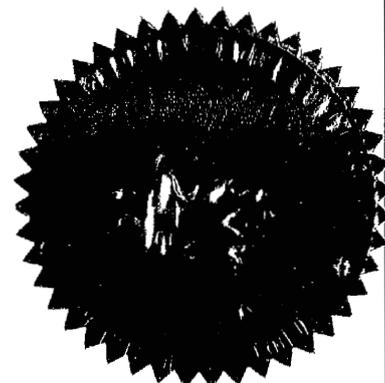


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 020129-TP

In the Matter of

JOINT PETITION OF US LEC OF FLORIDA,
INC., TIME WARNER TELECOM OF FLORIDA,
L.P., AND ITC^DELTACOM COMMUNICATIONS
OBJECTING TO AND REQUESTING SUSPENSION
OF PROPOSED CCS7 ACCESS ARRANGEMENT
TARIFF FILED BY BELLSOUTH
TELECOMMUNICATIONS, INC.



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PROCEEDINGS: ORAL ARGUMENT

BEFORE: CHAIRMAN LILA A. JABER
COMMISSIONER J. TERRY DEASON
COMMISSIONER BRAULIO L. BAEZ
COMMISSIONER RUDOLPH "RUDY" BRADLEY

DATE: Tuesday, August 19, 2003

TIME: Commenced at 3:00 p.m.
Concluded at 4:40 p.m.

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

REPORTED BY: LINDA BOLES, RPR
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P R O C E E D I N G S

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CHAIRMAN JABER: Commissioners, we're here for an oral argument. And, Ms. Christensen, you have a notice to read?

MS. CHRISTENSEN: Yes, Commissioner. By notice issued June 9th, 2003, this time and place having been set for oral argument in Docket Number 020129-TP, in re joint petition of US LEC of Florida, Inc., Time Warner Telecom of Florida, LP, and ITC^DeltaCom Communications objecting to and requesting suspension of proposed CCS7 access arrangement tariff filed by BellSouth Telecommunications, Inc. The purpose is to hear oral argument on Issues 8, 10 and 11 as set forth in the notice.

Staff notes that since the Commission first met on this item the law has changed specifically regarding Section 364.163, Florida Statutes.

CHAIRMAN JABER: Ms. Christensen, had you all agreed on a time, designated time limitation for oral argument?

MS. CHRISTENSEN: The parties agreed that they would limit their remarks to about ten minutes per party.

CHAIRMAN JABER: And what about the order of presentations?

MS. CHRISTENSEN: Staff would recommend that US LEC would go first, and then MCI, and then followed by BellSouth Telecommunications.

CHAIRMAN JABER: Okay. The only thing I ask of the

1 parties is as you make the oral argument, if it's not clear
2 which issue you are referencing, help us along and point out
3 which issue your argument pertains to.

4 COMMISSIONER DEASON: Madam Chairman, before we do
5 oral argument, it may be helpful for staff to -- at least it
6 would be helpful to me to bring us up to date, I mean to --

7 CHAIRMAN JABER: Refresh our memory?

8 COMMISSIONER DEASON: To refresh our memory as to
9 what transpired at the previous agenda, what, if any, action we
10 took on what issues, and what remains and what seems to be the
11 focus of today's oral argument.

12 CHAIRMAN JABER: Okay. Commissioner Deason, I think
13 that's a great idea. Ms. Christensen, do you want to briefly
14 bring us up to speed?

15 MS. CHRISTENSEN: Hopefully very briefly. What was
16 presented to the Commission at the February 18th agenda
17 conference was staff's posthearing recommendation on the
18 petition. At that agenda conference the Commission proceeded
19 to vote on several of the issues and had deferred several of
20 the issues.

21 The Commission voted to approve staff on Issue 1, in
22 which staff recommended that the evidence supports a finding
23 that BellSouth's CCS7 access tariff applies to nonlocal
24 intrastate traffic and to local traffic if the carrier does not
25 have an approved interconnection agreement.

1 The Commission also voted to approve staff's
2 recommendation on Issue 2, which found the evidence supports a
3 finding that BellSouth provided CCS7 access services to ALECs,
4 IXCs and other carriers prior to the filing of its CCS7 tariff.

5 The Commission voted to approve staff's
6 recommendation on Issue 3 in which the Commission found the
7 evidence supported a finding that BellSouth's CCS7 access
8 arrangement tariff is not revenue neutral. Whether viewed in
9 its current form or from the standpoint of one of the future
10 agreed upon adjustments the tariff is not revenue neutral.

11 The Commission denied staff's recommendation on Issue
12 4 and determined that there is an existing access service that
13 meets the parameters of Section 364.163, Florida Statutes.

14 The statutes -- or I'm sorry. The Commission
15 approved staff on Issue 5, which found that the evidence
16 supports a finding that under the CCS7 access arrangement
17 tariff BellSouth charges the following for the types of traffic
18 identified in Issue 1, and sets forth a schedule with the
19 charges for that.

20 The Commission also approved staff's recommendation
21 on Issue 6 finding that the evidence supports a finding that
22 pursuant to its tariff BellSouth does not bill multiple
23 carriers for the same message on any given segment of a call.

24 Further, the Commission found that BellSouth's
25 billing methodology from a technical perspective is accurate;

1 however, it found that it is not possible for a carrier to
2 report the appropriate jurisdictional factor without purchasing
3 a message counting system. Consequently, without a message
4 counting system the messages would be inappropriately billed
5 under BellSouth's default jurisdictional factor as discussed in
6 Issue 8.

7 The Commission also approved staff's recommendation
8 on Issue 7, finding the evidence supports a finding that,
9 pursuant to its CCS7 tariff, BellSouth bills for ISUP and TCAP
10 messages regardless of the originating party or the direction
11 of the message, and also found there are several significant
12 factors beyond the scope of this issue that could be considered
13 in order to determine whether these changes are appropriate,
14 and thus reserves final judgment for Issue 10.

15 Issue 8 was one of the issues which the Commission
16 left open for today's oral argument, and the issue was what is
17 the impact, if any, of BellSouth's CCS7 access arrangement
18 tariff on subscriber lines? Does such impact, if any, affect
19 whether BellSouth's CCS7 access arrangement tariff should
20 remain in effect?

21 Issue 9 was also an issue that the Commission
22 approved staff's recommendation that the evidence supported a
23 finding that BellSouth does not bill ILECs for signaling
24 associated with local or intrastate traffic. However, while
25 BellSouth does not bill ILECs per-message charge, it bills the

1 higher local switch rate pursuant to Section E16 of the
2 BellSouth tariff.

3 Issue 10 was one of the issues that was deferred.
4 That issue was, should BellSouth's CCS7 access arrangement
5 tariff remain in effect and, if not, what action should the
6 Florida Public Service Commission take?

7 Issue 11 was also deferred. That issue was if the
8 tariff is to be withdrawn, what alternatives, if any, are
9 available to BellSouth to establish a charge for nonlocal
10 CCS7 access service pursuant to Florida law?

11 And then, of course, Issue 12, which is the close
12 docket issue, was left open.

13 CHAIRMAN JABER: When we voted on the initial
14 recommendation and made the decision to, to defer ruling on
15 these issues, we voted to reopen the record; right?

16 MS. CHRISTENSEN: That is my recollection that the
17 Commission in deferring those issues also determined at that
18 point in time that they would like to receive oral argument on
19 those issues, thereby opening up the record again, and thus we
20 are here today.

21 CHAIRMAN JABER: And in doing that, you don't
22 anticipate a vote today. Certainly I don't anticipate a vote
23 today. You will bring back a recommendation to us that will
24 include discussion of the record and this oral argument?

25 MS. CHRISTENSEN: That was staff's understanding is

1 that we would try to incorporate what is presented in today's
2 oral argument and bring that back before the Commission
3 specifically on those issues. And since the, you know, the
4 record is open, whatever else the Commission deems they would
5 like to have us address again.

6 CHAIRMAN JABER: What time frame did you have in mind
7 for bringing back a recommendation?

8 MS. CHRISTENSEN: We had not specified a specific
9 time frame for that. We would need to get a copy of the
10 transcript, and that usually takes two weeks. And then a month
11 should be sufficient to analyze what the oral arguments are
12 unless there's something else that comes up, and then we may
13 need to take longer. But I would think within two months we
14 should be back with an updated posthearing recommendation.

15 CHAIRMAN JABER: The only reason I'm asking, I recall
16 when we voted to reopen the record and take oral argument, we
17 envisioned a much quicker time frame for the oral argument to
18 occur. And it's my understanding that the delay was because
19 parties were trying to negotiate and, in fact, one of the
20 parties, I guess, has withdrawn.

21 MS. CHRISTENSEN: My understanding is at least one of
22 the parties has reached a settlement with BellSouth, and maybe
23 more than that. And they'll -- I'm sure there are several of
24 the parties here present today who would probably like to
25 indicate that they've reached a settlement and probably would

1 ask to be excused for the rest of the proceeding, but that's my
2 understanding.

3 CHAIRMAN JABER: Okay. My point being I just don't
4 want anymore delay unless, obviously, you're kind of discarding
5 issues. And, parties, that's always encouraged. But this has
6 been here for a while.

7 Commissioner Deason, was that briefing appropriate,
8 or you had more questions?

9 COMMISSIONER DEASON: That's very helpful. I knew
10 that we had addressed a number of issues. I just did not
11 recall which ones were still remaining open, and that was very
12 helpful. Thank you.

13 CHAIRMAN JABER: Great. Okay. With that, let's see,
14 staff is recommending US LEC go first, MCI second, BellSouth
15 last. But there is a party here that wishes to be excused?

16 MS. NOEL: Yes. My name is Linda Noel. I'm with
17 the Pennington Law Firm and I'm here on behalf of Time Warner
18 Telecom. And I'm merely here to inform you that we have
19 reached a settlement in this matter and do not wish to be heard
20 on oral arguments.

21 CHAIRMAN JABER: Okay. I need you to tell me your
22 name right into the microphone one more time.

23 MS. NOEL: Linda Noel.

24 CHAIRMAN JABER: Thank you. Well, Ms. Noel, I
25 certainly don't have any questions for you. Commissioners?

1 And your settlement, will that, does that need to come to us in
2 some form? Do I need to acknowledge the withdrawal from the
3 case?

4 MS. CHRISTENSEN: I think just a mere acknowledgment
5 that they're withdrawing from the case would be sufficient if
6 they've reached a settlement. Since the Commission has not
7 reached a full and final decision on it, I think just an
8 acknowledgment of a withdrawal would be sufficient.

9 CHAIRMAN JABER: Do we ever need to act on the
10 settlement?

11 MS. CHRISTENSEN: I don't believe in this instance
12 you would need to act on the settlement, no.

13 CHAIRMAN JABER: Okay. Well, Ms. Noel, your notice
14 that you're withdrawing from the case is acknowledged. And we
15 appreciate your participation thus far and you may be excused.

