. Yes.

1 Q (By Mr. Early) Mr. Scheye, can you briefly  
2 summarize your rebuttal testimony to Mr. Gillan's  
3 direct testimony?

4 A Yes. And let me just talk about two simple  
5 points.

6 There seems to be the issue of whether  
7 BellSouth is allowed to have an affiliate, such as  
8 BSE. And secondly, if it is, what mode of operation  
9 should it have?

10 Referencing both the Telecommunications Act  
11 and the FCC rules, it is clearly anticipated that an  
12 affiliate such as BellSouth BSE is allowed to exist,  
13 may exist, and is in the public interest. There  
14 should be no issue that BellSouth BSE is allowed to  
15 exist, and it is allowed to provide services within  
16 its own territory. Again, all of those arguments were  
17 before the FCC.

18 The second issue is one of -- actually quite  
19 an interest to me, and that is what mode of operation  
20 should BellSouth BSE operate in?

21 Mr. Gillan talked about, in his rebuttal  
22 testimony -- in his testimony indicated that as long  
23 as we used unbundled network elements he was  
24 satisfied, but resale was problematic to him and he  
25 cited several reasons.

1           In looking at the record in the FCC docket,  
2 we find just the opposite. Both AT&T and MCI admit  
3 that resale of the incumbent services is satisfactory  
4 and not problematic. But conversely, the use of  
5 unbundled network elements is the major problem to it.

6           So I sit here and listen and find out that  
7 I'm not allowed to resell, according to Mr. Gillan. I  
8 look at the FCC's opinion by AT&T and MCI and they are  
9 concerned about unbundling. Well, that's the only two  
10 options I have.

11           I think the FCC correctly determined that I  
12 should be allowed to both resell and use unbundled  
13 network elements, and that, indeed, there were  
14 adequate safeguards in place irrespective of which  
15 mode of operation I chose. Thank you.

16           MR. EARLY: I have no further questions.

17           CHAIRMAN JOHNSON: The witness is tendered  
18 for cross.

19   CROSS EXAMINATION

20 BY MR. McGLOTHLIN:

21           Q     Mr. Scheye, I'm looking at Page 9 of your  
22 rebuttal testimony.

23           A     One second, sir, (Witnesses finds his copy.)  
24                 Yes, sir. I have it. Page 9?

25           Q     Yes. At the very top of the page, you say



1 "Capitalizing on a corporate brand is very common."  
2 And BellSouth BSE wants to capitalize on both the  
3 BellSouth name and the corporate logo; is that right?

4 A Yes, sir.

5 Q In the next sentence you say "The list of  
6 companies that consciously extend their brand is very  
7 long," and you cite Coca-Cola, General Motors and  
8 others. Do you know whether Buick and Pontiac are  
9 separate corporate entities?

10 A I believe they are.

11 Q Do you know whether Buick and Pontiac face  
12 different emission standards?

13 A I don't believe they do.

14 Q Well, at page -- well, first of all, would  
15 you agree with me, sir, that if the Commission grants  
16 BSE's certificate in the form that has been requested,  
17 BSE would have no obligation to set its retail price  
18 in any particular way?

19 A I would agree with that, with the exception  
20 of, and in accordance with, the price list  
21 requirements that this Commission has for all CLECs.

22 Q Okay. So it would have to follow its price  
23 list, but it wouldn't have to prepare its price list  
24 to -- in any particular way?

25 A No, sir. It wouldn't be formula driven, but

1 it would be public to the Commission in the price  
2 list. Then they could make their determination if  
3 there was an issue with it.

4 COMMISSIONER DEASON: Would be that any  
5 requirement on BSE to set prices that at least cover  
6 costs?

7 WITNESS SCHEYE: Again, I don't believe,  
8 based on the specifics of the Florida Commission  
9 rules, but there are words in the FCC orders about  
10 anticompetitive behavior and predatory pricing which,  
11 I believe, would imply that if we attempted to  
12 establish prices below cost that we would face some  
13 sort of anticompetitive or antitrust circumstance.

14 COMMISSIONER DEASON: So you're saying  
15 there's nothing specific in Florida prohibits it, but  
16 that you think you would be prohibited by federal law?

17 WITNESS SCHEYE: Federal law and the  
18 antitrust laws. Again, the FCC's -- I'm trying to  
19 paraphrase an FCC order. They said carriers are bound  
20 by Section 202 of the FCC rules, and that if any form  
21 of predatory pricing was undertaken, it would be  
22 deemed to be anticompetitive and against the antitrust  
23 laws.

24 COMMISSIONER DEASON: Where would an  
25 enforcement action be filed? Would that be filed at

1 the federal level or would it be permissible for a  
2 complaint alleging such activities to be filed in  
3 Florida?

4 WITNESS SCHEYE: Certainly it would be  
5 allowed to be filed in Florida. I think a company may  
6 also have an option to file it in a federal court if  
7 they chose to. But certainly they have an option of  
8 filing it here.

9 COMMISSIONER JACOBS: Would those  
10 restrictions apply to each element of BSE's offer  
11 package or to the package as a whole?

12 WITNESS SCHEYE: You're probably ranging a  
13 little bit outside of my realm of legal knowledge,  
14 because the Act and the FCC order are generally  
15 written towards telecommunications services. And in  
16 our case would be the local exchange piece and the  
17 long distance piece. However, I think, on sort of a  
18 carryforward basis, if it was proven that our entire  
19 package was somehow underpriced and predatorily  
20 priced, I suspect there are federal antitrust laws  
21 that one could use to take us to court or whatever.

22 Q At Page 7 of your rebuttal testimony,  
23 Mr. Scheye?

24 A Yes.

25 Q Beginning at Line 20 you make this statement

1 "BSE will obtain wholesale services from BST and other  
2 ILECs on the same terms as everyone else. We will  
3 have to develop new and innovative ways to sell these  
4 and other services to customers in order for BSE to be  
5 profitable."

6 We've spent some time talking in terms of  
7 margins between retail and wholesale prices, but the  
8 wholesale price that constitutes the cost of the  
9 service itself is not the only cost that a competitor  
10 has to incur, is it?

11 A No, sir. You have your own administrative,  
12 sales, marketing and billing-type costs.

13 MR. MCGLOTHLIN: I want to ask that we give  
14 an exhibit number to a docket I'm going to ask  
15 Mr. Bond to pass out for me.

16 CHAIRMAN JOHNSON: Identify this as Exhibit  
17 8. Short title -- what is this a request for  
18 production of documents?

19 MR. MCGLOTHLIN: Yes. Response to Staff's  
20 Request for Production of Documents.

21 CHAIRMAN JOHNSON: "Response to Staff's  
22 Request for Production of Documents."

23 (Exhibit 8 marked for identification.)

24 Q (By Mr. McGlothlin) Mr. Scheye, do you  
25 recognize this as a response to Staff's request to



1 produce documents that you sponsored, sir?

