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090430-TP

January 27, 2011

Ms. Ann Cole, Commission Clerk
Office of the Commission Clerk
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

RE: Saturn Telecommunication Services, Inc., a Florida corporation v. BellSouth Telecommunications, Inc. a Florida corporation d/b/a AT&T, Docket # 09-0430 TP

Dear Ms. Cole:

1. Attached for filing, please find letter with exhibits dated January 26, 2011, from Saturn Telecommunication Services, Inc. addressed to Ms. Lisa S. Harvey, Assistant Director of the Florida Public Service Commission in response to questions from Staff.

We thank you for your kind assistance.

Very truly yours,

ALAN C. GOLD

cc: Mr. Adam Teitzman, via email: ateitzma@psc.state.fl.us and US Mail
E. (Kip) Earl Edenfield, Jr., Esquire, via email: ke2722@att.com and US Mail
STS Telecom, via email
Ms. Lisa S. Harvey, **lsharvey@psc.state.fl.us**
Mr. Jerry M. Hallenstein, **jhallens@psc.state.fl.us**

COM ___
APA 1
ECR ___
GCL 1
RAD ___
SSC ___
ADM ___
OPC ___
CLK ___

STS

INTELLIGENT IP AT WORK

Keith Kramer
Executive Vice President
Legal and Regulatory
STS Telecom

Re: Pursuant to the FPSC Order No. PSC-10-0253-PAA-TP Response to questions from Staff in order to facilitate final resolutions of the docket.

Date: January 26, 2011

Ms. Lisa Harvey
Assistant Director
Office of Auditing and Performance Analysis
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Dear Ms. Harvey,

Thank you for the opportunity to respond to the significant and important questions posed by the Florida Public Service Commission to both STS and AT&T. The substance of the Commission questions and the subsequent answers are a concern not only to STS but also to the entire CLEC community.

STS Questions:

Issue 3:

*2. Would STS be amenable to accepting the R/C/O tables in a Microsoft Word format if **AT&T** is to be responsible for making the changes to the Word document to keep it up to date? If not, please explain.*

Answer: Yes, STS will agree to accept Section 3 all *R/C/O tables* of the LOH in Microsoft Word format provided the following:
(1) AT&T provides an index or table of contents comparable to the bookmarks available in the pdf format that exists today.
(2) AT&T maintain and update the information in the agreed upon format.

The *R/C/O Tables* that AT&T developed (will be provided upon request) is a 2455 paged document that is vastly inferior to the CLEC Community or the LOH Version that the document was created from. The lack of a index, bookmarks and/or a table of contents require a CLEC to scroll through the entire document to attempt to find the meaningful information; much like hunting for a needle in a haystack. . This is not efficient and will not allow the CLEC to submit an error free LSR in a timely manner. Furthermore, AT&T's document is currently outdated; missing information and containing information that is no longer applicable for ordering. An acceptable use of this document should include an index or table of contents with all current updated information. The document in its current form is essentially worthless.

I. STS's comment on AT&T's November 17, 2010 responses to staff's data request

STS is committed to working with Staff and AT&T to resolve the remaining issues in Docket No. 090430-TL. We are not convinced that AT&T shares this commitment as we do not understand why AT&T continues to make misleading statements on the record, if there is a sincere desire to reach a resolution For example, AT&T's Response to question 1 states; *"As previously noted, AT&T developed a Web-based Graphical User Interface (GUI) named LEX for CLECs that have chosen not to develop their own interface and connect with AT&T via XML".*

Also in AT&T's response, they consistently refer to a UNE SL2 DS0. While this may appear insignificant to the FPSC, at the FCC, AT&T took great issue with the use of the term "UNE DS0" as it relates to a voice grade loop. In other words AT&T has made a point to state that a voice grade loop is an analog loop and there is a technical difference between a UNE SL2 DS0 loop and a UVL UNE SL2 loop. While this appears to be a relatively minor point, since AT&T made it a material issue of this distinction before the FCC, AT&T should be consistent before both Commissions.. Wherever AT&T uses the term UNE SL2 DS0 for clarification the FPSC should request whether AT&T is referring to the material reference of a DS0, or is such reference actually to an analog voice grade loop.[1]

AT&T also consistently refers to commingling an UVL UNE SL2 Loop with special access. While this may seem immaterial to the FPSC, it is anything but immaterial. AT&T Southeast Region has several different variations of a simple voice grade loop, whether the loop is an Unbundled Cooper Loop, a Service Level 1 voice grade loop, or a Service Level 2 voice grade loop. For Commingling, AT&T has taken the position that it is technically infeasible to commingle any voice grade loop other than a

[1] In the current docket at the *FCC* EB 09-MD-008 STS v. AT&T, AT&T star witness W. Keith Milner's Declaration made several key statement referencing the difference between a voice grade loop and a DS0 loop *See* ¶¶ 64-66 of the attached exhibit "A", which is entitled W. Keith Milner's Declaration.

Service Level 2[2]. All of the Accessible Letters in AT&T's Southeast Region refers to only one type of voice grade loop, which is an SL2 loop, the most expensive loop available.[3] While AT&T argued that accessing a voice grade loop in a commingled arrangement could only be done through the use of an SL2 voice grade loop, that is simply not the case, and AT&T has never provided a publicly available document that allowed accessing of other types of voice grade loops either through a ***CLEC User Guide*** or through an Accessible letter.

This is not surprising to STS, which is currently involved in a protracted litigation with the FCC with regards to AT&T's Commingling Obligations. AT&T has from the onset of the FCC litigation taken the position that it was *"Technically infeasible"* to commingle an SL1 voice grade loop. That is until the FCC asked a direct question of AT&T's top expert, Keith Milner, whether from an "engineering" capability was it feasible to connect a SL1 with a COCI [Central Office Channel Interface] to special access, and Mr. Milner stated that it was.[4] The simple point is that when it comes to the issue of "Commingling" AT&T Southeast Region simply has never provided any CLEC an opportunity to "access" existing voice grade loops; therefore no CLEC could complain about what they could not get.

As an example, AT&T in their response to FPSC Staff's *Issue 1*,Question 4, AT&T stated the following: "Attachment A, available at CLEC Online to the general public contains the Customer Information Package for Migrations to Commingled UVL-SL2 Loop with Number Portability (Request Type B) and was published on April 14, 2006 and updated on April 26, 2010." This statement is simply ***false***. AT&T in the current FCC docket, in the "Supplemental Joint Statement of Undisputed Facts" agreed that prior to April 26, 2010, in the AT&T Southeast region that commingling of existing voice grade loops with number portability (Request Type B) simply did not exist.[5] Therefore for the purposes of commingling voice grade loops, AT&T

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[2] *See* Keith Milner's Declaration *FCC* EB 09-MD-008 STS v. AT&T ¶¶ 9, 10, 21, 22, 23 (Exhibit A)

[3] *FCC* File No. EB-09-MD-008 ¶ 63"Further Revised Joint Statement of Undisputed Facts" (Exhibit B) An SL2 loop requires STS to pay approximately 15% more per month for each customer loop over the monthly charges for a SL1 loop. The non-recurring charge for an SL2 loop is more than twice the non-recurring charge for an SL1 loop.

[4] *FCC* File No. EB-09-MD-008 deposition of Mr. Keith Milner: "Transcript of the deposition of Keith Milner, December 7, 2010 ("Tr.") at p. 192. the FCC asked Mr. Milner the following question (page 192, line 22): "As an engineering matter, what is it that prevents a CLEC from seeking to commingle an SL1 with a COCI with Special Access?" Mr. Milner replied (page 192, line 25): "From an engineering matter, that could be done" (Exhibit C).

[5] *FCC* File No. EB-09-MD-008 "Further Joint Statement of Undisputed Facts ¶ 210 (Exhibit B)"To the extent a STS customer requests service for the very first time, STS can request
a new SL2 loop through a manual process"; ¶ 265 "And prior to April 2010, there was no

simply did not allow any CLEC other than STS' Bulk Migration Work Around Process, access to UNE voice grade loop with number portability in a commingled arrangement with special access.

Then if you take the fact that AT&T would not allow any CLEC the ability to order a voice grade loop with number portability in a commingled arrangement with special access, it makes the Question 5 in *Issue 1,* axiomatic, how could a CLEC complain about what they could not order. If AT&T did not allow a CLEC to order commingled voice grade loops with number portability until April 2010, how could a CLEC complain about an inability to order such an arrangement through the LEX ordering interface. Commingling requires some technical experience and equipment from the CLEC in order for such an arrangement to work. Any CLEC with access to the publicly available information provided by AT&T Southeast region other than through the Accessible Letter provided in April 2010, would simply determine that this "arrangement" would not be supported by AT&T and choose another direction.

STS, was the exception because AT&T salespeople and engineers brought the proposal and network design to commingle a voice grade loop with number portability to STS in the first place. This occurred years before AT&T made it publically available to other CLECs *albeit* the process was either defective or AT&T simply did not want it to work. [6] Based upon the limited number of migrations that were eventually successful, it is clear that AT&T could have made the process work, if AT&T desired to do so

Based on AT&T Southeast Region's propensity to mis-direct, or simply provide false statements at every opportunity with regards to commingling to the staff of the FPSC, STS feels compelled to comment to staff about AT&T's past and current behavior. It is STS' belief that populating any field with a "fictitious" information and relying on AT&T to provide the correct information, is akin to have the fox guard the hen house. The minute one turns their head, the fox will be full, and the hens will be gone, leaving the fox to claim, "I don't know what happened?"

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process (either mechanized or manual) available for STS to migrate UNE-P/LWC lines not subject to the WAP to voice- grade commingled arrangements." and ¶ 266 "The process contained in the UNE Loop Multiple Bandwidth Commingling (new loop orders) Process was referred to at the status conference as the "manual process."
The "UNE Loop Multiple Bandwidth Commingling (new loop orders)" process or "manual process" is substantially different than the Bulk Migration Process for voice-grade EELs and UNE-L. First, it is not a "migration" process at all, but instead the installation of a new loop." Simply put, there was no Request Type B, and CLECs could only order new loops.

[6] *FCC* STS v. AT&T File No. EB-09-MD-008, Further Joint Statement of Undisputed Facts: ¶265 Exhibit B "And prior to April 2010, there was no process (either mechanized or manual) available for STS to migrate UNE-P/LWC lines not subject to the WAP to voice- grade commingled arrangements."

Here are the historical facts that have been proven regarding the commingling of simple voice grade loops:

- AT&T Southeast Region would only allow REQUEST Type A (new loops, without number portability) until April 2010, provided through their publically available CLEC Information Guide, which was first made available in late 2005, two years after commingling was mandated by the FCC.
- AT&T Southeast Region had only one process available to access voice grade loops with number portability in a commingled arrangement with special access which was the Bulk Migration Work Around Process available to only STS and to no other CLEC. This process was initially limited to 2500 lines of STS's embedded wholesale UNE-P base, and then AT&T placed further limitations on the Bulk Migration Work Around Process, such as limiting the number of lines that could be converted in a given day at a particular Serving Wire Center to a ridiculously small number. These AT&T imposed limitations rendered the process useless for all practical purposes.
- AT&T would only allow access to "new" Service Level 2 UNE voice grade loops in a commingled arrangement, and denied access to other voice grade UNEs on the basis that it was "technically infeasible" a position that under deposition at the FCC with AT&T's expert witness can not be supported, nor could it ever have been supported.
- AT&T's position with regards to ***R/C/O*** table, in STS' belief based on pass behavior, is simply allowing this ILEC to continue to obfuscate their legal obligations by making any process to commingle existing voice grade loops so difficult to find, and order, that such a process would be impossible for a CLEC to find or develop based on the publically available information.

While STS's position is based on the facts presented in another venue, they are facts, on the public record The following are more specific comments to staff's questions:

In the content of issue, staff addressed;
LEX does not allow STS to use a Loop Type of "Other" for a Commingled DSOSL2 Circuit. AT&T's note implies that if STS connects via XML, that STS could order a Commingled DS0 [voice grade] SL2 Circuit with the Loop Type of "Other". This is discriminatory position of AT&T to the competitive industry in Florida. STS points to the FCC (CC Order 96-325, para 524):
"524. We recognize that, although technically feasible, providing nondiscriminatory access to operations support systems functions **may require some modifications to existing systems necessary to accommodate such access by competing providers..."**

Additionally, AT&T response to question 3 is disingenuous. While STS admits that AT&T, eventually and long overdue, provided the step-by-step LEX ordering process for UNE SL2 DSO [voice grade loop] commingled arrangement with a request type "B", this ordering process is not equal to the same product not connected, linked, or

attached to a UNE. There is NO such product as a "Commingled" UNE SL2 voice grade loop. Rather it is attached, linked, or connected to a UNE or Special Access. Therefore, the deviation in the order process and the fictitious information in the Customer Information Package for Migrations to Commingled UVL-SL2 Loop with Number Portability (Request Type B) could only be classified as a (a) LEX Work-Around or (b) Roadblock for access of a UNE attached, linked, or connected to Special Access.

The Customer Information Package for Migrations to Commingled UVL-SL2 Loop with Number Portability (Request Type B) contains the valid entries for the NCI field. However, AT&T will not allow these valid entries to be populated in the NCI field on the LSR.

From the Customer Information Package for Migrations to Commingled UVL-SL2 Loop with Number Portability (Request Type B) April 26, 2010 Version 1.1 posted at CLEC On-Line.

LSR Field	**Requirement**	
REQTYPE	BB	
ACT	V	
NC	LY--	
NCI	02QC3.OOD	Loop Start (*Note: LSC will apply appropriate NCI code provided in the Remarks)*
	02QC3.OOB	Ground Start (*Note: LSC will apply appropriate NCI code provided in the Remarks*)
SECNCI	02LS2	Loop Start
	02GS2	Ground Start
Cable ID/Chan Pair	CABLE ID: PXXX1 (must populate PXXX1 as shown here) CHAN/ PAIR: 00 (must populate 00 as shown here)	
RMKS	SPECIAL HANDLING must be the first entry in the Remarks field followed by the CFA to be used for this arrangement as documented in the SE Special Handling document in CLEC Online. CLECs will provide a CFA for each circuit requested. The first CFA should be a complete CFA and include the NCI. Each CFA for each LNA thereafter (without NCI) should be complete unless there is a character limitation which would then necessitate CLECs to provide only what is different from the first CFA. The first CFA provided will be used for the first LNA and the second CFA will be used for the second LNA and so on. The valid NCI (from the CFA) to be placed in the Remarks supporting this ordering is one of the following: 04QB9.11 04QB6.S1 04QB6.33	

LSR Field	Requirement

Please provide copies of all Accessible Letters and any additional information provided to CLECs regarding the changes in the ability to order UNE **SL2** DSO commingled arrangements through the LEX ordering interface.

AT&T Response:
(https://clec.att.com/clec/hb/shell.cfm?section=2SS8&hb=S07), contains the Customer Information Package for Migrations to Commingled UVL-SL2 loop with Number Portability (Request Type B) and was published on April 14, 2006 and updated on April 26,2010.

The Customer Information Package for Migrations to Commingled UVL-SL2 loop with Number Portability (Request Type B) is lacking information for a clear understating of the information. When compared to its' counter-part UNE Loop Multiple Bandwidth Commingling (New loop orders) CLEC Information Package. There is a wealth of missing information. For Example:
Service Description
Basic Service Requirements
Ordering Information
Rate Elements & USOCs
Intervals
Maintenance and Repair
Commingling Architectures & NC/NCI Codes
Acronyms
Further example: In the **Multiple Bandwidth Commingling (New loop orders) CLEC Information Package for Introduction & Scope Section** it states;
1. Introduction & Scope
"This Product Information Package is intended to provide CLECs general information for UNE Loop Multiple Bandwidth Commingling with a wholesale channelized higher bandwidth transport circuit when a CLEC places an order for a **new** Loop. For purposes of this document a wholesale channelized higher bandwidth circuit will be referred to as wholesale channelized transport circuit. Detailed UNE Loop ordering guidelines are provided in other documents located on Interconnection Web site.

This product information package is applicable in AT&T Alabama, AT&T Florida, AT&T Georgia, AT&T Kentucky, AT&T Louisiana, AT&T Mississippi, AT&T North Carolina, AT&T South Carolina and AT&T Tennessee (collectively referred to for purposes of this document as "AT&T Southeast Region and AT&T").

This information package does not include a description or ordering/provisioning information for wholesale transport services.

The information contained in this document is subject to change. AT&T will provide notification of changes to the document through the CLEC Notification Process.

Please contact your AT&T Local Support Manager (LSM) if you have any questions about the information contained herein.

In the **Migrations to Commingled UVL-SL2 Loop with Number Portability CLEC information Package** it states;

1. Introduction & Scope

This document is intended to provide ordering instructions for migrations to Commingled UVL-SL2 Loops with Number Portability.

II. The sequence in which the LSR and the End User Forms are processed by CLECs can cause the ACTL and LSO fields on the LSR page to be re-populated.

While STS understood this endeavor as to cooperate to resolve the issues, we wonder if the question was not fully understood. STS admits the specific information listed will address the specific question. However, all parties understood the issue of that the ACTL & LSO fields would return BLANK information depending on what point in the LSR tree the information was populated. AT&T cannot point to the list of information provided in the response to address the ACTL, LSO, on the LSR Admin, and End User Forms in which the sequence is addressed.

The LEX GUI tool itself will only allow the End User/CLEC to Issue a PON from the LSR Page after the Edits to the PON is completed and closed. This is evidenced in AT&T's response to question 1. In Issue 2.

1. Please provide the specific instructions for ordering requisition types A, B and C in LEX.

Response: AT&T provides formal classroom training for LEX to interested CLECs. In addition, ***https://clec.att.com/clec/hb/shell.cfm?section=1956*** *contains training material and information on using LEX.*

AT&T provides a LEX User Guide at CLEC On Line
https://clec.att.com/clec/hb/shell.cfm?section=258&hb=507

AT&T provides Local Service Order Requirements (LSOR) and Local Exchange Ordering Guides at CLEC On-Line
https://clec.att.com/clec/hb/shell.cfm?sebion=742&hb=507

AT&T provides Product/LSR examples at CLEC On-Line
https://clec.att.com/clec/hb/lsrex/

AT&T provides additional miscellaneous General Ordering for UNE and Resale at CLEC On-Line ***httus://clec.att.com/clec/hb/shell.dm?section=2756&hb=507***

AT&T provides additional Customer Information Packages for certain Requisition Types B and C at CLEC On-Line
htt~s://clec.att.com/clec/hb/shell,cfm?section=2558&hb=507

AT&T's response to question 2 in Issue 2, admits that it knows there is a design flaw within LEX for commingled ordering and has not taken any action to correct this flaw.

It is AT&T's position that by design, based on Requisition type, when a user performs pre order service address validation in LEX, the ACTL and LSO fields are automatically populated with AT&T's ACTL and the NPA/NXX assigned to the service address. On the vast majority of the LSRs issued, AT&T's ACTL and the NPA/NXX assigned to the service address are the appropriate field inputs, therefore saving the LEX User the requirement to populate these fields.

This same design does not allow for a "UNE" Migration (Request Type B) SL2 that is attached, linked, or connected to Special Access to be populated on the LSR as a "UNE" Migration (Request Type B) that is NOT attached, linked, or connected to Special Access. It is the same "UNE" Migration SL2.

This is in stark contrast to the TRO & TRRO for ordering **"UNEs"** attached, connected or linked to Special Access aka commingling. Again' AT&T is dangerously close to discriminatory access. STS points to the FCC (CC Order 96-325, para 524)
"524. We recognize that, although technically feasible, providing nondiscriminatory access to operations support systems functions **may require some modifications to existing systems necessary to accommodate such access by competing providers** ..."

Further, AT&T outlines in the response the ordering defect in which it refuses to correct for "Commingling Ordering". For example, if a CLEC ordered a Loop with Number Portability, the CLEC would be collocated at the Serving Wire Center that is represented as an ACNA belonging to AT&T. The number being ported previously belonged to AT&T so the **LSO, (**basically the NPA/NXX at the Serving Wire Center), would remain unchanged. Per the business rules in the LSOR, for Commingled orders, the ACTL must reflect the Serving Wire Center CLLI where the Special Access circuit originates (Connected Facility Assignment) which may or may not be the End User's Serving Wire Center.

AT&T & STS agree on the Ordering and Billing Forum (OBF) Industry consortium for the ACTL and LSO fields. However, STS is not afforded the same ordering

functionality available to any other CLECs/Providers that populates the LEX GUI Tool ACTL and LSO fields for "UNE" Migration (Request Type B) SL2 (or any other voice grade loop] that is on a NON Commingled Network *i.e. collocated CLEC.*

AT&T's response to Question 4. "Please provide all Accessible Letters and any additional information provided to CLECs regarding the need for re-population of the ACTL and LSO fields for Requisition types A, **B** and C" lacks some vital information.

AT&T Responded
Response:
"The ACTL and **LSO** fields are not required on Requisition type C (Number Portability). For Requisition typ'e A (Loop) and B (Number Portability), if in a Commingled scenario, ***and*** if the CLLI where the Special Access circuit originates is not the same as the End User's Serving Wire Center, then a LEX User, who had previously performed address verification in LEX, would have to update the ACTL to reflect the CLLI where the Special Access circuit originates. This information is contained within the Local Service Order Requirements at CLEC On-Line **htt~s://clec.att.com/clec/hb/shell.cfm?section=742&hb=507"**

Per the Local Service Order Requirements at CLEC On-Line (LSOR) 10.08

58. ACTL - Access Customer Terminal Location
Identifies the CLLI code of the customer facility terminal location or designated collocation area. The CLLI code will have been previously assigned.
USAGE: This field is conditional.
NOTES:
1. If the customer does not have a CLLI code for a particular ACTL, a code must be Secured prior to the submission of any requests.
2. The APOT field is required if the ACTL does not identify the specific physical termination point of the service.
3. [Bulk Single LSR Arrangement] The ACTL must be the same on all LSRs.
4. For REQTYP A Multi-Bandwidth Commingled UNE Loops (SPEC = NTCD1, NTCVG, NTCUD), the ACTL field should reflect the SWC CLLI of where the Special Access Circuit originates (CFA) which may or may not be the End User's SWC.
5. The ACTL code identifiies the location entries for all services.
DATA ENTRY CONDITIONS:
1. When REQTYP = A and the service is Designed Loops and the ACT = W, the first 8 Characters of the ACTL field must match the first 8 characters of the ACTL on the CABS EAN CSR for each ECCKT provided.
2. When the ACT is T the ACTL must match the end user switch on the customer service record (CSR).
3. For REQTYP B - EELs, when SPEC field is populated, the 1st 8 characters of the ACTL SWC CLLI of the EATN must equal the 1st 8 characters of the Non-ACTL CLLI (MUXLOC).

4. [Bulk Single LSR Arrangement] the first 8 characters of the ACTL must equal the first 8 characters of the SWC CLLI for each EATN.
5. For REQTYP B - EELS ordered as Bulk Single LSR Arrangement, when SPEC field is Populated the first 8 characters of the ACTL SWC CLLI of the EATN must equal first 8 characters of the Non-ACTL CLLI (MUXLOC).
6. If the NC code equals TX--, TXCT or TXCF, the ACTL CLLI will be 8 characters.
7. If the ACTL city name contains only 3 characters, the 4th position must be blank.
8. When the REQTYP is A and the product type is Digital Data DS1 and the ACT is C, the ACTL field on the LSR must match the ACTL on the CSR.
9. 8 alpha/numeric characters are applicable to manual and 22 State XML ordering only.
Data Characteristics: alpha / numeric characters
Field Length (Min-Max): 8 or 11
Field Example:
MILNTNMA
MILNTNMAW01

63. LSO - Local Service Office
Identifies the NPA / NXX of the local or alternate serving central office of the customer location or primary location ofthe end user.
USAGE: This field is conditional
CONDITIONS:
1. For REQTYP A (excluding Interoffice Channels (IOC)) this field is required when the ACT is C, D, N, T or V and the LNA is not N.
2. Required when the REQTYP is E and the 2nd character of the TOS is H.
3. Required on REQTYP T or W, when the 2nd character of the TOS is 6, and the ACT is C, V or W.
4. Required when USOC RCF++, RD5++ or UER++ is populated.
5. Required when 4th character of TOS code is F.
6. Required for REQTYP E (Non-Complex) and M (Non-Complex) and the product type is On/Off Premise extensions / Different Premise Address (DPA).
7. For REQTYP A (excluding Interoffice Channels), this field is optional when the ACT is C, D, N, T or V and the LNA is N.
DATA ENTRY CONDITION:
Must be a valid AT&T Southeast Region (formerly BellSouth) NPA NXX.
Data Characteristics: numeric characters
Field Length (Min-Max): 6 - 6
Field Example:
201885

The above rules DO NOT state the CLECs need for re-population of the ACTL and LSO fields.

The appropriate comment for Question 7 is simple. Develop the Logic in LEX. AT&T states as committed they socialize the issue with the CLEC Community. Was this via a CR (Change Request)? AT&T goes on to utilize "scare" tactics to communicate this

information by threatening to "Remove" or "One approach would be to cease auto populating the ACTL and LSO fields for all LEX orders. This would require the LEX user to input data every time in accordance with the Business Rules."

It is AT&T's position that it is easier to use "scare" tactics than fix the issue. "This would be relatively easier than developing if/then logic within LEX. However this would be detrimental to the larger group of users. The benefit would be to those CLECs placing orders in LEX for the narrow scenarios previously discussed. The CLEC Community did not indicate this is an issue it wanted to pursue."
Who would want to pursue if threatened?

It has been STS's position to work with AT&T in a meaningful way to provide a fully publically documented process that is available to all CLECs in a way that would allow the CLECs to access UNE and UNE Combinations with Special Access according to the FCC's *Triennial Review Order* [August 22, 2003]. For years it has been AT&T's position that they simply saw no value to "Commingling" therefore it saw no basis to provide a meaningful way to allow CLEC an ability to access UNE and UNE Combinations with Special Access.

Once AT&T realizes that it is not above the law, but must comply with all laws and regulations, even the ones that AT&T does not like, including without limitation, the FCC Commingling Order, then and only then will AT&T work in good faith with STS and staff to provide a meaningful way to properly use LEX for the "ordering" of commingled "voice grade loops" [all voice grade loops, not just the most expensive available the SL2 loop].

Sincerely,

Keith Kramer

(*note:* The answers provided by STS were a work effort of Caryn Diaz, Ron Curry and Keith Kramer)

EXHIBIT
A

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of SATURN TELECOMMUNICATION SERVICES, INC., Complainant, v. BELLSOUTH TELECOMMUNICATIONS, INC., d/b/a AT&T FLORIDA, Defendant.	**File No. EB-09-MD-008**

DECLARATION OF W. KEITH MILNER

1. My name is W. Keith Milner. My business address is 2180 Dunwoody Heritage Drive, Atlanta, Georgia 30350. My telecommunications career spans over 39 years and includes management responsibilities in the areas of network planning, engineering, training, administration, network operations and regulatory planning and operations. I have held positions of responsibility with a local exchange telephone company, a long-distance company, and a research and development company. I have extensive experience in all phases of telecommunications network planning, deployment, and operations in both the domestic and international arenas.

2. Prior to my retirement from AT&T in 2008, I served as Assistant Vice President-Wholesale Regulatory and led a team handling a wide range of wholesale areas within AT&T's 22 in-region states, including all wholesale customer interconnection agreement negotiations (including those with Saturn Telecommunication Services, Inc.), regulatory support, contract

> the connecting, attaching, or otherwise linking of a Network Element, or a Combination, to one or more Telecommunications Services or facilities that STS has obtained at wholesale from BellSouth, or the combining of a Network Element or Combination with one or more such wholesale Telecommunications Services or facilities.[3]

9. The ICA then refers to Exhibit A of Attachment 2 "[f]or a list of the elements that can be commingled."[4] That exhibit, in turn, contains a subsection entitled "UNE Loop Commingling," broken down further into "2-Wire Analog Voice Grade Loop – Commingling" and "4-Wire Analog Voice Grade Loop – Commingling." Under the first category, the only loop listed is the "2-Wire Analog Voice Grade Loop – Service Level 2" in each rate zone.[5] SL1 loops are not listed among the 2-wire loops available for commingling. As I will explain later in this Declaration, that exclusion reflects the fact that it is not technically feasible to commingle SL1 loops.