16 MS. NOEL: Thank you.

17 CHAIRMAN JABER: Going once, twice.

18 MR. TURNER: Madam Chair, along those lines,
19 BellSouth has also reached a settlement with ITC^DeltaCom. My
20 memory is bad because it was a while ago. I think they may
21 have already entered a withdrawal, but I did want to bring to
22 the Chairman's attention that we have settled with that party
23 as well.

24 CHAIRMAN JABER: Okay. Since they are not here and I
25 don't have anything in front of me, we'll let staff address

1 that in the recommendation. And when we do ultimately vote on
2 the recommendation, I'm sure we can take care of it there.
3 Okay. With that, US LEC.

4 MR. McDONNELL: Thank you, Madam Chair. My name is
5 Marty McDonnell. I'm from the Tallahassee law firm of
6 Rutledge, Ecenia, Purnell & Hoffman, and I'm here on behalf of
7 US LEC of Florida.

8 I, too, would like to tell you that we've reached a
9 settlement with BellSouth on these issues; however, we've been
10 unable to do so through no fault of present counsel for
11 BellSouth.

12 US LEC agrees with staff and supports staff's
13 recommendation in Issues 8 and 10. That is, it's US LEC's
14 position that BellSouth's CCS7 access arrangement tariff
15 unnecessarily and unreasonably increases costs for CLECs that
16 provision their own SS7 networks by requiring those CLECs to
17 invest in a system simply to reciprocal bill BellSouth.

18 US LEC also agrees with staff recommendation number
19 10 that BellSouth's CCS7 access arrangement tariff should be
20 canceled and BellSouth should be ordered to refund on a
21 customer-specific basis any net increase resulting from this
22 tariff.

23 The other outstanding issue is Issue 11: If the
24 tariff is to be withdrawn, what alternatives are available to
25 BellSouth? US LEC has not taken a position regarding that

1 issue and does not take one today.

2 This tariff is indisputably discriminatory.
3 BellSouth has conceded during the hearing and this Commission
4 has found that BellSouth only charges ALECs or CLECs, IXCs and
5 third-party hubbing vendors for the SS7 network per signal.
6 BellSouth has admitted, and this Commission has found in Issue
7 9, that BellSouth does not bill ILECs for the signaling
8 associated with local or intrastate traffic.

9 By way of background --

10 COMMISSIONER DEASON: Let me ask a question. But
11 ILECs are required to pay the higher switching rate; is that
12 correct?

13 MR. McDONNELL: Which we -- yes. Which we were
14 required to pay until they implemented this tariff, and which
15 we would gladly go back to if the Commission deems appropriate.
16 That's why there would be a net refund because I think
17 BellSouth is asking the Commission, if you do cancel the
18 tariff, to allow them to go back to their higher rate, the same
19 rate the ILECs are paying.

20 By way of background, SS7 is a signalling network
21 that every CLEC uses to set up and take down all telephone
22 calls: Intrastate, nonlocal, local and interstate. Generally
23 CLECs either purchase their own networks or lease networks from
24 parties that are third-party hubbing vendors. BellSouth also
25 has its own SS7 network. And prior to the implementation of

1 this tariff, all parties paid for their own usage charges on
2 their own SS7 network. Every call has approximately 8 ISUP
3 messages and generally a smaller number of TCAP messages, and
4 each party's SS7 network transfers those messages back and
5 forth with the other party irrespective of the originating
6 caller.

7 Since BellSouth implemented this tariff, US LEC and
8 other CLECs now do two things. First, they pay for their own
9 entire SS7 network. They're not subsidized by BellSouth in any
10 manner.

11 Secondly, they pay BellSouth for BellSouth's
12 SS7 network on a per unit basis. And US LEC does that
13 irrespective of whether we -- our end user originates a call or
14 BellSouth's end user originates a call. BellSouth bills us for
15 every message irrespective of which party originated the call.

16 COMMISSIONER DEASON: Why don't you bill BellSouth
17 then for the utilization of your network?

18 MR. McDONNELL: One of the reasons is that -- going
19 back to the record, BellSouth was unable to catalogue these
20 calls and count the per-message hits on the SS7 network prior
21 to its purchase of the Agilent system. It's in the record, the
22 cost of that system, but I believe it's confidential. And I
23 think it's also in the record that the CLECs can't afford it.

24 COMMISSIONER DEASON: You can't come up with a
25 surrogate or an agreement?

1 MR. McDONNELL: Well, we've tried to come up with an
2 agreement and --

3 COMMISSIONER DEASON: Unsuccessfully, obviously.

4 MR. McDONNELL: Unsuccessfully, although we have in
5 our prefiled testimony and throughout this proceeding felt that
6 the equivalent of a bill-and-keep matter would be the
7 appropriate resolution in that we all have our own SS7 networks
8 and we all have our own customers to bill for it. And that's
9 essentially the way this, this signaling system worked prior to
10 the implementation of this tariff.

11 BellSouth admits that prior to the implementation of
12 this tariff CLECs --

13 COMMISSIONER DEASON: Excuse me just a moment. I
14 hate to keep interrupting.

15 MR. McDONNELL: That's okay.

16 COMMISSIONER DEASON: But you would support a
17 bill-and-keep arrangement. Mr. Turner, I'm going -- when your
18 turn comes, I want you to address why that's not acceptable.

19 MR. TURNER: Yes, sir.

20 MR. McDONNELL: BellSouth admits that prior to the
21 implementation of this tariff CLECs, third-party hubbing
22 vendors, IXCs and ILECs were all treated the same and that all
23 parties paid for their own SS7 usage, including BellSouth.
24 BellSouth now has unilaterally decided that BellSouth's costs
25 for the SS7 network shall be borne by CLECs, IXCs and

1 third-party hubbing vendors but not the ILECs. BellSouth has
2 admittedly exempted ILECs from these SS7 usage costs, and these
3 costs are significant. During the course of the hearing one of
4 the CLEC parties, I believe, waived confidentiality on a very
5 important issue, regarding a billing issue. I think I was
6 cross-examining a BellSouth witness who admitted that that
7 particular CLEC was charged by BellSouth for approximately
8 25 million SS7 messages during a one-month period of time, and
9 that's just one carrier. I don't think, respectfully, the
10 Commission can ignore the fact that BellSouth does not charge
11 ILECs for this service. And pursuant to Section 364.10,
12 Florida Statutes, any telecommunications company, including
13 BellSouth, may not make or give any undue or unreasonable
14 preference or advantage to any person or subject any person to
15 any undue or unreasonable prejudice or disadvantage in any
16 respect whatsoever.

17 BellSouth's stated basis for this tariff is that it
18 more accurately attributes the costs to the cost causers. And
19 I submit that argument is inappropriate and transparent, first
20 of all, because if the purpose of the tariff is to more
21 accurately bill the parties, they should be billing the ILECs
22 the same way they're billing us. The traffic they exchange
23 with ILECs over their SS7 network is exactly the same traffic
24 they charge with us. It's either intraLATA nonlocal traffic
25 where a Verizon or Sprint end user calls a BellSouth end user

1 or vice versa. It's the same network doing the same thing,
2 imposing the same costs on the parties, yet they do not charge
3 the ILECs the signaling usage charges.

4 COMMISSIONER DEASON: Is that because they have
5 basically a bill-and-keep arrangement between themselves or do
6 you know?

7 MR. McDONNELL: I'm sorry?

8 COMMISSIONER DEASON: Is the reason that the ILECs
9 are not billed on the same way that's being proposed for the
10 CLECs, is that because the ILEC arrangement is essentially a
11 bill-and-keep arrangement or do you know?

12 MR. McDONNELL: I do not know. I think BellSouth
13 testified -- Witness Follensbee testified that it wasn't
14 technically a bill-and-keep arrangement with ILECs, but perhaps
15 Mr. Turner --

16 COMMISSIONER DEASON: Mr. Turner is making notes, so
17 I'm sure he'll address it.

18 MR. McDONNELL: Okay.

19 COMMISSIONER DEASON: Thank you.

20 MR. McDONNELL: Thank you. And also, if the purpose
21 of this tariff is to attribute the cost to the proper, quote,
22 cost causers, I would submit to you that every call we exchange
23 with BellSouth, there are two cost causers, our end user and
24 their end user, yet they impose 100 percent of the SS7 costs on
25 us. We pay for our SS7 costs and we pay for BellSouth's

1 SS7 costs. So it's not attributing the cost to the, quote,
2 cost causer. It's attributing the entire cost to a single cost
3 causer, if you want to use their language, that being the CLEC
4 end user.

5 If the intent is to more accurately bill the proper
6 cost causers, I submit to you this tariff accomplishes nothing.
7 What it does do is it accomplishes putting CLECs in a
8 discriminatory position in that they are paying BellSouth for
9 something that the ILECs don't pay BellSouth for, exchanging
10 the same traffic, and the CLECs don't bill BellSouth for,
11 exchanging the same traffic, even though our costs are almost
12 identical.

13 Secondly, this tariff is undeniably anticompetitive.
14 The rates at which BellSouth charges CLECs, IXCs and
15 third-party hubbing vendors are the same rates that BellSouth
16 filed with the FCC for its interstate traffic. However, as
17 this Commission has found in Issue 1, BellSouth's CCS7 access
18 tariff applies to nonlocal intrastate traffic and to local
19 traffic if the carrier does not have an approved
20 interconnection agreement with BellSouth. These rates are not
21 cost-based. BellSouth admits so. CLECs, IXCs and third-party
22 hubbing vendors today pay for the entire SS -- their own SS
23 network and subsidize BellSouth's SS network at prices that
24 even exceed BellSouth's costs for provisioning the SS7 service.

25 As regulators of the Florida telecommunications

1 landscape this Commission respectfully owes a duty to the
2 CLECs, ILECs and third-party hubbing vendors to be treated in a
3 nondiscriminatory, competitive basis by the ILECs. US LEC
4 respectfully requests that the Commission cancel this tariff
5 and order the refunds to US LEC as though this tariff was never
6 in effect in accord with recommendation by your staff in Issue
7 10.

8 CHAIRMAN JABER: Mr. McDonnell, how would we
9 calculate the refund?

10 MR. McDONNELL: The refund will be calculated by --
11 first of all, I think BellSouth has held the money subject to
12 refund and they've sent us bills as to how much we owe them.
13 We could recalculate the local charges that they reduced in
14 order to bring this tariff into effect and net out how much
15 more money we've paid under this tariff than we would have paid
16 without this tariff.

17 CHAIRMAN JABER: You said recalculate local
18 charges -- I missed the last part of that.

19 MR. McDONNELL: Okay. When they implemented this
20 tariff, these new costs were to some extent offset by a
21 reduction in, correct me if I'm wrong, Mr. Turner, but the
22 local switching.