2 A Yes, sir.

3 Q And do you recognize the attachments as  
4 examples of advertisements that were received and paid  
5 for by BellSouth Corporation and offered in response  
6 to a Staff request?

7 A Yes.

8 Q And the last portion of this composite, does  
9 that represent the planned schedule for the appearance  
10 of those ads?

11 A That's my understanding, yes.

12 Q And if you'll look at the first of the two  
13 ads that are included there, is it true that the  
14 attribution is to BellSouth without indicating a  
15 specific BellSouth entity.

16 A It just says BellSouth.

17 Q Okay. If a customer were to read this  
18 advertisement, see the BellSouth name, see the  
19 BellSouth logo and associated BellSouth BSE as among  
20 the whiz kids, is that okay with you?

21 A I'm sorry, could you repeat that again?

22 Q Yes.

23 A Thank you. I'm sorry.

24 Q If a customer or potential customer were to  
25 see this advertisement, see the name BellSouth, see

1 the BellSouth logo, and associate BellSouth BSE as  
2 being among the neighborhood whiz kid, is that okay  
3 with you?

4 A Yes. As long as they are attributing it to  
5 the BellSouth name. I couldn't provide any of these  
6 particular services to them, so if they happened to  
7 call me, I couldn't do much good for them.

8 Q And were these ads paid for by BellSouth  
9 BSE?

10 A No, sir. They are paid by the corporation.

11 MR. MCGLOTHLIN: I'm going to ask Mr. Bond  
12 to help me again. And ask the Chairman to assign an  
13 identification number to the next document. (Counsel  
14 passess out documents.)

15 CHAIRMAN JOHNSON: This will be identified  
16 as Exhibit 9. Could you give me a short title for  
17 this?

18 MR. MCGLOTHLIN: BellSouth BSE Financial  
19 Statements.

20 CHAIRMAN JOHNSON: Okay.

21 (Exhibit 9 marked for identification.)

22 Q (By Mr. McGlothlin) Mr. Scheye, do you  
23 recognize this as the exhibit that was attached to the  
24 applications of BellSouth BSE for the ALEC certificate  
25 in this docket?

1           A     Yes.

2           Q     And does this purport to display the  
3 projected performance of BellSouth BSE on an overall  
4 basis over time?

5           A     At the time it was prepared, it did do so,  
6 yes. Right now we think it's overstated based on our  
7 current conditions.

8           Q     All right. Looking at the first page of  
9 this Composite Exhibit 9 for identification, does the  
10 entry called "local/intraLATA intrastate" include the  
11 predictions of revenues that BSE would receive from  
12 activities such as local service and the BellSouth  
13 ILEC service area?

14          A     I'm sorry, what was the last part, sir? I  
15 couldn't hear you.

16          Q     Does it include the revenues projected to be  
17 received by participation in local exchange service in  
18 the BellSouth ILEC service area?

19          A     Yes.

20          Q     Including Florida?

21          A     Yes.

22                MR. MCGLOTHLIN: Mr. Bond, if you will.

23 (Counsel passes out another document.)

24                Chairman Johnson, may I have an  
25 identification number?

1           CHAIRMAN JOHNSON: Be identified as  
2 Exhibit 10. Short title?

3           MR. MCGLOTHLIN: "BSE Response to FCCA  
4 Interrogatory No. 16."

5           CHAIRMAN JOHNSON: Okay.

6           (Exhibit 10 marked for identification.)

7           Q       (By Mr. McGlothlin) Mr. Scheye, do you  
8 recognize this as the response to the FCCA  
9 interrogatory that you sponsored?

10          A       Yes.

11          Q       The interrogatory asks "Does BSE intend to  
12 compete with BellSouth for BellSouth's existing  
13 customers and/or new customers by offering prices  
14 lower than BellSouth's prices? Please explain your  
15 answer." And you stated BSE has not determined the  
16 retail prices for its services in the state of  
17 Florida; is that right?

18          A       Yes.

19          Q       Isn't it true that in order to prepare the  
20 financial statements that are Exhibit 9, and to  
21 include the projection of intrastate revenues for  
22 local service in the ILEC service area as you  
23 described earlier, it would have been necessary to  
24 include a projection of the prices, retail prices?

25          A       Not the specific prices, sir. This was



1 done, as you mentioned -- or I think as I mentioned,  
2 on an aggregates basis -- so individual prices did not  
3 have to be determined. In other words, \$20.15 or  
4 something like that, but, rather, aggregate numbers  
5 were used.

6 Q Well, I believe you testified earlier that  
7 the entry for local/intraLATA intrastate includes the  
8 revenues projected to be received from providing local  
9 service in the ILEC service area, did you not, sir?

10 A Yes, I did. Correct.

11 Q All right. How can you use an aggregate  
12 number to project the revenues to be derived from  
13 providing local service in the BellSouth ILEC service  
14 area?

15 A The aggregate I was referring to was not  
16 just specifically the prices for the state of Florida.  
17 We had to make aggregate price decisions for local  
18 service, intraLATA toll as well as everything else.  
19 With did not try to forecast a specific number of  
20 customers at a specific rate in the state Florida  
21 versus the state of Tennessee, so we used aggregate  
22 type averages for that. That's all.

23 COMMISSIONER DEASON: But if you average  
24 something, don't you have to have an average price?

25 WITNESS SCHEYE: The basic averages that we

1 used in that were of the current retail prices that  
2 the incumbents had.

3           COMMISSIONER DEASON: But to average  
4 something you have got to take each individual one,  
5 add it up and divide it by the number of factors,  
6 correct?

7           WITNESS SCHEYE: If you do it quite that  
8 precisely. This was not done with that level of  
9 precision, since they really didn't know at the time  
10 they put this together whether we've got 100 customers  
11 in Florida versus 25 in Tennessee, or vice versa. So  
12 it was basically assumed that the current retail  
13 prices and the level of -- the weighting wasn't quite  
14 as precise as maybe we should have done, but it was  
15 broader than that. But it was essentially based on  
16 the current retail prices.

17           Q        (By Mr. McGlothlin) Well, does that mean  
18 that you assumed the current retail price of BellSouth  
19 Telecommunications in Florida?

20           A        Again, in the averages, that's correct, sir.

21           Q        And that was prepared at the time you filed  
22 your application for the ALEC certificate, correct?

23           A        This was a business case that was done even  
24 prior to that. It's probably ten, 11 months old at  
25 this point in time.

1           Q     In your testimony you've stated that  
2 BellSouth BSE intends to package and integrate some  
3 services in package form. And in addition to that, to  
4 do business in geographical areas that will allow it  
5 to follow customers from one area and the other; is  
6 that correct?

7           A     Yes.

8           Q     Isn't it true that BellSouth  
9 Telecommunications can, if it chose, do business in  
10 geographic areas beyond the traditional nine-state  
11 BellSouth region?

12          A     It is not legally restricted as far as I  
13 know. It could certainly branch out, but that's not  
14 been the method of operation we've chosen, though.