B. STS's Complaint and AT&T's Commingling Experience in the Southeast

1. AT&T's Commercial Volumes of Commingled UNE Loops

10. Although, as noted above and explained further below, AT&T does not and cannot commingle SL1 loops, AT&T provides numerous other types of commingling arrangements to CLECs. The most common commingling arrangement requested by CLECs involves UNE loops commingled with special access transport facilities. This is the type of commingling arrangement at issue here. I will therefore focus my discussion on that type of commingling arrangement.

11. AT&T enables CLECs to commingle the following capacities of UNE loops with the following capacities of wholesale special access transport:

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[3] ICA Attach. 2, § 1.11.1 (Ex. App. Tab 33).

[4] *Id.*

[5] *Id.* Attach. 2, Exh. A at 5.

where a CLEC obtains a standalone analog UNE loop – e.g., a loop that terminates to a CLEC's collocation cage – any necessary digitization (also referred to loosely as the analog to digital conversion) is provided by the CLEC, not the ILEC. In a commingling arrangement, such digitization is provided by the ILEC.

21. The specific UNE Loop types that are eligible for multiple bandwidth commingling are:

- 2-Wire Unbundled Voice-grade Loop – Service Level 2 ("UVL-SL2")
- 4-Wire Unbundled Voice-grade Loop ("UVL")
- 4-Wire Unbundled Digital Loop ("UDL") (operating at up to 64 kbps, also referred to as DS-0 level)
- 4-Wire DS-1 (operating at 1.544 Mbps)

Note that UVL-SL2 and UVL loops are analog, voice grade loops that, as discussed above, require digitization for use in a commingling arrangement. By contrast, UDL loops and 4-Wire DS-1 loops are in digital format and do not require further digitization.

C. STS's Request To Commingle SL1 Loops Is Technically Infeasible

22. STS's central claim in this case is that AT&T should be required to commingle an SL1 loop with special access transport. As I will now discuss, however, such a request is technically infeasible: an SL1 loop simply cannot, as a technical matter, be commingled with special access transport. To explain why that is so, I (1) explain the differences between an SL1 and SL2 loop and (2) describe equipment used for commingling. I then (3) describe the complex process used to commingle a UNE loop with special access, as compared to the far more simple process of delivering a UNE loop to a CLEC's physical collocation space. I next (4) explain that AT&T's back-office systems use a different database to track and assign SL1 loops than the one

necessary to support commingling. Finally, I (5) conclude that, based on all of these considerations, STS's request is technically infeasible.

1. The Differences Between SL1 and SL2 Loops

23. SL1 and SL2 loops are both analog, voice grade loops. Although the same basic loop facility can typically be used to provide an SL1 and SL2 loop, there are two main differences between them. First, and most important, an SL2 loop is a "designed" loop. That means that, before an SL2 loop is provisioned, design work is undertaken by AT&T engineers. I describe the design work necessary to support commingling further below. Second, SL2 loops have "test points" wired into the loops that permit remote testing in order to locate trouble conditions. A test point itself is a hardware device (sometimes referred to as a switched maintenance access system ("SMAS") test point). To create a test point, AT&T technicians run wiring between the loop itself and the test point, and from the test point on to the test systems.

24. These two differences between SL1 and SL2 loops result in different rates. First, the non-recurring rate for SL2 loops reflects the design work necessary to provision such a loop. That non-recurring rate also captures the labor cost of physically wiring in the test points. As a result, the non-recurring rate for an SL2 loop in a particular zone is higher than the non-recurring rate for an SL1 loop in that same zone. In addition, the monthly recurring rate for SL2 loops captures the ongoing costs associated with test points, resulting in a monthly recurring rate for SL2 loops that is slightly higher than the monthly recurring rate for SL1 loops.

2. Equipment Used for Commingling

25. In this section, I will address the equipment AT&T employs in order to commingle a standalone UNE loop with special access transport. For purposes of this discussion, a standalone UNE loop is defined as a transmission facility between a distributing

the commingling arrangement of an unbundled voice grade loop with channelized special access via a so-called 1/0 multiplexer, and, second, the commingling arrangement of an unbundled loop to a special access multiplexer. Both arrangements require the use of a design process (just as in AT&T's Southeast region). There is accordingly no relevant regional difference of policy or practice as to the steps AT&T takes in order to commingle loops with special access transport.

64. Indeed, Mr. Starkey's mistake on this point appears to result from his failure to grasp rather elemental telecommunications terms. Mr. Starkey states that "AT&T outside the BellSouth region seems to have no technical difficulty using these simple, **2-wire analog loops** in a commingled arrangement (in the same fashion as requested by STS)." (Starkey ¶ 54) (emphasis added) Mr. Starkey then extracts part of Exhibit A from the so-called "CLEC Coalition" agreement, which discusses a commingling arrangement labeled **"UNE DS-0 Loop** connected to a channelized Special Access DS1 [sic] Interoffice Facility, via a special access 1/0 mux." (*Id.*) (emphasis added) Mr. Starkey thus appears to equate the term "2-wire analog loop" with "UNE DS-0 loop." But, as I explained above, a "UNE DS-0 loop" is a digital loop, not an analog loop. Indeed, the very agreement Mr. Starkey cites defines DS-0 thus:

> 1.1.45 **"Digital Signal Level"** is one of several transmission rates in the time-division multiplex hierarchy.
>
> 1.1.45.1 **"Digital Signal Level 0" (DS-0)** is the 64 Kbps zero-level signal in the time-division multiplex hierarchy.

65. The term "time-division multiplex" refers to the standard used to transmit traffic in *digital* format. Mr. Starkey is therefore demonstrably wrong in asserting that "the DS-0 referenced in Exhibit A is the simple 2-wire analog loop discussed above, i.e., the equivalent of the SL1 loop in AT&T's BellSouth territory." (Starkey ¶ 55) The definition of "DS-0" in fact makes clear that a DS-0 loop is one utilizing time-division multiplexing, a form of sampling and

digitization. As I explained above, with an analog loop, no sampling and digitization is performed.

66. Nor is Mr. Starkey correct in asserting that "the fact that AT&T includes this type of DS0-commingled [sic] arrangement as a standard offering in its ICA indicates that AT&T (outside the BellSouth region) considers this to be a fairly standard combination of UNEs for which no special development or processes are required." (Starkey ¶ 55) Here again, Mr. Starkey confuses digital DS-0 loops with analog loops and wrongly concludes that AT&T Texas can somehow commingle an analog, voice grade loop with special access transport, without the complex design process I have described above. Simply put, such commingling of analog loops with special access transport is technically infeasible, both in AT&T's Southeast region and indeed in all of AT&T's regions.

67. Finally in this respect, Mr. Starkey asserts that "Exhibit A makes clear that this particular commingled combination (i.e., simple DS0 loop [sic] with special access 1/0 mux and DS1 [sic] transport) has been 'fully tested on an end-to-end basis, i.e., from ordering through provisioning and billing:' – hardly the type of situation that would indicate technical infeasibility." (Starkey ¶ 55) Once again, Mr. Starkey mistakenly mixes and matches analog and digital loop types and once again his conclusions are incorrect. AT&T Texas can indeed commingle digital DS-0 loops with digital special access facilities. But that same process simply cannot be used to commingle analog voice grade loops with special access transport.

68. The Agreement to which Mr. Starkey cites contains non-recurring and recurring rates for two different loop types: the first is called the "2-wire analog loop," and the second is called the "2-wire digital loop." The monthly recurring rates for the two loop types are significantly different in recognition of the technical attributes of each. Presumably, Mr. Starkey

EXHIBIT
B

REDACTED VERSION FOR PUBLIC INSPECTION
(Pursuant to Protective Order, File No. EB-09-MD-008)

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
SATURN TELECOMMUNICATION SERVICES, INC., a Florida corporation,	)	**Filed July 16, 2010**
	)	
Complainant,	)	
	)	
v.	)	**File No. EB-09-MD-008**
	)	
BELLSOUTH TELECOMMUNICATIONS, INC., a Florida corporation, d/b/a AT&T FLORIDA,	)	
	)	
Defendant.	)	

FURTHER REVISED JOINT STATEMENT OF UNDISPUTED FACTS

AT&T and STS agree that all documents produced by both parties are authentic. This stipulation, however, does not prevent a party from challenging the completeness of a document. The parties also agree that if a document is quoted, it is not an admission by either party to the truthfulness, correctness, or completeness of the quoted statement; a quote simply represents the parties' agreement that the quote is accurate. Neither party admits that the stipulations in this Joint Statement are relevant or material to the issues that must be decided by the Commission. AT&T and STS reserve the right to dispute any fact not listed herein, regardless of whether the fact is listed in the party's disputed facts section. AT&T and STS reserve the right to dispute any legal issue, regardless of whether the legal issue is listed in the party's legal issues section.

Subject to the preceding paragraph, AT&T and STS agree to the following:

FURTHER REVISED JOINT STATEMENT OF UNDISPUTED FACTS

BACKGROUND

1. STS is a Competitive Local Exchange Carrier ("CLEC") and Interexchange Carrier ("IXC") certified by the Florida Public Service Commission ("FPSC"), to provide telecommunication services in Florida. STS is also a telecommunications carrier and local exchange carrier under the Act.

2. STS is a regional telecommunications company offering local and long distance services to businesses and residential consumers throughout Local Access and Transport Area 460 ("LATA 460"), which includes South Florida.

3. STS has its office at 12399 SW 53rd Street, Cooper City, Florida 33330, and its telephone number is 954-252-1000.

4. BellSouth Telecommunications Inc. d/b/a AT&T Florida ("AT&T") is an incumbent local exchange carrier ("ILEC") certified by the FPSC to provide local exchange services in Florida. AT&T is an ILEC as defined in section 251(h)(1) of the Act and is a local exchange telecommunication company as defined by §364.02 (8), Florida Statutes. AT&T is also a Bell Operating Company ("BOC") and its affiliate BellSouth Long Distance, Inc. d/b/a AT&T Long Distance Service is an Interexchange Carrier certified by the FPSC to provide long distance services based upon its compliance with section 271 of the Act.

5. AT&T has its principal office at 675 W. Peachtree Street, NE, Suite 4500, Atlanta, Georgia 30375; and its Registered Agent for Florida, CT Corporation System, is at 1200 Pine Island Road, Plantation, Florida 33324.

6. AT&T has designed commingled networks that accommodate voice and data services.

7. AT&T has been able to convert some of STS's customers onto its commingled network.

8. STS and other CLECs can enter orders through the Local Exchange Navigation System (LENS). LENS is a graphical user interface that allows a CLEC's customer service representatives to place orders. LENS is designed with pre-order edits that will not generally allow an order to be entered with incorrect information in the fields. When CLECs enter orders in LENS, they are required to enter a Purchase Order Number or PON. The PON is a required field entry on each Local Service Request (LSR) order, and the code must be unique for each CLEC's LSR.

9. In addition to the PON, the CLEC is required to enter specific codes that are assigned to different network elements, projects, and configurations. Each code is entered into a particular field on the ordering screen. Some fields require the CLEC to select a specific code from a predetermined list of applicable codes for that field. Other fields require the CLEC to fill the entire field with data related to the service or the customer. Because human interaction is involved in the creation and utilization of the ordering process, errors are possible. For example, if a CLEC enters codes that do not fall within the prescribed parameters of the field or if the CLEC incorrectly enters data required in a field, the order will not flow through AT&T's systems, and the services requested in that order will not be provisioned. Per the LENS User Guide "Information entered via LENS for a firm order populates portions of the Local Service Request (LSR) automatically. It facilitates the mechanized generation of

service orders without manual intervention from the Local Carrier Service Center (LCSC)."[1]

10. LENS is designed with pre-order edits that will not generally allow an order to be entered with incorrect information in the fields. But, when an order is submitted by a CLEC that has incorrect codes, a "Reject" or a "Clarification" may occur. A Reject means that the system entries are too invalid for the system to recognize and process the LSR. A Clarification means that LENS can accept the format of the entries into a particular field, but the entry may not be valid for the service being requested. In this case, the LCSC service representative will send a notice to the CLEC of the invalid entries and ask the CLEC to correct or "clarify" the entries in question.

11. The resolution of Rejects and Clarifications depends on the specific type of error. The resolution may be as simple as the CLEC correcting a typographical error and resubmitting the order. Other times, the CLEC may have attempted to order an arrangement that is not available. In this scenario, the resolution is more complex because the CLEC would need to redesign its service request and resubmit the order. There are also times that an AT&T service representative may interpret the LSR field entries incorrectly and clarify the LSR in error.

12. Once a CLEC's LSR is free of errors, the CLEC receives a Firm Order Confirmation or FOC. The FOC is sent by the LCSC via manual or mechanized system to advise the CLEC customer that the LSR has been processed and has been assigned an order number(s) and due date.

[1]LENS Version 27.0 User Guide at 13 ¶ 2 (Effective date March 16, 2008) (available at http://wholesale.att.com/reference_library/guides/lens_tafi/assets/pdf/27.0_lensuserguide.pdf).

13. The work-around process that AT&T developed for STS is an electronic process used by STS for the submission of orders. Once AT&T receives the orders from STS, the actual processing of them includes manual intervention that requires manipulation of the order by the AT&T Service Representatives.[2] If a Service Representative invalidly clarifies an order, service is not interrupted or changed. Once an order is submitted, STS has at least eight days in which to cancel the order before the migration is scheduled to occur.

PERIOD PRIOR TO THE SETTLEMENT AGREEMENT

14. From 2003 through 2005, STS grew its business to approximately 18,200 UNE-P lines provisioned predominantly to small business and residential customers in LATA 460 in South Florida.[3]

15. Following the release of the *Triennial Review Order*[4] in August 2003, AT&T developed agreement language to permit CLECs to connect UNEs or UNE combinations to wholesale services, including special access services, obtained from AT&T.[5] In addition, in connection with negotiations with CLECs to develop interconnection-agreement language to implement the rules promulgated in the *Triennial Review Order*.

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[2] STS is without knowledge of what, if anything, AT&T does to manipulate the order.

[3] For purposes of the liability phase of this proceeding, AT&T is willing to stipulate to the facts alleged in this paragraph. AT&T has determined that it would be an undue burden in terms of time and effort to confirm the accuracy of these allegations.

[4] Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 18 FCC Rcd 16978, ¶ 581 (2003) ("*Triennial Review Order*"), *vacated in part and remanded, United States Telecom Ass'n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004).

[5] The Agreement language was available in 2005.

16. AT&T has also modified its special access tariffs to accommodate certain commingled arrangements. AT&T's Tariff FCC No. 1 specifically permits tariffed special access services to be commingled with UNE loops.[6]

17. During the summer of 2004, STS's switching facilities were located in Miami, Florida and consisted of a Telica (now Alcatel) Plexus 9000 packet switch connected to AT&T via an OC-12.

18. Although STS's primary focus has been the business market,[7] prior to this Commission's decision in the *Triennial Review Remand Order*,[8] approximately 15% of STS's customer base consisted of residential customers, as well as some small businesses, using UNE-P, with an average business customer having 3.5 lines.

19. In late 2004, the parties began discussing the design and construction of a new network for STS for the migration of STS's embedded UNE-P customers and as an alternative to the UNE-P.

20. Messrs. Kramer and Amarant stated that they were concerned about the possibility that UNE-P would be eliminated and that they wanted to discuss other network solutions for serving their local end users. STS considered possible network solutions offered by a number of carriers beyond AT&T.

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[6] *See* BellSouth Tariff FCC No. 1, § 2.2.3 (eff. Oct. 17, 2003).

[7] *See* Arbitration Award at 2, *Saturn Telecomm. Servs., Inc. v. Covad Communications Co.* (Am. Arb. Ass'n Dec. 5, 2007) ("*STS/Covad Arbitration Award*") (Exhibit Appendix ("Ex. App.") Tab 110) ("In 2004, STS was a [CLEC] in the business of selling [UNE-P] to small and medium size businesses."); Ex. App. Tab 2 (January 11, 2005 e-mail from K. Kramer to M. Amarant explaining that Mr. Kramer had told BellSouth (Vicki Wright) that "the customer profile of STS is 4 or more lines *and that we do very little residential*") (emphasis added).

[8] Order on Remand, *Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 20 FCC Rcd 2533 (2005) ("*Triennial Review Remand Order*" or "*TRRO*"), *petitions for review denied, Covad Communications Co. v. FCC*, 450 F.3d 528 (D.C. Cir. 2006).

21. Over the next several months, the parties worked to develop a strategy that met STS's networking needs. The parties conducted face-to-face meetings, held telephone calls, and exchanged documents to determine what facilities STS wanted to include in its network.

22. STS considered other network designs but STS ultimately decided on a network structured around a commingled arrangement of section 251(c)(3) elements and a special access facility called a SMARTRing. The SMARTRing is a dedicated, SONET-based network with a ring architecture that is designed for the transport of switched and dedicated special access service. The SMARTRing is built to traverse between customer-designated hub locations or between multiple customer-designated locations and AT&T's central offices.

23. The network design connected customers to the SMARTRing through DS-0 and DS-1 loops with collocation arrangement located at eight (8) AT&T wire centers. Each of the wire centers in the configuration would serve as a connection point or "node" for a "hub and spoke" design where STS could connect facilities to the SMARTRing, which would, in turn, be connected to an STS switch.

24. Mr. Kramer selected each Servicing Wire Center ("SWC") for the nodes based in large part upon the locations where STS had the highest concentration of UNE-P lines that would be migrated to the commingled network based upon information provided by Mr. Ducote.

25. AT&T offers a variety of UNE loop products, each of which has different specifications and pricing.

26. STS moved forward with the design based upon STS's business needs.

FURTHER REVISED JOINT STATEMENT OF UNDISPUTED FACTS

27. On January 12, 2005, Messrs. Lepkowski and Ducote met face-to face with Mr. Amarant, Mr. Kramer and Mr. Cohen. During this meeting Mr. Kramer questioned Messrs. Lepkowski and Ducote about the process for migrating current customers to the commingled arrangement.

28. On January 18, 2005, Ducote e-mailed Kramer in response to Kramer's inquiries, with copies to Lepkowski and Mark Amarant (Amarant"), the Chief Executive Officer of STS, the "information on the UNE-P to UNE-L bulk migration" which consisted of links to AT&T's website and two documents, the first entitled "Manual Migration to Channelized Transport" and the second "UNE-P to UNE-L Bulk Migration, CLEC Information Package."

29. On February 4, 2005, the FCC released its TRRO[9], which, in part, established the permanent rule related to unbundled local circuit switching, and in turn eliminated UNE-P. In the TRRO, the FCC issued a national finding of "no impairment" for unbundled local circuit switching and established a transition period whereby CLECs were required to migrate from UNE-P to other service-delivery methods.[10]

30. On February 11, 2005, AT&T released its carrier notification letter SN91085039, outlining the requirements related to the elimination of UNE-P and the conditions of the transition period.

31. During February 2005 Mr. Kramer questioned Mr. Lepkowski and Mr. Ducote regarding their training and expertise on unbundled local elements due to the fact that

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[9] *In the Matter of Unbundled Access to Network Elements, Review of the Section 251 Unbundling Obligations of Local Exchange Carriers, Order on Remand,* WC Docket No. 04-313, CC Docket No. 01-338; FCC 04-290.

[10] *TRRO* ¶ 199.

in prior discussions with these two AT&T employees (i) the primary focus was on Special Access products, and (ii) they have been unable to answer questions regarding UNEs.

32. Messrs. Lepkowski and Ducote discussed the placement of the nodes for the SMARTRing with Mr. Kramer.

33. Mr. Lepkowski volunteered to take the information on STS's nodes, begin a service inquiry which was required to see if AT&T could engineer the SMARTRing with eight (8) nodes, and to contact an AT&T commingling manager and other AT&T product managers to confirm that the network design proposed by Mr. Ducote was functional.

34. On February 25, 2005, Mr. Ducote sent Mr. Amarant and others the e-mail attached as KK00025 through KK00033.

35. Mr. Lepkowski told representatives of STS that the commingled network could be built and that STS's embedded base could be migrated to the commingled network.

36. In April 2005, Mr. Kramer traveled to AT&T's office in Atlanta to meet with Messrs. Ducote and Lepkowski to discuss the commingled network that AT&T was designing for STS. During the Atlanta meeting both Messrs. Lepkowski and Ducote drew out the network design on a white board. This meeting included but was not limited to detailed discussions on the following topics: (i) costs of the network, including, without limitation, the initial (non-recurring) and operating (recurring) costs, (ii) quantities of lines at the SWCs and (iii) diagrams of the commingled network architecture. At this meeting both STS and AT&T agreed that STS would require an OC-48 SMARTRing with OC-12 overlays for additional nodes given the particular

configuration STS utilized. STS agreed with AT&T's proposal that the network would be comprised of local loops from the customer's premise (either a DS-1 or a DS-0 Loop) to either a 1/0 [11] or 3/1 mux[12] either directly connected to STS's collocation or indirectly connected to STS's collocation through the interoffice transport hub and spoke design at either a DS-1 or DS-3 level.

37. Prior to the Atlanta meeting, on April 19 and 20, 2005 Mr. Kramer wrote AT&T's Contract Negotiator, Kyle Todtschinder ("Todtschinder") explaining that "Daryl [Ducote)] was coming up with a network design, based on the new rules [TRRO]" and wanted to discuss how the AT&T designed network would comply with the rules

38. On April 28, 2005, Mr. Ducote sent Mr. Kramer and STS's Chief Technical Officer, Gil Cohen, ("Cohen") an e-mail with copies to Messrs. Lepkowski and Amarant confirming the "main topic discussed, Commingling" at the Atlanta meeting, and the tremendous cost savings to STS of this AT&T designed commingled network. Attached to the e-mail were various schedules including one which showed the lines to be converted on each SWC, which included 18,296 DS-0 lines, and diagrams showing the proposed commingled network with the local loop from the end user to the SWC being a DS-0 in most cases and a DS-1 in the remaining situations.

39. On May 2, 2005, Mr. Ducote wrote Mr. Kramer to discuss the ordering process for the commingled network including the "ordering of a DS-0 to the end user."

40. On May 2, 2005, Mr. Kramer sent an e-mail to Mr. Ducote that read "I still think that we need additional help in forming a network with UNEs and SA on to the ring.

[11] This refers to a multiplexer that combines multiple DS-0s onto a DS-1.

[12] This refers to a multiplexer that combines numerous DS-1s onto a DS-3.

BellSouth [AT&T] engineering has never really done this type of daisy [chain] and it goes way outside their regular network thought."[13]

41. On May 3, 2005, Mr. Kramer sent an e-mail to AT&T's local contract manager ("LCM") who serviced STS, Ann Foster ("Foster"), inquiring about the location of the commingling rules on AT&T's website. Foster replied that same day, explaining that "there are no details as to what the rules are in the [Change Request] but they are being finalized. The rules will be provided to the CLECs as soon as they are available."[14]

42. On or about May 28, 2005 Kramer, Amarant, Cohen, and Kevin Collins ("Collins"), a STS engineer, flew to Birmingham, Alabama to meet with Lepkowski, Ducote, and Michael Hurst ("Hurst"), the AT&T Commingling Product Manager.[15]

43. During the May meeting in Birmingham, Lepkowski discussed the Commingled Network with STS, drew diagrams of AT&T's proposed network design and discussed implementation of the commingled network.

44. At the meeting, AT&T and STS discussed the equipment to collocate in AT&T's Serving Wire Center ("SWC") that would accommodate the commingled network arrangement as well as comply with the necessary requirements of 47 U.S.C. § 251(c)(6).

45. On May 31, 2005, Hurst, in documents KK00153, confirmed his understanding of this commingled network in writing stating; "From the proposed configurations that

[13] AT&T Ex. App. Tab 4.

[14] AT&T Ex. App. Tab 27 at ATT000339.

[15] For purposes of the liability phase of this proceeding, AT&T is willing to stipulate to the facts alleged in this paragraph. AT&T has determined that it would be an undue burden in terms of time and effort to confirm the accuracy of these allegations.

were reviewed with me today for STS Telecom, it is my understanding that they will have voice grade/DS-0 and DS-1 UNE loops connected to and riding Special Access channelized interoffice facilities connected to a ring. In my opinion STS Telecom would be in full compliance with their Triennial Review Order based interconnection agreement that stipulates that high capacity loop transport must terminate into a collocation that meets 51.318(c) if it terminates the channelized DS-3 facilities into a virtual collocation and further cross-connects to the ring."

46. On June 2, 2005, in document KK00154-KK00155 Ducote e-mails STS that they "are also still investigating the migration/conversion process discussed in our [Birmingham] meeting and hope to have a conference call early next week to discuss this." In the e-mail Ducote also referred STS to Technical Reference TR-73600, which provides details of the technical capabilities of AT&T's unbundled loop offerings, including "the difference between a Non_Design [sic] Unbundled Voice Loop (UVL) 2-Wire/SL1 and Unbundled Copper Loop and how they compare to the Loop currently used on a UNE-P service." Mr. Ducote also told Mr. Kramer that he would "look for someone" who could answer Mr. Kramer's questions "above and beyond" what Mr. Ducote had already provided regarding the differences between the various loop types.

47. Between February 2005 and May 2005, STS and AT&T discussed specific arrangements for the SMARTRing and the selection of nodes. The decision on the best location for the SMARTRing nodes was based primarily on line counts and was the result of a cooperative process between AT&T and STS.

48. By choosing the node locations based on the number of lines served by particular wire centers, STS hoped to lower the costs of connecting all customers to its switch.

49. In early 2005, STS indicated that it wanted to use a bulk migration process to migrate all its business lines to the new network to facilitate faster migration once the SMARTRing was installed.

50. On June 7, 2005, Ducote sent STS a copy of AT&T's UNE-P to UNE-L Bulk Migration Process. In the accompanying e-mail (KK00156 through KK000159). Ducote explained; "To me it indicates that you can use the lower rated loop out of your agreement. That is you can use a 2 wire Unbundled VoiceLoop-SL1 or a 2-wire Unbundled Copper Loop Non Design. As far as the difference between the two loops, short of the rates, again I am to refere [sic] you to the Technical Reference TR-73600." Ducote ended the e-mail stating "I am currently waiting for more information on a migration process." AT&T's UNE-P to UNE-L Bulk Migration Process specifically states "UNE-L is defined as the local loop network element that is a transmission facility between the main distribution frame (MDF) in BellSouth's [AT&T's] central office and the point of demarcation at an end-user's premises. This facility will allow for the transmission of the CLEC's telecommunications services when connected to the CLEC's switch equipment. The local loop will require cross-connects for connection to the CLEC's collocation equipment." (AT&T Ex. App. Tab 1 at ATT150062)

51. In the summer of 2005, Mr. Ducote told Mr. Kramer that that STS could use either an UCL-ND or SL1 Loop on the commingled network.

52. In July 2005, Mr. Ducote sent STS a letter from his superior, Assistant Vice President Marcus Cathey ("Cathey") at AT&T, demanding that STS abide by the TRRO and transition UNE-P arrangements from UNEs to special access, including a remittance to AT&T of the 15% rate increase retroactive to March 11, 2005 in document KK00160 through KK00164.

53. By August 2005 STS and AT&T had signed the SMARTRing Agreement which provided for STS to pay AT&T approximately $40,000 per month for the OC-48 SMARTRing service. In late 2005, AT&T's UNE Loop Multi-bandwidth Commingling CLEC Information Package was published on the AT&T CLEC website.

54. On September 13, 2005, STS forwarded Ducote an e-mail (documents KK00167) containing questions from AFL Networks regarding installation of the collocation equipment.

55. Ducote sent an e-mail to STS which answered AFL Networks' questions and contained a network diagram for STS to forward to AFL Networks. (KK00169 through KK00171)

56. Once the application and engineering forms were completed and accepted by both companies, AFL Networks proceeded with the collocation installations, which began in November of 2005.