23 MR. TURNER: Yes, ma'am. It was a reduction in the
24 local switching component of switched access services.

25 CHAIRMAN JABER: Uh-huh. Uh-huh. Okay. So that,

1 that netting has to occur to get the pot right. Okay.

2 MR. McDONNELL: Correct.

3 CHAIRMAN JABER: And then that gets compared to
4 what's being held in escrow?

5 MR. McDONNELL: Correct. Well, some of it has been
6 billed and not paid, but some has been billed and paid. But
7 we're aware of those numbers. We could work those numbers out,
8 I think, subject to the Commission ruling.

9 CHAIRMAN JABER: Okay. Commissioners, do you have
10 any questions of Mr. McDonnell at this time or do you want to
11 go forward and come back with any questions?

12 Okay. Commissioner Bradley.

13 COMMISSIONER BRADLEY: Mr. McDonnell, several or at
14 least a couple of the other companies have worked out
15 agreements. Have you all tried to negotiate an agreement with
16 BellSouth relative to your issues?

17 MR. McDONNELL: Yes, sir. We've been trying to
18 negotiate since we were last before the Commission in February,
19 and we've been unable to negotiate a settlement agreeable to
20 both sides.

21 COMMISSIONER BRADLEY: One other question. Your
22 issues -- are your issues the same as the other companies who
23 have been able to negotiate an agreement with BellSouth or do
24 you have different issues?

25 MR. McDONNELL: Well, I am not privy to their

1 settlement discussions.

2 COMMISSIONER BRADLEY: Okay. Yeah. That's an unfair
3 question.

4 MR. McDONNELL: I would say though I think some
5 issues are the same and I think some issues are different. But
6 more than that, I can't tell you, Commissioner Bradley.

7 CHAIRMAN JABER: What he's trying to say is he's not
8 privy to the negotiations.

9 COMMISSIONER BRADLEY: Right. I understand. Right.
10 That's why I said that's an unfair question.

11 How close are you, you all?

12 MR. McDONNELL: We're not very close. There's some
13 fundamental differences that we're unable to resolve.

14 COMMISSIONER BRADLEY: As it relates to all three of
15 the issues, one or two or more?

16 MR. McDONNELL: As to 8 and 10. Yeah. That's fair.
17 As to all three issues, I think. We were -- when we were
18 attempting to resolve it, it was going to be a global
19 resolution of all the issues pending before the Commission;
20 however, we reached an impasse that we just cannot get past.

21 COMMISSIONER BRADLEY: Thank you.

22 MR. McDONNELL: Thank you.

23 CHAIRMAN JABER: Mr. McDonnell, Ms. McNulty and
24 Mr. Turner, if you could prepare to answer this as well so I
25 don't forget it. Staff in their introduction reminded us that

1 364.163 has been changed or modified by the Legislature. What
2 impact -- in light of that statutory change, what impact do you
3 believe there is on the resolution of these three issues?

4 MR. McDONNELL: On behalf of US LEC I do not think
5 that the amendments to 364.163 alter anything I've said so far.
6 I think under the law in effect at the time that this tariff
7 was implemented US LEC is entitled to the relief sought. I
8 have not briefed how the 2003 amendments may impact a
9 February 2002 tariff filing. If that's something the
10 Commission is interested in, I would request a brief period of
11 time to file something in writing regarding the amendments, if
12 I could.

13 CHAIRMAN JABER: Well, let me pose it to you. Is
14 that, is that a relevant concern? Is it a legitimate concern
15 to decide whether changes that occurred, I guess it was
16 effective July 1st, if and how they impact the resolution of
17 these issues?

18 MR. McDONNELL: The resolution of the issues as far
19 as US LEC is concerned under the old law is as we say. And I
20 don't think there's anything we could add to the new law to at
21 least the period of time that the tariff was in effect prior to
22 July 1, 2003.

23 CHAIRMAN JABER: I guess the legal question that
24 might need to be addressed, and again I pose it to you, is is
25 there consensus that this case should be processed under the

1 old law or is that the issue to be briefed? Are we obligated
2 to follow the old law because that's when this petition was
3 filed or is there an obligation for us to review the rest of
4 the issues under existing state law?

5 MR. McDONNELL: I'm not in a position to assert that
6 the new law applies retroactively to these facts. I would
7 request a short period of time either to concede the issue or
8 to alert BellSouth that we don't concede the issue and file a
9 brief.

10 CHAIRMAN JABER: Okay. And if we went down that
11 road, how much time is necessary for that kind of a brief?

12 MR. McDONNELL: We can have that done before staff's
13 rec gets in. Two weeks.

14 CHAIRMAN JABER: I would hope so. Two weeks. Okay.

15 MR. McDONNELL: I wanted to make the two weeks sound
16 a little better because they wanted 30 days.

17 COMMISSIONER BRADLEY: Madam Chair, I want to --

18 CHAIRMAN JABER: Commissioner Bradley.

19 COMMISSIONER BRADLEY: Along that same line, as it
20 relates to the Florida Statute as it was amended during the
21 last legislative session, does that eliminate your problem
22 presently even though it doesn't take care of what your problem
23 was previously?

24 MR. McDONNELL: As long as this tariff is in effect
25 we have a problem.

1 COMMISSIONER BRADLEY: Thank you.

2 CHAIRMAN JABER: Ms. McNulty.

3 MS. McNULTY: Thank you. Good afternoon,
4 Commissioners. I'm Donna McNulty representing MCI. MCI agrees
5 with US LEC and staff regarding Issues 8 and 10, but the
6 Commission should cancel BellSouth's CCS7 tariff. In addition
7 to the points raised today by US LEC, MCI believes there are
8 two other issues for the Commission to consider regarding
9 Bell's tariff.

10 First, Bell's tariff is inappropriate and vague as
11 written, too vague for a customer to understand its terms.
12 Second, Bell fails to provide sufficient billing detail to
13 customers for them to evaluate their bills.

14 Regarding the first point, Bell's tariff provides
15 that the customer is responsible for reporting to BellSouth the
16 percent interstate usage or PIU for Bell's CCS7 access
17 arrangement. It is unclear from the tariff what specifically
18 that factor represents and precisely how it is to be
19 calculated. Nor is the tariff clear whether the factor the
20 customer provides is supposed to apply to the customer's
21 originated traffic only or to both its originated and
22 terminated traffic.

23 The tariff explains how to calculate PIU for
24 minutes-of-use-based billing elements and it's clear how the
25 PIU applies to such elements. The tariff says nothing,

1 however, about how to calculate PIU for message-based billing
2 elements such as the SS7 signaling. To compound matters, if a
3 company fails to provide Bell with such a PIU, Bell imposes a
4 default allocation of 50 percent interstate and 50 percent
5 intrastate. This is significant because BellSouth then applies
6 the intrastate TCAP and ISUP charges to 50 percent of all of
7 the customer's traffic regardless of the true jurisdictional
8 nature of that traffic. Thus, BellSouth's intrastate tariff
9 illegally classifies as intrastate messages that are interstate
10 and subject to the FCC's jurisdiction. Moreover, this puts
11 customers in a box.

12 Bell's tariff doesn't specify how to calculate the
13 factors or precisely what those factors represent. And when
14 the customers are unable to provide accurate factors, Bell then
15 arbitrarily and incorrectly applies a default factor. If you
16 can't tell what the factors apply to, the result could be that
17 local messages are billed at access rates.

18 Although the Commission has ruled in Issue 1 that
19 Bell's tariff doesn't apply to messages associated with local
20 traffic for those carriers with interconnection agreements,
21 Bell's tariff has no mechanism for separating out messages
22 associated with local traffic. Because the tariff isn't clear
23 on that point, the Commission needs to ensure that customers
24 are not billed for messages associated with local traffic when
25 they have local interconnection agreements with BellSouth.

1 At the hearing BellSouth's counsel asked CLEC
2 witnesses questions about whether CLECs, you know, filed
3 percent local usage, PLU factors under BellSouth's intrastate
4 tariff. BellSouth's tariff, however, does not have a provision
5 for filing the PLU. The tariff simply has no provision for the
6 customer to notify BellSouth what messages are local and no
7 requirement that BellSouth abide by such a notification. In
8 essence, customers are required to provide a PIU for traffic of
9 messages they are not able to accurately track. And when they
10 can't do it, they're subject to a hefty BellSouth-favorable
11 split that could possibly include local traffic.

12 Regarding the second point regarding lack of
13 sufficient billing detail, with its CCS7 tariff BellSouth
14 reduces access charges and assesses charges for TCAP and ISUP
15 messages when previously there were no explicit charges for
16 such messages. Although BellSouth claims that when it filed
17 the tariff it intended the tariff to be revenue neutral,
18 BellSouth at the hearing conceded that its tariff is not
19 revenue neutral.

20 The impact of BellSouth's CCS7 tariff is that it
21 significantly increases the cost to customers and that it is a
22 revenue generator for BellSouth. While customers such as MCI
23 have seen significant increases in their bills under
24 BellSouth's CCS7 tariff, BellSouth has failed to provide
25 adequate billing detail to them. Although BellSouth provides

1 some information such as the total number of ISUP and TCAP
2 messages and the rate, Bell refuses to identify the offices
3 where the messages truly originate or terminate, and these are
4 also called the origination and destination point codes. This
5 means that a company such as MCI, which has received huge
6 increases in its bill from BellSouth, has no way to determine
7 the accuracy of its bill or even to run a sanity check on the
8 bill from BellSouth. BellSouth has said that the cost to
9 provide such information is just too high.

10 Bell has modified its tariff and spent a lot of money
11 to add its Agilent Link Monitoring System so that it's able to
12 assess charges for these TCAP and ISUP messages. It is
13 inappropriate for the Commissioners in this docket to be
14 cajoled into spending an enormous amount of money on a similar
15 monitoring system that would not make economic sense when the
16 messages may likely be equivalent, and it would constitute a
17 barrier to local entry.

18 Part of providing the service is submitting accurate,
19 understandable and verifiable bills. Although Bell has spent a
20 lot of money so that it could measure and charge for these ISUP
21 and TCAP messages, it failed to complete the job. Simply put,
22 customers must be able to assess whether Bell is accurately
23 charging them for these ISUP and TCAP messages.

24 BellSouth voluntarily decided to assess these charges
25 for ISUP and TCAP messages. Customers shouldn't just have to

1 just trust that their competitor, BellSouth, is charging them
2 correctly. If Bell is going to charge for these messages, Bell
3 should do it right. As a result of BellSouth's refusal to
4 provide origination and destination point codes and because its
5 tariff is vague the Commission must cancel BellSouth's
6 CCS7 tariff. If BellSouth seeks to refile a tariff that
7 complies with Florida law, BellSouth must also be required to
8 provide bills that contain origination and destination point
9 codes. Thank you.