15          Q     Yes. And to focus that on the moment -- for  
16 the moment, that strategy to engage in such activities  
17 through BSE as opposed through the ILEC is a matter of  
18 choice as opposed to any requirement; is that correct?

19          A     Yes. I believe earlier today I said we were  
20 not doing this simply because of a legal restriction.  
21 We were doing it because we felt it was the proper  
22 focus, the proper way to deal with that type of  
23 market. And, actually, we thought it would help  
24 encourage competition through our use of the  
25 operational support systems, both of BST, as well as

1 the other companies that we might be interfacing with.

2 Q But you could bring the same focus to bear  
3 through the vehicle of an operating division as  
4 opposed to a separate corporate entity?

5 A I don't believe so, sir. I mean, at least  
6 in our opinion, our experience was that BST certainly  
7 has a lot on its plate to do these days serving its  
8 retail customers, meeting its obligations under the  
9 act, modifying its operational support systems, its  
10 billing systems, et cetera, to accommodate all of  
11 that.

12 We felt, from a business perspective, to  
13 develop our own unique systems tailored towards  
14 packaging, tailored toward the multistate environment  
15 was more effective, more efficient and a better way to  
16 operate. And, candidly, believe that our use of the  
17 operational support systems of both BST and other  
18 incumbents, if we chose to buy their services, would  
19 actually be a benefit to competition by putting more  
20 emphasis on those operational support systems.

21 Q Again, to focus on the business objectives  
22 as described by you in your testimony, isn't it true  
23 that the wholesale discount obligation placed on ILECs  
24 would not prohibit BellSouth BSE from either  
25 integrating services or engaging in business in states



1 beyond the nine-state traditional BellSouth region?

2 A I'm sorry, somehow I lost the thought of that  
3 questions. Somehow we went from the discount to  
4 something, and I missed it -- so I'd ask you to repeat  
5 it.

6 Q I've characterized your testimony as having  
7 two main themes with respect to big BSE's business  
8 objectives: The integration of several services in a  
9 single package and offering that package in  
10 geographical areas that extend beyond the traditional  
11 BellSouth service areas.

12 A Yes. That's a correct depiction of our  
13 business strategy.

14 Q Is it true that the application of the  
15 wholesale discount obligation contained in the '96 Act  
16 as applicable to ILECs, if applied to BSE, would not  
17 prevent it from doing business beyond the nine-state  
18 region?

19 A Now I understand it. Yes, it would. It  
20 would bankrupt me. And maybe I ought to explain that.

21 If I'm buying at a wholesale price from B&T  
22 or from anyone else, if the retail price is \$20 and I  
23 got a 10% discount, so my wholesale price is 18. If I  
24 then have to sell it at \$18, and as you mentioned  
25 earlier I, will have my own expenses, billing

1 advertising, et cetera, I will go bankrupt.  
2 Therefore, I cannot sell with a wholesale discount. I  
3 will not have the same avoided cost at the incumbent.  
4 So the only way I could sell my services and make any  
5 margin at all would be to sell them at the \$20 rate or  
6 the retail price I must charge.

7           So if I would be forced to put a wholesale  
8 discount on to my services that I purchased at the  
9 wholesale discount, I would do bankrupt, since I would  
10 have no way to cover my own expenses. And as you were  
11 talking earlier, every CLEC will have such expenses.  
12 So, yes, it would clearly limit me to providing  
13 anything since, essentially, I could not be  
14 profitable.

15           Q     Well, the impact on profitability is a  
16 subject we'll get to in a minute. But with respect to  
17 the ability to engage in services beyond the  
18 nine-state region, it would not prohibit you from  
19 doing that, correct?

20           A     Again, that technically doesn't prohibit me,  
21 it just bankrupts me. So practically speaking, I  
22 can't provide service.

23           Q     Nor does it prevent you from packaging  
24 multiple services in a single package?

25           A     Again, same answer, sir. It doesn't stop

1 me; it just bankrupts me, so I can't provide any  
2 service. So from a practical standpoint, I am stymied  
3 in my business operation due to an uneconomical  
4 condition placed upon me.

5 Q So that you might then look to the  
6 possibility of an operating division within the ILEC?

7 A No, sir. I don't believe so. I think what  
8 would happen is, in effect, we would not provide  
9 customers that opportunity to buy those services.

10 MR. MCGLOTHLIN: Those are all of the  
11 questions I have.

12 CHAIRMAN JOHNSON: Thank you.

13 Mr. Bond?

14 MR. BOND: Just a couple of questions.

15 CROSS EXAMINATION

16 BY MR. BOND:

17 Q First, just for clarification, do you have a  
18 copy of the Exhibit No. 4. This was Staff's composite  
19 exhibit.

20 A Staff Exhibit No. 4. What is that? I  
21 probably have it, but not under that name. Oh, it's my  
22 deposition? I do have that. I'm sorry.

23 Q In particular, I'm looking at Page 70 which  
24 is one of the attachments.

25 A I'm sorry, sir, Page 70?

1 Q Page 70. It's the copy of the Kentucky  
2 Interconnection Agreement.

3 A Yes.

4 Q Page 70, which is Page 2 of the Kentucky  
5 agreement, under general provisions, Subsection A,  
6 there's a couple of references to an Exhibit B. And I  
7 didn't see an Exhibit B attached to this. And I was  
8 wondering, is there an Exhibit B? And, if so, could  
9 you provide that?

10 A If there is one, certainly we'll provide it.  
11 Right off the top of my head, since this is the only  
12 copy I have. I don't recall if there is an Exhibit B,  
13 but certainly we will provide it.

14 Q Well, would you be willing to file a  
15 late-filed exhibit that either says there is no  
16 Exhibit B or whatever the Exhibit 1 is, would that be  
17 fine?

18 A Certainly, that would be fine.

19 MR. BOND: We want to identify a late-filed  
20 exhibit, which would be Exhibit B to the Kentucky  
21 Interconnection Agreement with BSE.

22 CHAIRMAN JOHNSON: Exhibit B to the Kentucky  
23 order, did you say?

24 MR. BOND: Yes.

25 CHAIRMAN JOHNSON: Okay. It will be



1 identified as Late-filed Exhibit 11.

2 (Late-Filed Exhibit 11 identified.)

3 MR. BOND: Thank you.

4 MS. BEDELL: Chairman Johnson, that's not a  
5 Kentucky order. That's an agreement.

6 CHAIRMAN JOHNSON: It was an agreement?

7 MS. BEDELL: Uh-huh.

8 MR. BOND: I'm sorry. I misspoke.

9 Interconnection Agreement.

10 Q (By Mr. Bond) When Mr. McGlothlin was  
11 asking you some questions, in one of your responses  
12 you said that BST had a lot on its plate, therefore,  
13 we felt it was more affective to create a separate  
14 company. Do you recall that?

15 A Yes.

16 Q Who is the "we" you're referring to?

17 A At that time, it would be the people who  
18 were comprising BellSouth BSE.

19 Q Okay. But that was before BellSouth BSE  
20 existed?

21 A Well, sure. It was directly before, and  
22 then we filed, or it filed for incorporation.

23 Q Okay. So you're talking about BellSouth  
24 Corporation employees; is that correct?

25 A They would have been BellSouth Corporation

1 employees, that's correct, sir.