57. By March 2006, AT&T informed STS that SL1 loop could not be commingled with special access facilities and that SL2 loops would be required instead.

58. On March 27, 2006, Kramer e-mailed James Tamplin ("Tamplin") at AT&T, and summarized his view of what had transpired since January as STS had attempted to

convert its UNE-P lines to its commingled network. Kramer also states; "James, it seems perplexing to me that after a year of designing and building the network with the help of some very good people at BellSouth [AT&T] to comply with the FCC TRRO through commingling, now that it comes time to convert our UNE-P base, BellSouth [AT&T] has no way of doing the Bulk migration process to convert our lines." (KK00216 – 217).

59. On March 27, 2006, STS's Ron Curry ("Curry") e-mailed AT&T complaining of a manual process proposed by AT&T in which STS would order a new line and disconnect the UNE-P. By its very nature, every hot cut creates a disconnect; which results in an outage. (KK00220 – 224)

60. On March 28, 2006, Monica Curtis, AT&T's Local Support Manager, e-mailed STS requesting a conference call on March 29, 2006, to discuss the aforementioned e-mail from Ron Curry, dated March 27, 2006. (KK00219)

61. On March 28, 2006, Kramer e-mailed AT&T complaining of the manual process and the prohibitive costs of the same and requested resolution. (KK00259)

62. On March 29, 2006, Kramer e-mailed Tamplin complaining that the costs of utilizing the SL2s in the commingled network would be "more than the retail price that [AT&T] sell to its end users in Florida."

63. An SL2 loop requires STS to pay approximately 15% more per month for each customer loop over the monthly charges for a SL1 loop. The non-recurring charge for an SL2 loop is more than twice the non-recurring charge for an SL1 loop.

64. In March 2006, AT&T informed STS in that it had not created a bulk migration process to convert former UNE-P customers to the kind of commingled network STS

had chosen. The notes from a conference call on March 24, 2006, indicate that the parties discussed the following issue:

a. "STS requests to convert UNE-P lines to UNE-L with commingling via spreadsheet or Bulk Migration. Their position is that the request is supported by their contract, conversations with Customer Care, and the February 06 Commingling presentation. How can the request be accomplished?"

b. AT&T informed STS that "[c]urrently, a spreadsheet or Bulk Migration process to convert UNE-P lines to UNE-L Commingling does not exist."

c. AT&T also indicated that "[t]he contract language is referencing UNE-P to UNE-L. Jim Tamplin, BellSouth [AT&T] Contract Negotiator, has discussed with STS Negotiator, Keith Kramer, and is willing to provide further clarity surrounding this issue if needed. Upon review of the Commingling presentation, Local Support Manager, Monica Curtis, explained that the presentation was addressing existing Commingling situations rather than the transition of UNE-P lines to UNE-L Commingling."

d. AT&T also told STS that "[a] request to implement a process encompassing UNE-P lines to UNE L Commingling may be submitted 'business as usual' or a new business requests may be submitted to . . . [the] BellSouth [AT&T] Local Contract Manager."

e. The meeting ended with the following resolution: "Issue closed. STS will determine their path forward, which may result in contacting BellSouth [AT&T] to submit new or process change request." (KK00221 – 222)

65. Kramer e-mailed Tamplin on March 28, 2006 about the conversion process. Kramer stated in that email that STS had expended considerable time, effort and money over the past year building out the commingled network in reliance on the proposals given to STS by AT&T. Although Kramer was critical of AT&T in this email, he also stated that "Alessandra, Daryl Ducote, Michael Lepkowski, Barbara (I owe her a dinner and she is more than entitled to it), Anne, and so many others at BellSouth worked very hard to get us to the point where the network is in so we can convert the base and be a 'true facilities' based company with services provided by BellSouth [AT&T]. We are at the point where all of us worked so hard to be at." (KK00259)

66. In early April 2006, STS had settlement discussions with AT&T; however AT&T insisted that before settlement discussion occurred, that a non-disclosure agreement ("NDA") be signed.

67. The NDA required all STS personnel involved with the project be told of the confidential and proprietary nature of AT&T's information and agree in writing to protect such information from unauthorized disclosure.

68. During the spring of 2006, Mr. Kramer had a phone conversation with Donna Hartley where they discussed the conversion of STS's embedded base of UNE-P customers to UNE loops commingled onto the special access SMARTRing architecture that STS had recently installed.

69. On April 4, 2006, Mr. Kramer sent an e-mail to Mr. Amarant that read "I told them that we have drawn up secondary plans to keep Resi on the commercial agreement, and convert all customers that can be with six lines or more to a T1. . . . But that is a substantial cost that we had never factored in. . . . They were very interested in

exactly how many lines with this in place would they have [to] convert to UNE-Ls. 1. I told them that we would keep the 2,500 resi[dential] lines with the commercial agreement. 2. There are about 8,500 lines that we may be able to convert to Ts. 3. Which leaves about 3,500 lines that we need to convert. 4. I swear you could hear a collective sigh of relief." (AT&T Ex. App. Tab 24)

70. From May 10, 2006 through May 26, 2006, STS continued to work with AT&T to allow ordering of voice grade UNE-Loops with special access facilities.

71. In May 2006 AT&T had no process for STS to electronically place a single order for multiple customers for voice grade loops commingled with special access facilities. Prior to June 30, 2006, AT&T assembled a product team to develop an electronic ordering functionality and a bulk-migration process.

THE SETTLEMENT AGREEMENT

72. STS's concerns and problems with AT&T led to a request that the companies meet in person to attempt to find a resolution. This meeting occurred in Atlanta, Georgia at AT&T's offices in May 2006. The STS personnel present at this meeting were Mark Amarant and Keith Kramer, and the AT&T personnel present at this meeting were Gary Patterson, Regina Guillet, Michael Lepkowski, Paul Wilbanks, Donna Hartley, Robby Pannell, and Valerie Cottingham. Several topics were discussed at this meeting, including STS's financial position, AT&T's requirement that SL2 loops were necessary for commingling with special access facilities, and cutover volumes. Regarding STS's financial position, Ms. Guillet (AT&T) expressed concerns about STS on a going forward basis given that she had reason to believe that hundreds of CLECs were going out of business. Regarding AT&T's requirement to use SL2

loops in a commingled arrangement, Ms. Hartley (AT&T) explained that using SL1 loops in a commingled arrangement was technically infeasible. Regarding cutover volumes, STS indicated that it may have as many as 12,000 UNE-P customers to be converted.

73. Several Settlement Proposals were exchanged over the following weeks that never came to fruition. In the course of discussions between STS and AT&T, the companies exchanged a document containing questions from STS and AT&T's responses regarding the details of a proposed settlement.[16] In AT&T's responses it stated that the use of Unbundled Copper Loops in a commingling arrangement is not technically feasible, that only SL2s could be used as the local loop in STS's commingled network, that STS must augment its existing collocation points at the eight (8) nodes and that the number of conversions would be limited to 2,100 lines.

74. In June 2006, STS's Counsel filed an emergency petition with the FPSC and a comment letter to the FCC opposing the merger of AT&T and BellSouth. Both filings complained of the failure of BellSouth to timely convert STS's embedded base of business as required by the FCC's TRRO, including but not limited to:

a. That AT&T's representatives misled STS with regards to the use of SL1, loops in its Commingled Network; and

b. That AT&T misrepresented the Bulk Ordering Migration process.

75. In July 2006 AT&T representatives Jim Meza (Attorney), Parkey Haggman (Attorney), Jerri Hendrix (AVP) Mr. Cathey (AVP) and Mike Lepkowski met with

[16] The document referenced can be found at KK00355 – 366.

FURTHER REVISED JOINT STATEMENT OF UNDISPUTED FACTS

STS's representatives, Alan Gold (Attorney), Mark Amarant (CEO) and Keith Kramer (EVP) for mediation in Tallahassee Florida.

76. During the mediation both Parties reached resolution of their disputes and entered into a Term Sheet that contained the following terms:

a. STS would receive approximately [***Begin Confidential***] [***End Confidential***] in billing credits.

b. STS agreed "to withdraw its current billing disputes regarding the delta between SL1 and SL2 rates" and "to keep its billing accounts current based on the services STS actually purchases."

c. AT&T agreed to provide STS with the ability to purchase a higher capacity, OC192 SONETRing at a [***Begin Confidential***] [***End Confidential***] discount.

d. Both Parties would enter into a new ICA and Wholesale Agreement.

e. AT&T agreed "that STS would be able to convert 2,500 UNE-P lines to SL-2 loops commingled with special access transport." (AT&T Ex. App., Tab 37)

77. The Term Sheet does not address the conversion of any STS line beyond the 2,500 UNE-P lines to be converted to SL-2 loop commingled with special access transport. (*Id.*)

78. STS never requested that AT&T terminate the SMARTRing contract.

79. In June 2006, prior to the execution of the Term Sheet, Kathy Cicero ordered STS's first special access 1/0 muxed DS-1. STS then submitted an order on June 21, 2006

80. to convert two (2) UNE-P lines to SL2 loop commingled on STS's dedicated service to test the conversion process.

81. By the first week in December 2006, STS and AT&T signed the Interconnection Agreement, Market Based Rates Agreement, and the Confidential Settlement Agreement. A true and complete copy of the Confidential Settlement Agreement can be found at AT&T's Ex. App. Tab 40. A true and complete copy of the Interconnection Agreement can be found at AT&T Ex. App. Tab 33. The ICA provides for commingling of services without limiting the total numbers of lines that can be converted.[17] *See* ICA Attach. 2, § 1.11.

82. The Confidential Settlement Agreement expressly did not "in any way, modify, amend or abrogate the current Interconnection Agreement" between the parties.

83. The Confidential Settlement Agreement required STS to withdraw the Complaint STS filed before the Florida Public Service Commission against BellSouth without prejudice and its Comments opposing the merger between AT&T and BellSouth filed before the FCC without prejudice.

84. The Confidential Settlement Agreement released AT&T "from all Demands, Actions and Claims, whether known or unknown, asserted or which could have been asserted against BST (BellSouth) related to" the FPSC Complaint or the FCC Comments.

85. The Confidential Settlement Agreement required that AT&T use "reasonable efforts" to migrate these 2,500 lines to the commingling arrangement, and that the lines be migrated no later than March 31, 2007, provided that STS satisfied certain conditions

[17] The parties disagree on the question whether bulk migration applies to commingling under the terms of the ICA.

such as providing a list of the circuits to be converted by a certain date and submitting all orders by the end of January 2007.

86. The Confidential Settlement Agreement provided "STS will follow the requirements and guidelines provided by BellSouth for this work-around process."

87. The Confidential Settlement Agreement states that "BellSouth will establish time frames, with input from STS, for migrating the 2500 lines by the bulk migration work-around process as quickly as feasible. Provided that STS . . . (2) submits migration orders in accordance with the schedule and due dates established by BellSouth . . . ."

CONDUCT SUBSEQUENT TO THE SIGNING OF THE SETTLEMENT AGREEMENT AND INTERCONNECTION AGREEMENT

88. Since the date of the two Agreements BellSouth has merged with AT&T.

89. Paragraph 13 of the Confidential Settlement Agreement required, among other things, STS to submit "a list of the number of circuits to be migrated by CLLI [the Common Language Location Identifier]] no later than November 13, 2006."

90. On October 27, 2006, Mr. Kramer sent an e-mail to Mr. Pannell that read "Here is a list of the 'Platform' lines that we have at the eight SWCs to which we have as nodes that are connected to the OC 48 ring. These are the lines to which we want to convert to SL 2 UNE Loops." (AT&T Ex. App. Tab 39 at ATT132240-41.)

91. Mr. Pannell sent an e-mail to STS on October 31, 2006, indicating that the list STS provided included several lines that were not UNE-P accounts and that some telephone numbers were omitted from the list. Mr. Pannell stated that "[w]e need a

clean list of the telephone numbers to be converted from UNEP to commingled SL-2s" (*Id.* at ATT132240.)

92. In response to AT&T's request for a corrected list of circuits, STS submitted a partial, "preliminary" list of circuits on November 8, 2006, and indicated a more complete list would follow. (AT&T Ex. App. Tab 42.)

93. On November 13, 2006, Mr. Kramer sent an e-mail to Mr. Pannell that read "Robby could you give me acknowledgement that you have receive [sic] the conversion list of Platform lines to SL 2. The list was a bit incomplete the rest of the numbers will be e-mailed today." (Kramer Aff. Ex. 2 at CD00009.) Later that day, Mr. Pannell replied to Mr. Kramer in an e-mail that read "Yes sir, I have received your preliminary list and shared with the team. I am now attempting to schedule an internal (within AT&T) call with the team to discuss the list, and develop timelines for project completion. I plan to have the internal call this week & our network group will need an accurate list in order to plan effectively so please try to share as quickly as possible." (*Id.* at CD000009). On November 14, 2006, Mr. Pannell sent an email to AT&T personnel indicating that "Attached are the 2 lists I received from STS (total 3009 circuits) Keith [Kramer] recognizes that they have exceeded the 2500 identified in the Settlement Agreement." (AT&T Ex. App. Tab 43.) In addition, on January 15, 2007, Mr. Pannell sent an e-mail to Mr. Kramer and Ms. Diaz (f.k.a. Roldan) that indicated that "many of these ckts were not served by the Wire Centers they are identified under. This is a critical issue because we have no way of knowing how many ckts are to be provisioned out of each End Office and that is where the physical work will have to be performed." (AT&T Ex. App. Tab 64 at ATT111030.) Under

the STS special-access arrangement, the loop does not always connect directly to the STS switch; rather, it often connects to the STS SMARTRing, which carries the call to the STS switch in another central office. The e-mail also indicated "[a]dditionally, each end user (account) must terminate to a MUX in the End User Serving Wire Center and based on the ACTLs provided for these Telephone numbers that does not seem to be the case."[18] Mr. Pannell requested STS to review the list of circuits STS previously provided and indicated "We need an accurate list of the EATNs for each Servicing Wire Center so we can schedule the cuts and allocate the resources needed in each wire center. (*Id.*)

94. In an email dated November 14, Mr. Pannell wrote an internal email, stating "Team, Attached are the 2 lists I received from STS (total 3009 circuits) Keith recognizes that they have exceeded the 2500 identified in the Settlement Agreement. He suggests we cross that river when we get to it (when we actually start to exceed 2500 in the conversion process). I believe we need to go ahead & address it up front." In response, Kristen Shore (of AT&T) stated, "I agree with Robby that we do need to address it now. Is it easier for us to use 'the process'? (1) If not, I think we draw the line at 2,500 circuits and instruct STS as to how the remaining 509 circuits should be submitted for conversion. (2) If it is easier, do we want to (a) accept the 509 and clearly document that we will not accept any additional in the future, or (b) accept the 509 and leave the door open for them to submit in a similar fashion in the future?"

[18] The ACTL is an 11-character code that identifies a CLEC's collocation space in a specific central office. The first eight characters of the ACTL correspond to the central office CLLI code and the last three to the CLEC's specific collocation space. So normally, the ACTL for a given unbundled loop corresponds to the CLEC's switch that is collocated in the central office that serves the CLEC's end-user customer's loop.

Parkey Haggman (of AT&T) wrote to STS about this issue stating, "Keith, the circuit lists you submitted contain 3009 platform lines. As you know, the Settlement Agreement only covers the migration of 2500 platform lines. While BellSouth is willing to migrate the additional 509 lines pursuant to the process we have developed for STS, those lines will be migrated outside of the terms of the Settlement Agreement. The problem is, we don't have ANY agreement for the migrations. It seems to me we either need to amend the ICA or amend the settlement (which I really don't want to do)."

95. In an email dated November 29, 2006, Mr. Pannell sent "a summary of the issues" STS and AT&T had discussed on a conference call on November 28, 2006. Specifically, Mr. Pannel wrote, "STS indicated they have 10,000 UNEP lines that need to be converted. We explained it was our understanding that they were using a DS1 application for any END users with "8+" lines and that left aprox [sic] 3,000 UNEP lines left to convert (the Settlement Agreement only allows for 2,500). Keith indicated he had made this clear with Ms. Haggman & he wasn't sure exactly how we were going to migrate the remaining ckts. He asked me to have Ms. Haggman call him in regard. Keith Kramer mentioned that Parkey had limited the # [of] circuits to 2500 to which you responded that we are only here to discuss the 2500 circuits per the settlement (I believe Keith Kramer's claim that Parkey limited the numbers is not correct and that the 2500 is what he requested."

96. In response to Mr. Pannell's email, Karen Fields (of AT&T) wrote, "Thanks for the minutes. . . . Also, I will check with specific product team members about handling the add'l 7500 circuits using the work-around-want to make sure that it is ok with the

ordering and provisioning folks. If we do allow the add'l circuits using the work-around, either STS's [IA] will have to be updated to include the provisions or there will have to be a confidential separate agreement. Either way, the time lines in the settlement will not apply to the 7500 circuits."

97. On January 16, 2007, Mr. Pannell sent an email to STS indicating the need for, among other things "an accurate list of your End Users identified by the BellSouth [AT&T] Servicing Wire Center they are 'currently' being served by." (AT&T Ex. App. Tab 71 at ATT113804.)

98. On January 16, 2007, Ms. Roldan sent Mr. Pannell an e-mail that indicated "I have attached a list of the TN's that we want to convert to SL2's. The list is shorter than the original you have because it has since been "scrubbed" for accuracy. The list includes customers' current serving wire center information." (*Id.* at ATT113803.) The list STS provided on January 16, 2007, identified 2,731 lines. (AT&T Ex. App. Tab 83.)

99. On January 15, 2007, Karen Fields wrote, "Brenda, This is the list that contains the number of circuits by CLLI for STS. These are the circuits that are to be migrated using the work around process that we put in place just for STS. Network needs to assign due dates for each CLLI on the spreadsheet. Once this is completed send the spreadsheet to Robby who will send to STS. STS will use the due dates on their bulk orders. The bulk orders for 2500 circuits were suppose to be submitted by 1/31. We are running a little behind so we need to get due dates to STS asap so they can start submitting asap. I've talked to Tina and she is willing to get the LCSC on board for

this and try to process as many orders as STS can submit (up to 2500 circuits) by 1/31. The orders need to be completed by 3/31/07."

100. On January 17, 2007, Mr. Pannell wrote, "Team, Are we saying that we will allow them to issue 3 LSRs in BCRTFLBT per day? They will be allowed to CUT more than 3 lines per day though, right? Wire Center (BCRTFLBT); Total (109); Lines per day (3). Who will be sharing this information with STS? The project manager??" On January 22, 2007, Mr. Pannell wrote, "Yes, I just got off the phone and he mentioned the schedule. He said the Bulk Migration tool on the Web and in their ICA states they can schedule up to 100 circuits per day in each wire center and had they known they would only be allowed 4, they would not have agreed. I feel like this is going to blow up. Although I support whatever position you guys present, I personally do not see how we would not allow after-hour coordination. I also do not understand how we can limit them to 3 lines per day when most of there accounts have multiples lines. Never the less, I sent it and he just voiced his concerns when we spoke with him on the phone. We'll keep you guys posted."

101. On January 22, 2007, Ms. Fields wrote, "As a reminder, STS cannot use the standard bulk migration process which means they cannot use the scheduling tool, after hours cuts, appt windows, etc. The work around cannot accommodate those features of the standard process. They agreed to the work-around process per the settlement. I think everyone has made a great effort in trying to accommodate STS with the work-around but they continue to complain about what they don't have rather than try to work with what we have provided. We can look at the appt window option again and see if there is a way to accommodate this option but I am making no promises nor should

anyone mention to ST[S] what we are working on it. Right now we cannot offer them more than we have already done." On January 23, 2007, Mr. Pannell wrote, "Team, My concern is that they again agreed to something (and we supported it) that had not been developed. Therefore, they are basically bound to whatever 'we' decide is applicable without collaborating with them on what they will need/request as part of the process. I know an exhausting amount of work has been done by all (Thank you very much, sincerely..) and we are all ready to get this out of the way and move on to more productive opportunities. However, I think they are landlocked to whatever we have developed so we need to ensure it sounds logical and within reason to someone on the outside looking in. Although I understand our challenges and support our cause, I'm not sure how this would be viewed by a neutral third party. I have trouble understanding it and I'm partial to ATT. Additionally, Keith specifically brought up the number of lines per day and referenced the BULK Migration Tool language in his ICA, and the tool on the web. I know we have a Settlement agreement that says they will use the BULK Migration Tool Work Around, but doesn't the ICA also come into play? Can they use this for their argument?? I will try to pull the ICA and see what language is there regarding the BULK Migration Process. Sorry just very paranoid after my conversation with him yesterday. He was all over the place."

102. The Confidential Settlement Agreement required AT&T to "establish time frames, with input from STS, for migrating the 2,500 lines by the bulk migration work around process as quickly as feasible." AT&T provided STS with a spreadsheet indicating the maximum number of lines that could be migrated per day per wire center. AT&T

also explained that if STS followed the schedule, the standard due date of eight business days should be designated on each order. The document expressly provides that, "[t]his schedule assumes that STS will begin submitting orders on 2/5/07 with the first orders due dates on 2/15/07 [i.e. the standard, eight business days service interval plus the weekend]. STS must continue submitting orders everyday starting on 2/5/07 according to the number of lines per CO ["Central Office"] (up to 2500 lines) that can be worked."[19] (Diaz Aff. Ex. 49, at CD000915 (note 2)). Under the process AT&T developed with STS, the AT&T project manager would, if necessary, negotiate a revised due date for the coordination of the migration once the order is submitted.

103. The Settlement Agreement requires that "STS will follow the requirement and guidelines provided by BellSouth [AT&T] for [the] work-around process."

104. Ms. Rockett and Mr. Pannell suggested that STS should alert AT&T before submitting PONS. In an email dated September 13, 2007, Ron Curry wrote that "I will take back to our Upper Management, it before STS submits any other PONs, for you and your folks update the Process and bring it inline with your statements. Include the fact that you want STS to notify you before we submit the SL2 Conversion PONs. I will let our Upper Management Team decide. I have no clue what you are saying and I want it in the Process." In an email sent the same day, Rockett replied, "As with any documented process there will be questions, however, we do not go back and update every CLEC information package with answers to

[19] It is STS's position that this document did not comply with the Confidential Settlement Agreement.

questions we have received. We are here to explain and address any questions you have to assist you in better understanding the process. There is no need to update this process, it works. If you would like to have a call to discuss this once again, AT&T will be glad to accommodate."

105. The Settlement Agreement requires that "Provided that STS (1) submits a list of the number of circuits to be migrated by CLLI no later than November 13, 2006, (2) submits migration orders in accordance with the schedule and due dates established by AT&T and has submitted all orders no later than January 31, 2007, and (3) complies with the AT&T requirements and guidelines for the work-around process in submitting all such orders, then AT&T shall use reasonable efforts to complete the migrations of 2500 Platform Lines no later than March 31, 2007."

106. STS first received the ordering document for UNE-P to Commingled SL2 UNE Loop Bulk Migration on November 1, 2006, in which AT&T requested information to begin the conversion of customers.

107. From November 1, 2006 through November 28, 2006, STS continued to exchange and provide documentation and information requested by AT&T in connection with the conversion of customers.

108. On November 28, 2006, AT&T sent a revised document for the ordering process. On December 1, 2006, Robby Pannell sent an email to both STS and AT&T representatives involved in the conversion process. This email summarized the issues discussed during the meeting the Parties held on November 28 and 29, as well as a couple of items sent by Diaz by email. Pannell invited STS to let him know if there were any additional issues. STS confirmed that Pannell's list was complete.

109. On or about September 14, 2006, XO Communication sent an e-mail to the BellSouth/AT&T CLEC Facilitator summarizing issues that XO had with submitting manual orders.

110. From November 29, 2006 through December 12, 2006, STS and AT&T corresponded regarding the bulk migration work around process.

111. By December 18, 2006, STS had provided all requested information to AT&T, and awaited further instructions on how to process test orders and answers from AT&T concerning all issues raised from the November 28th test.

112. STS followed up with AT&T by e-mail on January 8, 2007.

113. On January 15, 2007, AT&T sent a third revised document for the work around process reflecting modifications to the process. AT&T also provided STS with answers to the remaining issues pending from the November 28th and 29th conference calls. As of January 15, 2007, the following were not issues with the work around process: manual versus LENS [mechanized] order submission, the 2,500 circuits to be handled by the work-around process, hot cut coordination, the omission of the SPEC field and the future disconnection of SL2 lines.

114. From January 16, 2007 through January 19, 2007, STS and AT&T continued to work on the revised work around process.

115. On January 18, 2007, Mr. Pannell sent an email to Ms. Diaz and Mr. Kramer that responded to questions and concerns that STS had regarding the revised January 15, 2007 Work Around Process.

116. On January 18, 2007, Stacy Rockett ("Rockett") of AT&T requested that STS submit two (2) test orders, one with the Connecting Facility Assignment ("CFA")

information in the remarks (as instructed in AT&T's process) and one with the CFA info in the Circuit Reference ("CKR") field (requested by STS). At this time, STS rejected AT&T's suggestion to use STS end users' telephone numbers and insisted on using its own administrative numbers until further testing was performed.

117. On January 19, 2007, AT&T's Robby Pannell advised STS that he believed that Ms. Rockett had addressed all of STS's concerns and that STS should be able to submits its test orders. STS's Caryn Diaz ("Diaz" f/k/a "Roldan") disagreed and advised Mr. Pannell and Ms. Rockett that the order STS submitted on January 18 was clarified and cancelled. Ms. Rockett notified STS that the orders that STS had submitted on January 18, 2007, had been mistakenly clarified due to an internal training issue.

118. On January 22, 2007, Diaz received a call from AT&T's Rockett to discuss populating the CFA in the CKR field of the order in LENS. Rockett requested that STS submit another test order using a "live customer" and asked that STS once again populate the CFA info in the CKR field. Diaz advised Rockett that the test lines STS had been using in its office are no different from a live customer. Rockett advised Diaz that STS could not submit another order under that ATN[20] because STS has already used it on three (3) prior orders and that those orders were still in the system. Rockett requested that STS submit an order using one of its live customers outside of STS's office. Diaz advised Ms. Rockett that she would need to get authorization from Keith Kramer prior to submitting a test order using one of STS's live customers, as

[20] "ATN" stands for Account Telephone Number. See Exhibit 45--documents CD001678-CD001683.

the orders that STS had submitted prior to this date were for live customer lines but in STS's own office.

119. Kramer then spoke to AT&T's Rockett and Hartley, and they both requested that STS submit a test order on one of its live customers. Kramer requested that they provide to STS a written guarantee that if STS used an outside live customer that the service would not go down.

120. On January 23, 2007, Diaz received a call from Rockett and Hartley. They called to discuss the issue STS had with the ACTL pre-populating the orders in LENS. They advised STS to send another test order using a live customer and to allow the system to auto-populate the ACTL. They advised STS that the Local Carrier Service Center ("LCSC") representative would change the ACTL for STS to the correct one. Diaz asked Rockett and Hartley to send an e-mail detailing what they wanted STS to do on the orders and it would be discussed with Kramer for approval before sending over any orders. Diaz also advised Rockett and Hartley that Kramer would need to authorize a test order on a outside live customer. AT&T agreed to send Diaz an e-mail detailing the work around for the ACTL field. STS received Rockett's e-mail regarding the ACTL work around. Ms. Rockett's email specified that "regardless of whether you leave the ACTL field pre-populated or change it, that part of the order will be touched by our service representatives, in which our service representatives have very detailed instructions as to how they are to handle. Please let me know how you will proceed." On April 27, 2007, over three months later, Mr. Echols sent an email to Ms. Rockett that stated "4 of the 6 were clarified in error, but are being pulled and processed now. The reps cant [sic] get past the ACTL not being valid on

the LSR, but I am trying to make sure they understand. Sorry but I will have them processed asap."

121. On February 7, 2007, AT&T sent STS a fourth revised document for the work around process.

122. Initially there was a problem with provisioning some of STS's orders with the proper signaling.

123. On May 2, 2007, AT&T sent STS its fifth revised document on the ordering process.

124. From May 11, 2007 through June 7, 2007, the parties continued to work on the work around process. On June 7, 2007, the parties performed a second round of live tests, which failed.