10 CHAIRMAN JABER: If BellSouth were to refile the
11 tariff pursuant to existing law, other than the position you've
12 advocated, what changes would need to be made to the tariff to
13 comply with current law?

14 MS. McNULTY: In addition to the changes that -- I
15 mean, of course we agree with US LEC. If they remedied those
16 concerns, they would need to make sure that how to calculate
17 factors as, with regard to messages are clear as opposed to,
18 you know, PIU for, you know, minute-based traffic, usage-based
19 traffic. That needs to be clearer.

20 CHAIRMAN JABER: And you think that's a clarification
21 that's been required by changes to 364.163?

22 MS. McNULTY: No.

23 CHAIRMAN JABER: Okay. My question is are there
24 additional changes to the tariff that result from changes to
25 364.163?

1 MS. McNULTY: Oh, I'm sorry. I misunderstood your
2 question.

3 CHAIRMAN JABER: I could have been clearer.

4 MS. McNULTY: I think that is something I agree with
5 US LEC that if we were to address this question, we'd like to
6 do it by brief to -- we just weren't prepared today to discuss
7 the impact of the new law.

8 CHAIRMAN JABER: Okay. Were you done with your
9 presentation?

10 MS. McNULTY: Yes. And I just wanted to let you
11 know, this is my colleague John Monroe today, but he's not
12 going to address the Commission. He's just here to appear with
13 me.

14 CHAIRMAN JABER: Okay. Commissioners, do you have
15 any questions of Ms. McNulty before we move on?

16 COMMISSIONER DEASON: One quick one.

17 CHAIRMAN JABER: Commissioner Deason.

18 COMMISSIONER DEASON: What is your position on
19 assuming a bill-and-keep arrangement?

20 MS. McNULTY: MCI would be in favor of bill-and-keep
21 for those companies that have their own systems.

22 CHAIRMAN JABER: Okay. Mr. Turner.

23 MR. TURNER: Thank you, Madam Chair. I'm Patrick
24 Turner with BellSouth.

25 Madam Chair, I'm going to ask for some guidance from

1 you. I can either go into my prepared remarks, trying to hit
2 everything that was raised, and then coming back and clean up.
3 It may be easier though if I just start out trying to address
4 points that were just raised and then go into my prepared
5 remarks. And I'll do it whichever way the Chair prefers.

6 CHAIRMAN JABER: That's fine. If you want to address
7 our questions and come back to the prepared remarks, no
8 problem.

9 MR. TURNER: Thank you, ma'am.

10 Let me start with the statute. And I'll say I've
11 spent about 20 minutes reading it and trying to figure it out,
12 so this is about as off the cuff as you can get. But I think
13 the key to remember is this issue is not is the tariff in
14 effect. The Commission already voted to allow the tariff in
15 effect, subject to refund, but it went into effect. So
16 BellSouth's position is that the validity of the tariff is
17 governed by the statute that was in effect at the time.

18 Now this new statute, as I read it, may, and I want
19 to be clear I'm saying may, it may impact price increases that
20 BellSouth can implement under this tariff going forward. But
21 whether the tariff was valid when filed, whether what BellSouth
22 has done was appropriate or not we feel strongly is governed by
23 the law that was in effect at the time that the tariff went
24 into effect. But we certainly would be willing to brief that
25 more thoroughly and submit it as well.

1 I'd like to now go to settlement.

2 CHAIRMAN JABER: You said, you said the new statute
3 may impact price increases going forward?

4 MR. TURNER: Yes, ma'am. I know I saw some language
5 about a cap, cap for three years. Now exactly how that applies
6 to a tariff that's already in effect at the time the statute
7 has come in, I don't know. But I don't think that, again, the
8 statute that came into play months after this tariff went into
9 effect determines the validity of the tariff, which is what
10 we're here to talk about today.

11 I want to echo what Mr. McDonnell said about
12 settlements. BellSouth has, has worked very hard with both
13 companies represented here. Counsel for both companies have
14 been very good to work with. I appreciate their efforts. And
15 it truly is just a disagreement in principle.

16 The settlements with the other two companies, there
17 are nonproprietary versions of them available. And to address
18 some questions by Mr. Bradley, we have offered to make the same
19 methodology apply to these two companies. So we're not
20 discriminating in the way that we're settling.

21 I want to talk briefly about third-party hubbing
22 providers. Mr. McDonnell said that one of the reasons this is
23 anticompetitive is that a third-party hubbing provider who is
24 not an interexchange carrier -- I'm sorry, who is not certified
25 as a local exchange carrier has to bow out of this tariff

1 instead of out of interconnection agreements. There's nothing
2 anticompetitive and nondiscriminatory about that.

3 Today, if I am not a local exchange company, I can't
4 buy a thing out of an interconnection agreement. If I'm a big
5 business, I can't go and buy UNEs and put them together myself.
6 In order to take advantage of an interconnection agreement, you
7 simply have to be a registered and certified local exchange
8 company. So we differ very much on that interpretation being
9 something that's improper, discriminatory or anticompetitive.

10 And finally I want to address the ILEC issue. As Mr.
11 McDonnell noted, we are treating ILECs differently from ALECs,
12 but not in a discriminatory manner. The ILECs continue to pay
13 the higher local switching component of switched access. The
14 ALECs got the benefit of a reduction in that. So the ILECs are
15 paying a higher local component of switched access than the
16 ALECs are. The ILECs do not pay per-message charges, but the
17 ALECs do.

18 And Mr. Follensbee addressed the reason for that, and
19 Mr. Follensbee explained that it's because of the intricacies
20 of how in the past historically two independent companies --
21 I'm sorry, independent companies have interexchange traffic
22 with BellSouth. Mr. Follensbee also stated at Page 243 of the
23 transcript that BellSouth's plans are to as quickly as possible
24 move the independent companies into this new arrangement
25 because it is the most effective and the best way to do this.

1 So we did implement it with the ALECs first. We did not do it
2 in a discriminatory manner. And we are working as hard as we
3 can to change that and many other things regarding our
4 relationship with independent companies. And there are some
5 differences to be worked out there, but we're clearly -- the
6 record shows we're going in that direction.

7 A lot of the rest of it talked about factors and, if
8 I may, I think I'd like to blend that into my prepared remarks.

9 CHAIRMAN JABER: Let me ask you a question on a point
10 you just made. I guess since we've reopened the record this is
11 an appropriate question. I'm assuming if it's not, someone
12 will tell me.

13 Since the hearing and since our decision have you
14 worked out a different arrangement with those ILECs? There's
15 been plenty of time.

16 MR. TURNER: Yes, ma'am. There are many other
17 issues, including meet-point billing arrangements, including
18 exchange of CMRS traffic. There's a veritable hotbed of issues
19 with the ILECs -- I'm sorry, with the ICOs. This is one of
20 them. And we're trying to see what we can work out and iron
21 out among ourselves. In the context of those talks we have not
22 filed anything yet, but we are working with them.

23 CHAIRMAN JABER: So the answer is no, you haven't.

24 MR. TURNER: Not yet.

25 CHAIRMAN JABER: Go ahead.

1 MR. TURNER: At this point I have a couple of
2 handouts I'd like to pass out just for demonstrative purposes,
3 if I may.

4 Madam Chairman, Mr. McDonnell just raised a good
5 point. These are not hearing exhibits. I don't introduce them
6 as record, but I will walk through and show you where there is
7 a transcript cite that will support everything on that page,
8 unless it's just a factor I threw in there for demonstrative
9 purposes, and I'll identify that as well.

10 Before I get to those handouts, in thinking about how
11 to address this argument today, I was reminded of a field trip
12 I attended with my son, who's a first grader. We went out to a
13 big cornfield maze. Somebody had seen them. They have a big
14 old cornfield. They plow out a maze in it, you go into the
15 front end and, if you're lucky, you come out the back end. And
16 while you walk through it and you're down there at the level of
17 the stalks and the leaves, everything starts looking the same.
18 It can get really confusing. But every once in a while you'd
19 come across a platform, and you could stand up on the platform
20 and look back down on that maze from a common, everyday
21 perspective, the one you're used to looking at a maze from, and
22 from that point you could get guidance and it's pretty easy to
23 figure your way through it.

24 Thinking of it that way, it struck me that something
25 that the staff said about Issue 8, which is what most of my

1 remarks will be addressing today, the staff said something
2 about Issue 8 during the February 18th, 2003, agenda conference
3 that I think is really on target. Staff representatives said
4 Issue 8 addresses the effect on carriers, not from a legal
5 perspective but from a common, everyday perspective. What I'd
6 like to do for the remainder of my discussion with you is sort
7 of get up on that platform and look at this issue from a
8 common, everyday perspective and show you how what we're asking
9 you to do is the common, everyday way that we address these
10 issues.

11 First, you've heard a lot of talk about just simply
12 reciprocal billing, that all that's going to happen is they're
13 going to bill us back the exact same amount of money we're
14 billing them. That's what these handouts are going to help me
15 walk through because I think I can show you based on the record
16 that's not accurate. The most time I'm going to spend on this
17 argument is going to be explaining this first page, because
18 then from then on it's all the same methodology.

19 What we've done here is -- let's look at what an ALEC
20 would pay BellSouth --

21 COMMISSIONER DEASON: Mr. Turner, is that the reason
22 why you do not believe a bill-and-keep arrangement is
23 appropriate?

24 MR. TURNER: Yes, sir. That is one very important
25 reason.

1 COMMISSIONER DEASON: So we're going to go through
2 this and that's going to demonstrate that?

3 MR. TURNER: Yes, sir. I had a note on my last page
4 to remind myself to say that at the end. Yes, sir.

5 Let's look at what an ALEC would pay BellSouth, and
6 to do that let's assume that there are 10 million signaling
7 messages that traverse a B-link, and that's just the
8 transmission facility between me and Mr. McDonnell. Let's say
9 in a given month there are 10 million, and that's on the top
10 left. If you move over to the right, you see ALEC factors.
11 Let's assume that they give us a factor of PIU, percent
12 interstate signaling usage of 8 percent, a PLU of 87 percent.

13 Now Mr. Milner --

14 COMMISSIONER DEASON: Let me interrupt. Where do
15 those numbers come from? Is that something that the ALEC is
16 obligated to measure and report to you, and is that auditable
17 by you or do you accept those numbers? How do those numbers
18 come about?

19 MR. TURNER: Yes, sir. If I may, what I'll -- I've
20 got all of that right behind this to talk about the factors.
21 What I wanted to do is demonstrate to the Commission how
22 changing the factors between two companies can result in a
23 difference in the amounts owed to one another, and then I'm
24 going to come back and address the factors and address how we
25 calculate them, what the tariff says about it, what the

1 evidence says about it, if that will suit you.