2 Q In your rebuttal testimony you refer to FCC  
3 Order 96-149?

4 A Yes.

5 Q Is it correct that was issued in December of  
6 1996?

7 A I believe so.

8 Q I believe on Page 5 of your testimony?

9 A Christmas eve, 1996.

10 Q And that's prior to the 8th Circuit's order  
11 on the FCC rules; is that correct?

12 A Yes, I believe so.

13 Q And that order concerns 272 affiliates; is  
14 that correct?

15 A It's in part, sir.

16 Q Is BSE a 272 affiliate?

17 A Not at this point in time, since, one,  
18 BellSouth does not have long distance relief, and  
19 that's what you require for a 272. And, two, we have  
20 not requested long distance certification yet.

21 Q Okay. So you're not a 272 affiliate yet?

22 A Not at this same time, that's correct.

23 Q Thank you.

24 MR. BOND: No further questions.

25

## 1 CROSS EXAMINATION

2 BY MS. RULE:

3 Q Mr. Scheye, your counsel earlier referred to  
4 comments made by AT&T and others before the FCC. Do  
5 you remember that reference?

6 A By Mr. Lightsey? Is that who you were  
7 referring to?

8 Q Yes.

9 A Yes, ma'am.

10 Q Okay. Now, do you know the date of those  
11 comments? (Witness examines document.)

12 A August 15, 1996 in Docket 96149.

13 Q And that was before AT&T had an  
14 arbitrated -- actually it had an arbitration  
15 proceeding with BellSouth in Florida, wasn't it?

16 A I don't remember the timing. It may have  
17 been before.

18 Q Okay. Would you accept, subject to check,  
19 that the arbitration happened around October of that  
20 year?

21 A Sure.

22 Q Okay. It was also before the 8th Circuit  
23 decision?

24 A Yes.

25 MS. RULE: Thank you.

1 CHAIRMAN JOHNSON: No questions? Staff?

2 MS. BEDELL: Well, I was waiting for  
3 Commissioner Clark to ask if there was a typo on  
4 Page 10.

5 COMMISSIONER CLARK: I think there is. I  
6 think it's "ample," not "amble."

7 WITNESS SCHEYE: I wasn't asked to correct  
8 it. I'm sorry. On Page 10.

9 COMMISSIONER CLARK: That's why spellcheck  
10 didn't pick it up, I guess.

11 WITNESS SCHEYE: Yes, it's "ample", not  
12 "amble."

13 COMMISSIONER CLARK: I had another question,  
14 and I apologize for being out of the hearing room for  
15 just a few moments, but did you answer the question as  
16 to why you thought there might be some joint marketing  
17 restrictions?

18 WITNESS SCHEYE: I had not answered. Should  
19 I do it now?

20 COMMISSIONER CLARK: Yes.

21 WITNESS SCHEYE: Okay. I think you had  
22 asked me earlier what the reference was, which, if  
23 it's appropriate, I'll start there.

24 The reference I'm using is out of Telecom  
25 Act, and specifically it's Section 272(g), and it



1 refers to the joint marketing. And (g)(2) says "Bell  
2 Operating Company sales of affiliated services," and it  
3 goes on to describe --

4           **COMMISSIONER CLARK:** All right. Tell me  
5 what in there gives you concern that there's some  
6 ambiguity.

7           **WITNESS SCHEYE:** The ambiguity doesn't  
8 arise -- that's the reference from the Act. When you  
9 go to the FCC Order, what the FCC does in dealing with  
10 that in 96149 -- in their discussion, and this is in  
11 Paragraph 296 of that order. Just to paraphrase, it  
12 says, "we", and it's referring to the FCC, "see no  
13 point to attempt at this time to compile an exhaustive  
14 list of the specific BOC activities that would be  
15 covered by Section 272(g). That's the joint  
16 marketing restriction. We recognize that such  
17 determinations are fact-specific and will need to be  
18 made on a case-by-case basis. This is a summary of  
19 the FCC's finding after a lot of parties gave their  
20 thoughts as to what should be included and what should  
21 not be included.

22           That left me with the understanding, at  
23 least, that it is not as clear-cut as I may think or  
24 over the other side may think of exactly what is  
25 encompassed in the joint marketing capabilities.

1           Clearly, BSE can do other things. Other  
2 things, they may not be able to. And it appears that  
3 what the FCC refers to do is to see on a case-by-case  
4 basis how that's going to arise.

5           Therefore, with that level of uncertainty  
6 and, again, with the caveat that our main purpose in  
7 this was not simply a legal regulatory, but rather a  
8 marketing operational focus, we felt it better and  
9 clearer and more efficient to strive towards the full  
10 integration within a separate corporation which,  
11 again, we feel is allowed and provided for.

12           COMMISSIONER CLARK: Let me ask you a  
13 question and you answer yes or no. It's your view  
14 that there may be some restrictions with respect to  
15 joint marketing that will be applicable to BST.

16           WITNESS SCHEYE: Yes.

17           COMMISSIONER CLARK: That may be -- and  
18 those restrictions may be avoided by BSE.

19           WITNESS SCHEYE: That's correct.

20           COMMISSIONER CLARK: And on what basis do  
21 you believe they can be avoided?

22           WITNESS SCHEYE: Because the provisions that  
23 we're referring to are strictly the provisions of an  
24 ILEC, an incumbent local exchange carrier. There are  
25 no such provisions that would be applicable to a CLEC.

1 For example, in the same order the FCC allows that the  
2 272 subsidiaries, or the long distance company, may  
3 provide local exchange service without any  
4 restrictions placed upon it. So it's clear to me --  
5 or clearer to me, I should say, that the affiliate,  
6 the nonincumbent, is not nonincumbered by such  
7 interpretations or provisions, and rather can provide  
8 the services in any way it desires to do so.

9 COMMISSIONER CLARK: Can you explain what  
10 the logic would be in your view to having restrictions  
11 apply -- assuming you get the authority to do the long  
12 distance service, why would there be any rationale to  
13 have restrictions on the ILEC and not the ALEC?

14 WITNESS SCHEYE: Well, basically, I think  
15 the other side, the opposition or intervention, would  
16 feel that an incumbent may have a definite marketing  
17 advantage in fully integrating all of the services,  
18 including long distance, in order to obtain a more  
19 significant market share.

20 I think Mr. Gillan referred even to what he  
21 believes is some experience in Connecticut, or  
22 Southern New England Telephone, which was the  
23 incumbent local exchange carrier, branched into the  
24 long distance field and got what he felt was a  
25 substantial market share.

1           The other thing is that the incumbent local  
2 exchange carrier retains all of its equal access  
3 presubscription obligations and will have to, again,  
4 provide all the names of all the carriers. And it may  
5 be more cumbersome for it to attempt to package its  
6 own long distance carrier more exclusively. So those  
7 types of things, I think, make it more difficult --  
8 I'm not saying it's impossible -- to get an effective  
9 marketing of an integrated package.