125. On July 3, 2007, STS submitted eight (8) live test orders at the Oakland Park spoke. On July 17, 2007, the live test conversions at a spoke were completed and the process testing phase was completed.

126. AT&T has not published a process for CLECs to convert to commingled SL2 loops outside the work-around process provided to STS.

127. The bulk migration work-around process only altered the order entry process of the electronic bulk migration process; it did not affect the actual provisioning of an order, which was to be "business as usual". So, if a service representative were to clarify an order incorrectly, that would not interrupt service to an existing end user.

128. Since STS's last test order was converted Change Request ("CR") 2468 was put into effect.

129. Since STS has started the test order conversion process, the support team assigned to STS by AT&T has changed.

FURTHER REVISED JOINT STATEMENT OF UNDISPUTED FACTS

130. AT&T, like any other large company, has been subject to normal employee turn-over and attrition.

131. AT&T limited the number of UNE-P lines per day that STS could migrate at certain wire centers and that, in certain wire centers, the average permitted was four lines per day.

132. AT&T now provides telecommunications services to Fox's All Pro Car Wash. The problems with "Fox's All Pro Car Wash" had nothing to do with the bulk migration work around process, but were repair issues.

133. STS has converted approximately eighty-five (85) lines to its commingled network utilizing the Bulk Migration Work around Process.

134. STS's Wholesale UNE-P lines have reduced from approximately 18,200 to just fewer than 4,500 lines today.

135. WLC is AT&T's Wholesale Local Contract which is used for Wholesale Local Platform Lines, which is the replacement for the UNE-P services that were eliminated with the FCC's TRRO.

136. STS filed an informal complaint with the FCC on May 30, 2008.

137. STS filed a complaint against AT&T before the United States District Court for the Northern District of Florida on June 12, 2008.

138. The federal District Court Complaint contained three counts: (1) Count I for breach of the Settlement Agreement based upon AT&T's failure to convert the 2500 lines; (2) Count II for fraud in the inducement with respect to the entering the Settlement Agreement, alleging that AT&T knew it would not be able to convert the 2500 lines, but represented otherwise to STS in order to persuade STS to enter into the

Settlement Agreement; and (3) Count III for Breach of the Interconnect Agreement based upon AT&T's implementation of its new Operating Support System ("OSS") by failing to properly test the same despite being warned by STS that the OSS would fail and failing to convert the embedded base and new customers to its network utilizing SL2s.

139. Upon a Motion to Dismiss filed by AT&T, the District Court dismissed Counts II and III on November 28, 2008. The Court dismissed Count II for fraudulent inducement, ruling that under Florida law, since the parties were adverse, STS could not reasonably rely on AT&T's representations even if they were false. The Court dismissed Count III for breach of the Interconnect Agreement, ruling that the Florida PSC would be the appropriate forum to address the breaches of the ICA. The Court denied AT&T's Motion to Dismiss Count I of the Complaint for breach of the Confidential Settlement Agreement because the parties had explicitly chosen the Northern District of Florida as the appropriate forum for any dispute regarding the Settlement Agreement, and ruled that STS's prior filing of an informal complaint with the FCC did not preclude STS from filing suit for breach of the Settlement Agreement.

140. During the pendency of the litigation, toward the end of March 2009, STS submitted another batch of orders pursuant to the bulk migration work around process. Specifically, on March 27, 2009 STS submitted 29 Purchase Order Numbers ("PONs"). STS submitted these PONs without giving prior notice to AT&T. Before submitting these PONs, STS had not submitted PONs using the work-around process since January 2008. These orders were clarified and subsequently cancelled by STS.

FURTHER REVISED JOINT STATEMENT OF UNDISPUTED FACTS

141. An unidentified STS customer experienced a service outage in relation to one of the orders submitted on March 27, 2009, by STS pursuant to the Bulk Migration Work Around Process because AT&T processed the conversion order before the due date. Other STS customers may have experienced a service outage because AT&T processed the conversion order before the due date.

142. AT&T restored service to all customers who lost service, and the trouble tickets were closed on the next day.

143. After March 27, 2009, STS's management gave the directive to cancel all orders and stop placing additional orders.

144. On June 22, 2009, STS filed a Motion to Amend and to file its Second Amended Complaint, adding an alternative count for rescission of the Settlement Agreement.

145. On June 23, 2009 STS and AT&T entered a Stipulation agreeing to dismiss the Federal litigation without prejudice.

146. On June 30, 2009 pursuant to the Stipulation, the United States District Court entered its Order, dismissing the case without prejudice.

147. On January 15, 2009, the FCC approved the Parties' first joint request to extend the original deadline of January 21, 2009 to convert STS Informal Complaint to a Formal Complaint to March 7, 2009.

148. On February 10, 2009, the FCC approved the Parties' second joint request to extend the conversion deadline of March 7, 2009 to March 26, 2009.

149. On March 16, 2009, the FCC approved the Parties' third joint request to extend the conversion deadline of March 26, 2009 to April 15, 2009.

FURTHER REVISED JOINT STATEMENT OF UNDISPUTED FACTS

150. On April 10, 2009, the FCC approved STS's fourth request to extend the conversion deadline of April 15, 2009 to June 30, 2009, which was also agreed to by AT&T.

151. On June 17, 2009, the FCC approved STS's motion to extend the conversion deadline of June 30, 2009 to July 21, 2009, which was also agreed to by AT&T.

152. All claims stated in STS's Formal Complaint that were also stated in its Informal Complaint shall relate back to the date of original filing of May 30, 2008.

GENERAL OBSERVATIONS AND PRIOR PROCEEDINGS

153. According to the deposition of Marcus Cathey, Executive Director of Wholesale Sales for AT&T, taken May 21, 2009, "STS had a very large base of UNE-P provided customers" and "probably large for that area, significant in that area."

154. In order to convert a new customer to STS's commingled network, STS must first order a new SL2 loop and then commingle the loop with its special access facilities.

155. According to AT&T's commingling expert, Frederick C. Christensen, Senior Manager, Methods & Procedures, in a hypothetical situation in which the order for a conversion pursuant to the bulk migration work around process went through smoothly without rejection or clarification, the end-user should receive dial tone with the only effort from STS being the submission of the order; stating; "In the other instance, where the order is submitted successfully by STS and its falls out for manual intervention, the service rep creates a service order, sends it downstream to network organization, they do their magic, the customer's got dial tone and everybody is happy". Mr. Christensen also stated that "in the normal course of business, we are supposed to be talking to each other all the time, so it wouldn't be

unusual that STS might have called to say, 'By the way, we are going to be sending X number of orders.'"

156. During the Florida Public Service Commission's investigation of AT&T's batch hot cut process in 2003, AT&T discussed the benefits – operational efficiencies and rate advantages[21] – of its batch hot cut process and assured the FPSC that AT&T was capable of converting the embedded base of UNE-P to UNE-L arrangements. AT&T described its batch hot cut process as follows: "BellSouth [AT&T] took a proven. tested and approved process and overlaid a bulk ordering mechanism and project management to create a seamless, end-to-end process that will allow BellSouth [AT&T] to efficiently migrate thousands of UNE-P customers to UNE-L. These additions create efficiencies in the batch process and thereby it complies with the TRO."

157. AT&T explained to the Florida Public Service Commission that its batch hot cut process would work even if "CLECs decide to convert the totality of their UNE-P base to unbundled loops attached to the CLECs' switches rather than BellSouth's [AT&T's] switches"[22] and claimed that it could hire "687 central office employees

[21] Direct Testimony of Kenneth Ainsworth on behalf of BellSouth Corp., Florida PSC Docket No. 030851-TP, December 4, 2003, p. 25. ("Q. IN ADDITION TO OPERATIONAL EFFICIENCIES, ARE THERE RATE ADVANTAGES TO THE BATCH PROCESS? Yes. The rate for the batch hot cut is discussed in the testimony of BellSouth witness John Ruscilli.") MS000094.

[22] Direct Testimony of Kenneth Ainsworth on behalf of BellSouth Corp., Florida PSC Docket No. 030851-TP, December 4, 2003, p. 33. (emphasis in original) MS000097

and 394 installation and maintenance employees" in "4 to 5 months" to address the UNE-P cutover volumes.[23]

158. In its Comments to the FCC in the TRRO proceeding, AT&T represented: "BellSouth's [AT&T's] hot cut processes, including its batch hot cut process, allows for UNE loops to be provided at a high level of efficiency and quality and for large quantities of UNE-P arrangements to be converted to UNE loops in a short time frame."[24][25]

159. A document entitled "UNE – UNE-P to UNE Loop Commingling" states as its "Purpose" that "[t]his document provides instructions to the LCSC [that is, the Local Carrier Service Center] on how to process requests for UNE-P to UNE-Loop commingling." The LCSC receives and processes ordering documents referred to as Local Service Requests which the LCSC receives from CLECs. During this processing the LSR is converted to a Service Order which is subsequently handled by the appropriate provisioning group. That same document states, "The Central Office Channel Interface (COCI) which includes the low speed card and jumper, will be a part of the UNE Loop Order." The document further states, "The Commingled DS0

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[23] AT&T claims, and STS disputes, that the batch hot cut process described was developed to process orders for loops terminated to CLEC collocation spaces. That loop cutover process is straightforward and amenable to reliable performance in substantial volumes. Commingling, however, is fundamentally different than the standard hot cut process.

[24] Initial Comments of BellSouth Corp., WC Docket No. 04-313, CC Docket No. 01-338, October 4, 2004 ("BellSouth TRRO Comments"), p. 26.

[25] Although AT&T admits that the paragraph is accurate, AT&T claims, and STS disputes, that the batch hot cut process described was developed to process orders for loops terminated to CLEC collocation spaces. That loop cutover process is straightforward and amenable to reliable performance in substantial volumes. Commingling, however, is fundamentally different than the standard hot cut process.

Loop will be terminated to the MDF [that is, the Main Distributing Frame] and then connected, using the appropriate DS0 COCI, to the DS0 side of a D4 channel bank." Further, that same document states that the "same features and capabilities allowed for the DS0 analog Loops will also be allowed for the Commingled Loop including reuse of facilities (when available) as with this process. The UNE Loops that are commingled with SPA services will continue to be supported by the same processes and centers as the loops are today. There is no difference in the way the UNE Loop is provisioned except that the UNE Loop is delivered to the CLEC at a MUX or D4 Channel Bank in the EU SWC instead of a Collocation arrangement. The same UNE Loop capabilities, measurements and options will apply to the Loop circuit portion of the commingled circuit."

160. Prior to 2004, AT&T promised the FCC an efficient hot cut procedure to convert its entire embedded base of UNE-P to UNE-L in exchange for the elimination of UNE-P. For example, in October 2004 AT&T filed the Affidavit of Kenneth Ainsworth, Keith Milner, and Alphonso J. Varner in WC Docket No 04-313, CC Docket No 01-338.[26] Beginning at paragraph 52 of AT&T's Affidavit, the affiants discuss the creation of a "pseudo CLEC" by establishing 750 UNE-P accounts in three (3) SWCs in Florida for the purposes of demonstrating the proficiency of its batch hot cuts processes. In paragraph 55 of the affidavit. AT&T discussed the current makeup of its existing base of UNE-L accounts in Florida, and determined that 87% were SL1s and 7% were SL2s. AT&T testified that it was able to do 125 batch hot cuts on day one at the West

[26] Direct Testimony of Kenneth Ainsworth on behalf of BellSouth Corp., Florida PSC Docket No. 030851-TP, December 4, 2003.

Hollywood Central Office, which is close to the same SWC in which STS has a significant quantity of lines. AT&T claimed that in the first three (3) days of this "test" it did 125 batch hot cuts a day in a particular SWC. On Day 4, AT&T claimed it performed 375 batch hot cuts in three SWCs. This is in addition to AT&T's claims that it could efficiently and seamlessly migrate the embedded base of UNE-P to alternative arrangements if the FCC eliminated UNE-P.[27]

161. AT&T offers and performs bulk migrations as well as individual (single) Local Service Request ("LSR") conversions for STS's competitors who do not utilize a commingled network.

162. The following commingled arrangement is available in AT&T's thirteen (13) state non-BellSouth region: "UNE DS0 Loop connected to a channelized Special Access DS1 Interoffice Facility, via a special access 1/0 mux."

163. AT&T does not offer SL1 and SL2 loops in its thirteen (13) state region (that is, outside the former BellSouth territory).

164. Since 2005, AT&T has had a list of available commingled arrangements posted to its CLEC-Online website that it has made available to all requesting carriers and agreed to include in its interconnection agreements with CLECs. The commingled arrangements on AT&T's list are "available and fully tested on an end-to-end basis, i.e., from ordering through provisioning and billing...."

[27] STS claims, but AT&T disputes, that outside of the Southeast AT&T commingles an analog, voice grade loop with special access transport without a complex design process.

165. AT&T's list of available commingled arrangements contains a commingled arrangement called "UNE DS-0 Loop connected to a channelized Special Access DS1 Interoffice Facility, via a special access 1/0 mux."

166. The same type of commingling arrangement involving a "UNE DS-0 Loop" offered in Texas through AT&T's Interconnection Agreement is offered throughout AT&T's twenty-two state region.

167. In this same thirteen (13) state non-BellSouth region, AT&T offers only a single type of analog DS0 loop and does not distinguish on the basis of SL1 versus SL2.

COMMINGLING ARRANGEMENTS & FCC AUTHORITY

168. UCL-ND is the least expensive local loop, with nonrecurring charges ("NRC") of $44.98 (connect) and $24.88 (disconnect) per line and a monthly recurring charge ("MRC") of $10.92 per line.

169. The SL1 loop is more expensive than the UCL-ND loop, with non-recurring charges ("NRC) of $49.57 (connect) and $25.62 (disconnect) per line and a monthly recurring charge ("MRC") of $15.20 per line.

170. The SL2 loop is more expensive than the SL1 and UCL-ND loops, with NRCs of $135.75 (connect) and $63.53 (disconnect) per line and a MRC of $17.40 per line.

171. Due to STS's customer make-up, the initial investment in SL2 loops could be up to four (4) times the cost of using SL1s.

172. On average STS's conversion costs of an SL2 is approximately 3.6 times greater than the installation costs of an SL1.

173. To date, AT&T has not had to prove to the Florida Commission, or to any other state commission that it is not technically feasible to use an SL1 loop in the commingled arrangement that STS employs.

174. In prior testimony before the FCC and state commissions, AT&T claimed it could do batch hot cuts in a seamless manner in its request to have the FCC eliminate the requirement for UNE-P.[28]

175. The generic interconnection agreement for AT&T Texas provides in section 2.18.5:

> "This Section 2.18 only applies to situations where the wholesale service, or group of wholesale services, is comprised of UNEs offered or otherwise provided for in this Attachment, including commingled arrangements with wholesale services. The Parties agree that converting between wholesale services, such as special access services, and UNEs or UNE combinations should be a seamless process that would not create any unavoidable disruption to CLECs customer's service or degradation in service quality. Since such conversions will only constitute a record and billing change and in no way impact the physical circuits involved the interval for completing conversions shall be mutually negotiated between the parties. In no event will the conversion interval exceed the standard interval applicable to the UNE(s) or UNE combination to which the wholesale service is being converted. Pricing changes begin the next billing cycle following the conversion request."

176. The generic interconnection agreement for AT&T Texas also provides in section 2.13:

> "When CLEC orders Unbundled Network Elements in combination, and identifies to SBC TEXAS the type of telecommunications service it intends to deliver to its end user customer through that combination (e.g., POTS, ISDN), SBC TEXAS will provide the requested elements with all the functionality, and with at least the same quality of performance and operations systems support (ordering, provisioning, maintenance, billing and recording), that SBC TEXAS provides through its own network to its local exchange service customers receiving equivalent service, unless CLEC requests a lesser or greater quality of performance through the

[28] AT&T's position is that these batch hot cuts were developed to process orders for loops terminated to CLEC collocation spaces.

> Bona Fide Request (BFR) process. 251(c) (3) Unbundled Network Element combinations provided to CLEC by SBC TEXAS will meet all performance criteria and measurements that SBC TEXAS achieves when providing equivalent end user service to its local exchange service customers."

177. In March 2006, prior to and during the negotiations of the present Interconnection Agreement between STS and AT&T, AT&T represented to STS that the only DS-0 UNE loop type available in a commingled arrangement was a Service Level 2, or SL2, and that it was technically infeasible to use the SL1 loop in a commingled arrangement.

178. The interconnection agreement between STS and AT&T limits STS to commingling only certain kinds of DS-0 loops, including the SL2 loop type

179. In its response to Interrogatories 11 and 12, AT&T provided STS the Texas cost study for a 2 wire analog loop as well as the Florida cost studies for SL1 and SL2 loops. The service description in the cost study describes the loop as follows:

> a general-purpose voice grade loop consisting of one twisted pair cable or an equivalent electronic communications channel from the customer's premises to the serving central office. The designation, 8dB analog loop, indicates that the loop is designed to have no more than an 8dB signal loss from end-to-end. Loops of this type are used for basic voice communications.

180. AT&T has claimed that a "designed" SL2 loop (as opposed to an SL1 loop) must be commingled because of the assignments and connections that must be made to commingle the loop with digital transmission facilities, as compared to the cross-connect work performed to connect a loop to a collocation arrangement.

181. The Texas cost study for a 2 wire analog loop as well as the Florida cost studies for SL1 and SL2 loops show that the endpoints of an unbundled loop are the customer's premises on one end and the Main Distribution Frame (MDF) on the other end.

REVISED JOINT STATEMENT OF UNDISPUTED FACTS

182. AT&T also provided a Florida cost study for the voice grade COCI element in response to STS Interrogatory 11.

183. The recurring and non-recurring costs for the COCI shown in the cost study are incurred in order to make the connection from the MDF to the D4 channel bank. For example, the DS-X Panel Termination investment in the cost study is hit with a Hardwire Factor which nearly increases the investment amount by ***BEGIN CONFIDENTIAL END CONFIDENTIAL*** to recover the cost of the wiring work that must be performed at the DS-X panel. Likewise, the voice grade plug-in card investment is hit with factors for Plug-In and Plug-in Inventory which increase the investment amount by ***BEGIN CONFIDENTIAL END CONFIDENTIAL*** to recover the cost of installing the plug-in card and completing the circuit. The rates for a voice grade COCI in the AT&T/STS ICA are a monthly recurring rate of $1.38 and a non-recurring charge of $6.71 for the first COCI.

184. The SL2 cost study also shows that the CPC/CPG work is assumed to occur between ***BEGIN CONFIDENTIAL END CONFIDENTIAL*** of the time for the first SL2 loop.

185. According to AT&T, the difference between the monthly recurring costs in the SL1 loop cost study and the monthly recurring costs in the SL2 loop cost study is the test points. AT&T's Florida cost studies shows that this difference amounts to about ***BEGIN CONFIDENTIAL END CONFIDENTIAL*** in additional

monthly costs for test points (i.e., material investment, land investment and building investment).

186. According to AT&T, the difference between the non-recurring costs for a SL2 loop versus a SL1 loop is due to two differences: (a) "design work necessary to provision such a loop" and (b) "labor cost of physically wiring in the test points.

187. The non-recurring costs for the SL2 include: order plug-in when not in stock, clerical functions in connection with the plug-in order, problem resolution of plug-in order, assign loop facilities, handling requests for manual assistance, design circuit and DLR, coordinate dispatched technicians, places/removes plug in at remote terminal, places/removes cross connect at cross box, check continuity and dial tone, trouble resolution at cross box, test from network interface device and tag loop, trouble resolution at premises, and dispatch to cross box. All told, at least two-thirds of the NRC for a SL1 or SL2 loop install (1st) relates to activities undertaken to install an entirely new loop.

188. The difference between the monthly recurring costs in the SL1 loop cost study and the monthly recurring costs in the SL2 loop cost study is the cost of test points (i.e., material investment, land investment and building investment).

189. AT&T has an obligation, as a BOC, to satisfy the checklist items under section 271 of the Act in order to provide in-region interLATA services, as well as independent obligation, as an ILEC, to satisfy the obligations of section 251 of the Act.

190. Section 271 includes the obligation for AT&T to continue to comply with the market-opening requirements it had to meet for 271 approvals, including the competitive checklists under 271(c)(2)(B).

FURTHER REVISED JOINT STATEMENT OF UNDISPUTED FACTS

191. AT&T has received 271 approval to provide long distance services throughout its local territories in 22 states.

192. In its complaint to the FCC, STS alleges that AT&T has violated its obligations as a BOC under section 271 of the Act and asks the FCC to take corrective action, and that AT&T's authority to provide in-region interLATA authority be suspended. AT&T has denied that it has violated its obligations under section 271 or that the Commission would be entitled to exercise any authority to suspend AT&T's interLATA authority on the basis of the allegations raised by STS in this proceeding.

193. The FCC has expressly concluded that properly raised claims of discrimination arising from section 271 can be brought before the FCC in section 208 complaints. STS claims that AT&T discriminated against it in violation of section 271. AT&T denies that STS has properly raised a claim of discrimination under section 271 in this proceeding, and AT&T expressly asserts that it is in compliance with section 271.

194. Though the FCC references state processes as a potential avenue for discrimination complaints, it makes clear that "parties remain free" to file complaints regarding ongoing section 271 compliance with the FCC in section 208 complaints.

195. Further, the FCC has found that nothing in Section 251 of the Act disturbs a party's ability to file a complaint with the FCC under section 208 of the Act.

196. The parties have held numerous informal settlement discussions since the filing of the Informal Complaint.

197. The March 30th mediation was unsuccessful, therefore prior to filing the formal complaint STS mailed a certified letter on April 2, 2009 outlining the allegations that

form the basis of the complaint it anticipated filing with the FCC, allowing for a reasonable period to respond prior to filing the Complaint.

198. On April 7, 2009, the Parties attended a pre-complaint teleconference with the FCC. At the teleconference, AT&T requested and STS agreed, that STS would send a revised certified letter clarifying AT&T's violations of FCC rules and regulations, along with explanations of how AT&T violated each rule or regulation.

199. At the direction of the FCC as discussed at the teleconference, STS sent a Mediation Brief to outline the dispute in detail to AT&T and the FCC by e-mail on April 14, 2009. AT&T served its Mediation Brief by e-mail on STS on May 8, 2009. In response, STS served its Reply Mediation Brief on May 15, 2009, by e-mail and certified mail. AT&T served on STS a Supplemental Mediation Brief on May 29, 2009 as directed by the FCC.

200. On June 9th and 10th, 2009, the Parties attended mediation at the FCC, and have held informal talks since mediation. However, the Parties have not been able to reach an agreement to resolve their disputes.

201. On or about June 5, 2006, STS filed a petition before the Florida Public Service Commission, which was based on AT&T's conduct prior to the date of the complaint in failing to convert STS's embedded base of UNE-P customers to its commingled network utilizing SL1s.[29] STS also filed Comments[30] before the FCC opposing BellSouth's merger with AT&T on or about July 13, 2006.

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[29] In re: Dispute To Require BellSouth to Honor Commitments and to Prevent Anticompetitive and Monopolistic Behavior Between Saturn Telecommunication Services, Inc. d/b/a STS and BellSouth Telecommunications, Inc., Docket Number 06-0435-TP. See Affidavit of Nancy M. Samry, Exhibit 2.

FURTHER REVISED JOINT STATEMENT OF UNDISPUTED FACTS

202. The FPSC Petition and Comments before the FCC concerned, *inter alia*, the failure of AT&T to convert STS's embedded base prior to June 2006 and had been resolved by the Mediated Settlement Agreement, however the breach of said Agreement forms one of the bases of the instant formal complaint.

203. STS filed its Informal Complaint on or about May 30, 2008 before the FCC, which was based in part on the same set of facts as the instant formal complaint, Docket No.: EB-08-MDIC-0034, entitled Saturn Telecommunication Services, Inc. v. AT&T.

204. STS also filed a complaint in the U.S. District Court, Northern District Court of Florida, Case No.: 4:08-cv-00271-SPM-WCS, entitled Saturn Telecommunication Services, Inc. v. BellSouth Telecommunications, Inc., d/b/a AT&T Florida, on June 12, 2008, which was voluntarily dismissed on June 30, 2009.

205. The District Court Complaint was also based in part the allegations that AT&T breached the Confidential Settlement Agreement by failing to convert 2,500 lines. Before the Complaint was voluntarily dismissed by stipulation and without prejudice. STS sought to add a count for rescission of the Settlement Agreement.

206. Settlement discussions have occurred and the parties agree to continue discussions in good faith.

207. AT&T has a batch hot cut process for UNE-P to UNE-L.

208. AT&T has successfully migrated thousands of wholesale UNE-P lines to commingled arrangements other than DS0 using new DS1 circuits.

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[30] In the Matter of: BellSouth Corporation and AT&T, Inc., STS's Comments on Application for Consent to Transfer of Control Filed by AT&T, Inc. and BellSouth Corporation, Docket No.: WC DOCKET NO 06-74 (July 13, 2006) See Affidavit of Nancy M. Samry, Exhibit 3

209. STS did not have a BAN by December 18, 2006.

210. To the extent a STS customer requests service for the very first time, STS can request a new SL2 loop through a manual process.

211. STS's complaint raises no issues regarding AT&T's commingling of DS-1 UNE loops commingled with special access transport.

212. AT&T reasonably permits commingling when utilizing DS1s serving large business customers.

213. In a "classic" collocation arrangement, the CLEC owns the multiplexing and transport equipment used to digitize and multiplex the voice-grade loops.

214. It is undisputable that AT&T offers and performs bulk migrations as well as single LSR conversions for STS's competitors who do not utilize a commingled network.

UNDISPUTED FACTS IN RESPONSE TO QUESTIONS POSED BY COMMISSION STAFF AT THE STATUS CONFERENCE HELD ON MAY 4 AND 5, 2010

1. Identify each step in the design process necessary to commingle a voice grade analog loop with Special Access Transport. Identify:

a. Design steps that are part of Special Access
b. Design steps that are part of the COCI
c. Design Steps that are part of the unbundled Loop.

215. Special Access transport facilities are put into place prior to the CLEC's issuing its Local Service Request ("LSR") for unbundled loops to be commingled with those special access transport facilities.

216. In the case of a special access DS-1 circuit, the CLEC would have 24 channel assignments available for connection to DS-0 services.

217. The COCI consists of two parts: 1) a connection (sometimes referred to as the "jumper") between the unbundled loop to the DS-0 input card on the D4 channel bank or other functionally equivalent equipment, and 2) the DS-0 card itself. The COCI replaces the collocation cross-connect.

218. AT&T provided STS with 27 WORD documents for the voice-grade commingled circuits currently inventoried in AT&T's TIRKS system as of May 21, 2010. These WORD documents were marked as confidential. Every WORD document for STS' voice-grade commingled circuits (with one exception) carried the label "THIS IS A PRO-CDS DESIGN."

219. DCS equipment allows "logical" connections of inputs and outputs to be made via a computer controlled switching matrix rather than via wired connections.

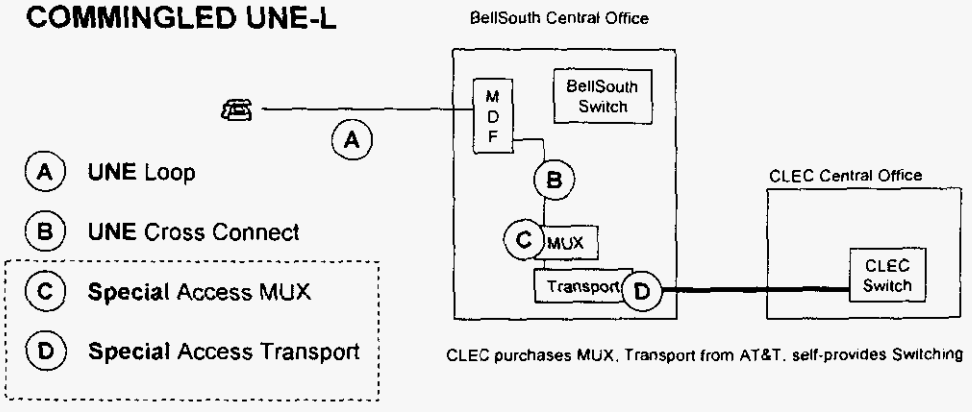
220. This test point is sometimes referred to as the "SMAS" test point, a reference to a test sub-system called the Switched Maintenance Access System.