2 COMMISSIONER DEASON: That's fine.

3 MR. TURNER: Okay. Now Mr. Milner at Page 353 of the
4 transcript testified that our system counts the total messages
5 there, that 10 million, but we have to use the jurisdictional
6 factors in order to break that down into buckets to determine
7 how many to bill at the interstate rate, how many to bill at
8 the local rate, how many to bill at the intrastate nonlocal
9 rate. And at Page 198 through 199 of the transcript
10 Mr. Follensbee adopted Mr. Ruscilli's testimony and he
11 explained how to apply these factors. And that's what I've
12 done over here on the messages per jurisdiction side on the
13 left of the page about halfway down.

14 The PIU of 8 percent means that 10 million -- of
15 those 10 million -- of those 10 million messages, 8 percent of
16 them are interstate. So we have 800,000 there, interstate
17 messages.

18 The PLU says of the remaining messages 87 percent of
19 those are local. So you take the difference between
20 10 million -- you back 800,000 interstate out of it, and you
21 take 87 percent of that and you get 8,004,000 messages at the
22 local level, and the remainder is 196 million at the nonlocal
23 intrastate level.

24 Move over to the right. The rates for ISUP messages.
25 The interstate and the nonlocal intrastate rates are straight

1 out of the record. They're at Page 205 of the transcript. The
2 local message rate depends on the interconnection agreement.
3 So what I did is everyone testified they're TELRIC-based,
4 they're always lower than the tariffed amount, so I just
5 plugged in a number of .00015 just for discussion purposes
6 because it is lower than those two tariffed rates.

7 And so when you multiply the number of messages times
8 a rate, over on the right side of the page we see that the ALEC
9 would pay BellSouth \$28 for interstate messages, \$41.86 for
10 nonlocal intra and \$120.06 for local, for a grand total of
11 \$189.92.

12 All right. Go with me now, if you would, to the
13 second page. That second page takes the exact same 10 million
14 messages over that B-link, and the assumptions we're using here
15 are that the ALEC has a tariff that does exactly what
16 BellSouth's does. It says give me your factors. I'm going to
17 have the exact same message rate, I'm going to have everything
18 the same, you give me your factors that apply to those messages
19 and let's see what you come up with.

20 If we assume the exact same factors, which I've done
21 here, then in that one circumstance where the exact same
22 factors apply, it's going to come out to the exact same amount.

23 But let's flip the page and see what happens when the
24 jurisdictionality of our traffic is different than the
25 jurisdictionality of their traffic. Here the percent

1 interstate PIU factor there is zero percent for BellSouth.
2 That's supported by the record.

3 Mr. Follensbee testified that BSLD, BellSouth Long
4 Distance, and not BST provides interstate services in Florida.
5 Ironically that was at Page 271 of the record. So we'd have a
6 PIU of zero. We'd have a PLU -- I just threw in there
7 72 percent. That is a lower PLU than what we assumed on the
8 ALEC on the first page.

9 COMMISSIONER DEASON: Let me ask a question then. If
10 you're making that assumption, that has no effect on your
11 assumption of 10 million messages traversing the B-link?

12 MR. TURNER: No, sir. What we're saying is there are
13 10 million messages that went back and forth on that B-link to
14 handle my calls to them and their calls to me. And so under
15 these tariffs you would take the 10 million messages -- if both
16 parties had identical tariffs, you'd take the total messages,
17 you would apportion them by the factors depending on the
18 traffic I sent them and the traffic they sent me, and then
19 you'd get them into these pots. So here we'll be saying that
20 72 percent of our messages were associated -- of those messages
21 were associated with our calls that were local in nature. So
22 that will plug into a nonlocal intrastate of 2.8 million, local
23 7.2 million messages. And the bottom line is when you look
24 over at the right --

25 COMMISSIONER DEASON: Let me ask, the 10 million,

1 that's the same messages, you're recording the same messages?

2 MR. TURNER: Same messages. Yes, sir. Exact same
3 messages.

4 In other words, we're saying when you send us
5 traffic, you're using our network to handle X percent local
6 calls, X percent intrastate calls and X percent interstate
7 calls. When we're using your network to handle these calls,
8 we're using different percentages because you're sending us
9 different jurisdictionality of traffic. And it makes sense
10 that if a carrier is, is sending traffic that generates more of
11 the higher-priced messages, that carrier will be paying more
12 than the carrier who didn't. So this, this is the
13 assumption -- you know, throughout the record and throughout
14 the staff rec there is a statement that these things will
15 simply even out and they'll be exactly the same.

16 We're showing you that if they put in the exact same
17 tariff and counted the exact same messages and billed them the
18 exact same way, it's not going to even out all the time. It's
19 going to depend on the factors.

20 And if you look at the next page, we've assumed that
21 we had more local usage than they did. And that shows that we
22 pay them \$154, they pay us \$189. The point to all this is the
23 record does not support this idea that if everything is equal
24 as far as the number of messages, as far as the rates, as far
25 as the tariffs go, it's always going to be us paying each other

1 the same amount of money. It's not equal because the
2 jurisdictionality is not equal.

3 Let's go back to these factors real quick. Let me
4 first start out by saying what the record shows about how
5 BellSouth tells folks to create these factors. Late-filed
6 Exhibit Number 16 --

7 CHAIRMAN JABER: How BellSouth creates the factors?
8 I thought the record established that you rely on the companies
9 to report.

10 MR. TURNER: I misspoke if I said we create them.
11 Yes, ma'am. That's exactly right.

12 BellSouth Late-Filed Exhibit Number 16 is the new
13 language that was updated to the jurisdictional factor
14 reporting guide. And it says to carriers, "Carriers developing
15 and reporting a signalling percent interstate usage in this
16 manner," which basically says split them out into inter and
17 local, "shall inform BellSouth of the methodology used to
18 determine the signals associated with billed minutes that are
19 jurisdictionally interstate and the methodology used to
20 determine the signals associated with total billed minutes."

21 What we're saying is we're not going to handcuff you
22 to a given methodology. If you want to base it on minutes of
23 use, do it. If you've got a counting system, do it. However
24 you think makes sense, give it to us, let us see the
25 methodology so we can say, hey, we don't think this is right,

1 let's talk about it, or so we can say, fine, that makes sense
2 to us, we'll accept it. So this is in the record and this
3 shows that we do say: You figure out the methodology. And,
4 frankly, we'll help them out, we'll tell them how to do it.

5 One way that you see that is in the transcript.
6 Mr. Milner, at Page 350 through 351, explained how an ALEC
7 could use historical data to look at its minutes of use,
8 determine an average duration of call and, therefore, they
9 could put those numbers together and figure out how many calls
10 are involved. You heard Mr. McDonnell tell you, and I think it
11 was supported by the evidence, there are about eight ISUP
12 messages per call. That's one way of doing it. There are
13 other ways; we're not handcuffing folks. We're just saying you
14 figure it out, send it to us and let us see how you did it and
15 we'll accept those factors and apply them.

16 There's a lot of discussion about the 50/50 split.
17 Well, what are we supposed to do? You've got to
18 jurisdictionalize this thing. And if we say give us a factor,
19 you figure out however you want do it and tell me how you did
20 it, but if you don't do it, I've got to have something to
21 apply. And all we're saying is it'll be 50/50. And if you
22 don't want 50/50, all you've got to do is tell me your factors.
23 And all this is in the record.

24 Now is this factor absolutely perfect? Well, no,
25 nothing's perfect. If you can measure the jurisdictionality of

1 a call, you wouldn't have to worry about this. But from a
2 common, everyday perspective we use factors all the time.
3 We've been using them on the local voice side of the house for
4 a very long time now. Mr. Milner testified to that at the
5 transcript on Page 360.

6 Mr. Milner also said on Page 361, if they can come up
7 with other methodologies that make sense to them, we'll accept
8 them, as long as there's not just some gaping problem that we
9 see in it that we'll discuss with them.

10 There was a question about whether or not the -- why
11 don't the CLECs just bill us back? Well, they can. And, in
12 fact, Mr. Follensbee explained in the testimony that the reason
13 that we don't just take our bill and apply it and send it back
14 to the CLECs and say here is what we owe you for signaling is
15 because there is no tariff that he's aware of that any ALEC has
16 filed that provides for that. He said on Page 239 of the
17 transcript that they certainly can file one. But that's not
18 just a legal nicety. The reason we say file it is ALECs are
19 under nondiscriminatory obligations just like BellSouth. If
20 they bill BellSouth for signaling, they need to bill others.
21 That does not mean they have to apply the exact same
22 methodology by any stretch, but it does mean that we have an
23 opportunity to see how they're planning on billing everybody,
24 look at the tariff. If we have a problem with it, we'll bring
25 it in front of you. If we don't, it goes into effect. But

1 it's not simply a legal nicety. It's there is no tariff in
2 effect yet or any other authority that allows them to bill back
3 yet. And all they have to do is file one in order to bill
4 BellSouth.

5 There's been a lot of talk about building their own
6 counting systems and having to go out and make these
7 investments. The record does not support that. You just -- we
8 just showed you that you don't need counting systems in order
9 to develop jurisdictional factors.

10 Also, we address this in our brief on Page 31 that
11 Mr. Brownworth for DeltaCom -- it was -- as I recall, he was
12 the one that started up this whole notion that you had to have
13 a counting system to bill it. He testified on
14 cross-examination that DeltaCom is a third-party hubbing
15 provider. DeltaCom provides signaling functionality to its
16 third-party hubbing customers. DeltaCom has a factor that they
17 bill for signaling messages. It's a flat rate; they don't do
18 it per message. But he admitted on cross-examination, and it's
19 cited in the record on our brief on Page 31, that they do, in
20 fact, have a method of recovering the costs they incur to
21 provide this signaling. As we pointed out in our brief, if
22 they don't want to do it by counting, they can do factors, they
23 can do a flat rate. If a flat rate doesn't fit all across the
24 board, there are tiered structures that could be used. There
25 are all kind of ways for these ALECs to be able to bill back

1 for this methodology.

2 The fact that BellSouth has made an investment in its
3 network and has come up with a more accurate way of doing it
4 should not be held against us to say until or unless we decide
5 to do the same thing, you can never bill us. There are other
6 ways for them to get this accomplished.

7 CHAIRMAN JABER: Mr. Turner, in the original staff
8 rec, Page 53 on my copy, I think it was Issue 8. Let me see.
9 It was, it was Issue 8. Staff opines that because of how it's
10 set up with a third-party hubbing vendor, that you may be in
11 here a short time after our vote asking for bill-and-keep. And
12 just in case you don't have the recommendation -- and for the
13 Commissioners' benefit staff says, "A third-party hubbing
14 vendor could invest in a message counting system and bill
15 BellSouth per message, and that was conceded as fair by
16 BellSouth." They cite to Randlkev's testimony. "However, the
17 vendor could bill BellSouth at a higher rate. Staff perceives
18 this as reasonable due to the validity of BellSouth's argument
19 that intralata toll message charges are not required to be
20 cost-based." Staff goes on to say, "Considering that logically
21 the number of messages would be equal, with exception offered
22 to message failure, BellSouth would always owe the vendor a net
23 amount per billing interval." And they conclude that
24 intuitively bill-and-keep should eventually work in your favor.
25 You want to comment a little bit on that?