10           **COMMISSIONER CLARK:** What I hear you saying  
11 is not that there would be restrictions, but because  
12 it's an ILEC, for business reasons you're better off  
13 doing it through BSE.

14           **WITNESS SCHEYE:** I think there are still  
15 some restrictions potentially that will apply to the  
16 ILEC that would not apply to us. But, yes, there's  
17 clearly a business reason for us to want to focus  
18 integrated packages within a separate company.

19           **COMMISSIONER CLARK:** Thanks.

20           **MS. BEDELL:** Staff has just one more  
21 question.

22                           **CROSS EXAMINATION**

23           **BY MS. BEDELL:**

24           **Q**    We had also talked to you to you about the  
25 cite on the requirement to resell.



1           A     251-A, Section 251-A of the Act.

2           Q     And not 251-B?

3           A     251-A(2)1), which are the general duties of  
4 all telecommunications carriers. And B1 is  
5 specifically resale. The duty not to prohibit and not  
6 to impose unreasonable or discriminatory conditions or  
7 limitations on the resale of its telecommunications  
8 services.

9           MS. BEDELL: We don't have any other  
10 questions.

11           COMMISSIONER GARCIA: Let me ask you,  
12 Mr. Scheye, did you see the document that Mr. Gillan  
13 handed out?

14           WITNESS SCHEYE: Yes. You mean sort of the  
15 example with some numbers on it?

16           COMMISSIONER GARCIA: Yeah.

17           WITNESS SCHEYE: I saw it. Yes, I even have  
18 it with me.

19           COMMISSIONER GARCIA: Tell me why he's  
20 wrong.

21           WITNESS SCHEYE: Tell you why he's wrong.  
22 Well, several reasons.

23                     First of all, the access piece of this  
24 analysis is irrelevant to the entire analysis. If  
25 anyone resells BST services, BST, in accordance with

1 this Commission's rules and the FCC rules, retains the  
2 access. So access is an affective wash in this entire  
3 operation. The only way around the access is if the  
4 carrier -- some alternative carrier, builds its own  
5 facilities and provides its own access. So,  
6 therefore, using the access as piece --

7 COMMISSIONER GARCIA: So if this were -- if  
8 we created another -- why don't you do this for us,  
9 create another column here for the entrant, okay? And  
10 tell me how it's different. All right. We'll create  
11 another column.

12 WITNESS SCHEYE: You mean for BellSouth BSE?

13 COMMISSIONER GARCIA: Let's create just one  
14 more column for AT&T and tell me where AT&T would end  
15 up as we go through all of these values that they have  
16 here, and why they wouldn't end up the way Mr. Gillan  
17 has them end up, with only a -- what is it? a margin  
18 of \$8.

19 A I'm not disagreeing necessarily. If AT&T --

20 COMMISSIONER GARCIA: But you're telling us,  
21 for example, the \$13 access.

22 WITNESS SCHEYE: Is not relevant to this  
23 entire example.

24 COMMISSIONER GARCIA: Because BSE would make  
25 it, but so would AT&T make that?

1           WITNESS SCHEYE: No. If AT&T or BSE are  
2 both reselling BST service --

3           COMMISSIONER GARCIA: Right

4           WITNESS SCHEYE: -- BST gets the access, the  
5 \$13 in the top example, irrespective. Both companies,  
6 both AT&T and BSE, purchase the resale service from  
7 BST at exactly the same price, which I believe is  
8 \$49.34, if I'm reading this correctly.

9           COMMISSIONER GARCIA: This is the first  
10 thing you believe is wrong. What else?

11          WITNESS SCHEYE: Basically, when you get  
12 down to the margin, what he shows as the reseller  
13 entrant is \$8.32?

14          COMMISSIONER GARCIA: Uh-huh.

15          WITNESS SCHEYE: If that is, in fact, the  
16 correct calculation, that is equally correct for me as  
17 it is for AT&T, it would make no sense for BellSouth,  
18 the corporation, or me as a subsidiary, an affiliate,  
19 to try to sell for less than that. Because what this  
20 document says is that AT&T or BSE, in reselling  
21 services, there's still going to be \$13 worth of  
22 access revenue to BST. That's a given and nothing has  
23 changed. There's a margin. BST is selling for  
24 \$49.34, let's assume, and if that's the proper avoided  
25 cost, they are whole. So the only place for any more

1 money to be made by BellSouth at this point is for BSE  
2 to be able to make some additional margin. If BSE  
3 loses money, the corporation loses money and they are  
4 better off reselling it to AT&T.

5 So this concept of me selling below costs  
6 just doesn't make any sense in the business world.  
7 And throwing in the access revenues as piece of the  
8 explanation is, at best, a red herring. Because --

9 COMMISSIONER GARCIA: How about his argument  
10 that you can keep -- you can keep certain of your  
11 customers? In other words, you can cut the margin so  
12 that you can keep customers away from, say, AT&T? You  
13 go into this scenario and you've got -- let's say  
14 you've got a gross margin of \$8.32, as an example.  
15 And you know that, perhaps, AT&T is willing to take a  
16 risk and -- I don't know, give them another \$2  
17 discount. You could then go out with your company and  
18 match that price, but you still don't have to give it  
19 to them to the wholesale side.

20 WITNESS SCHEYE: If we do that -- and,  
21 again, your option is available to us as it is to  
22 AT&T, to price below cost -- if either of us are to do  
23 that, clearly, in our mind --

24 COMMISSIONER DEASON: Wait, wait. You said  
25 price below cost.



1           WITNESS SCHEYE: The option of pricing \$2  
2 below, even though there's legal implications.

3           COMMISSIONER DEASON: You're not trying to  
4 price below cost --

5           WITNESS SCHEYE: No, I'm not.

6           COMMISSIONER DEASON: -- that \$2 discount  
7 you're still above -- in this example, you'd still,  
8 with an \$8.32 margin, you'd just be reducing your  
9 margin \$2, not pricing below cost.

10          WITNESS SCHEYE: I'm sorry. You're correct.

11          So the margin is \$8.32. Both AT&T and I  
12 both have to cover whatever our internal advertising,  
13 billing, maintenance, customer care expenses.

14          Let's assume just for the sake of this  
15 discussion that both of us have \$5, so we have left  
16 \$3.32 to play with.

17          COMMISSIONER GARCIA: Right.

18          WITNESS SCHEYE: We may decide, or AT&T  
19 decide, I'm willing to only make \$1. AT&T might say,  
20 "I'm only willing to make 50 cents" for some reason.  
21 Those are all business decisions that will occur in  
22 the --

23          COMMISSIONER GARCIA: But isn't there a  
24 difference for you? Because you basically have those  
25 costs out there. This is your business. AT&T is

1 making a decision to get into your business. And  
2 they've got the risks incumbent with that. You're  
3 still there, Mr. Scheye. You're there. I mean,  
4 you're not going anywhere. So anybody who leaves you  
5 is costing you money.