221. AT&T's W. Keith Milner lists seven (7) "design" steps necessary to commingle a 2-wire analog voice-grade loop with special access transport that are not necessary when a UNE-L is terminated to a CLEC's collocation space. Those 7 steps are:

> "(1) a cross-connection at the MDF [Main Distribution Frame] to connect the loop to a single pair on a multi-pair tie cable between the MDF and other distributing frames or to a rack of equipment referred to as D4 channel banks (in some cases the connection might traverse one or more so-called Intermediate Distributing Frames for which assignments and connections must be made); (2) the pair on the multi-pair tie cable is connected to a single input on the D4 channel bank which itself accommodates 24 inputs (loops, in this setting) and digitizes those inputs into a single DS-1 bit stream; (3) the digitized bit stream leaves the D4 channel bank and is conveyed forward to the input stage of a multiplexer; (4) the multiplexer aggregates additional digital bit streams (DS-1s) carrying other loops into a DS-3 bit stream (operating at roughly 45 Mbps) and is itself connected to interoffice digital facilities; (5) those interoffice

digital facilities might pass through several other central offices before arriving at the nearest central office serving as a node on the CLEC's special access ring; (6) the traffic placed on the ring is then sent forward to the node at which the CLEC will receive the aggregated unbundled loops (in digital format); (7) the aggregated loops are then removed from the ring and attached to CFAs that the CLEC denoted in its original order as the place to which AT&T should deliver the aggregated loops."

222. All 7 "design" steps referenced by Mr. Milner occur between the MDF (where the loop ends[31]) and STS' switch. These facilities are labeled as "B", "C" and "D" in the diagram on page 16 of Michael Starkey's Reply Declaration (reproduced below).



223. The activities and resultant costs associated with all 7 "design" steps (i.e., B, C, and D) occur after the UNE loop has been terminated to the MDF (labeled as "A" above). None of the 7 "design" steps applies to the UNE loop.[32]

[31] Section 2.1 of the AT&T/STS ICA defines a "local loop Network Element" as a "transmission facility that BellSouth provides pursuant to this Attachment between a distribution frame (or its equivalent) in BellSouth's central office and the loop demarcation point at an customer premises (Loop)." See also diagrams in AT&T's CLEC Information packages related to UNE loops showing that all loops end at the MDF. See, e.g., "Unbundled Voice Loop – SL2 CLEC Information Package," page 6,(KK00132).

[32]CONTRARY RECORD MATERIAL: AT&T does not dispute this statement, except that the design work associated with the remote access test point is part of the design of any SL2 loop, regardless of whether it is part of a commingled arrangement.

224. Steps 1 and 2 are related to the Central Office Channel Interface or COCI (UNE). See facility labeled "B" above. STS compensates AT&T for steps 1 and 2 in the COCI rates.

225. Steps 3 through 7 are related to the special access services purchased by STS. See facilities labeled "C" and "D" above. STS compensates AT&T for steps 3 through 7 in the special access rates.

226. In cases where the customer is currently served by Integrated Digital Loop Carrier ("IDLC"), the customer may be moved from that loop to another loop, such as an "all copper loop" or a loop provided via Universal Digital Loop Carrier. The IDLC is irrelevant to Commingling and seeks to confuse and mis-lead the Commission.

227. Mr. Milner has stated that a voice-grade UNE loop must be inventoried in AT&T's Trunk Integrated Record Keeping System ("TIRKS") database (instead of Loop Facilities Assignment and Control System or "LFACs") for it to be commingled with special access transport. Mr. Milner has also stated that the UNE loop data is logged into TIRKS by AT&T's Circuit Provisioning Center ("CPC").

228. The non-recurring cost study for a SL2 loop contains a cost element for AT&T's CPC adding loop data to TIRKS. The non-recurring cost study for a SL1 loop does not contain a cost element for AT&T's CPC adding loop data to TIRKS.

229. According to AT&T's non-recurring cost study for a SL2 loop, it costs AT&T's CPC.[33]

230. According to AT&T's non-recurring cost studies for SL1 and SL2 loops, the non-recurring costs for a SL2 loop are higher than the non-recurring costs for a SL1 loop.

[33] AT&T's cost studies refer to the CPC as the Circuit Provisioning Group or "CPG."

A comparison of the total non-recurring costs for SL1 and SL2 loops are shown in the following table:

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231. According to AT&T's non-recurring cost studies for SL1 and SL2 loops, the non-recurring costs for a SL2 loop are between ***BEGIN CONFIDENTIAL END CONFIDENTIAL*** greater than the non-recurring costs for a SL1 loop.

232. Based on AT&T's non-recurring cost studies for SL1 and SL2 loops, the cost element for AT&T's CPC adding loop data to TIRKS makes up, at most, ***BEGIN CONFIDENTIAL END CONFIDENTIAL*** of the amount by which the SL2 loop non-recurring costs exceed the SL1 loop non-recurring costs. This is illustrated in the following table:

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233. The Work Order and Details (or "WORD") document is a TIRKS record that contains detailed information about a particular circuit and serves as the work orders that AT&T's central office technicians use for making necessary connections to establish contiguous circuits. The WORD provides "a road map that maneuvers you through the offices, equipment, and carrier facilities required by the circuit."

234. AT&T provided WORD documents for 27 STS voice-grade commingled circuits currently inventoried in AT&T's TIRKS system as of May 21, 2010.

235. These WORD documents were marked as confidential. Every WORD document for STS' voice-grade commingled circuits (with one exception) indicates that "THIS IS A PRO-CDS DESIGN."

236. PRO-CDS stands for Programmable Circuit Design System, and according to AT&T's TIRKS documentation, a PRO-CDS design:

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2. Describe the EEL bulk migration process. Describe how it is different from, or the same as the process required by STS. Explain why the EEL bulk migration process could, or could not have been used to convert STS' embedded base of UNE-P/ Local Wholesale Complete customers to STS's commingled arrangements utilizing voice grade loops. (Focus in particular on the argument Mr. Starkey made in his affidavit that the process STS sought was analogous to the EEL migration process).

237. The "EEL bulk migration process" refers to the process by which AT&T would convert existing customers served either over UNE-P or the Wholesale Local Platform to a UNE loop combined with UNE dedicated transport.

238. The traditional bulk migration process similarly specified that, if a CLEC wished to migrate a UNE-P to an EEL, it had to use an SL2 combined with UNE dedicated transport.

239. Mr. Starkey discusses BellSouth's Bulk Migration Process for voice-grade Enhanced Extended Links ("EELs") at paragraph 32 of his Reply Declaration.

240. This Bulk Migration Process, which also applies to UNE-Ls terminated to a collocation, was developed by BellSouth in response to the FCC's requirement in the Triennial Review Order ("TRO") that state commissions approve a batch cut migration process for incumbent LECs within nine months of the TRO to "address the costs and timeliness of the hot cut process."

241. The documentation for AT&T's Bulk Migration (or "Bulk Migration (Single LSR/Bulk Arrangement)") Process is in the record at CD000456-68.

242. Mr. Starkey contends that because BellSouth included voice-grade EELs in its Bulk Migration Process, Mr. Milner's "critical point" is factually inaccurate.

243. Mr. Starkey also explained that the voice-grade EEL is the functional equivalent to a commingled arrangement of a 2-wire analog voice-grade UNE loop (or "UNE DS-0") connected to special access DS1 transport via a special access 1/0 mux.

244. BellSouth's Bulk Migration Process allows for the migration of UNE-P non-complex Port/Loop combination services, wholesale platform lines, and Resale services to UNE-L or voice-grade EELs. The Bulk Migration Process was developed following the 2003 TRO and has existed since at least 2004.

245. The principal provisions of BellSouth's Bulk Migration Process are summarized as follows:

(a) includes operational efficiencies due to handling large migrations of UNE-P/LWC to UNE-L,

(b) electronic Bulk LSRs can be submitted (99 accounts, with 25 telephone numbers each for a total of 2,475 telephone numbers per request),

(c) the loop is re-used whenever possible, and number portability is available,

(d) 8 day provisioning interval,

(e) guarantee to the extent possible that an end user's account will all be cut on the same day,

(f) provide for a four-hour window for coordinated hot cuts,

(g) web-based notification tool,

(h) timely restoral process if there is a problem with the cut,

(i) a total of 200 lines per central office per day for all CLECs, on a first-come-first-served basis, and

(j) the potential for reduced non-recurring charges.

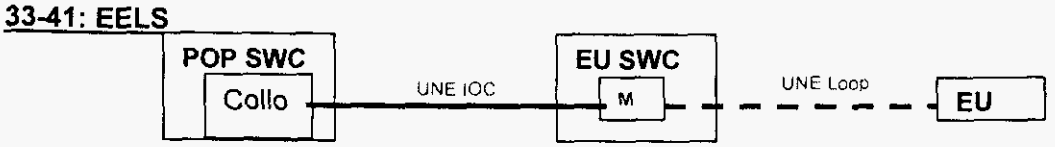
246. The voice-grade EEL is the functional equivalent to STS' voice-grade commingled arrangements.

247. The voice-grade EEL consists of a SL2 loop, a voice-grade COCI, and UNE transport.

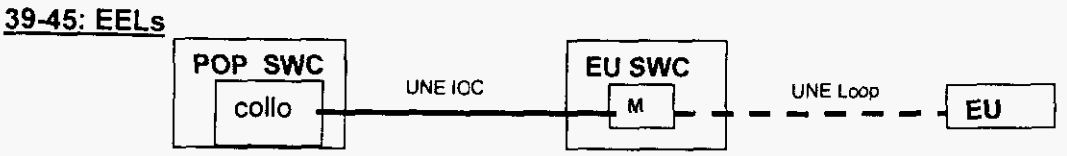
248. STS' commingled arrangement consists of a SL2 loop (per AT&T's requirement), a voice-grade COCI, and special access transport.

249. The following diagrams from AT&T's CLEC Information Packages illustrate the fact that a voice-grade EEL is the functional equivalent to a voice-grade commingled arrangement.

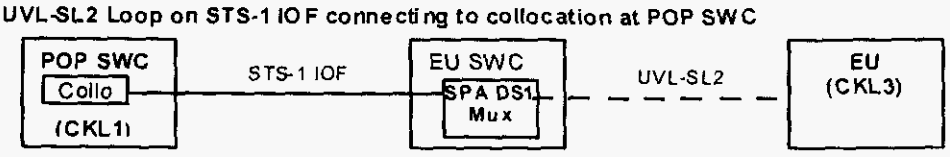
250. The following EEL diagram is taken from page 10 of AT&T's "Unbundled Dedicated Transport – Ordinarily Combined UNE Combinations CLEC Information Package":



251. The following EEL diagram is taken from page 15 of AT&T's "Unbundled Dedicated Transport – Currently Combined UNE Combinations CLEC Information Package":



252. The following diagram of a voice-grade loop commingled with special access DS1 transport via a 1/0 mux is taken from page 10 of the Bulk Migration Work Around Process documentation:



253. The AT&T diagrams show that the exact same network elements comprise a voice-grade commingled arrangement as comprise the voice-grade EEL: a loop, mux, and transport. The only difference shown in these diagrams is that the DS1 transport is a UNE in the EEL diagrams while the DS1 transport is special access in the commingled arrangement diagram.

254. An email dated May 14, 2010, from Kip Edenfield (AT&T Florida counsel) to Alan Gold (STS counsel) states:

> "Based on AT&T's most recent processes, there are no specific provisioning limitations for designed commingled circuits other than those generally applicable for EELs and other designed circuits. For bulk migrations, the limitations are found in the Bulk Migration (Single LSR/Bulk Arrangement) CLEC Information Package, Section 6 'Bulk Migration Options' and Section 8 'Bulk Migration Scheduling Tool' for limitations per day. For Single (Individual) LSR submissions, the limitations would be the same as described in the SE Interval Guide for SL2 Commingled Loops or EELs."

255. The "Bulk Migration (Single LSR/Bulk Arrangement)" Process referenced in Mr. Edenfield's above email is the Bulk Migration Process that has been available for UNE-L and voice-grade EELs since the 2003-2004 timeframe.

256. Prior to April 2010, AT&T had no publicly-available process (either mechanized or manual) for the migration (bulk or otherwise) of existing circuits to a voice grade commingled arrangement.

257. On May 10, 2010, AT&T Florida filed reply comments in Florida PSC Docket No. 000121A-TP, which states: "The UNE portion of commingled circuits for the

[SQM/SEEMs] Maintenance & Repair metrics as well as the Provisioning metrics is captured in the UNE Enhanced Extended Loops (EELs) disaggregation." AT&T uses the very same process to capture SQM/SEEMs data for commingled loops as it does to capture SQM/SEEMs data for EEL loops.

258. Section 2.2.3 of BellSouth's interstate access tariff states:

> 2.2.3 Commingling
>
> (A) Except as provided in Section 51.318 of the Federal Communications Commission's rules, telecommunications carriers who obtain unbundled network elements (UNEs) or combinations of UNEs pursuant to a Statement of Generally Available Terms, under Section 252 of the Act, or pursuant to an interconnection agreement with the Telephone Company, may connect, combine, or otherwise attach such UNEs or combinations of UNEs to Access services purchased under this Tariff except to the extent such agreement explicitly:
>
> (1) prohibits such commingling; or
>
> (2) requires the parties to complete the procedures set forth in the agreement regarding change of law prior to implementing such commingling.
>
> (B) The rates, terms, and conditions of this Tariff will apply to the Access Services that are commingled.
>
> (C) UNEs or combinations of UNEs that are commingled with Access Services are not included in the shared use provisions of this Tariff.

259. STS obtains SL1 loops pursuant to an interconnection agreement with AT&T.

260. Section 2.2.3 of BellSouth's interstate access tariff was effective on October 17, 2003.

261. STS requested AT&T to make available the same electronic, bulk processes AT&T offered under the Bulk Migration Process for UNE-L and voice-grade EELs for also migrating STS' embedded base of UNE-P/LWC to STS' commingled arrangements.

262. Instead of making the Bulk Migration Process available for migrating STS' embedded base of UNE-P/LWC to STS' commingled arrangements, AT&T

developed the "Bulk Migration (Bulk Single LSR Arrangement) Migrations to Commingled UVL-SL2 Loop Work-around process for STS" or what is referred to as the Bulk Migration Work Around Process or "WAP."

263. Second, the WAP was limited to 2,500 embedded base UNE-P/LWC migrations to commingled SL2 loops, which did not cover STS' entire embedded base of UNE-P/LWC. This is different from the Bulk Migration Process which was designed specifically for CLECs to migrate their entire embedded base of UNE-P to UNE-L or voice-grade EELs.

264. The WAP contained numerous other attributes less desirable than those available in the Bulk Migration Process including:

(a) the WAP did not allow for TS (Time Specific) and after-hours cuts which would have minimized the chances of STS' end users experiencing service impacting outages that would or could affect their businesses;

(d) the WAP did not guarantee a four-hour cut over window;

(e) the WAP did not offer reduced non-recurring charges for the loop; and

(f) the WAP was only available in one state and for one CLEC (STS) compared to the Bulk Migration Process that is available for all CLECs throughout AT&T's multi-state service territory.

265. And prior to April 2010, there was no process (either mechanized or manual) available for STS to migrate UNE-P/LWC lines not subject to the WAP to voice-grade commingled arrangements.

266. The process contained in the UNE Loop Multiple Bandwidth Commingling (new loop orders) Process was referred to at the status conference as the "manual process."

267. The "UNE Loop Multiple Bandwidth Commingling (new loop orders)" process or "manual process" is substantially different than the Bulk Migration Process for voice-grade EELs and UNE-L. First, it is not a "migration" process at all, but instead the installation of a new loop.

268. As a general matter, the Bulk Migration Process should not experience a "facilities not found" rejection because it re-uses the same loop.

269. Third, the process of disconnecting the existing loop and ordering a new loop increases manual intervention and costs as compared to the Bulk Migration Process. For example, BellSouth offered a 10% discount (or more) off of the non-recurring UNE rates applicable for hot cuts as part of the Bulk Migration Process. AT&T offered no such discount for its "manual process."

270. Fourth, the ordering process for the "UNE Loop Multiple Bandwidth Commingling (new loop orders)" process is manual only, as compared to the Bulk Migration Process that provides electronic ordering in bulk.

271. In April 2010, AT&T added a CLEC Information package to its Handbook for the Southeast Region entitled "Migrations to Commingled UVL-SL2 Loop with Number Portability."

272. This is the first publicly available process AT&T ever issued for migrating loops connected to BellSouth's or another CLEC's switch to commingled UNE loops.

273. AT&T recently replaced the LENS system with the LEX system as BellSouth's front end ordering system. BellSouth's provisioning systems were not impacted by the change to LEX.

274. BellSouth represented to the Florida PSC and FCC that its Bulk Migration Process was scalable due, in part, to a "worst case scenario" volume test that assumed "CLECs decide to convert the totality of their UNE-P base to unbundled loops attached to the CLECs' switches rather than BellSouth's switches."

275. When discussing BellSouth's Bulk Migration Process before the FCC, Mr. Milner represented that "[t]here are no limitations that BellSouth cannot manage around."

276. The work involved in migrating loops connected to BellSouth's switch to a UNE-L terminated to a collocation or voice-grade EEL includes AT&T removing the jumper on the MDF that connects the loop termination point to AT&T's switch and connecting a new jumper to the CFA identified by the CLEC that will then be connected to either a collocation arrangement or a multiplexer. This very same work is involved in migrating loops from BellSouth's switch to voice-grade commingled arrangements. In the commingled scenario exactly like the collocation arrangement, the CLEC, STS, is required to identify for AT&T the CFA to which the jumper should be connected (i.e., CFA assigned to STS on an AT&T multiplexer).

277. The following facts are supported by the record:

a. the voice-grade EEL is the functional equivalent to the voice-grade commingled arrangement: they both consist of a voice-grade loop, a voice-grade COCI and transport,

b. AT&T's Bulk Migration Process can be used to migrate UNE-P/LWC lines to voice-grade EELs and has been available for voice-grade EEL migrations since at least 2004,

c. the work involved in migrating a loop from BellSouth's switch to a loop connected to multiplexing/transport is the same whether the transport is purchased from ICA or a tariff,

3. Describe the process ATT made available to STS to convert a customer to STS' commingled network whether from AT&T, another CLEC or STS's UNEP platform during the 2007 timeframe and explain why that process does or does not comply with:

a. The Settlement Agreement
b. The ICA
c. The Commission rules

278. In November 2005, BellSouth published its *UNE Loop Multiple Bandwidth Commingling (new loop orders), CLEC Information Package* (Ver. 3, Nov. 17, 2005) (AT&T Ex. App. Tab 15).

279. The CLEC Information Package included among the UNE loop types "eligible for multiple bandwidth commingling" the "2 Wire UVL-SL2 (DS0)."

280. To establish a commingled arrangement using the process described in the CLEC Information Package *UNE Loop Multiple Bandwidth Commingling (New Loop Orders)*, a CLEC would first have to "establish the wholesale channelized transport higher bandwidth facility and associated multiplexer equipment in the end user's AT&T serving wire center (SWC) in advance of the UNE Loop being ordered."

281. UNE Loop Multiple Bandwidth Commingling included several different architectures, and there was a different NC/NCI code combination depending on the architecture, the UNE Loop type being ordered, and special access service to which the UNE Loop was to be connected.

282. The Commission's commingling rule provides that "an incumbent LEC shall permit a requesting telecommunications carrier to commingle an unbundled network element or a combination of unbundled network elements with wholesale services obtained from an incumbent LEC."

283. The rule further states that, "[u]pon request, an incumbent LEC shall perform the functions necessary to commingle an unbundled network element or a combination of unbundled network elements with one or more facilities or services that a requesting telecommunications carrier has obtained at wholesale from an incumbent LEC."

284. Similarly, the Interconnection Agreement between AT&T and STS prohibits AT&T from denying access to a UNE or UNE combination merely because it is "connected to, attached to, linked to, or combined with" a facility that STS has obtained at wholesale from AT&T.

285. The CLEC Information Package *UNE Loop Multiple Bandwidth Commingling (New Loop Orders)* constituted BellSouth's standard offering after the *Triennial Review Order*, and it permitted CLECs to order various types of unbundled loops, connected to wholesale digital transport circuits that are purchased as special access.

286. The Work Around Process provided for the electronic submission of orders to migrate existing multiple noncomplex UNE-P lines to commingled UVL-SL2 Loops.

287. The Work Around Process required STS to submit the CFA information in the Remarks field.

288. At no time prior to April 2010 did AT&T have a publicly-available process that would allow CLECs to migrate lines to commingled arrangements.

289. Prior to April 2010, there was only one process in existence that permitted any type of migrations to commingled arrangements and that process was the confidential WAP designed by AT&T only for STS.

290. The Settlement Agreement was specific in that the WAP would be used for the migration of up to 2,500 LWC lines and that STS was to provide a spreadsheet to BellSouth in November of 2006.

291. The work around process allowed STS to submit "REQTYP B" orders, which allowed for re-using the loop and for STS to port the number. The manual process did not provide for a REQTYP B order or for the re-use of an existing loop.

292. Section 1.6 of Attachment 2 "Network Element and Other Services" of parties' ICA 1.6 states:

> Conversion of Wholesale Services to Network Elements or Network elements to Wholesale services". Upon request, BellSouth shall convert a wholesale service, or group of wholesale services, to the equivalent Network Element or Combination that is available to STS pursuant to Section 251 of the Act and under this Agreement. or convert a Network Element or Combination that is available to STS pursuant to Section 251 of the Act and under this Agreement to an equivalent wholesale service or group of wholesale services offered by BellSouth (collectively "Conversion") BellSouth shall charge the applicable nonrecurring switch-as-is rates for Conversions to specific Network Elements or Combinations found in Exhibit A. BellSouth shall also charge the same non-recurring switch-as-is rates when converting from Network Elements or Combinations. Any rate change resulting from the Conversion will be effective as of the next billing cycle following BellSouth's receipt of a complete and accurate Conversion request from STS. A Conversion shall be considered termination for purposes of any volume and/or term commitments and/or grandfathered status between STS and BellSouth. Any change from a wholesale service/group of wholesale services to a Network Element/Combination, or from a Network Element/Combination to a wholesale service/group of wholesale services, that requires a physical rearrangement will not be considered to be a Conversion for purposes of this Agreement. BellSouth will not require physical rearrangements if the Conversion can be completed through record changes only. Orders for

Conversions will be handled in accordance with the guidelines set forth in the Ordering Guidelines and Processes and CLEC Information Packages as referenced in sections 1.13.1 and 113.2 below.

293. The FCC explained in the TRO that a "conversion" should be a seamless process amounting largely to a billing change and should not involve non-recurring charges associated with establishing service for the first time.

294.

- 47 C.F.R. §51.311(a) and (b) states:

  "(a) The quality of an unbundled network element, as well as the quality of the access to the unbundled network element, that an incumbent LEC provides to a requesting telecommunications carrier shall be the same for all telecommunications carriers requesting access to that network element. (b) To the extent technically feasible, the quality of an unbundled network element, as well as the quality of the access to such unbundled network element, that an incumbent LEC provides to a requesting telecommunications carrier shall be at least equal in quality to that which the incumbent LEC provides to itself. If an incumbent LEC fails to meet this requirement, the incumbent LEC must prove to the state commission that it is not technically feasible to provide the requested unbundled network element, or to provide access to the requested unbundled network element, at a level of quality that is equal to that which the incumbent LEC provides to itself."

- 47 C.F.R. §51.313(a), (b) and (c) states:

  "(a) The terms and conditions pursuant to which an incumbent LEC provides access to unbundled network elements shall be offered equally to all requesting telecommunications carriers. (b) Where applicable, the terms and conditions pursuant to which an incumbent LEC offers to provide access to unbundled network elements, including but not limited to, the time within which the incumbent LEC provisions such access to unbundled network elements, shall, at a minimum, be no less favorable to the requesting carrier than the terms and conditions under which the incumbent LEC provides such elements to itself. (c) An incumbent LEC must provide a carrier purchasing access to unbundled network elements with the pre-ordering, ordering, provisioning, maintenance and repair, and billing functions of the incumbent LEC's operations support systems."

- 47 C.F.R. §51.309(g) states:

"An incumbent LEC shall not deny access to an unbundled network element or a combination of unbundled network elements on the grounds that one or more of the elements: (1) Is connected to, attached to, linked to, or combined with, a facility or service obtained from an incumbent LEC; or (2) Shares part of the incumbent LEC's network with access services or inputs for mobile wireless services and/or interexchange services."

- 47 C.F.R. §51.316(a), (b) and (c) states:

  "(a) Upon request, an incumbent LEC shall convert a wholesale service, or group of wholesale services, to the equivalent unbundled network element, or combination of unbundled network elements, that is available to the requesting telecommunications carrier under section 251(c)(3) of the Act and this part. (b) An incumbent LEC shall perform any conversion from a wholesale service or group of wholesale services to an unbundled network element or combination of unbundled network elements without adversely affecting the service quality perceived by the requesting telecommunications carrier's end-user customer. (c) Except as agreed to by the parties, an incumbent LEC shall not impose any untariffed termination charges, or any disconnect fees, re-connect fees, or charges associated with establishing a service for the first time, in connection with any conversion between a wholesale service or group of wholesale services and an unbundled network element or combination of unbundled network elements."

- 47 C.F.R. §51.319 (a) states:

  "An incumbent LEC shall provide a requesting telecommunications carrier with nondiscriminatory access to the local loop on an unbundled basis, in accordance with section 251(c)(3) of the Act and this part and as set forth in paragraphs (a)(1) through (a)(9) of this section."

- 47 C.F.R. §51.321 (a) states:

  "(a) Except as provided in paragraph (e) of this section, an incumbent LEC shall provide, on terms and conditions that are just, reasonable, and nondiscriminatory in accordance with the requirements of this part, any technically feasible method of obtaining interconnection or access to unbundled network elements at a particular point upon a request by a telecommunications carrier."

- The Telecommunications Act of 1996 requires each local exchange carrier "to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission."

- The Commission has determined that "consumers should be able to change providers while keeping their telephone number as easily as they may change providers without taking their telephone number with them."

- The Commission rules require AT&T to file a special access tariff with the FCC detailing the terms, conditions and rates for AT&T's interstate special access services.

- AT&T is obligated to adhere to and comply with its special access tariff on file with the FCC. AT&T's special access tariff at section 2.2.3 requires AT&T to permit CLECs to commingle a voice-grade UNE loop purchased from an ICA with special access transport unless the ICA "explicitly (1) prohibits such commingling; or (2) requires the parties to complete the procedures set forth in the agreement regarding change of law prior to implementing such commingling."

295. The Settlement Agreement clearly allowed STS the right to convert up to 2,500 lines to their commingled arrangement using the Bulk Migration Work Around Process.

296. The "Migrations to Commingled UVL-SL2 Loop with Number Portability" issued by AT&T in April 2010 provides for Conversion of Wholesale services to UNEs, Commingling and the Bulk Migration Process.

4. Explain why the bulk migration process that existed in 2006 could or could not have been used to migrate STS' embedded base of UNE-P/Local Wholesale Complete customers to its commingled network.

297. The bulk migration process combines ordering efficiencies and project management support with a proven hot cut provisioning process.

298. In 2004, AT&T published its bulk migration process as a CLEC Information Package called the Unbundled Network Element Platform (UNE-P) and DSO Wholesale Local Platform Service to UNE-Loop (UNE-L) Bulk Migration (Ver. 3 July 26, 2004).

299. As part of the bulk migration process, the UNE-L "is defined as the local loop network element that is a transmission facility between the main distribution frame (MDF) in [AT&T's] central office and the point of demarcation at an end-user's premises."