1 MR. TURNER: Yes, ma'am. I believe, and I certainly
2 cannot speak for the staff, but I believe that that conclusion
3 was driven in large part by staff's statement throughout the
4 document that between the ALECs and BellSouth this would result
5 in us billing \$100, them billing \$100 and a net zero. If that
6 were always the case, then there would be some concern here.
7 But as we've just demonstrated, it won't always be a net zero.

8 CHAIRMAN JABER: Okay. So what's the impact then on
9 your third-party hubbing vendor relationship? None?

10 MR. TURNER: I don't want to go so far as saying
11 none. But I think our business folks have run the numbers and
12 have told me that when it's all said and done they believe it's
13 better for BellSouth and our business interests to do it this
14 way. And that's all I can say without getting way over my
15 head.

16 CHAIRMAN JABER: Well, okay. That brings me back to
17 the independent companies you cited to earlier. You don't have
18 a message counting system with them.

19 From the record I recall that that was the case. I
20 remember -- I think I asked that question myself.

21 MR. TURNER: I'm struggling with whether it's the
22 fact that we don't have one that is already there and just not
23 turned on or whether we don't even have it there or not.
24 There's an element in the system that you can put in place and
25 you can either turn it on to count or not turn it on to count.

1 I just don't remember which it was.

2 CHAIRMAN JABER: Let's assume, and it's subject to
3 check, I mean, you all can try to correct this somehow, but
4 let's assume you don't. How can you really be sure you've got
5 50/50 traffic or anything close in those kinds of an
6 arrangement, that kind of an arrangement between you as an ILEC
7 and this independent company?

8 MR. TURNER: I don't think we do. And that's why we,
9 we are working and trying to do what it takes both technically
10 and legally to get in a position to be able to do this counting
11 system across the board with everybody.

12 CHAIRMAN JABER: But at some point the decision was
13 made to treat them differently. And I understand your position
14 that it's not discriminatory, but at some point the decision
15 was made that you would treat them -- I think you said the
16 higher of the switched, switching costs for the accessed tariff
17 and then they don't pay for messaging.

18 What went into that decision versus why can't that be
19 done right now for the ALECs?

20 MR. TURNER: I think the easiest way to answer that
21 is there are so many issues between independent companies and
22 ILECs that need to be brought up-to-date, and you can't just
23 choose one or two and try to pull it up. You have to try to do
24 the entire relationship together. That doesn't occur in the
25 ALECs because since the Act went into effect we've been having

1 negotiations, arbitrations, decisions; we've been coming along
2 that route for a long time and now it just, it fits into that.

3 With the ICOs the relationship --

4 CHAIRMAN JABER: Are ICOs ILECs? What are ICOs?

5 MR. TURNER: You know, they're independent companies
6 in the smaller areas. They're not your RBOCs. But they're --
7 I think of them usually as your smaller rural companies.

8 CHAIRMAN JABER: Independent rural companies?

9 MR. TURNER: Yes, ma'am.

10 CHAIRMAN JABER: Rural ILECs?

11 MR. TURNER: Yes, ma'am. Who are the local carriers
12 for the smaller areas. Those relationships between BellSouth
13 and the independent companies as a general rule are very
14 archaic in the sense that they haven't been changed, they
15 haven't been brought up-to-date in years and years. And
16 because there's so many issues involved that need to be brought
17 up-to-date at once, it was just too difficult to try to bring
18 this one into play without resolving some others. And that's
19 part of the process I spoke about earlier. We're still trying
20 to get there, but it just takes a while.

21 CHAIRMAN JABER: Were you done with your
22 presentation?

23 MR. TURNER: I had one point on revenue neutrality
24 I'd like to make very briefly, if I may.

25 CHAIRMAN JABER: Okay.

1 MR. TURNER: I want to explain for the record why we
2 try to make it revenue neutral, and it goes back to the old
3 statute. Staff brought it out during the agenda conference.

4 The old statute said that on an element-by-element
5 basis basically you could take these access charges or access
6 service charges, I forget the exact word in the statute, but
7 this type of charge, you could increase it year over year by
8 three percent. Well, as the record shows, we had a zero rate
9 for these things when this started out. So how do you increase
10 zero by three percent?

11 The reason we made this revenue neutral was not
12 because the statute requires it or because that's what
13 typically is required. What we were trying to do is say, look,
14 we're going to start charging on a per-message basis for
15 something that before had not been charged. We think the best
16 way to address this under the statute would be to implement a
17 charge, make it revenue neutral, something else in the same
18 type of charges so that across the board there's no change in
19 it. And then the next year you've got a baseline amount that
20 you can start adding three percent on and going with. That was
21 the reason for doing it. And that's why we're saying we are
22 willing, as Mr. Follensbee noted on the transcript at Page 268,
23 we're willing to make a one-time adjustment to look at the
24 actual numbers and make it revenue neutral for that first year.

25 One of the problems we have in doing that, quite

1 frankly, is we hadn't gotten factors. So if a company -- if we
2 do it on the basis of 50/50 like we've been doing and then
3 tomorrow a company comes in and gives us an actual factor, I
4 mean, that could change things going forward. So there's some
5 things that need to be weighed in there. But that's why we did
6 it revenue neutral and that's why we were saying in the
7 transcript by Mr. Follensbee we're willing to adjust it one
8 time but not try to keep it revenue neutral forever because
9 that's neither required nor appropriate under the statute. And
10 that is all I had. Thank you, ma'am.

11 CHAIRMAN JABER: Commissioners, do you have any
12 questions?

13 COMMISSIONER DEASON: The 50/50 default, is that a
14 realistic default?

15 MR. TURNER: I think if you look at one given
16 company, maybe not. If you look at the aggregate of the ALECs
17 we had to look at, I don't think it's unreasonable to say that,
18 especially given that the only time it applies is when an ALEC
19 simply refuses or declines to give a factor. In order for it
20 not to apply, they simply had to give us a factor. So under
21 those two circumstances I would say it is a reasonable factor.

22 COMMISSIONER DEASON: I don't mean to be putting
23 words in the, in the other parties' mouths, and they can
24 correct me, but one of the things that I heard is that there's
25 ambiguity in the application of the tariff and there's

1 difficulty in the measuring and it's expensive to measure. It
2 seems to me that if there were a reasonable default everyone
3 could live with, that that may solve the problem. And maybe
4 I'm looking at it too simplistically. I'll pose that question
5 to you. And then Mr. McDonnell or Ms. McNulty, if you wish to
6 respond to that, that would be fine, too.

7 MR. TURNER: Let me say it this way. If I were to
8 take that back to my clients, I would strongly urge that they
9 think about what you just said and see if we could do
10 something. I simply am not in a position to commit one way or
11 another now because I, frankly, didn't think to ask them about
12 that.

13 COMMISSIONER DEASON: Okay. I guess the question is
14 is the problem the default, that it is unreasonable in your
15 point of view, or is it your problems go much deeper than that
16 and that is not a reasonable basis to address your problems?

17 MR. McDONNELL: My client's problems run much deeper
18 than that, although that has been a problem historically. We
19 may be able to work through that. We have fundamental
20 differences on whether this is a valid tariff for, for this
21 traffic.

22 COMMISSIONER DEASON: Well, let me ask you this. If
23 the traffic can be measured accurately, do you believe then
24 that this tariff does place cost on the cost causer?

25 MR. McDONNELL: No.

1 COMMISSIONER DEASON: And why?

2 MR. McDONNELL: Because ILECs are exempt, because
3 BellSouth is a cost causer, which they refuse to recognize in
4 the tariff.

5 COMMISSIONER DEASON: But you have the ability to
6 bill them, do you not?

7 MR. McDONNELL: No.

8 COMMISSIONER DEASON: Why not?

9 MR. McDONNELL: They wouldn't pay our bills. We
10 billed them.

11 CHAIRMAN JABER: Do you mind if we pose that to
12 BellSouth?

13 COMMISSIONER DEASON: Sure.

14 CHAIRMAN JABER: If -- Mr. Turner, if the traffic
15 could be measured, would you pay a bill that was rendered by an
16 ALEC for traffic you originated?

17 MR. TURNER: If there is a tariff or something else
18 that gives them authority to bill us, absolutely.

19 CHAIRMAN JABER: I can't hear you.

20 MR. TURNER: I'm sorry. If there is a tariff or
21 something else that gives them the authority to do so,
22 absolutely. I think you heard Mr. McDonnell say that they sent
23 us a bill and we didn't pay it. I don't think there is a
24 tariff or anything else that allows them to do that. And for
25 the reasons I mentioned earlier, that is a concern to us. But

1 if there's one in effect, we'd pay it.

2 CHAIRMAN JABER: So do you think -- well, let me ask
3 it a different way. Do you think they can file a tariff here?

4 MR. TURNER: Yes, ma'am.

5 CHAIRMAN JABER: And would you oppose it?

6 MR. TURNER: As long as it was nondiscriminatory,
7 and, again, I don't mean it has to treat everybody exactly
8 identically, but as long as we felt like it was
9 nondiscriminatory and not unreasonable, no.

10 CHAIRMAN JABER: What if it was a tariff that
11 mirrored your tariff?

12 MR. TURNER: Not checking with my clients, I would
13 have to say that if it simply mirrored our tariff, I doubt we
14 would oppose it.

15 CHAIRMAN JABER: Because your tariff is not
16 discriminatory?

17 MR. TURNER: Absolutely.

18 CHAIRMAN JABER: So if it's a tariff that mirrors
19 your tariff, you would concede that this Commission could
20 approve it and you would pay bills submitted to you under that
21 tariff?

22 MR. TURNER: Given I haven't asked my clients for
23 authority to say that, I would say I would be shocked if that
24 were not the case.

25 CHAIRMAN JABER: Commissioner Deason. Commissioner

1 Bradley.

2 COMMISSIONER BRADLEY: Yeah. On Page 54 it mentions
3 alternative SS7 providers. It says that alternative
4 SS7 providers are available to carriers. Would you discuss
5 that just briefly and explain to me what that means? I think I
6 know what it means. And my question would be is there a
7 possibility that you might engage in business with other
8 carriers other than BellSouth?

9 CHAIRMAN JABER: Mr. McDonnell and Ms. McNulty, I
10 think that question is posed to you.

11 COMMISSIONER BRADLEY: Right.

12 MS. McNULTY: I'm sorry. Do you mind repeating the
13 question? I'm still trying to find where you are on Page 54.

14 COMMISSIONER BRADLEY: On Page 54.

15 MS. McNULTY: But where on Page 54?

16 COMMISSIONER BRADLEY: It says, "Staff believes it
17 may be reasonable for BellSouth to pursue charging carriers on
18 a per-messages basis when that carrier purchases BellSouth's
19 SS7 because there are alternative SS7 providers available to
20 those carriers."