6 WITNESS SCHEYE: That's the point, I think.  
7 They are not leaving BellSouth. Because if BellSouth  
8 sells wholesale to AT&T and AT&T then makes a margin,  
9 fine. BellSouth is still fine. BellSouth is a  
10 corporation. The customer hasn't really left  
11 BellSouth. It has from a retail perspective, but it's  
12 still using BellSouth underlying --

13 COMMISSIONER GARCIA: Aren't you getting now  
14 an additional buck you wouldn't get if they left you?

15 In other words, I've got a margin of \$8, all  
16 right? And then you said it costs us each \$5 to be  
17 there. And, obviously, AT&T and the other long  
18 distance companies question whether it really costs  
19 you \$5. Let's, for argument purposes, say that it  
20 costs each of you \$5 to provide that service. Now  
21 we've got \$3.32 to play with.

22 WITNESS SCHEYE: Right.

23 COMMISSIONER GARCIA: BellSouth is still  
24 better off only making \$1.32 than letting you off,  
25 period.

1           WITNESS SCHEYE: Not really. Because we  
2 look at particular margins. I mean, BellSouth  
3 doesn't -- holding a customer at all costs isn't  
4 really our business practice. If a \$1.32 is an --

5           COMMISSIONER GARCIA: We question that in  
6 some of the proceedings we go through. But let's  
7 assume that that's not the case. Why do you want to  
8 let him go? In terms of the business sense, clearly,  
9 if you have a customer, you have an understanding of  
10 what he does, how he does it, when he does it, much  
11 more so than someone who doesn't have a customer.  
12 You're still providing those services. It's not like  
13 you picked up and left town. You're still there.  
14 Your network is still there. And those costs are  
15 being taken care of somewhere else. You still have a  
16 \$1.32 that you would not have gotten if you assume  
17 that it cost you \$5 and you're willing to take it to a  
18 price under AT&T's profit margin, or whatever.

19           WITNESS SCHEYE: If I'm willing to operate  
20 at a lower margin than AT&T, if that's what you're  
21 saying -- we're both profitable, but I'm willing to  
22 take a lower margin because that's the nature of my  
23 business, then you're possibly correct. I don't  
24 believe, however, candidly, that it makes any sense  
25 for me to want to operate with that low a margin,

1 because -- just again, your point --

2           **COMMISSIONER GARCIA:** Aren't you operating  
3 anyway? I mean, you still have to operate. They  
4 still came to you and had to get the \$49.32 worth of  
5 service. They are paying that cost outright. You're  
6 still whole.

7           **WITNESS SCHEYF:** BST is.

8           **COMMISSIONER GARCIA:** Yes.

9           **WITNESS SCHEYE:** But I'm not. And they  
10 might as well let me fold up and let BST sell to AT&T  
11 and everybody goes away happy. Because I'm not a free  
12 expense. I mean, we cost something for this  
13 corporation. We will have expenses. We have a  
14 building that we pay rent to, et cetera. If we're not  
15 profitable and if we don't make a decent margin, spend  
16 the money someplace else. Spend it on licenses in a  
17 foreign country.

18           **COMMISSIONER GARCIA:** All right. Let's go  
19 back. You said it costs you and -- both you and AT&T  
20 that \$5 to operate in that margin. Let's say AT&T  
21 comes in here and says, "Commissioner, it may cost us  
22 \$5 to get that BellSouth customer, but BellSouth is  
23 outspending us on advertising. They are not paying  
24 the true advertising cost. It only costs them \$2 to  
25 get this customer because BSE is not spending that



1 same money. It's being spent by BST to get that  
2 customer. In other words, they are -- that person  
3 that they get is not any different than anyone else.  
4 In other words, the fancy-schmancy BellSouth  
5 distinction isn't made. Someone just calls BellSouth  
6 and because BellSouth is already building that within  
7 its local network within its LEC, they have an  
8 advantage.

9           **WITNESS SCHEYE:** Sure. And at that point  
10 because, as you say, in this case the customer already  
11 is BST's customer today. Maybe we're better off at  
12 that point saying stay with BST. Don't spend the  
13 money. Don't spend the extra money for the CLEC.  
14 Don't offer these particular services. If the  
15 customer wants to go to AT&T, and we've got a  
16 reasonable wholesale discount, fine. But we just  
17 won't go into the CLEC business. We will not make  
18 those services available.

19           **COMMISSIONER GARCIA:** All right. But follow  
20 my scenario. And forgive me, I probably don't use the  
21 right technical language.

22           Let's go back to the \$8.32 that you say that  
23 this calculation, if correct, that's about right,  
24 okay? Then we will assume that it costs AT&T \$5 to  
25 get this customer, so AT&T -- and forgive me for using

1 AT&T. It's just simpler for me. AT&T makes the  
2 profit of \$3.32, right?

3 WITNESS SCHEYE: Right. Before tax.

4 COMMISSIONER GARCIA: What do I do when  
5 AT&T -- Ms. Rule, comes in here and says to me,  
6 "Commissioner, this is what we're making but, you  
7 know, what, it only costs Southern Bell about \$2 to  
8 get that customer." So that means that Southern Bell  
9 is makes \$5.32. So Southern Bell can cut another  
10 dollar off that customer's bill, and they beat us,  
11 because they have this market power that we don't  
12 have. They have the ability to sell their LEC -- not  
13 your company, but the incumbent LEC's services, they  
14 are selling as a general package so they don't have to  
15 spend all of the money that we have to spend to  
16 capture that specific client."

17 WITNESS SCHEYE: I think if that were the  
18 case -- and I don't agree that is the case --

19 COMMISSIONER GARCIA: Let's say that were  
20 the case.

21 WITNESS SCHEYE: Then I think we're saying  
22 we've got two large corporations. I can operate --  
23 I've decided to operate based on a lower level of  
24 advertising that's specific to my product than AT&T  
25 has chosen -- because we both certainly spent a lot of

1 money on general corporate advertising. There's no  
2 question about that.

3 COMMISSIONER GARCIA: Correct.

4 WITNESS SCHEYE: So putting that aside and  
5 saying that's sort of a separate expense, AT&T has  
6 said, "We need to spend X dollars to advertise our  
7 local service, and we don't think BellSouth BSE has to  
8 do that." Conversely -- I mean, and then the flip  
9 side is true. AT&T doesn't have to spend near as much  
10 to sell its long distance as my long distance carrier.

11 I mean, that's -- when two large entities,  
12 certainly BellSouth as a corporation and AT&T as a  
13 corporation and, again, we're not picking on  
14 individuals -- we're talking about two large companies  
15 entering each other's businesses. That's what this  
16 whole game is about.

17 COMMISSIONER GARCIA: Right.

18 WITNESS SCHEYE: Certainly, there's some  
19 synergies we have and there are some synergies they  
20 have. Marketplace will ultimately determine how that  
21 is all going to fall out. And I think trying to pick  
22 one little piece and say, we may or may not have a  
23 advantage -- I actually believe we will have a  
24 disadvantage, and I'll tell you why.