300. AT&T does not provide telecommunications services with the UNE-L.

301. BellSouth developed and implemented a Bulk Migration Process in the 2003-2004 timeframe in response to the FCC's TRO. That Bulk Migration Process is the same process that existed in 2006, and is the same in all material aspects to the Bulk Migration Process that BellSouth uses today for bulk migrations to UNE-L and voice-grade EELs. See, "Bulk Migration (Single LSR/Bulk Arrangement)."

302. The Florida Public Service Commission Staff stated: "Staff strongly believes AT&T has not adequately evaluated and updated all documentation CLECs are required to

use in the placement of these orders (commingled arrangements) through the LEX interface"

5. Provide support for the argument that the primary purpose for creation of the Bulk Migration Work Around Process was/was not to avoid the applicability of SQM/SEEM remedy payments.

303. AT&T's UNE and special access electronic ordering processes were separate.

304. Florida performance data for the UNE portion of a commingled circuit are captured and reported subject to the definition, exclusions, and business rules of the metrics in the SQM Plan, and applicable remedies are paid as defined by the SEEM Plan.

305. The metrics for evaluating service quality were agreed to by BellSouth and CLECs through a series of "workshops" held by the FPSC.

306. Such a review is currently ongoing in a workshop involving CLECs and AT&T at the FPSC. The first tier is designed to compensate an individual CLEC when materially discriminatory performance by AT&T would likely harm that CLEC's ability to compete Tier two provides for additional remedies when AT&T delivers non-compliant performance that affects the aggregate of all CLECs over a consecutive three-month period. From 2002 to 2009, AT&T has paid approximately $11.3 million in Tier II payments to the State of Florida.

307. AT&T petitioned the FPSC for relief from Tier 2 payments in a recent Florida Docket.

a. An e-mail from Edgar Echols to Robby Pannell and others (ATT000346) states:

> "Team, After talking with Staff about these PONS further it appears STS is trying to order Commingled Loops electronically.

> The error that LENS is supplying is not correct but Commingling is not available so that is why they are getting an auto clarification. Even though the clarification reason is not valid the PONS should be placed in clarification. We need to discontinue removing any of these LSR's ASAP because it is affecting duration/SEEMS."

b. On June 30, 2006, Karen Fields sends an e-mail to Tina Berard and others including Advernall Allen and BellSouth's Attorney, Parkey Haggman (TAB36) that indicates BellSouth will allow STS to use the Bulk migration process:

> "Bulk Migration orders Tina has worked out a solution for STS to submit their UNEP to commingled SL2 bulk migration orders. The solution will allow STS to submit their bulk order through the bulk ordering process per the standard guidelines plus additional instructions that will be provided to STS. Once the orders are submitted through electronic bulk ordering system, the orders will be forced out for manual handling by the LCSC...Tosha we'll need to make sure that STS has the appropriate bulk migration USOCs in their contract as the bulk migration process will be left in place after 7/5/06 will require those USOCs."

c. This e-mail dated June 30, 2006, was generated before the parties' settlement.

d. Other than the reference to "additional instructions that will be provided to STS," there is no mention of limitations or time of use other than it was to be used after 7/5/06.

e. Then on July 7, 2006, Karen Fields in an e-mail to Robby Pannell (ATT132418) states:

> "Also don't discuss the SEEMs stuff with STS at this point. If we have to get their permission, it will likely have to be part of the settlement that is still in negotiations/mediation."

f. This email shows that SEEMs applicability is a concern to BellSouth as it relates to commingling and bulk migration.

g. On the same day (July 7, 2006), Tina Berard e-mails Fields and Pannell (ATT132419)

> "Karen and I participated in a conference call yesterday with PMAP and as it turns out the proposed Bulk order process would cause SEEMs penalties. The PMAP representative is investigating for us whether or not the order can be excluded from SEEMs. If they cannot, then the next step would be to see if STS would agree to waive SEEMs for being able to use this particular ordering process."

h. On the same day, Nancy Piatkowski sends Berard and Fields an e-mail (ATT132347-48):

> In an e-mail to Nancy Piatkowski (ATT132345), Ms. Berard states:
>
> "the time is quickly approaching when we need to provide STS documentation on how to submit the UNE-P to UNE-L Commingling orders via Bulk. I just wanted to confirm with you the understanding the team has in regards to SEEMS and also share a concern I have. First of all, you stated in one of your previous e-mails that having a common BOPI (Bulk Ordering Project Identifier) will help you identify STS' orders so that you can exclude them from potential SEEMs...is that sufficient to be able to exclude these orders from the Flow-Thru, FOC Timeliness and SOA?...As you know there is a lot of attention on Edit 010 and the amount of SEEMs paid on it. I cannot do anything that will contribute to the amount of SEEMS paid on that error and need to double verify that these orders can be exclude (sic) from SOA. Once we have confirmation from you that by using the standard BOPI above these order can be identified as being excluded from the three SEEMS measures, I will proceed with finishing the work instructions for the CLEC and the LCSC."
>
> "I want to be clear that ordering and provisioning will be excluded from SEEMs. Is that correct?"
>
> "Yes, these LSRs will be excluded from the Ordering and Provisioning measures."

308. Bulk Migrations with valid Bulk Order Project IDs (or "BOPIs") are captured by AT&T's SQM/SEEMs. AT&T's documentation makes this clear: "Per the existing SQM/SEEM rules, LSRs with valid project IDs for Bulk Migration are included in FOCT, Reject Interval, and FOC and Reject Response Completeness measures."

309. To be captured by SQM/SEEMs, a Bulk Migration LSR must be scheduled through the Bulk Migration Scheduling Tool accessed though the PMAP website and have a valid BOPI.

> "There have been some STS orders that have been recently issued. I cannot see them in PMAP nor do they populate an automatic BOPI notification. Without this notification, I don't have any way to know when the CLEC has placed a request or been foc'd. Please let me know what the expectation is for project management's involvement if the orders do not come to us for handling."

a. Nancy Piatkowski, on June 5, 2007, answers the questions in an e-mail to Berard (ATT007779):

> "Yes, we exclude them from PMAP measures. They are still in our feeds, and we bring them into the PMAP warehouse tables but just don't count them. Kimberly, I don't understand what is meant by 'we can't see them in PMAP' or 'They are not populating in PMAP'".

b. An email from Fields to Purifoy dated June 5, 2007, states:

> "So does this mean that the orders will not show up for project management if excluded from SEEMs and the order fall at LCSC?"

Purifoy answers:

> "The whole point is that these are not showing up in the Bulk Report that we open and view. Regardless of what it starts or ends with or whether or not the LCS is receiving it; it isn't showing up. I know that I should be able to (but I can't) which is why we are having this discussion."

310. When AT&T first drafted the Confidential Settlement Agreement, it contained the following language; "and STS agrees that no SEEMs penalties will be applicable to any order or installations related to the conversion of these 2,500 Platform Lines to

commingled circuits." Since the term sheet reached at mediation[34] did not contain language addressing the applicability of SEEMs remedy payments, AT&T agreed to omit the above language from the final version of the Confidential Settlement Agreement.

311. The most recent orders submitted by STS since April 2010 have been captured by the SQM/SEEMS Plans.

6. Provide a chronology of when the following language first became publicly available in Texas, Florida and elsewhere: "UNE DS-0 Loop connected to a channelized Special Access DS1 Interoffice Facility, via a special access 1/0 mux."

312. The language "UNE DS0 Loop connected to a channelized Special Access DS1 Interoffice Facility, via a special access 1/0 mux" pre-dates the AT&T/BellSouth merger. It was published by AT&T in the five former-Southwestern Bell states (Arkansas, Kansas, Missouri, Oklahoma, and Texas) and incorporated into the CLEC Online Handbook on August 2, 2005. *See* AT&T CLEC Online, *Handbook for Arkansas, Kansas, Missouri, Oklahoma, and Texas: Commingling*, RC000665-660, also available at https://clec.att.com/clec/hb/shell.cfm?section=2444&hb=1151.

313. The *UNE Loop Multiple Bandwidth Commingling (New Loop Orders)* offer, which became available in Florida and the other states in Southeast region in November 2005, provided as follows:

> UNE Loop Multiple Bandwidth Commingling in this document is defined as a lower bandwidth UNE Loop connected to a higher bandwidth wholesale channelized transport circuit ordered from the Special Access (SPA) Tariff or

[34] The term sheet signed by all parties at mediation provided the framework for the more formal Confidential Settlement Agreement.

Switched Access (SWA) Tariff. The Loop that is to be commingled will be connected as follows:

- *DS0 UNE Loop connected to a wholesale channelized DS1 transport circuit (1/0)*
- DS1 UNE Loop connected to a wholesale channelized DS3 transport circuit (3/1).

UNE Loop Multiple Bandwidth Commingling (New Loop Orders), CLEC Information Package, § 4 (Ver. 3, Nov. 17, 2005)) (emphasis added) (AT&T Ex. App. Tab 15 at ATT150191).

314. In Texas, this language has been publicly available since at least August 2005. This language became publicly available in Texas in the "T2A" successor agreements.

315. AT&T's CLEC Online website indicates that the Texas PUC issued its order approving the T2A successor agreements on August 29, 2005, and all carriers had until September 26, 2005, to elect to adopt a T2A successor agreement.

316. The list of available commingled arrangements (which includes the commingled arrangement involving a "UNE DS-0 Loop connected to a channelized Special Access DS1 Interoffice Facility, via a special access 1/0 mux") in the T2A successor ICA between AT&T Texas and the Texas CLEC Coalition is dated August 25, 2005.

317. The document in which this language appears is the T2A successor agreement between Southwestern Bell (n/k/a AT&T Texas) and the CLEC Coalition. This document is in the record at MS000286.

318. In Florida, very similar language has been publicly available since at least November 2005, in the UNE Loop Multiple Bandwidth Commingling CLEC Information

Package ("DS0 UNE Loop connected to a wholesale channelized DS1 transport circuit (1/0).")

319. The CLEC Information Package specifies that the voice-grade "DS0 UNE Loop" is a two-wire analog voice-grade SL2 loop or a four wire unbundled voice-grade loop.

320. This document is in the record at ATT150186 and ATT150191. Language identical to that in the Texas ICA has been publicly available in Florida since at least July 1, 2008 – the date AT&T posted its updated "22-State ICA Attachment 13: Section 251(c)(3) UNEs" following the AT&T/BellSouth merger.

321. Section 6.3.7 of the updated 22-state ICA (dated 7/1/08) references the same list of Comingled Arrangements that is available in the Texas ICA, which includes the "UNE DS-0 Loop" commingled arrangement.

322. The document in which this language appears is Section 13 of AT&T's 22-state Generic Interconnection Agreement, available on AT&T's "CLEC Online" website.

323. For the AT&T 13-state Generic ICA, this language was presumably[35] publicly available from at least the third quarter 2005 until it was superseded by AT&T's 22-state Generic ICA.

324. For the AT&T 22-state Generic ICA, this language has been publicly available since at least July 1, 2008, the date AT&T posted its updated "22-State ICA Attachment 13: Section 251(c)(3) UNEs" following the AT&T/BellSouth merger.

325. For all states other than the 9-state AT&T Southeast Region (i.e., former BellSouth territory), this language has been publicly available since at least September 14, 2005. This is the date AT&T updated its CLEC Online website to post the list of available

[35] AT&T has replaced the 13-state ICA on its CLEC Online website with the 22-state ICA.

commingled arrangements to the CLEC Handbooks in the states of Arkansas, California, Connecticut, Illinois, Indiana, Kansas, Michigan, Missouri, Nevada, Ohio, Oklahoma, Texas, and Wisconsin. The document in which this language appears is AT&T's CLEC Handbooks.

7. **Describe the role of a remote access test point associated with an SL2 loop. Describe the extent to which that role is necessary to preserve the network's reliability and integrity related to technical feasibility under the Commission's rules**

326. The remote access test point allows extensive testing of loop facilities without the need to dispatch a technician to either the serving central office (that is, the central office in which the loop appears) or to the customer's premises.

327. But there is nothing peculiar to commingling that makes such remote access test points technically necessary for the network.

328. The test points at issue here are remote access test points. These remote access test points are hardware devices (referred to as switched maintenance access system or "SMAS") that are created by AT&T technicians wiring the loop termination point on the MDF to an intermediate frame which houses remote test equipment.

329. Remote access test points permit remote testing in order to further isolate trouble conditions.

330. The capability for AT&T to test for trouble conditions on a commingled circuit exists in the absence of remote access (SMAS) test points. To the extent that an UNE loop without remote access (SMAS) test points is commingled with special access transport, there are points on the circuit that can be used for testing in order to isolate

trouble conditions. These points include, but are not limited to the main distribution frame, any remote terminal equipment in the loop, the multiplexer (e.g., D4 channel bank), and the customer's premises.

331. SL1 loops do not come standard with remote access test points.

332. AT&T has never challenged this rebuttal presumption before a state commission.

333. AT&T has never sought a ruling from a state commission (nor has a state commission ruled) that commingling a SL1 loop with special access transport would result in specific or significant adverse network reliability impacts.

334. Under the FCC's rules related to technical feasibility, a determination of technical feasibility does not include consideration of the following factors: (a) economic, (b) accounting, (c) billing, (d) space, (e) site concerns (except that space and site concerns may be considered in circumstances where there is no possibility of expanding the space available), and (f) the fact that an incumbent LEC must modify its facilities or equipment to respond to such request.

335. AT&T has never sought a ruling from a state commission (nor has a state commission ruled) that commingling a SL1 loop with special access transport would undermine the ability of other carriers to unbundled network elements or to interconnect with the AT&T's network.

336. AT&T has not proven to any state commission that commingling a SL1 loop with special access transport is technically infeasible, as that term is defined by the FCC.

337. AT&T's "Unbundled Voice Loop – SL2 CLEC Information Package" at page 9 describes the "Maintenance & Repair Procedures" for SL2 loops as follows:

Maintenance & Repair Procedures

The CLEC is responsible for testing and pre-screening any trouble conditions to make sure the trouble is with the UVL – SL2 loop before calling AT&T. If the CLEC's testing isolates the repair problem to AT&T's unbundled loop, the CLEC should notify the Customer Wholesale Interconnection Network Services (CWINS) Center. The CLEC will provide the results of the CLEC test which indicates a problem on the UVL – SL2.

The CLEC must provide the following information to UNE Center when reporting a repair problem:

- UVL - SL2 pair Circuit ID
- Description of the trouble

If AT&T must dispatch a technician outside the central office on a CLEC reported trouble call and no trouble is found on the UVL-SL2, AT&T will charge the CLEC for time spent on the dispatch and for time spent testing the UVL – SL2 loop.

AT&T's "Unbundled Voice Loop – SL1 CLEC Information Package" at page 10 describes the "Maintenance & Repair" Procedures for SL1 loops as follows:

11. Maintenance & Repair

The CLEC is responsible for testing and pre-screening any trouble conditions to ensure the trouble is with the UVL-SL1 loop before calling AT&T. If the CLEC's testing isolates the repair problem to the UVI-SL1 loop, the CLEC should notify the Customer Wholesale Interconnection Network Services (CWINS) Center. The CLEC will provide its test results indicating the problem is on the UNE Loop.

The CLEC must provide the following information to CWINS when reporting a repair problem:

- UVL-SL1 Circuit ID
- Description of the trouble

If a trouble is reported and no trouble is found, AT&T will charge the CLEC for any dispatches and tests required in order to confirm the loop's working status.

In addition, the CLEC Information Packages for both SL1 and SL2 loops contains the following language: SL1 and SL2 loops "are intended for analog voice-grade services and accordingly, will be provisioned, maintained and repaired in a manner that supports voice-grade services."

338. AT&T's CLEC Information Package for a SL2 loop makes no mention of using remote access test points for maintenance/repair purposes.

339. Section 1.13.4 of Attachment 2 of the STS/AT&T ICA is entitled "Testing/Trouble Reporting" and Section 2.5 of Attachment 6 of the AT&T/STS ICA is entitled

"Maintenance and Repair." These sections of the ICA describe the process to be used for testing, trouble reporting and repairing service problems. These sections of the ICA contain substantially the same language as the Maintenance and Repair sections of the CLEC Information Packages. Neither of these sections of the ICA discuss using test points for isolating trouble.

340. On May 1, 2009, STS submitted a Bona Fide Request (BFR) to AT&T for a designed SL1 loop to be commingled with special access.

341. On May 18, 2009, AT&T denied the request on the grounds that:

> "the test points that are available on the designed SL2 loops are necessary to enable AT&T to adequately maintain and repair the loop. Without those test points, in the event of a service outage on the commingled arrangement, AT&T would be unable to isolate the trouble to the loop or transport portion of the facility to repair the trouble. In short, from a network reliability perspective, the test points are necessary for a designed facility, and thus your request to develop a designed voice grade loop without them is denied."

351. Mr. Milner's declaration filed in August 2009 states:

> "test points are needed to sectionalize troubles on the SL2 loop in order to effectuate speedy repairs of these complex [commingled] circuits. The installation of those test points requires human work and AT&T is entitled to recover the cost of that work."

352. Mr. Milner's supplemental declaration filed in November 2009 states:

> "instead of suggesting that commingling would be impossible without test points as STS's Motion seems to imply, I simply described what test points are and how they are useful in effectuating speedy repairs."

353. Random House Webster's College Dictionary defines the words "necessary" and "useful" as follows:

- Necessary: "essential, indispensable, or requisite."

- Useful: "being of use or service; serving some purpose; advantageous, helpful, or of good effect."

WHEREFORE, SATURN TELECOMMUNICATION SERVICES, INC. and BELLSOUTH TELECOMMUNICATIONS, INC. d/b/a AT&T FLORIDA hereby file this Further Revised Joint Statement of Undisputed Facts.

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EXHIBIT
C

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

IN THE MATTER OF:	*	
SATURN TELECOMMUNICATION SERVICES, INC., a Florida Corporation,	*	
Complainant,	*	File No.
v.	*	EB-09-MD-008
BELLSOUTH TELECOMMUNICATIONS, INC., a Florida corporation, D/B/A AT&T FLORIDA,	*	
Respondent.	*	

Deposition of W. KEITH MILNER

Washington, DC

Tuesday, December 7, 2010

9:45 a.m.

Pages: 1 - 204

Reported by: Dianna C. Kilgalen, RPR

Deposition of W. KEITH MILNER, held at the offices of:

Federal Communications Commission
Market Disputes Resolution
Enforcement Bureau
445 12th Street, SW
Washington, DC 20544
(202) 418-7330

Pursuant to notice, before Dianna C. Kilgalen, Notary Public for the District of Columbia.

A P P E A R A N C E S

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A P P E A R A N C E S C O N T I N U E D

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ALSO PRESENT:

Terri Hoskins, General Counsel, AT&T.
Anisa Latif, Associate Director, AT&T.
James Will Davis, Esquire, AT&T.
Michael Starkey, Consultant, STS Telecom.
Keith Kramer, EVP Legal, STS Telecom.
Caryn Diaz, Executive Asst., STS Telecom.
Patrick Phipps, Consultant, QSI Consulting, Inc.

C O N T E N T S

E X H I B I T S

(Attached to transcript)

P R O C E E D I N G S

W. KEITH MILNER, having been duly sworn, testified as follows:

EXAMINATION BY COUNSEL FOR THE COMPLAINANT:

BY MR. GOLD:

Q. Good morning, Mr. Milner.

A. Good morning.

Q. I'm going to hand you -- excuse me a minute. I'm first going to ask questions, some questions about the revised undisputed facts. Sorry.

Mr. Milner, let me hand you a copy of the revised statement of facts and ask you to please turn to page Number 221 of the joint statement.

A. Okay. I'm there.

Q. Mr. Milner, there are seven design steps that are listed that are not necessary when the UNE-L is terminated at the CLEC's colocation. Is that correct?

A. Yes. That's correct.

Q. And if I refer you to your Declaration on paragraph 7 -- 37. That is your initial Declaration. It's the same list that is in there. Is that correct?

A. Did you say paragraph 7?

MR. GOLD: 37.

A. Oh, 37. Thank you. Yes, that appears to be the same.

Q. That list of the seven design steps not necessary when the UNE-L terminates to colocation, to the CLEC's colocation, is a true and accurate statement. Is that correct?

A. Yes.

Q. Now, none of those seven design steps apply to the UNE Loop, do they?

A. No. The design steps do not. There are other analogous steps required to connect a loop to a colocation, but the design steps named here do not apply.

Q. And the loop terminates at the MDF. Is that correct?

A. In almost all cases, yes.

Q. In the cases that are relevant to what we are talking about today, the loop terminates at the MDF. Is that a fair statement?

A. Well, I think having read some of the issue statements, yes, I think we can work with that. The only exception I would draw is that certain loops, such as those served by integrated digital loop carrier equipment, do not appear on the main frame.

But I think Saturn agrees that is not a relevant issue here. So we can ignore those today.

Q. For the purpose of today, we can agree that the loop terminates at the MDF?

A. Yes.

Q. And if we look at paragraph 223 of the joint undisputed facts, the activities and costs associated with all design steps occur after the UNE Loop has been terminated to the MDF. Is that a correct statement?

A. That is a correct statement, yes. These steps are those that are used to make the loop, rather, that terminates at the main distributing frame a part of the commingled circuit, that is to connect that loop to the Special Access facilities.

Q. And if we look at the first two steps of the seven, which is the cross-connection at the MDF, and number two, the pair, the multi-pair tie cable is connected to the single input of the D4 channel bank, those relate to the COCI. Is that correct?

A. Yes. That's correct.

Q. Or the COCI?

A. I pronounce it COCI, but the C-O-C-I.

Q. STS compensates AT&T for Steps 1 and 2 at the COCI rates. Is that correct?

A. Well, yes. Saturn pays the nonrecurring and the recurring rates that are set forth in the agreement for the COCI.

Q. Which are Steps 1 and 2 of the first seven?

A. Yes. Yes.

Q. The remainder of the steps, 3 through 7, AT&T is compensated at the Special Access rates. Is that correct?

A. That is correct.

Q. And if we take a quick, quick look at paragraph 37 of your initial Declaration, you declare under oath that the primary technical distinction between providing a UNE Loop to a CLEC's colocation space on the one hand and providing that loop via a commingled arrangement on the other is the design work required. Is that a correct statement?

A. Yes.

Q. And the design work required are those seven steps that we talked about in 321 of the joint statements. Is that correct?

A. Yes. That's the steps I would refer to.

Q. Now, at times, isn't it true that dependent upon the design of the CLEC's network, some of the seven design steps may be necessary in a colocation arrangement?

A. Yes. I suppose it's possible that some of the same, you know, design steps and work steps would be required were a CLEC to use Special Access facilities extended to its colocation arrangement. Is that your question, or is that the predicate to your question?

MR. GOLD: Yes, sir, it is.

A. Okay. Then if Special Access facilities were extended to a CLEC's colocation arrangement, then those Special Access design steps -- or not necessarily all of them, but at least something analogous to those -- would be required on the Special Access circuit extended to the colocation.

Q. For example, let's just explore it a little bit.

A. Sure. Okay.

Q. That there was STS or another CLEC could go out and purchase a D4 channel bank and DCS, the same as you have installed, and use those for the colocation arrangements. Is that correct?

A. You mean use those for, do you mean replace those in the colocation arrangement?

Q. Replace those in the colocation arrangement.

A. Yes. That is possible. A CLEC could buy those same kinds of equipment that are used in a commingling arrangement, including, as you mentioned, the D4 channel bank, the digital cross-connect system, and anything else that is required, and place the entirety of that into the colocation arrangement.

Yes. That is possible.

Q. And in such a case, they can also determine to

buy Special Access transport from AT&T. Is that correct?

A. Yes. Yes.

Q. And in such an arrangement, that would not be commingling, would it?

A. I would not label it that. No.

Q. We could call it, for lack of a better term, the traditional station arrangement?

A. It would certainly appear that way.

Q. And in such an instance in which Special Access transport was purchased from you, at least some of those seven design steps would be utilized in AT&T arranging that network, correct?

A. Perhaps. And I say perhaps, because you have to tell me, within the colocation, whether the CLEC itself or AT&T, as the Special Access provider, was the owner and operator of the D4 channel bank equipment and the digital cross-connection system equipment.

Q. If STS owned the colocation, that equipment --

A. Okay.

Q. -- and repurchased Special Access transport through AT&T, assuming the same system we have now with Smart Ring, et cetera.

A. Sure. Okay. In that case, the answer to your first question or your earlier question is no. These same seven steps would not be done by AT&T.

Some of the steps would be done by Saturn, and other steps would be done by AT&T as part of provisioning the Special Access facilities.

But I would expect that all seven of those steps would be done either by the CLEC or by the Special Access provider, AT&T.

Q. As you said earlier, in certain special -- depending on who owned it, in certain colocation arrangements, AT&T would be required to do some of those seven design steps?

A. Well, yes. If AT&T were to provide, under Special Access, you know, all these same equipment components, that is the D4 channel bank, the DCS, and any other equipment required for Special Access, if that was part of a Special Access offer, then AT&T would, under Special Access provisioning, do all seven steps.

Q. Now, assuming that STS acquired the -- owned the D4 channel banks and the DCS, would not AT&T still have to do Step Number 5 which states: Those in-office facilities may pass through several other central offices before arriving at the central office serving the node on the CLEC Special Access ring?

A. Yes. To the extent that those facilities pass through other central offices, they would have to make assignments and design a circuit that traversed those

central offices and connected back to the CLEC's equipment there in the colocation.

Q. So paragraph 31 -- 37 in undisputed facts 221, which lists seven design steps that are not necessary when a UNE-L terminates to a CLEC's colocation is not accurate in all instances, is it?

A. Well, the statement that I made is accurate, because I was talking about the difference in the design and work steps that AT&T would perform in the context of the local provisioning of a commingling arrangement, compared to providing an unbundled loop to a colocation arrangement.

Your predicate is different from the one I described in either of my Declarations. I was not describing AT&T as a Special Access provider, but AT&T as providing a commingling arrangement. So my statement was and remains correct.

Q. Well, when we are talking about colocation, and you made a -- you distinguished, as I understood it, that here are seven steps that are not necessary when UNE-L terminates to a CLEC's colocation. Is that correct?

A. They are not -- they are not required of AT&T as the local provider to perform on behalf of a CLEC. That is true.

Q. Except when somebody else purchases Special

Access transport from you, it would be required?

A. It would be required, and it would be provisioned under the Special Access tariff, not through the Interconnection Agreement.

Q. Did you make that distinction in your Declaration?

A. I did not need to make the distinction, because I did not describe a situation where Special Access entered or left a colocation arrangement. So there was no need for me to make that comparison.

My comparison was simply between a commingling arrangement that AT&T would provide compared to the work that AT&T would perform subsequent to the Interconnection Agreement.

In fact, the provisioning of the commingling arrangement that I described is subject to provisions of the Interconnection Agreement. And I described the process that would be required, again, under the Interconnection Agreement to provide an unbundled loop to a colocation arrangement.

I did not create a predicate where AT&T had stepped into the entire role of the CLEC inside the colocation arrangement. That was not in any of the Declarations that I wrote.

Q. Well, when the CLEC purchases its own

colocation arrangement, and AT&T sells it Special Access transport, AT&T is not stepping into the entire role of the CLEC, is it?

A. The predicate you put forth was that AT&T was now, under Special Access, providing all the things that had been provided in a commingling arrangement but was now providing as Special Access extended to the CLEC's colocation arrangement.

Q. With the exception of the colocation equipment, D4 channel banks, and the DCS, which is quite common, as I understand it?

A. I'm sorry. I didn't follow your question.

Q. The situation which I thought we were talking about was where the loop was purchased from AT&T. The CLEC, in its colocation cage, put in a D4 channel bank, put in a DCS, and then purchased the transport at Special Access from AT&T.

THE WITNESS: Okay.

Q. Wasn't that what we were talking about?

A. That is one of the scenarios we discussed, yes. We also discussed the case where AT&T, under its Special Access tariff, provided all of those things, including the D4 channel bank and the DCS equipment.