21 And what my question is, do you have -- are there
22 other alternatives that you can use other than BellSouth for
23 SS7 business activities?

24 MR. McDONNELL: I believe, if I might, Commissioner
25 Bradley.

1 COMMISSIONER BRADLEY: Yes.

2 MR. McDONNELL: That issue was addressed by staff in
3 Issue 8, and I'm going to state what staff's position was. You
4 did not approve it. You deferred on that issue.

5 Here was staff's position. "Staff notes that the
6 Commission determined that ALECs are precluded from providing
7 access in BellSouth's territory for themselves or any other
8 entity when interconnection trunks are employed with BellSouth.
9 Therefore, carriers are practically forced to interconnect with
10 BellSouth's SS7 network."

11 CHAIRMAN JABER: I think the Commissioner's question,
12 if I might, Commissioner, is not what staff's position is. I
13 think he articulated what staff believed. But he's asking you
14 all if you have an alternative SS7 provider so that you
15 wouldn't have -- what is it you think?

16 MR. McDONNELL: We have SS -- we provide our own SS7,
17 we being US LEC. We provide our own SS7 service. Our
18 SS7 signaling interconnects with BellSouth's SS7 signaling on
19 every single phone call we have with them. We have never
20 billed them except when we started receiving bills and they
21 ignore them. We never billed them for our SS7 messages, never,
22 ever. They never billed us until they implemented this tariff
23 and now are billing us. And it's not \$189 a month. And I
24 don't know if that's what, if that's illustrative of something,
25 but --

1 COMMISSIONER BRADLEY: Okay. Well, maybe I'm not
2 understanding this, but it says that there are alternative
3 SS7 providers available to those carriers.

4 MR. McDONNELL: No.

5 COMMISSIONER BRADLEY: There's no other --

6 MR. McDONNELL: We don't have any other option when
7 we're in BellSouth's territory than to hook into BellSouth's
8 SS7 network.

9 COMMISSIONER BRADLEY: Okay.

10 COMMISSIONER DEASON: There are SS7 vendors out there
11 if you did not have your own system that you could obtain
12 services from. I think that's what the nature of the question
13 is and what the nature of staff's observation was. You do
14 recognize that; correct?

15 MR. McDONNELL: For our side?

16 COMMISSIONER DEASON: It doesn't apply to you because
17 you have your own. But for those who do not have their own
18 SS7 system, there are third-party vendors out there who provide
19 that; is that correct?

20 MR. McDONNELL: That is correct. It's my
21 understanding that those third-party hubbing providers would
22 essentially stand in the shoes of what we do for ourselves.
23 They don't stand in BellSouth's shoes. The third-party hubbing
24 provider must then interconnect with BellSouth.

25 COMMISSIONER BRADLEY: Okay. That was my question.

1 MR. McDONNELL: Yeah. And work out their
2 differences. I'm sorry. I missed the question.

3 COMMISSIONER BRADLEY: Okay.

4 CHAIRMAN JABER: Mr. Turner, I have a final question
5 for you. It just -- it really is in the nature of making sure
6 all of the issues are covered when this finally does come back
7 to us to vote and not having to deal with anymore issues and
8 more delays.

9 As it relates to the refund plan, staff's original
10 recommendation was if this Commission found it appropriate to
11 cancel a tariff and if we were to require a refund, staff
12 recommended that we give you all 30 days to submit a refund
13 plan to us.

14 Is there -- I understand your position is no refund,
15 no cancellation of the tariff. But if we did require a refund,
16 is there a consensus with regard to how it should be conducted?
17 You know, are you all clear on how the refund should be
18 calculated, when the refund should be made? Again, I'm
19 thinking ahead. I don't want to have this -- well, we can't
20 have this discussion when we vote. Participation will then be
21 limited to Commissioners and staff.

22 MR. TURNER: Let me address first the amount
23 calculation and then the, some of the intricacies involved.

24 The amount -- we believe what should be done to
25 calculate an amount would be to look on a carrier-by-carrier

1 basis and say since this tariff went into effect we've charged
2 this carrier this much for the local switching piece of
3 switched access and we've charged this carrier this much on a
4 per signal basis and you'd get that aggregate amount. Then you
5 would say if the tariff never went into effect, we would have
6 been charged, we would have charged them this much for local
7 switching, which would be higher because it would be the higher
8 rate, and we would have charged them zero per message. And you
9 would compare those two amounts and then you would basically
10 give the difference back to that carrier. In other words, you
11 would just act as if the old, the old way of doing it had
12 always been in place, compare that billing to the new way of
13 doing it and make them whole that way by paying the difference.

14 CHAIRMAN JABER: Have you ever done that calculation?
15 Have you ever really narrowed down what the dollars are between
16 the old method and the relationship you have with the
17 independent companies versus the implementation of the tariff
18 now?

19 MR. TURNER: No, ma'am. Because there have been so
20 many, frankly, settlement discussions that all our time had
21 been, had been spent on that. That's how we get the dollar
22 amount.

23 CHAIRMAN JABER: I guess what I'm fishing around for
24 is it a significant dollar amount?

25 MR. TURNER: I think in the aggregate, I want to be

1 careful, but I don't think it's very significant. I think
2 that -- especially if you were to apply appropriate factors
3 instead of the 50/50 split, I don't think it would be
4 significant. With the 50/50 split it is, again, it's not, it's
5 not a huge number given numbers you were used to looking at
6 with us, but I don't think it would be staggering.

7 MR. McDONNELL: Can I address that, please?

8 CHAIRMAN JABER: Yeah. Hang on a second though.

9 MR. McDONNELL: I'm sorry.

10 CHAIRMAN JABER: Have you -- is that a good
11 calculation for you to make in terms of understanding whether
12 it's worth it to you as a company to pursue this approach?

13 MR. TURNER: I have asked many times to make sure
14 that it's worth it to pursue this approach and have been
15 consistently told yes.

16 CHAIRMAN JABER: But that doesn't mean anybody looked
17 at it thoroughly, does it?

18 MR. TURNER: That's correct. But that's --

19 CHAIRMAN JABER: Did you ask Mr. Criser? Because you
20 really should ask Ms. White.

21 MR. TURNER: We now have some conversation for the
22 way home.

23 CHAIRMAN JABER: Okay. I just -- sort of a common
24 sense question. I mean nothing by it. Has anyone ever done
25 the math and what are we really talking about here in terms of

1 dollars?

2 I am going to let you address it, Mr. McDonnell, but
3 Commissioner Bradley has a question.

4 COMMISSIONER BRADLEY: Right. And I think my
5 question is probably along the same line as what you just
6 asked. And I know we've discussed this, but let's talk about
7 reciprocal billing a little bit more.

8 Mr. McDonnell, you said that it would not be
9 cost-effective for your company to do reciprocal billing; is
10 that correct?

11 MR. McDONNELL: To conduct accurate billing we would
12 need to invest in the Agilent system or something similar,
13 which we cannot afford to do.

14 Now what we have done is -- you know, settlement
15 negotiations are kind of a different animal, and I don't want
16 to invade anybody's turf here, but stop me if you think I am.
17 We just billed them back. All right. You can bill us. Good.
18 We'll bill you. And they won't pay.

19 COMMISSIONER BRADLEY: Beg your pardon?

20 MR. McDONNELL: They won't -- they will not recognize
21 our right to bill them for SS7 messages.

22 COMMISSIONER DEASON: Did you make any attempt to try
23 to come up with a reasonable approximation of the amount of
24 interstate use, local use?

25 MR. McDONNELL: Yes.

1 COMMISSIONER DEASON: And you applied that to the
2 bills that you rendered to BellSouth?

3 MR. McDONNELL: I can't say specifically we did that.
4 I believe what we did was, for lack of a better term, mirror
5 the numbers that were sent to us.

6 COMMISSIONER DEASON: So you assumed the same
7 percentage factors that you were billed in your, in your bill
8 back to BellSouth?

9 MR. McDONNELL: Correct.

10 COMMISSIONER DEASON: And you made no attempt
11 whatsoever to come up with a reasonable approximation of what
12 your actual percentage factors would be for your specific
13 utilization and operations?

14 MR. McDONNELL: We did not get that far. We, we were
15 rejected.

16 COMMISSIONER BRADLEY: One other question. You said
17 that it's cost prohibitive for you to invest in your own
18 system.

19 MR. McDONNELL: Yes, sir.

20 COMMISSIONER BRADLEY: Why is that?

21 CHAIRMAN JABER: Are you going to pass out a
22 confidential document?

23 MR. McDONNELL: Yes. There's a confidential exhibit
24 in evidence.

25 (Pause.)

1 MR. TURNER: Madam Chairman, before I forget, there
2 were two more points about that refund I wanted to make. I can
3 do it now or later, however you prefer.

4 CHAIRMAN JABER: Let's let a response be had for
5 Commissioner Bradley's question and then we'll come back.

6 MS. McNULTY: I just happen to have -- there's one
7 copy of the confidential exhibit. This was a confidential
8 exhibit in the hearing.

9 CHAIRMAN JABER: Ms. McNulty, we'll wait until you
10 get back to the microphone, but -- okay. In response to
11 Commissioner Bradley's question, you've handed out a
12 confidential exhibit that was identified and admitted into the
13 hearing?

14 MS. McNULTY: Yes. And I did that in -- were you
15 going to address that?

16 MR. McDONNELL: No. Go ahead, if you can explain it
17 without --

18 CHAIRMAN JABER: Okay. Without revealing any
19 confidential information, what is it you want Commissioner
20 Bradley and the rest of us to look at?

21 MS. McNULTY: That was the exhibit, confidential
22 exhibit during the hearing related to the Agilent Link
23 Monitoring System that BellSouth has in place and the cost for
24 that system.

25 CHAIRMAN JABER: Okay. So the question posed by the

1 Commissioner was why is it cost prohibitive to put in your own
2 facilities? And the answer is?

3 MS. McNULTY: The answer is please look at that
4 document and see how much that system costs.

5 COMMISSIONER BRADLEY: The numbers, I can't read
6 them.

7 CHAIRMAN JABER: Let's be careful not to reveal any
8 of the numbers.

9 COMMISSIONER BRADLEY: They're real vague. They're
10 not too legible.

11 MS. McNULTY: That was a problem during the hearing.
12 But they did calculate -- during the hearing there was a
13 description of those numbers. Without actually revealing the
14 numbers, I just was hoping you could read them so that way you
15 could have at least an idea of the magnitude.

16 COMMISSIONER DEASON: Does staff have a legible copy?
17 I guess what I'm suggesting is that at some point staff may
18 wish to walk that around to each Commissioner and show that to
19 them in a confidential way so that we'll have an idea of the
20 magnitude of the number.