25 My expenses are going to be totally what

1 they call green field. I have to start from scratch.  
2 I have no systems. I have nothing. AT&T, MCI, and  
3 LCI and everybody else has some inherent system  
4 capability that they can, if they want to, build  
5 upon --

6 COMMISSIONER GARCIA: Wouldn't they argue  
7 the same thing when they are getting into the local --  
8 to your business?

9 WITNESS SCHEYE: They have some system, they  
10 have platform. It may not be local, but they have a  
11 platform upon which they can build. I'm starting from  
12 scratch. That's what I mean by green field. I have  
13 no system capability. Whatever I build will be unique  
14 to my capabilities and my services. So I'm starting  
15 with nothing. They are starting with -- now, they can  
16 argue their systems aren't particularly compatible  
17 with local, and that may be the case in some  
18 instances. There's certainly some relevance, customer  
19 base, customer care situations. So which one of us  
20 has the expense advantage going into it, I think is  
21 debatable. I think we both have expenses. We'll both  
22 incur those expenses, and we'll both make our  
23 decisions on what margin we're willing to tolerate to  
24 stay in business. But, to me, that's the name of the  
25 competitive game when you talk about large entities.



1           **CHAIRMAN JOHNSON:** Any other questions,  
2 Commissioners?

3           **COMMISSIONER JACOBS:** Yes. You mentioned  
4 the restrictions in the FCC order on joint marketing.

5           **WITNESS SCHEYE:** Yes, Commissioner.

6           **COMMISSIONER JACOBS:** Under that order, it  
7 refers to a 272 affiliate. That's what BSE is?

8           **WITNESS SCHEYE:** BSE -- right not we're not  
9 a 272 affiliate because in order to be -- this is sort of  
10 a catch-22. In order to be a 272 affiliate you have  
11 to be providing long distance service. We are not yet  
12 approved to provide long distance service, so we  
13 haven't made it that far. We are a fully separate  
14 subsidiary in all other fashions like a 272  
15 subsidiary, but we don't provide long distance  
16 service.

17           **CHAIRMAN JOHNSON:** Okay. If you were to get  
18 the certificate, would the restrictions that the Order  
19 lists apply to you in all other respects?

20           **WITNESS SCHEYE:** Yeah, I would think so.

21 And, certainly, all the provisions of  
22 nondiscrimination already do apply to me.

23           **COMMISSIONER JACOBS:** How so? If you're not  
24 technically a 272 affiliate, how would those separate  
25 -- separation requirements apply to you?

1           **WITNESS SCHEYE:** Again, the requirements in  
2 many cases deal with the provision of long distance,  
3 and they don't apply to me because I'm not a long  
4 distance provider. But they also talk about providing  
5 services to an affiliate in the same time frame and  
6 under the same terms and conditions as one would apply  
7 to a nonaffiliate. Those are basically generic. It  
8 doesn't make any difference whether we are already  
9 providing long distance or plan to provide long  
10 distance in the future, they're still basic  
11 requirements for nondiscrimination and fair treatment.

12           **COMMISSIONER JACOBS:** And then, finally,  
13 just to beat a dead horse absolutely to death, if  
14 you -- I understand that you're saying you see  
15 yourself as a brand new market entrant. But I still  
16 come back to the idea that these are customers who are  
17 going to be looking at basically a package of goods  
18 being offered by market players.

19           If you're coming in and you're going to --  
20 as you described a moment ago, you're going to come in  
21 and you're going to resell your local service,  
22 initially you're going to contract with providers of  
23 the other services, and have -- and your parent, which  
24 is going to offer you your capital and any other  
25 thing, has this margin to play with, you don't see

1 there being any kind of an incentive, certainly, to  
2 capture as many customers under the FallSouth umbrella  
3 looking at them from the ALEC perspective as opposed  
4 to the ILEC perspective? Because the more and more  
5 that margin increases, the more opportunity there is  
6 to increase marketing expenses, the more opportunity I  
7 would think to offer advantage to BSE here at a more  
8 favorable marketing position.

9 WITNESS SCHEYE: Again, if I can get those  
10 customers with my package and make an adequate margin,  
11 certainly, I want to do as much as I can as long as  
12 it's profitable.

13 COMMISSIONER JACOBS: So what does that do  
14 to the customers that are left with the ILEC?

15 WITNESS SCHEYE: Nothing. I mean, they are  
16 basically still purchasing the services that they may  
17 be purchasing.

18 COMMISSIONER JACOBS: They're not doing  
19 anything to their costs?

20 WITNESS SCHEYE: Not really, because, again,  
21 this is -- I think this is a very significant point.  
22 When I buy at resale -- again, assuming the avoided  
23 cost discount is set properly, and we're not here to  
24 debate that, BST is not worse off selling wholesale as  
25 it is retail. So if it sells to me at a 20% discount

1 and sells to AT&T at a 20% discount, because that's  
2 what the avoided cost is, BST is still whole. So  
3 there's no reason for it to do -- stand-alone basis to  
4 do anything. It's not financially hurt by that.  
5 Therefore, it has no incentive, nor does the  
6 corporation have any incentive, for me to buy at that  
7 20% discount and then start selling cheaper. Because  
8 all we're going to do as a corporation is lose money  
9 from that deal, and we have no desire to do that. So  
10 we will be selling above the wholesale discount like,  
11 I assume, all other CLECs will be doing, because  
12 that's the only way I can create margin and enough  
13 profitability to stay in business.

14 COMMISSIONER JACOBS: That's all.

15 CHAIRMAN JOHNSON: Mr. McGlothlin, did you  
16 have a --

17 MR. MCGLOTHLIN: I was going to ask  
18 permission to follow up on a couple of questions that  
19 related to Mr. Gillan's exhibit, if you would permit  
20 that.

21 CHAIRMAN JOHNSON: Any objections?

22 MR. EARLY: No.

23 RECROSS EXAMINATION

24 BY MR. MCGLOTHLIN:

25 Q Mr. Scheye, in response to Commissioner



1 Garcia's question about Exhibit 5, you called the  
2 entry for access revenue -- I think you said it was a  
3 red herring at one point and that it was irrelevant to  
4 the analysis. And the third thing you said that I  
5 recall was that you said it's a wash. When you said  
6 it was a wash, you mean by that that BellSouth would  
7 receive the access revenue whether the competitor was  
8 BSE or AT&T; is that correct?

9 A Yes.

10 Q But is it true, sir, that the access revenue  
11 is a component of BellSouth's margin but is not a  
12 component of the other entrant's, AT&T's margin in  
13 this scenario?

14 A No, it's not. I think that's the point.  
15 BST's margin or nonmargin on this \$13 is the same  
16 whether I buy it, whether the customer stays with BST  
17 on a retail basis, or whether that customer goes to  
18 AT&T as another CLEC. So whatever that margin is, say  
19 it's a dollar of the \$13, or whatever, is irrelevant  
20 to this analysis because it hasn't changed regardless  
21 of who is providing service to the customer.