Q. So in certain situations, when a CLEC owns its own colocation facility, AT&T may have to perform certain

of the seven design steps. Is that a true statement?

A. Partially, it's a true statement. It's partially true in that AT&T, the corporation, provides some of those work steps. But it's not true that those work steps would be performed pursuant to the Interconnection Agreement, and, thus, subject to the rates established by, in this case, the Florida Commission, which was the subject of my Declaration.

Q. Your Declaration didn't deal at all with Special Access.

A. It talked about Special Access. But the comparison I was drawing in these paragraphs was the difference in work steps between two things, both provided under the Interconnection Agreement. That is, commingling and extending loops to colocation.

Q. Would you please point out to me where in your Declaration do you limit your discussion to colocations to those only through the Interconnection Agreement?

A. Okay. If we go to back to paragraph 37, I will read the sentence that starts: As explained above, except in the case where a customer is served via IDLC and there is no UDLC or all-copper loop, but a voice grade loop -- a voice grade UNE Loop can be provided to a CLEC's colocation space with no design work.

Providing a loop to a CLEC's colocation space

is performed under the Interconnection Agreement, not Special Access.

If we continue in that same paragraph, the sentence that starts: The commingling scenario, by contrast, is far more complex, using the simplest -- then it describes the work steps.

And then in, I believe, the next paragraph, let me find it, in paragraph 39, the first sentence starts: In this respect, it's useful to emphasis the amount of human work required in the context of commingling arrangements -- commingling arrangements provided under the Interconnection Agreement, that is my addition -- that is not required in the context of extending unbundled loops to a CLEC's colocation, period.

The only two arrangements I discuss here are commingling and colocation arrangements.

Q. The situation we discussed, that I proposed to you, was a colocation arrangement, was it not?

A. It is, but the work that you described that was going to be done within a colocation arrangement was not done pursuant to the Interconnection Agreement.

Q. Okay. And you have explained to us every place in your Declaration where you limited the design work to only that design work done in the Interconnection Agreement. Is that correct?

A. Well, first of all, let me say this. The seven steps that I lay out in paragraph 37 are not meant to be -- not meant to be an exhaustive list of every wire or every conceivable arrangement that might be put in place, but rather to show the types of circuits that are used in a commingling arrangement and how they are used. First of all, let me set that.

The second goal of enumerating those seven steps was to show how the work content in a commingling arrangement under the Interconnection Agreement was different from the work that AT&T would provide under the Interconnection Agreement in the context of providing unbundled loops.

Now, are there other references to Special Access in these Declarations? Yes. But the design steps that I was laying out here were those pursuant to the commingling arrangement, and especially those steps that were required pursuant to the Interconnection Agreement.

Q. Mr. Milner, as I understood the purpose of what we were talking about, about this section of the Declaration, it was your purpose, as I interpret it, to make commingling as complex as possible and colocation as easy as possible?

A. I completely disagree with that statement. I saw in your writing where I described a trip to Mars and

other things. That is not at all what I was attempting to do.

I was trying to set forth a complex process in simple, straightforward language, using the fewest steps that I could to convey how that was and how that was done. I was not trying to make this overly complex, and I don't believe I did so.

Q. Mr. Milner, do you believe you need to make it as complex as necessary to make it accurate?

A. I didn't say that I made it as complex as necessary. I said the description does need to be complete. If by being complete it adds complexity, so be it.

My intention was not to minimize or to maximize the descriptions of the work steps involved, but to portray them as accurately as I could, and I believe I did that.

Q. You weren't trying to make things less complex at the sake of losing accuracy?

A. No, I was not. I was trying to set forth a straightforward description of the general work steps that would be required. I was not trying to build a case for complexity, nor was I trying to build a case for simplicity. I was trying to set out the facts as I understand them.

Q. By August 31st, 2009, AT&T had provisioned, as I understood it, a total of 89 voice grade loops commingled with Special Access. Is that correct?

A. That is my understanding, yes.

Q. All were SL2s?

A. Yes.

Q. And none of those conversions went totally smoothly, did they?

A. I don't know the answer to that.

Q. All of those 89 were provisioned to STS?

A. Yes.

Q. So your experience of what is necessary to provision voice grade loops commingled with Special Access derives from STS. Is that correct?

A. If you mean I learned this from STS, no. I learned -- I derived my understanding of commingling from my years of experience in working for AT&T in various capacities.

In fact, before this proceeding, I don't recall a single conversation that I had directly with Saturn. So I could not have derived my information from them.

Q. When we talk about fall-outs on these orders and what happens when you place these orders for commingling, that experience derives from the 89 lines you provisioned for STS. Is that correct?

A. Yes. When I talk about particular orders, yes, I'm talking about Saturn's orders.

Q. What something routinely does in commingling, we are talking about the 89 orders?

A. No. Actually, the overall design of a commingling circuit was explored by other people at AT&T, not by me personally, but by others. And the work steps that I describe there in paragraph 37 were reflective of the type circuit that the designers intended to build and/or steps that the operations people told me were necessary to effectuate that design.

Q. When we talk about what practically happened when you are provisioning, or what happens when AT&T is provisioning voice grade loops commingled with Special Access, we are talking about a universe of 89, are we not?

A. Yes.

Q. And all of those 89 loops that we are talking about were new loops, were they? Excuse me. None of those were new loops?

A. I'm not sure of that, because I did read in some of Saturn's filings there was some concern early on in the conversion process whether there was a requirement for a customer to be served over a new loop or over the existing loop.

So I can't tell you which or how many of the 89 were over newly-provisioned loops versus the loop that heretofore had been used by the customer. I just don't know that breakdown.

Q. You are familiar, sir, with the PRO-CDS design, are you not?

A. Generally, yes.

Q. Would you agree that a PRO-CDS design means programmable circuit design systems?

A. That's correct, yes.

Q. A PRO-CDS design provides C1/PREP with the ability to design and post automatically certain types of special services and message circuits and compute the appropriate transmission levels and supply equipment required on WORD documents?

A. That's my understanding of what it does, yes.

Q. The process is also known as a one-button design process?

A. The author of the document that described -- that made the description of what its capable of described it as a one-button process.

Q. And when it says the ability to design and post automatically certain types of special services, what do you understand that to mean?

A. That with proper input from the result of human

intervention, once initiated with those proper inputs, can design a circuit with equipment parameters and settings that later a technician can use to set up the circuit and put it in service.

Q. Compute the appropriate transmission levels, what does that mean?

A. That means that taken into consideration the characteristics of the unbundled loop, and knowing the technical requirements, technical transmission requirements, of the type of transport that that loop would be attached to, then PRO-CDS can determine what transmission levels are required at various points along the circuit and can instruct the technician to make settings in the equipment to achieve those transmission levels.

Q. When it says supply equipment settings, do you understand that this process does those required equipment settings automatically?

A. In some cases, no, I wouldn't agree that it's done automatically. What PRO-CDS does is tell the technician what settings to make. These transmission levels are often set by setting switches in one direction or another.

So PRO-CDS says ensure that these settings are made in a certain way to ensure that the transmission

levels that are needed for the overall circuit are achieved.

Q. Now, you never mentioned this PRO-CDS design in the initial Declaration, did you?

A. Not by name. I did not name it. But I did name -- or I did say that circuit provisioning center personnel, or CPC as I will call it from here out, that CPC personnel used mechanized aids in PRO-CDS, as well as the C1/PREP process that you mentioned earlier are mechanized aids that are associated with a larger system, T-I-R-K-S, or TIRKS, as I will pronounce it.

So I did not name PRO-CDS by name, but I did say that CPC personnel use mechanized systems, and this is one of the tools they use.

Q. You didn't mention the automated process either, did you?

A. Well, I don't know whether or not I used the word automated, but I did say that there are mechanized processes, and mechanized processes are automated. So yes, I did allude not only to CDS not by name but by function, and the fact the process is somewhat -- is at least partially automated.

Q. You didn't mention the WORD documents in your initial Declaration either, did you?

A. I didn't see any need to, to tell you the

truth.

Q. You didn't mention PRO-CDS or the automated design process in your second Declaration, did you?

A. Not by name, but I believe in the second Declaration, I named other -- I think I made that same statement, I would have to look, but that CPC use mechanized tools. PRO-CDS is one of those things.

MR. KLINEBERG: Excuse me. I'm sorry to interrupt. Alan, I'm sorry, when you said second Declaration, could you be more precise?

MR. GOLD: You did not use it in you Supplemental Declaration. Thank you.

MR. KLINEBERG: There was a Supplemental Declaration, and then there was a Second Supplemental Declaration.

MR. GOLD: I'm talking about the second, your Supplemental Declaration.

A. If you would like to take the time, I will look through both the Supplemental and the Second Supplemental to -- I think we are talking about the Supplemental, not the Second Supplemental.

But if you would like, I will take the time and see if I referred to mechanized aids that the CPC folks would use. And if I did, then I was again referring to things like PRO-CDS, C1/PREP and TIRKS.

MR. GOLD: Here's your Supplemental.

A. Okay. Thank you. I don't see a reference to mechanized aids in here, but I also don't see a specific description of design steps either in the Supplemental Declaration. So there would have been no need to describe those.

MR. GOLD: I'm going to ask you some other questions.

THE WITNESS: Thank you.

MR. GOLD: If it's easier, I will be happy to keep it for you and give it back.

THE WITNESS: No. I will keep it here. That is fine.

BY MR. GOLD:

Q. Now, Mr. Milner, after the last status conference, we exchanged -- answered seven, seven questions. Do you recall that?

A. Yes.

Q. And in that, you supplied a Second Supplemental Declaration, which was your third Declaration in this case?

A. That's correct. Yes.

MR. GOLD: And what I'm going to do is show you -- why don't we mark this as Exhibit 1, please?

(Whereupon, Milner Deposition Exhibit 1 was

marked for identification and attached to the transcript.)

BY MR. GOLD:

Q. I'm going to show you -- I will give it to counsel first -- a draft of your Second Supplemental Declaration that was dated June 4th, 2010. And I ask you, you didn't refer to the PRO-CDS design in that draft, did you?

A. I will look through here. But as I'm looking through, I will say that the earliest draft of my Second Supplemental did not name PRO-CDS by name, no.

Q. And the one you filed, the Second Supplemental -- and I will be happy to give you a copy of the filed one.

THE WITNESS: Thank you.

Q. In paragraphs, I believe, 6 and 7, you mention the PRO-CDS by name?

A. That is correct.

Q. And you mention it by name there because it was something that was brought to your and your counsel's attention after reviewing the WORD documents. Is that correct?

A. Do you mean that you brought the existence of a process called PRO-CDS to mine and counsel's attention?

Q. No. I meant that we brought to your attention that we discovered that that existed.

A. Well, I and, I presume, counsel knew that already, because the WORD documents that we provided to you, all but one bore the label this is a PRO-CDS design. I'm not sure what it is you discovered. But that label appears on the WORD document. We knew about that beforehand.

Q. I know you have known about this PRO-CDS design even prior to this case. Isn't that correct?

A. I don't know that I had any specific understanding of PRO-CDS itself. I knew that TIRKS and it is subroutines had a number of different mechanized aids that all helped CPC personnel design circuits.

Q. You certainly knew about it by the time you filed your initial Declaration in this case?

A. Did I know about PRO-CDS at the time that I filed my first Declaration?

MR. GOLD: Yes.

A. No. I don't believe so, not by name or by function.

Q. So when you filed your first Declaration in this case, you didn't do the research and investigation to determine that there was an automated process involved in the designing of the loop?

A. No, and I didn't need to, because I knew that there were already mechanized tools that the CPC personnel had used for years. There was no need for me to research what I already knew to be the case.

Did I know it was called PRO-CDS and all of its capabilities? No. But I knew that there were mechanized tools. In fact, I mentioned mechanized tools in my very first Declaration.

Q. Let's take a look at your first Declaration. Start at paragraph 31. In paragraph 31, you state: In this section, I will explain the process AT&T employs to commingle a UNE Loop with Special Access to provide a point of comparison and to highlight the complexity associated with commingling.

I first explain the comparative simple process of extending a UNE Loop to a CLEC's colocation cage, and then describe the more complex steps associated with commingling.

That was -- this section of your initial Declaration, that was your goal, to highlight the complexity associated with commingling. Is that correct?

A. And to compare it with the simpler process of extending the loop to the colocation, yes.

Q. A comparatively simple process; that is what you called it?

A. Yes. I'm not sure that either of these, to a lay person, would be simple processes. But comparatively speaking, to an experienced technician, commingling is more complicated than simply cutting over a loop to a colocation arrangement.

Q. Now, if we look at paragraph 38 of your initial Declaration, you state that commingling of voice grade loops --

A. I'm sorry. Would you point me to -- let me find the sentence. In paragraph 38?

MR. GOLD: Paragraph 38.

THE WITNESS: Okay. I am there.

Q. That commingling of voice grade loops is one of the most complex. Is that correct? If I may, I have highlighted it, the third line from the bottom.

THE WITNESS: Let me read it in context.

MR. GOLD: Take whatever time you need, Mr. Milner.

A. Okay. The sentence, and let me read it: Indeed, to the extent any circuit is complex, and the commingling of voice grade loops with Special Access transport is among the most complex, automated systems like TIRKS -- again, a reference to TIRKS -- routinely drop out the circuit for manual design and assignment activities.

So yes, in the world of providing unbundled loops in any configuration, commingling is the most complex.

Q. Now, could you please read the rest of that paragraph.

A. Beginning with the word because?

MR. GOLD: Yes, sir.

A. Sure. Because each commingled loop requires its own discreet assignments on distributing frames, multiplexers, and other equipment, CPC personnel use TIRKS and its inventory and assignment tools to provide a unique design for each such loop.

The entire paragraph? Okay.

MR. GOLD: Yes.

A. There is simply no mechanized system capable of handling those complex assignments automatically and without human intervention, either for AT&T's retail customers or for any CLEC.

Q. Now, there is no -- there is simply no mechanized system of handling these complex assignments automatically. Isn't that what we just read that TIRKS did, make the assignments automatically?

A. No. That is not what happens within the CPC, because there is definitely human intervention between the personnel in the CPC and PRO-CDS, for example, and

the other TIRKS mechanized tools.

Q. Let's talk about the assignments. What do the people do to -- for the assignments?

A. I describe that in my Second Supplemental. I will summarize that here, unless you would like me to read it directly into the record. But basically, personnel in the CPC, once they receive an order for a commingled circuit -- and, by the way, all commingled circuits involving voice grade loops intentionally drop out to the CPC for the personnel to handle.

When one of those people receives an order, they use a mechanized tool to attempt an initial routing of the circuit from the loop to the Special Access transport. They review the output of that process to ensure that the end points are correct, that the circuit is routed via D4 channel equipment, and that during that process, D4 signaling is applied to the circuit.

I understood, I believe, from our conference here back in May, I think a statement that Mr. Kramer made, that there were conversations early on in the provisioning that Saturn wanted D4 signaling on all of the commingled circuits that were delivered to it.

So those were the steps that the humans in the CPC do before they engage PRO-CDS.

Then once they are satisfied that those

criteria are met, then they use PRO-CDS. The person then examines the resultant design, again, making sure that the loop is part of a continuous circuit, that it appears to be routed correctly, that is, through the right central offices and on to the right ring.

And if there are errors, they correct those. They rerun PRO-CDS, make other checks. If there are no errors -- well, if there are errors, then they make further corrections, run PRO-CDS again.

But at the conclusion of that process, when the person is confident that the design is accurate, then they allow the -- they allow PRO-CDS to post the output of that record into other parts of TIRKS for further provisioning.

So it's not -- it's not fair at all to say that the mechanized systems can run effectively and accurately without CPC, human intervene.

Q. So CPC inputs data?

A. In certain cases, they do, yes.

Q. And some of the data they input is the same information that is put by STS, or whatever CLEC, places the order. Is that correct?

A. Some of the information is derived from Saturn in its initial order, yes.

Q. And as far as the actual routing and the

assignments that are to be made, those assignments are made by PRO-CDS design, are they not?

A. Partially.

Q. When you said there is no mechanized systems capable of handling these complex assignments automatically, why didn't you mention the PRO-CDS design?

A. Well, first of all, you didn't read my sentence correctly. You left out the part without human intervention. That is an integral part of that statement.

Q. Most systems require a human to put some information in?

A. I thought your earlier suggestion was that there was not such a requirement, that somehow this information would flow into PRO-CDS, it would make the design, and it would be untouched by human hands, as it were.

Q. So are you saying PRO-CDS doesn't have any valuable function?

A. I did not say that at all. It's as valuable as the other mechanized tools that CPC personnel use, but it's not capable of running by itself.

Q. You also state that each commingled loop requires its own discreet assignments on distributed frames, do you not?

A. Yes.

Q. And that is something that PRO-CDS does, is make these discreet assignments, does it not?

A. On certain distributing frames, yes, it does.

Q. Now, out of the 89, the universe of lines that were provisioned, we have a record of only 27. Is that correct; the WORD documents?

A. That's correct. Yes.

Q. All except one of the WORD documents, the WORD records, show that a PRO-CDS design was done automatically, does it not?

A. I hesitate only by the word automatically that you added at the end of your question. And the reason I hesitate is that you cannot tell from the WORD document how many times PRO-CDS was invoked by the person in the CPC before the design was satisfactory.

Earlier, you described it, or it was described, as a one-button process. The person in the CPC may push that button several times before the right design is produced by PRO-CDS.

So it was only -- that you say it was automatically, which connoted to me, at least, that what you meant was that PRO-CDS only ran one time, and that the design was accepted and passed forward, and that is not necessarily the case.

Q. That is not necessarily not the case either, is it, Mr. Milner?

A. No. That is what I'm trying to explain, is that this one button may have been pushed a number of times to eventually produce an accurate record. In other cases, it may have been only pushed once.

Q. In the 27 cases, it might have been pushed once every single time?

A. Possibly, or, you know, that the contrary is true. It may have been pushed a number of times on all 27. I don't know.

Q. There is no written documentation existing to show how many times somebody pressed the button?

A. Not that I'm aware of, yes.

Q. What we do know is that in 27 of the 28 times, that the PRO-CDS design for commingling arrangements were successful?

A. We do know that. And it is possible that PRO-CDS was used in the other case, as well. It may not have been used to the final execution, but it was used -- it may have been used, and I don't know one way or another, but it may have been used even in that one exception.

Q. And that one exception, was that the case in which the technician tried -- let me start again. That

one exception, was that the first test case that was tried by STS?

A. I don't know that. I don't know.

Q. Do you know if it was the case in which a technician tried to do it with an FX card?

A. I don't know that either. As I was investigating for this, what I was told was that the reason that one WORD document did not bear the label PRO-CDS was that the CPC person had made entries directly into the design and did not run -- if PRO-CDS had been run earlier, did not run it again, but instead was satisfied that the design was accurate and then posted that design.

So I don't know if there was a problem with the type of line card that was utilized, or whether it was the first or the 28th. I don't know that.

Q. If we count that one design, the one time, as a failure of PRO-CDS, PRO-CDS successfully worked in STS's case 96.3 percent of the time. Is that correct?

A. I will trust your math on that.

MR. GOLD: Let's say above 95. It's early and it's cold.

A. I will trust your math. I don't want to get my calculator out here. But yes. But here's where I do need to make a comment.

You said that in some high percentage of cases, PRO-CDS was successful. And I will just qualify that and say I agree that PRO-CDS was eventually successful, because, as you pointed out and to which I agree, we don't know how many times for a given loop PRO-CDS may have been executed before it finally got to that success. But ultimately, all but one of the designs PRO-CDS created a design for.

Q. And as pointed out earlier, we don't know that if in every single case, besides the one that we believe was the first time, that they pressed it once and it did its magic?

A. That is possible. The contrary is possible.

Q. And all of the records or all of the ability to be able to determine what happened on each time of the 27 instances lie solely within AT&T, does it not?

A. I'm not sure if I -- let me attempt to answer your question, and you tell me if I'm --

MR. GOLD: If you don't understand, I will be more than happy to rephrase.

A. I'm thinking because -- yes, why don't you ask me your question again? I don't want to speculate.

Q. It's within AT&T's knowledge and ability to -- let me ask it another way. All of the people that ran the CDS -- PRO-CDS design and pressed that button were

employees of AT&T at the time, correct?

A. Yes.

Q. And AT&T would have access to talk to and investigate what happened with its employees?

A. Certainly, to the extent that the people who did those designs are still AT&T employees, AT&T, you know, could talk to them.

The reason I hesitated earlier was I don't mean to suggest that there is any record that AT&T might possess of how many times the one button was pushed on any one of those orders. I don't know that there is a log of how many times PRO-CDS was run on any design, for commingling or for any other purpose.

Q. We don't know if the technician who did it is still employed, or if he is employed, would still remember what happened?

A. Exactly.

Q. But it's something you never tried to find out, did you?

A. That I tried to find out?

MR. GOLD: Yes, sir.

A. I tried to find out why the one WORD document did not bear the label, and was given a satisfactory answer. But did I go back and look at how many times the button got pushed on the others? No. Frankly, I saw no

need to do that.

Q. Is there a particular reason why the WORD documents were not produced prior to the status conference in this case?

A. Is there a reason? Yes. There is a reason. The reason is that had STS wanted to see these, or any other WORD documents, for any of its circuits, it could have requested those.

I recall that this whole exploration came out of the May status conference. And towards the end of that, late in the afternoon, I don't recall if Mr. Kramer or Mr. Starkey said -- let me just say collectively, that Saturn had made a request about asking AT&T's assistance in decoding the detailed layout record, the DLR, which is -- contains some of the information in the WORD document, but not all of it. The WORD document is a more complete record of the entire circuit.

So I recall that this whole notion of exploring WORD documents came out of Saturn's request for assistance from AT&T to interpret the contents of design layout records, or DLRs.

Q. And since you were unable to supply the DLRs, you supplied us with the 27 WORD documents. Is that correct?

A. That's correct. Yes.

Q. And the reason that you supplied us with 27 WORD documents is that those represented those commingled circuits that were still active at the time?

A. That's my understanding, yes.

Q. Mr. Milner, at that time, you could imagine our surprise when we looked at the WORD documents, after we were finally able to figure out the hieroglyphics on them, and determined that it was a PRO-CDS design, after saying that there was no mechanized system capable of making those assignments.

MR. KLINEBERG: Sorry. Alan, is that a question?

MR. GOLD: I will withdraw it.

BY MR. GOLD:

Q. Let's look at page 38 of your initial.

A. 38?

MR. GOLD: Paragraph 38.

A. Sorry. Yes. Paragraph 38? I didn't have a page 38. Okay. I'm there.

Q. Towards the end, you say automated systems like the TIRKS routinely drop out of the circuit for manual design and assignment activities, correct?

A. Yes.

Q. Now, in this case, you are talking about commingled voice grade loops with Special Access. Is

that correct?

A. Given that, yes, the sentence starts to the extent any circuit is complex, and we are talking about commingling here, yes. I think the discussion is limited to that context, yes.

Q. Now, when we are talking about that automated systems like the TIRKS routinely drop out of the circuit for manual design and assignment activities, regarding commingled circuits, what we are looking at, if I understand correctly, is 89 total commingled circuits that were provisioned by AT&T?

A. That is right. Yes.

Q. Now, if I understand what has been produced to us, the only records that we have is of the 27 WORD documents, correct?

A. That is my understanding as well, yes.

Q. We have no idea what happened with the other 62?

A. Yes. Now, let me explain that I was not, you know, involved directly in gathering WORD documents as part of discovery and for production to you.

But my understanding of how TIRKS has operated for years is that once circuits are disconnected, it removes the inventory and all other assignments that it might have made for two purposes; first of all, to free

up equipment that might be used for other purposes, and then to sort of clean up the record base of what is in service and what is inventoried in TIRKS.

So I'm not surprised that those earlier circuits that may have been established and later disconnected are no longer resident in TIRKS. That is a fairly routine process.

Q. Now, as we discussed earlier, we do not know whether any of those 27 of the WORD documents besides, as we said, that one, dropped out of the PRO-CDS design process?

A. Correct. We have no knowledge, pro or con, about how effectively PRO-CDS did its job the first time it was invoked. Let me qualify one other thing.

I think I said earlier that all of Saturn's commingling circuits, the orders drop out to the CPC intentionally. So they all get to humans in the CPC for processing, every one of those, including the -- all 89.

Q. It drops out because you require STS to populate the fields, or certain of the fields, with fictitious information. Is that correct?

A. That is not correct.

Q. Don't you require STS to populate some of the fields with fictitious information?

A. Yes. That part is correct. But that is not

the reason, and that was the predicate for your question, that because of the fictitious information, that is the reason they drop out to the CPC.

The reason they drop out to the CPC is that AT&T wanted to ensure that there was human intervention to ensure continuity of the loop to the Special Access, that it was routed via D4 channel bank equipment, and that D4 channel -- the signaling was properly applied. That is the reason the -- that all orders of this type drop out to the CPC for manual handling.

Q. That AT&T wasn't capable, if the proper information was put in, that the technicians wouldn't know what to do?

A. To the contrary. AT&T wanted to design a process of handling these orders that gave the highest assurance that a proper design would be created. And the way that AT&T chose to do that was putting people in the loop to ensure that proper assignments were being made.

Q. And that's why STS was required to populate correct information, such as the -- and that's why STS was required to put correct information, such as the CFA, in the remarks section?

A. Yes. Yes. Well, wait a minute. Let me make sure what I'm agreeing to. Would you ask the entire question now?

Q. Certainly. Is that the reason STS is required to populate certain correct information, such as the CFA and other information, in the remarks field?

A. I believe that is correct, having overheard conversations from back in May, as to how the order was -- how the information was passed forward to the ordering group. But that sounds about right.

Q. So the people that are inputting the information at AT&T would then take the information supplied, such as the CFA, by STS in the remarks field and then input it?

A. That is one of the things, yes.

Q. And there is no technical reason why STS cannot populate the orders with the correct information?

A. I'm not quite sure I understand your question. Let me try to answer, and we will go from there. There is nothing that prohibits Saturn from putting accurate information on its orders. But I don't really think that is what you are asking me about.

MR. KLINEBERG: Alan, I want to make sure we are not talking here about ordering, right? This is about Issues Numbers 1 and 7?

MR. GOLD: Yes, it is.

MR. KLINEBERG: You are treading toward a topic that wasn't part our understanding.

MR. GOLD: I don't believe so. We are talking about the design.

MR. KLINEBERG: Okay.

BY MR. GOLD:

Q. Mr. Milner, STS has requested, on numerous occasions, that it be able to input the correct information in the orders, has it not?

A. I have not been directly part of those discussions. That is not an area of any of my Declarations about what information Saturn would put in any particular field of its order. But I will try very hard to answer your question.

Q. You did testify that once the order dropped out, the people at AT&T would then input the order, correct?

A. Well, there are -- let's be very clear as to which group at AT&T we are talking about. The group that receives the order from Saturn and does some processing on it, to begin with, is not the CPC. It's another work group that, when I was there, was called the LCSC. So which of those groups are you referring to?

Q. Who receives the order?

A. Initially, the LCSC. And that is part of the ordering process. The CPC, as its name implies, the Circuit Provisioning Center, is involved in

implementing -- fulfilling that order. But that is not the order receipt center.

Q. No. The order drops out at the LCSC?

A. In fact, I believe it does, but I'm not positive of all that, but I think it does.

Q. Then they input the correct information in the order and it flows down to the provisioning?

A. Again, you are asking me about the ordering process, which I didn't testify about. I will tell you my recollection from having overheard the discussions back in May, some months ago. But what I did talk about --

Q. If you aren't able to answer, then we can move on. I thought you testified -- and that is why I went in to this line of questioning -- that the order dropped out so that AT&T could ensure that it was provisioned correctly.

A. I did say that, and you used the operative word that it was provisioned correctly. It intentionally drops out, and the center I was referring to is the Circuit Provisioning Center. So whether or not it drops out in the LCSC is not what I was talking about.

What I am talking about is that intentionally all the orders, once they get to the provisioning center, that is the design center, fulfillment center, all of

those intentionally drop out for human review.