21 MR. McDONNELL: It's my recollection we received that
22 as a, in response to a discovery request from BellSouth, and we
23 made the best copy we could make of the discovery response.

24 CHAIRMAN JABER: I think, Ms. Christensen, if you
25 just came around --

1 MS. CHRISTENSEN: I would just ask for some, yeah,
2 some clarification on which -- the hearing exhibit number, and
3 then we can track it down and get it from obviously where we're
4 holding it in records and reporting and we can walk that around
5 to the individual Commissioners.

6 CHAIRMAN JABER: Why don't we let you all figure that
7 out off record and just get back to the Commissioners.

8 MS. CHRISTENSEN: Okay.

9 CHAIRMAN JABER: Mr. McDonnell, I promised you an
10 opportunity to respond, and then we're going to go to
11 Mr. Turner for follow-up.

12 MR. McDONNELL: My only response was, unlike
13 BellSouth, the difference in the numbers, had we been billed
14 prior to this tariff using those numbers versus these tariff
15 numbers, are humongous for my client. I don't know what they
16 are in the aggregate and I'm not saying he's wrong, but I'm
17 saying for my client we're in a range that we're in hundreds
18 and hundreds and hundreds and hundreds of thousands of dollars.

19 CHAIRMAN JABER: Okay. So that responds to my
20 question that you have done a calculation of the difference in
21 terms of what you've been billed to pay under this tariff
22 versus the approach that's been used for the ICO calculations?

23 MR. McDONNELL: Yes. But not to the penny, but, yes.

24 CHAIRMAN JABER: And you're representing that that's
25 a substantial difference?

1 MR. McDONNELL: It's a significant amount of money.

2 CHAIRMAN JABER: The other question I asked is if
3 you're asking us to cancel a tariff and order refunds, is there
4 agreement with respect to the refund, how it should be
5 calculated and implemented if we go down that road?

6 MR. McDONNELL: I cannot tell you, Madam Chair, that
7 my client has allowed me to go ahead and concede. But, I mean,
8 in fairness it's my position to my client that, yeah, I mean,
9 we reaped the benefit of something when they implemented this
10 tariff, that one of the rates went down. So if we want to net
11 out, cancel out the tariff, we should -- to place us a whole
12 would require that netting out. And I would recommend that my
13 client take that same position, although I can't do that today.

14 CHAIRMAN JABER: Commissioner Bradley.

15 COMMISSIONER BRADLEY: Well, netting out wouldn't
16 require a refund though, would it?

17 MR. McDONNELL: Huge, a huge refund to us.

18 COMMISSIONER BRADLEY: But -- I'm not able to do the
19 math in my head conceptually. How -- if we cancel the tariff
20 and require a refund to you, that means that BellSouth is
21 paying you for --

22 MR. McDONNELL: For the costs.

23 COMMISSIONER BRADLEY: For what?

24 MR. McDONNELL: That they're billing us under this
25 tariff minus the difference between the local switching rate

1 reduction that they initially implemented to what they thought
2 would offset the revenues they're generating from the tariff.

3 CHAIRMAN JABER: It's your position that the
4 reductions are much less than the increase in revenues
5 associated with the, imposing the switched access charge?

6 MR. McDONNELL: Yes, for us personally. And I think
7 BellSouth conceded when they were talking about revenue
8 neutrality in the record that they're making more money this
9 way.

10 COMMISSIONER BRADLEY: I'd like to hear BellSouth
11 respond to that.

12 MR. TURNER: Thank you. First of all, beauty is in
13 the eyes of the beholder, and it doesn't surprise me that
14 Mr. McDonnell would be characterizing the amount differently
15 than I would characterize it. I'd simply point out there is --

16 CHAIRMAN JABER: But you don't know what the amount
17 is. I mean, that's, that's why I was asking that question.

18 MR. TURNER: And the point is there is no evidence of
19 record. So I would just ask folks to keep that --

20 COMMISSIONER BRADLEY: There's no what?

21 CHAIRMAN JABER: Evidence.

22 MR. TURNER: There's no evidence of record as to that
23 amount, so I would ask you to keep that in mind when you
24 consider the characterizations.

25 As far as the document you have, Commissioner

1 Bradley, the, the dollar amount that you see on that
2 confidential document for the cost of that Agilent network, I
3 believe the record would show that it is a region-wide cost,
4 it's not Florida specific.

5 Also, as Mr. Milner testified on Page 364, BellSouth
6 has a very large network. And as he testified on Page 357, you
7 would not expect DeltaComs or any other ALEC's network to be as
8 large as BellSouth. So I don't think that gives you a
9 representative idea of the cost it would take for a CLEC or an
10 ALEC to implement that system.

11 And, finally, Mr. Milner also pointed out in the
12 record, it's going to be somewhere between Page 346 and 359,
13 that Adulant's system is not the only one that's out there.
14 There are other systems they could use, if they want to do
15 that. So I'd ask you to keep that in mind when you consider
16 those figures.

17 CHAIRMAN JABER: Mr. Turner, Commissioner Deason has
18 a question. But you said you also had a couple of points on
19 the refund plan?

20 MR. TURNER: Just two very quick points on the
21 refund. Timing wise everyone thinks we can just flip a switch
22 and get checks out. It doesn't work that way. It does take
23 some IT planning, and so we would ask for about 90 days to be
24 able to implement it. I would also ask you though to consider
25 if you did that to consider the possibility of allowing a

1 credit as opposed to an actual check back. That's a lot
2 easier. I guarantee it. And hopefully we will have been
3 successful at the end of the day in proving to you that this
4 was a moot discussion.

5 CHAIRMAN JABER: You need 90 days to file the plan or
6 90 days to implement a refund?

7 MR. TURNER: If it's going to be checks, I think we
8 need 90 days to implement.

9 CHAIRMAN JABER: Implement a plan? Okay.
10 Commissioner Deason.

11 COMMISSIONER DEASON: On the refund implementation,
12 and I guess this also relates to the magnitude as it relates to
13 individual carriers, is it conceivable that there may be
14 carriers out there whose traffic and configuration is such that
15 the net amount, the difference between the old tariff and the
16 new tariff is such that they actually saved money, and would
17 you be looking to surcharge them if the tariff is cancelled?

18 MR. TURNER: I think that is possible, given the way
19 that the changes were made. And in fairness, I would think
20 that if the goal of the refund were to put everyone back in the
21 position they would have been in before the tariff, I would
22 think that that would be something that my clients would ask us
23 to ask you to consider.

24 COMMISSIONER DEASON: Do you know if that's factually
25 the case? Are there carriers out there who are in a position

1 such that they have saved money under the new tariff?

2 MR. TURNER: With regard to a specific carrier, no,
3 sir. There was an answer to a question I believe you asked in
4 the hearing room in which Mr. Brownworth conceded if there were
5 net payors under this, there's probably a net beneficiary under
6 this, too. I have not delved into determining, you know, the
7 identity or which one or how much they might owe us back, but
8 my guess is there might be one or two out there.

9 COMMISSIONER DEASON: Well, based upon -- of course
10 now I realize there's a difference in size between BellSouth
11 and other carriers, and what may be humongous to some may be
12 small to you. But given the fact that in the aggregate you
13 indicate the numbers are not that substantial and we have
14 individual carriers who say the numbers are huge for them, that
15 means that if they're net payers, there may be net
16 beneficiaries or vice versa. And it would be your position you
17 would be entitled to surcharge those customers to make yourself
18 whole.

19 MR. TURNER: Our position -- well, my position today
20 is I can't tell you that we'd be willing to waive it at this
21 point because I simply haven't raised it with my client. At
22 this point I have to leave it open as a possibility.

23 CHAIRMAN JABER: Mr. Turner, I don't really have any
24 other questions for you or for Ms. McNulty or Mr. McDonnell.
25 But I leave you with this thought: I fully appreciate the fact

1 that those numbers are not in the record, so, you know, my
2 reliance on that is really for purposes of you taking back that
3 question. But sometimes what's not in the record is just as
4 important. And the fact that you couldn't answer that question
5 is bothersome to me from a couple of angles. I don't mean it
6 to be critical. Whether the dollars are worth this approach is
7 an important consideration of mine. But the second thing is I
8 have to believe a company such as yours pursues this approach
9 because the revenues are substantial. I mean, I would hope
10 that you guys have looked at the numbers.

11 Commissioners, do you have any questions? Okay.

12 Staff, where do we go from here? Oh, on the legal
13 question with respect to the applicability of the new law,
14 Commissioners, based on the responses I got to the questions,
15 I'm comfortable not pursuing that anymore. But if you feel
16 like you need --

17 COMMISSIONER BRADLEY: Not pursuing?

18 CHAIRMAN JABER: Not pursuing the, whether we have to
19 operate under the law as it existed when this petition was
20 filed or consider changes to the new law. I think I heard
21 consensus from the parties that the old law is applicable.
22 They wouldn't mind doing briefs, but they, they believe the old
23 law is applicable here; right? Not putting words in anyone's
24 mouth.

25 COMMISSIONER DEASON: Maybe if they don't have to

1 brief that, they'll have more time to continue their
2 negotiations.

3 CHAIRMAN JABER: Exactly. So I don't feel a need to
4 pursue it. Commissioners, what do you think?

5 COMMISSIONER DEASON: I'm fine with it not being
6 pursued. I think it's -- I agree with your observation that it
7 seems to be a nonissue at this point.

8 CHAIRMAN JABER: Okay. Staff, you're bringing a rec
9 to us. There's going to be a transcript from this oral
10 argument, and you will bring a rec to us when?

11 MS. CHRISTENSEN: We would like to try and have a
12 recommendation back before this Commission by September 30th.

13 CHAIRMAN JABER: Uh-huh. That's a recommendation for
14 an October agenda?

15 MS. CHRISTENSEN: That would be for the
16 September 30th agenda. That would be allowing two weeks for
17 the transcripts to be completed of this oral argument and then
18 for filing for the September 30th agenda.

19 CHAIRMAN JABER: Ms. McNulty.

20 MS. McNULTY: I just have a very minor housekeeping
21 matter. I found a reference to that confidential exhibit, and
22 it's Exhibit Number 2, BellSouth's Late-Filed Deposition
23 Exhibit, study dated September 20th, 2000, Page 7 of 14, Lines
24 33, 43 and 44. And that's referenced in our brief.

25 CHAIRMAN JABER: Okay. Thank you. Seeing nothing

1 further to come before us this afternoon, this concludes the
2 oral argument. Parties, thank you. Appreciate it.

3 MR. McDONNELL: Thank you.

4 MS. McNULTY: Thank you.

5 (Proceeding concluded at 4:40 p.m.)
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1 STATE OF FLORIDA)
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CERTIFICATE OF REPORTER

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I, LINDA BOLES, RPR, Official Commission Reporter, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorneys or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 28th DAY OF AUGUST, 2003.


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