22 Q Okay. In this scenario BellSouth does  
23 receive access revenue of 13.02, correct?

24 A BST does, that's correct, sir.

25 Q And AT&T would not, correct, under the

1 scenario?

2 A Just like it doesn't today, that's correct.

3 Q All right. Now, you said in response to  
4 another question that BellSouth BSE would have no  
5 incentive to lower its price in the manner that was  
6 discussed by the question.

7 Is it true that you are assuming by that  
8 answer that the proper economic result would be based  
9 upon an analysis that BellSouth BSE on a stand-alone  
10 basis, its profitability alone?

11 A No, sir, I'm not. Again, as clarified  
12 earlier, and I believe in Mr. Gillan's testimony, and  
13 I stated, both BellSouth BSE, BST and every other  
14 affiliate has, as one of its requirements, shareholder  
15 value. And, therefore, all aspects of BellSouth would  
16 be affected if I sold below costs, because the overall  
17 shareholder would be hurt, therefore, it would be  
18 detrimental impact on the shareholder. So whether it  
19 be me or the corporation, we would both come out with  
20 the same conclusion.

21 Q Well, we may differ on the result of you're  
22 doing that. If the result were to make it impossible  
23 for competitors to stay in the business and for the  
24 BellSouth entities in the aggregate to have all of the  
25 customers and the freedom to return those prices to

1 higher levels, that would be a different measure of  
2 shareholder value, would it not?

3 A That is such a far-fetched scenario, sir, I  
4 don't know how to answer that one.

5 Q Okay. You don't have to. That's all the  
6 questions I have.

7 COMMISSIONER JACOBS: That's --

8 COMMISSIONER DEASON: Mr. McGlothlin, is  
9 that what you refer to as predatory pricing, the  
10 example you just gave?

11 MR. MCGLOTHLIN: Well, predatory, I don't  
12 know if that's a term of art. It's certainly using an  
13 advantage gained through the artifice of a separate  
14 subsidiary that will avoid the requirement of the  
15 wholesale discount.

16 CHAIRMAN JOHNSON: Any redirect?

17 MR. EARLY: No.

18 CHAIRMAN JOHNSON: Exhibits?

19 MR. EARLY: I would move -- I've lost count,  
20 but I believe it's 7.

21 CHAIRMAN JOHNSON: We'll show that admitted  
22 without objection.

23 (Exhibit 7 received in evidence.)

24 MR. MCGLOTHLIN: I move 8, 9 and 10.

25 MS. BEDELL: Staff would object to admitting

1 Exhibit 8, only because we already have those pages an  
2 Exhibit 4 at Pages 83 through 88.

3 MR. MCGLOTHLIN: Then I withdrew my motion.

4 CHAIRMAN JOHNSON: Okay. Show 9 and 10  
5 admitted and 8 not admitted, but it's in a previously  
6 -- have we already admitted the documents that you're  
7 referring to?

8 MS. BEDELL: It's in Staff's Composite  
9 Exhibit 4.

10 CHAIRMAN JOHNSON: In it's Composite Exhibit  
11 4, so show 8 not admitted.

12 (Exhibits 9 and 10 received in evidence.)

13 And we have one late-filed. That was Exhibit 11.  
14 The BellSouth is to provide us with Exhibit B to the Kentucky  
15 Agreement.

16 MR. BOND: That's correct, Madam Chairman.

17 CHAIRMAN JOHNSON: Okay. Any other  
18 questions?

19 MS. BEDELL: Do we have a date to file that  
20 exhibit? It would be nice to have it before the  
21 transcripts are due so we could include it.

22 WITNESS SCHEYE: Tomorrow.

23 MS. BEDELL: That will be soon enough.

24 WITNESS SCHEYE: I can send it by fax.

25 CHAIRMAN JOHNSON: I'm sorry.



1           **WITNESS SCHEYE:** If facsimile is adequate,  
2 tomorrow.

3           **CHAIRMAN JOHNSON:** Then we'll have that  
4 document provided to all of the parties tomorrow by  
5 facsimile.

6           **MR. EARLY:** And I'll file it with the  
7 Commission.

8           **CHAIRMAN JOHNSON:** Thank you. Any other  
9 matters to come before the Commission?

10           **MR. MCGLOTHLIN:** Chairman Johnson, I have  
11 now the reference to the Texas Order that I want you  
12 to take official recognition of. It's in Docket  
13 No. 16495 and 473-96-1803, an order that the Texas  
14 Commission entered November 20th, 1997, in the matter  
15 of an application by GTE.

16           **CHAIRMAN JOHNSON:** Okay. Seeing no  
17 objection, we'll take official recognition of that  
18 order.

19           **MR. MCGLOTHLIN:** I have one more request in  
20 a housekeeping nature.

21           I think typically parties are limited to  
22 50-word description of their post-hearing statements.  
23 During the prehearing conference, the parties agreed  
24 to fold some additional issues that had been proffered  
25 in and keep the number of issues to only two. It's

1 very difficult to write something meaningful in 50  
2 words that addresses something as broad as these  
3 issues are, so I would request that the parties be  
4 given 120 words each.

5 CHAIRMAN JOHNSON: 120 words. Any objection  
6 to that? Seeing none, then show that modification  
7 accepted.

8 MR. MCGLOTHLIN: Thank you.

9 CHAIRMAN JOHNSON: Anything else? Seeing  
10 none -- oh, you're excused, I'm sorry. And this  
11 hearing is adjourned.

12 (Witness Scheye excused.)

13 (Thereupon, the hearing concluded at 5:10 p.m.)

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1 STATE OF FLORIDA)  
: CERTIFICATE OF REPORTER  
2 COUNTY OF LEON )

3 I, JOY KELLY, CSR, RPR, Chief, Bureau of  
4 Reporting, Official Commission Reporter,

5 DO HEREBY CERTIFY that the Hearing in Docket  
6 No. 971056-TX was heard by the Florida Public Service  
7 Commission at the time and place herein stated; it is  
8 further

9 CERTIFIED that I stenographically reported  
10 the said proceedings; that the same has been  
11 transcribed by me and under my direct supervision; and  
12 that this transcript, consisting of 335 pages, Volumes  
13 1 and 2, constitutes a true transcription of my notes  
14 of said proceedings, and the insertion of the  
15 prescribed prefiled testimony of the witness.

16 DATED this 11th day of May, 1998.

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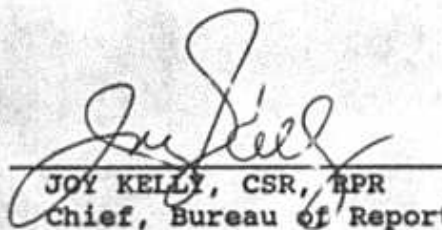
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JOY KELLY, CSR, RPR  
Chief, Bureau of Reporting

(904) 413-6732