Q. What is the purpose of that?

A. It is the statement I made in my Second Supplemental. I will briefly recap. If you would like me to go there, I will. But essentially, to ensure that the circuit end points are correct, that the routing appears -- that the intermediate routing appears to be correct, that D4 channel equipment is used in the circuit, and that D4 signaling is applied properly.

Q. From there, it goes to the PRO-CDS design?

A. That's right. Then it goes back to the human to review once more before it is allowed to pass forward.

Q. Now, when it goes to the PRO-CDS design, we do not know how many times, if any, that it drops out?

A. Well, I think we are using drops out in a different way than I used it in the Declaration. When I wrote my Declaration, I said that once PRO-CDS produces a design, it may -- or as it's producing a design, it may identify errors. I didn't say -- I didn't use the word drop out in that context.

So if you will indulge me, let's use intentional dropout to mean that the order is delivered to a human. And whether or not there are errors that

PRO-CDS either recognized or created is the subject of how many times PRO-CDS might be invoked by that human once the order has dropped out to the center.

Q. Well, the dropout, the initial dropout, as I understand it, is before it makes it into the automated system. Is that correct?

A. Correct.

Q. And I'm reading from paragraph 38 of your initial Declaration. It says: Automated systems like TIRKS routinely drop out the circuit for manual design and assignment activities, correct?

A. That's right. Because the CPC receives all its orders from TIRKS, and TIRKS looks at some of those and says this one needs human intervention, drop it out to the humans in the center.

Q. So you are not saying in that that it automatically or routinely drops out of the automated design process, are you, PRO-CDS?

A. Let me take a shot at it. Are you saying that by design, PRO-CDS drops the order?

MR. GOLD: Let me reask the question.

THE WITNESS: Okay. Thank you.

Q. When you are saying automated systems like TIRKS routinely drop out the circuit for manual design and assignment activities, are you including PRO-CDS

designs in the automated systems that routinely drop out the circuit?

A. Yes, but only by reference. First of all, this sentence was meant to explain how CPC personnel got the order in the first place. TIRKS handles lots of orders every day that are not flagged for human intervention. Some are.

And so TIRKS is the vehicle that says this order that I'm about to process needs human intervention. I will stop. I will send it to the attention of people in the CPC who routinely look in certain cues within the system. Let them decide what needs to be done.

Q. They decide to put it in the PRO-CDS automated design process?

A. Well, they -- yes, they decide to use PRO-CDS, along with other mechanized tools that they have at their disposal. But again, let me say that this sentence was not -- perhaps I should have chosen a different word than drops out.

Here what I was trying to get across was that of all the orders that TIRKS processes on a daily basis, it intentionally sends some, drops them out, if you will, to the center for human intervention.

Q. Now, if we take a look at your last sentence of

paragraph 38, the no mechanized system of handling these complex assignments automatically without human intervention, you do not know, do you, whether after the information contained in the order is inputted, such as the correct CFA and the other information that routinely goes in an order, that the PRO-CDS handles the assignments automatically?

MR. KLINEBERG: I am sorry. Could you read that back?

(Thereupon, the last question was read back by the reporter.)

A. No. I don't know that. However, what I do know is that the designers of the process for commingling circuits looked at the available tools, and in order to raise the assurance level as high as they could, decided that in addition to the mechanized tools that were available, including PRO-CDS and C1/PREP and probably a whole variety of others, that these orders would be flagged such that a human always looked at them and concluded that the design was proper before it was allowed to leave the center.

BY MR. GOLD:

Q. And without the human looking at those, do you have any knowledge of whether the orders would have flowed through the way they did?

A. I don't know. The people who designed the process apparently believed that they would not, because they put humans in to the process to make sure that they were handled correctly.

MR. KLINEBERG: Alan, would this be a good time for a short break?

MR. GOLD: Certainly.

MR. KLINEBERG: Thank you.

MR. STARR: Let's try to keep the break to five minutes.

(Thereupon, there was a recess taken at 11:00 a.m.)

(Thereupon, the proceedings were resumed at 11:08 a.m.)

BY MR. GOLD:

Q. Mr. Milner, we have seen where the order drops out at the LCSC in this case, right?

A. We have seen? I don't know what you mean by that.

Q. We have seen testimony regarding that?

A. I do recall that. I didn't write any of that testimony, but I do recall that.

Q. In there, it's STS's contention that it drops out for -- to avoid SEEMS -- SQM SEEMS revenue payments at the LCSC?

A. Yes.

Q. Is that also the reason that it drops out at the CPC?

A. Well, first, I won't agree with the first part of your question that orders drop out at the LCSC simply to avoid being subject to SEEMS payments. My understanding was that for much the same reasons as in the CPC, orders drop out in the LCSC to ensure proper handling and to raise the assurance that the order is going to be fulfilled sufficiently.

Regarding the CPC, I think CPC personnel would be indifferent to SEEMS payments, as a general concept. I doubt that any of them could even explain what all of that was about.

So the producers of the process for CPC personnel did not consider whether a resultant circuit would be, whether the provisioning or maintenance of that would be the subject of SEEMS payments or not.

As I said earlier, they fall out to the CPC for the simple reason that the designers of that provisioning process were to increase the probability of having an accurate design efficiently produced the first time.

Q. Where in the written documentation for this process does it evidence that the orders drop out at the CPCP -- I have my initials wrong -- CPC?

A. Well, the center I have been describing, the Circuit Provisioning Center, is CPC.

Q. Where is the written documentation showing that these orders were designed to drop out at the CPC?

A. Somewhere in the written work procedures for the CPC, for CPC personnel.

Q. Are those documents filed in this case?

A. There has been such a massive amount of paper filed. I can't say whether or not -- I don't recall -- I can't recall having seen that, but I can't answer, you know, conclusively whether the CPC's work instructions for its personnel were in the record or not.

MR. GOLD: I don't recall. I can't tell you I have read every document.

THE WITNESS: It's a lot of paper.

MR. GOLD: I want to show you -- if you could please mark this as Exhibit 2.

(Whereupon, Milner Deposition Exhibit 2 was marked for identification and attached to the transcript.)

MR. GOLD: The ones that we weren't -- I know such as the facts that were referenced in the order I did make some extra copies of.

MS. SAKS: Thank you.

MR. GOLD: Do you need another copy?

MR. STARR: No.

BY MR. GOLD:

Q. Do you recognize --

A. Before we proceed, should I be keeping track of the ones that have what looks like a Bates sticker on the bottom?

MR. GOLD: Yes. If not, the court reporter will track you down to the ends of the earth.

THE WITNESS: I don't want to run afoul of that. Okay. Sorry. Go ahead.

MR. GOLD: By the way, it usually will be in my briefcase.

THE WITNESS: Pardon?

MR. GOLD: It usually will be in my briefcase.

BY MR. GOLD:

Q. I'm going to show you what has been marked as Exhibit 2, and ask you if you can identify that?

A. Give me a moment to --

MR. GOLD: Take whatever time you need.

A. Sure. Thank you. I think I have seen this before. Let me just flip through the pages. Yes. I have seen this before. I think we discussed this back in May.

This is a set of work instructions for the Local Carrier Service Center, or LCSC, service center

representatives, as it says there in the introductory of purpose, and provides guidance to them on how to process requests, that is, orders for an UNE-P to UNE Loop commingling.

So this document was written by the staff personnel for people in the LCSC who would receive and process orders from Saturn.

Q. Did you review this at the time it was written?

A. At the time it was written?

MR. GOLD: Yes, sir.

A. Well, the original was back in 2006. No. I don't recall having seen this, certainly not at that time.

Q. You were involved in this situation back in 2006, weren't you?

A. What do you mean by the situation?

Q. Were you involved in the relationship between AT&T and STS regarding the attempt to commingle STS's embedded base of 18,200 lines?

A. I had overall responsibility for some of the activities related to that relationship. The situation involving this whole issue of whether SL1s or SL2s were the right loop types for use in commingling came to me very much later than that initial discussion, and really only after the fact that it was discovered that SL1s

would not work in a commingling arrangement, despite some discussions that had been had with Saturn.

And when it became evident that there was an issue that had to be resolved, then I had a more active role than I had heretofore. But up to that point, I had not been involved in creating a process for commingling, anything of that sort.

Q. Prior to the first mediation conference at the FCC here, you and I have never met or spoke. Is that correct?

A. I'm pretty sure that is correct. It's possible we were in the same hearing room once upon a time. You and I have both been in this line of work for quite a long while. But I can't remember that we had spoken before that time. As memorable as you are, I don't recall that.

Q. And prior to that mediation conference here, neither you, Mr. Kramer, or anybody at STS had any meetings or conversations regarding any business activity. Is that correct?

A. That's correct. Yes. I believe that's correct.

Q. Could you please tell me -- because I do see your name pop up on a lot of the e-mails -- what your involvement was prior to the confidential settlement

agreement?

A. Okay. Well, let me first explain sort of the way my team at AT&T, even before at BellSouth, how that team was composed. And, you know, I was responsible for several different general areas, including negotiation of Interconnection Agreements.

So in terms of that -- in terms of that function, within my larger team, a negotiator was assigned to Saturn. That was a management person. That negotiator, in most cases, reported to a team leader who also was a negotiator for other accounts, but a more senior individual served as the team leader.

The team leader, or the team leaders, plural, because there are at least two or three of those, reported to a director, and the director reported to me.

MR. GOLD: Okay.

A. So it was -- so most of the day-to-day interactions between -- I will just use AT&T to mean BellSouth before the merger and after -- day-to-day interactions were most common between the negotiator or the team leader and appropriate representatives of Saturn.

Q. And we negotiated the ICA. I remember talking to, I believe, Ms. Lynn Allen Flood.

A. And Lynn was one of the team leads that I

mentioned. And she had a smaller team of negotiators that reported to her.

Q. And Mrs. Flood would report to somebody else and then report to you?

A. Well, before divestiture -- excuse me. I think I just dated myself.

MR. KRAMER: Don't feel bad. I was there, too.

A. Before the merger, the negotiators all reported to a woman named Kristen Shore, who I believe is still in something like that same capacity. And, in turn, Kristen reported to me.

BY MR. GOLD:

Q. I believe we had several conversations with Ms. Shore, as well.

Would you go on and describe your involvement regarding STS's attempts at commingling prior to the confidential settlement agreement?

A. Well, let me say at the outset that I really didn't have much interaction in that, in those discussions, except when it was first brought to me that the arrangement that the sales team had proposed to Saturn was technically infeasible, and that something else would have to be worked out instead.

I believe that was the first, you know, engagement that I had directly into this issue. Then

that, of course --

Q. That would have been the various options that AT&T had to resolve the situation that we have seen in the e-mails?

A. Well, I recall -- I think that you are referring to a letter from Advernal Allen (phonetic). I recall that being closer to the discussion of how do we craft a settlement agreement than at the, you know, earliest time that I was made aware that there was an issue that needed to be resolved.

Q. After the settlement agreement, generally what was your involvement?

A. I don't recall that I had -- I don't recall any engagement that I had. Once the settlement agreement was put in place until I retired at AT&T, I don't recall having been involved directly, and when I say directly, I mean personally, with the matter.

MR. GOLD: Let's look at Exhibit 2.

THE WITNESS: Okay.

Q. And if I recall your testimony, you did not have any input in this document?

A. No, I did not.

Q. Did you review it at any time prior to these proceedings?

A. No. Let me say that while my team at BellSouth

and AT&T had a number of different components to it, providing staff direction and writing methods and procedures for the LCSC was not part of my domain. That was over in the network operations side of the wholesale division.

Q. Who is Danny Mann?

A. I don't know who that is.

Q. And this document, as it says on the front page, was merely for your internal use?

A. It does say that, yes.

MR. GOLD: Okay. The only thing I'm going to be asking you about would be on the second page of the document.

THE WITNESS: Okay.

Q. In the second line, it says a CLEC must have established a higher level of Special Access and associated multiplex equipment and the same SWC, Serving Wire Center, where the local loop will terminate.

A. It says that, yes.

Q. And that is an accurate statement?

A. Yes.

Q. When we are talking about the Special Access equipment, we are talking about the D4 channel banks, we are talking about the DCS, and the various transport that STS purchased?

A. No, we are not.
Q. What are we talking about?
A. Because you said the D4 channel bank, the D4 line card, which is part -- that is plugged into a channel bank, is part of the COCI, not part of Special Access.
MR. GOLD: We will talk about the card a little bit later.
THE WITNESS: Okay.
Q. What about the D4 channel bank?
A. The output side, that is, the high-speed side of the D4 channel bank, I suppose, would be provisioned as part of the Special Access part of the commingled circuit.
And so let me explain that, without getting too deep into the weeds. A D4 channel bank, there are a number of different configurations, but typically, as many as 24 line cards can be plugged into the input side. And each of those 24 line cards would accommodate, in this case, one voice grade loop.
The line card, and some of the common equipment, digitize the equipment which is then multiplexed onto a DS1 that leaves the D4 channel bank in individual format, and one of those channels would carry one unbundled loop.

Q. Does the D4 channel bank multiplex as well as digitalize?

A. It depends on how you use the term. Because the term multiplexing is used in different ways. Let me explain what I mean by that phrase.

The D4 channel bank performs a number of different functions. First of all, as I just mentioned, it takes the analog signal that is presented to it, it samples it and digitizes it, and then presents that single DS0, as it is now because it has been converted from analog to digital, presents that DS0 signal to other equipment into the D4 channel bank and then interleads, multiplexes that one channel, along with as many as 23 others, into a single bit stream that operates at roughly 1.5 megabits per second forward to the next point.

So yes, it multiplexes these 24 channels. It interleads them into various time slots on the DS1 that leaves the D4 channel bank.

Q. And then it's multiplexed again by the DCS?

A. It can be, yes.

Q. What about in STS's case?

A. Well, because the output stream containing all these unbundled loops is going to be attached to Special Access transport facilities, the -- that bit stream leaving the D4 channel bank does use DCS equipment,

digital cross-connection system equipment.

In fact, it often uses several along the path of getting from the Serving Wire Center, on and off the ring, and ultimately to Saturn's switching equipment. So yes, DCS equipment is required, and it's used in various places along the connection.

Q. And your testimony is that the low-speed card for the channel bank is purchased through the COCI at UNE order, correct?

A. It's purchased as a provision of the Interconnection Agreement. And yes, the third line on the second page that you presented to me says that, that the COCI includes the low-speed card. That is a reference to the single-line card on the D4 channel bank, and the jumper that would connect the unbundled loop -- or the loop on the main distributing frame to that input card.

Q. The jumper is wire?

A. Wire.

Q. Getting back to the question, the D4 channel bank, that is purchased -- aside from the low-speed card, that is purchased as Special Access, correct?

A. Yes.

Q. Not just half of it?

A. What do you mean half of it?

Q. I thought you said half of the D4. I misunderstood.

A. When did I say half of the D4?

Q. Then let's leave it. The entire D4 is purchased as Special Access?

A. Well, not the input card to the D4.

Q. Now, the second one, the central office channel interface, the COCI, which includes a low-speed card in the jumper, will be part of the UNE order. The COCI replaces the colocation cross-connect. Is that an accurate statement?

A. In the -- only in the most general terms is that accurate.

Q. There's no colocation cross-connect in a -- I will withdraw that. Let's move on.

The commingled DS0 loop will be terminated to the MDF and then connected using the appropriate DS0 COCI to the DS0 side of the D4 channel bank. Is that correct?

A. It's sort of loose language. So let me correct it. At this moment, there is no -- I really don't want to launch off into a discussion of DS0 loops and voice grade loops.

But at the moment that a loop is connected to the low-speed side of the D4 channel bank, that is the low-speed card, it's not in DS0 format. It's still in

voice grade analog format. So that part of the language is a little bit loose.

But recognizing that this whole document was prepared not for technicians that were going to wire these things together, nor was it prepared for the circuit designers in the CPC that would, you know, have to know exactly how the thing was routed, this document was written for people that would receive the service order and submit it for further processing.

So in the most general terms, being very generous, this is a somewhat accurate, but not technically accurate, depiction there in the third sentence. But it probably would suffice for people that didn't really need to know all that information in the first place.

That is a long answer to a short question, I know. But this is not really technically accurate, but it was probably okay for the people that were going to read this particular document.

Q. Now, you had stated that the loop was connected to the DS0 side of the D4 channel bank. Wouldn't the jumper of the COCI be connected to the low-speed card in the D4 channel bank?

A. Repeat the last part -- repeat the question part.

Q. Certainly. If I heard what you said, you said that the loop was connected to the DS0 side of the D4 channel bank. What I was asking, if I did hear you correctly on that, that isn't it the COCI, actually the jumper of the COCI connected to the low-speed card of the D4 channel bank?

A. Yes. The COCI is composed of two things; wire that connects the loop on the distributing frame to the low-speed card on the D4 channel bank. Those two things together are called the COCI.

Q. The same features and capabilities allowed for the DS0 analog loop will also be allowed for the commingled loop, including reuse of facilities when available as with this process. That is also a correct statement, is it not?

A. Well, again, again, with the expressed desire that we don't launch off into a big discussion of what is a DS0 loop and what is a voice grade loop, the language is technically incorrect. I'm not aware of anything called a DS0 analog loop. It's either analog or it's digital.

But, again, for the intended audience, which was service representatives processing orders, not technicians in the central office, not technicians in the CPC, this was a reasonably accurate description, and I

think was meant to convey to them that as far as their work was concerned, not much was different in terms of how they would process this order compared to how they would process other orders.

MR. GOLD: Mr. Milner, like you, I'm not going to go into whether DS0 means analog or digital. That is not the subject of the day.

THE WITNESS: I will buy you lunch anyway.

Q. We could spend a couple of hours on that. Let's go to the last, UNE Loops that are commingled with Special Access services will continue to be supported in the same process in centers as the loops are today. Do you agree with that?

A. Only if we qualify it. And the qualification comes from -- turn to Bates stamped, the last three digits, 879, it's Chapter 5. And then and under 5.1, types. Do you see where I'm reading from?

MR. GOLD: Yes.

A. I will read that into the record: Only one type of commingled loop is available for this process: two-wire unbundled analog voice designed SL2.

So if we go back to the page we were on, if we insert SL2 before UNE Loop, then that would make some of these statements more technically accurate.

And, in fact, this document only talks about

SL2 loops. So as the bottom paragraph in the section we were looking at says, the UNE Loops that are commingled with Special Access circuits will continue to be supported, that whole paragraph, I would insert the word or the letters SL2 to have it read more like the SL2 UNE Loops that are commingled, there's no difference in the way the SL2 loop is provisioned in the next sentence, and in the third sentence, the same SL2 UNE Loop capabilities measurements and so forth.

So with that editing, which I think is, you know, is not only permitted, but implied by the limitation in Chapter 5, that the only type loop that is being considered in this document is the SL2, then I think it makes sense to read the other descriptions about how the process might or might not be changed in the same view that only SL2 loops were being considered.

Q. To go on: There is no difference in the way that the SL2 UNE Loop is provisioned except that the SL2 UNE Loop is delivered to the CLEC at a MUX or a D4 channel bank in the EUSWC instead of a colocation arrangement. Do you agree with that?

A. Not entirely. And to repeat what I said earlier, given the audience that this document was written for, that is a reasonably accurate depiction of the commingling arrangement.

Q. When we talk about provisioning, we are not talking about ordering, are we?

A. I use those terms to mean different things. The document that we are referring to here is an ordering document. It tells the service rep how to take information, how to make sure it gets into the right places on the order, how to make edits if it's not right, how to do error checks and that sort of thing.

However, these are not the people that actually do the provisioning.

Q. They are not the people that would do the supporting if there was trouble on there, would they?

A. No, they are not. No, they are not. So my point is that, you know, I can allow some relatively loose language in here, because this is not information that is especially critical to people that process the order.

It is critical to the people that have to do the design, who have to actually make the connections, who actually have to maintain it and repair it if it breaks.

Q. Now, we see this in writing, that there is no difference in the way that the commingling is provisioned and colocation. And provision, as I understand it, means the way that the order is fulfilled, that you are making

the circuits work. Is that a fair definition?

A. That is a fair definition. But what's not fair, by your suggestion, is that the author of this document who is concerned solely with receiving and processing ordering is an expert on provisioning, or that the author would necessarily be able to describe all the work steps accurately in the design of the provisioning process.

In fact, the only -- that is the last, you know, real reference to provisioning that is made in this document. The rest of it goes field by field, line by line, and says here are things that you should expect to see in the order in this place, and it has to be in this range, and all the detailed information required to pass the order to the next step. But it does not help in any way to design the circuit or to provision the circuit or to maintain it if it breaks.

So I think you are asking much of this document, which was prepared for one purpose, to, sort of, put boundaries around what the provisioning steps are for an entirely different work group.

Q. So are you saying that it's AT&T's practice to be inaccurate in aspects of the document that might not relate to what the document's going to be used for?

A. Ask your question again.

Q. Certainly. Is it AT&T's practice to be inaccurate in its descriptions of documents?

A. Did you say to be inaccurate?

Q. To be inaccurate. Yes, sir.

A. Of course not, you know, but there's obviously a contextual reference that says how much information has to be in here to generally describe a process for somebody that is not involved in that process in the first place.

So certainly, it's not AT&T's intention to produce inaccurate documents. But unfortunately, as members of the human race, people don't use precise language in all cases, and this is one of those cases.

It's not an indictment of AT&T, or even of the author. They simply weren't writing about provisioning and design steps.

Q. Take a look at -- I see that document. Take a look at the TIRKS training, the confidential document on the PRO-CDS, which states that -- you read earlier in the deposition -- that it has the ability to design and post automatically certain types of special services, a message service, compute transmission levels, supply equipment settings.

I look at the written document, on the words that you all supplied to me, that says this was a PRO-CDS

design. I can see that.

But what I don't see anywhere in the record is any supporting documentation from you that talks about it being dropped out at the CPC, or the amount of human intervention required.

What I see in writing is the exact opposite. Could you explain that, please?

A. What is the question in all that? I'm not quite -- that was fairly long.

Q. Sure. Why don't I see any documentation supporting what you are telling me about the amount of human intervention? All I see is that we are looking at an automated design process.

A. Let's look at -- if you will point me to the reference you are reading about PRO-CDS, let's dissect that statement for a moment.

MR. GOLD: Certainly. It might be helpful. I will give you the entire document instead of one page.

THE WITNESS: If you like. I mean, it's not necessary, but if it's easier for you, that is fine.

MR. GOLD: I will give you the page.

THE WITNESS: Really all I need is the language you just read from.

MR. GOLD: Do you want to give one to Alex and Lisa? I was going to give you a copy, as well.

MR. KLINEBERG: Do you want to mark it?

MR. GOLD: I wasn't going to make it an exhibit, unless you prefer.

MR. KLINEBERG: No.

MR. GOLD: Why don't we mark it an exhibit so we know what we are talking about.

THE WITNESS: Might I say this starts on page -- I'm not sure what page I'm looking at. I guess this is page 3.

MR. GOLD: I will be happy to give you the entire document.

THE WITNESS: I would like to see the first page to see the date stamp as to when this document was actually created.

MS. SAKS: Is this being marked as an exhibit?

MR. GOLD: Why don't we mark the entire thing? That will make it easier. That would be Exhibit 3, if my recollection is correct.

(Whereupon, Milner Deposition Exhibit 3 was marked for identification and attached to the transcript.)

THE WITNESS: Would you like me to answer the previous question?

MR. GOLD: That's on the table, sir.

THE WITNESS: Okay. All right. Let me --

MR. GOLD: After all that, you would kill me if I withdrew it.

A. Please don't. Please don't. Well, first of all, if I'm reading this correctly, if you look at the cover page, to make sure we are all on the same thing, it's a document -- I'm looking at Bates stamp AT&T 160301, a document entitled Circuit Details, Special Services and Message, Module 3. I presume that means this is a reference to modules of training.

But the place I wanted to point was in the bottom left corner of that page where it says 9/93. And that reference, although in not the same place, sometimes on the bottom right, sometimes on the bottom left, I'm assuming that that is a reference to the date at which this document was either created or last edited. I wish I knew for sure about that, because there is not a -- I don't see -- let me flip to the back -- I don't see a record of changes here. And I also note that the proprietary marking at the bottom refers to Pacific Bell and Nevada Bell.

So I conclude from that that this is a pretty old document. If not actually produced in September of 1993, which is what it certainly indicates to me, it doesn't bear an AT&T logo anywhere on here. So this was even pre -- it looks like it was pre-Pacific Bell merger

with SPC.

BY MR. GOLD:

Q. You understand that this document was produced to us, and, hence, the AT&T stamp on it?

A. Do you mean the Bates stamp?

MR. GOLD: Yes, sir.

A. I'm sorry. I was not referring to the Bates stamp. I meant in the proprietary markings or in the title, I don't see AT&T or SPC. That was my point. I'm trying to underline this is a document that has apparently been around for quite some time.

If I'm accurate, if I'm correct, that 9 of '93 is its issue date, then this preceded the topic of commingling by at least a decade or so.

So your point was why don't I see any -- in the written record or written instructions that AT&T has produced, why don't you see specific references to how many times an order would drop out for commingling. Commingling simply did not exist when this document was created.

Q. Mr. Milner, if there was a later document that was produced to us, I would have been happy to have utilized it. But hasn't it been your experience that over the last 17 years, systems have improved by becoming more automated and not less automated?

A. Some have, and some have been left entirely alone. I can't tell you whether this particular system or subsystem has been refined further or not. You can't tell that, at least, from the cover page.

MR. GOLD: Let's get back to my original question.

THE WITNESS: If you will, point me to where the description of PRO-CDS about the one-button process. Does that appear in here?

MR. GOLD: Yes, sir. It's on AT&T 160322.

THE WITNESS: Okay.

MR. GOLD: Or page 3-23, whatever is easier for you to find.

THE WITNESS: I don't have a page 3-23. Now I have a page 3-23.

MR. GOLD: That was my trick.

THE WITNESS: I'm sorry I spoiled it. Okay. So I'm still not finding the precise language about the one-button process. There it is. Okay. I found it. Thank you.

MR. GOLD: Mr. Milner, you will also find a description of the assignment at page 3-5 or 160304.

THE WITNESS: Which would you like me to look at?

MR. GOLD: Whichever one you need to.

THE WITNESS: We will use the one there on Bates stamp 322. Just to make sure, you are not waiting for a response from me, are you?

MR. GOLD: Yes, I was.

THE WITNESS: I apologize. I thought I had answered. But ask it again. Ask away.

Q. What my question -- what my initial question was, is -- I will make it simple. Where in the record can I look, besides your Declaration, which, to a large part, is unsupported by footnotes, to see where the large amount of human intervention in provisioning commingling, where it drops out to the CPC? Where in writing can I find that?

A. I think earlier, you asked me a question as to whether the CPCs work instructions were part of the record, and I answered that I did not know whether they are in the record, but if they were, that's the place you would look. And I also recall that you weren't sure whether those instructions were in the record or not.

But if I wanted to know exactly, you know, what the work process was for the personnel in the CPC, I would look to their work instructions to understand that.

MR. STARR: Can I just interject a quick question? Mr. Milner, what documents, if any, did you review in order to prepare your testimony about the human

intervention in this process that Mr. Gold is asking you about?

THE WITNESS: I looked at the -- first of all, I did not look at the CPC's work instructions. Instead, I looked at documents that are on AT&T's website that is available to CLECs.

I had conversations with staff members who write various procedures for work centers, including the CPC. But mostly, I looked at information that was in what I will call the public domain that could be found on AT&T's wholesale website, and augmented by conversations with the subject matter experts.

MR. STARR: The documents that you looked at that are publicly available, can you describe them for Mr. Gold now with as much specificity as you can recall?

THE WITNESS: I will do my best. Basically, what I did was go on to the wholesale website and just searched on the word commingling, and pulled up, for example, the CLEC information package. I pulled up documents about various loop types, a technical reference. I can't remember the full designation, but the reference starts TR, I'm going to say, 32.

MR. KRAMER: 76.

THE WITNESS: Thank you. That is a list of the unbundled loop types that AT&T makes available.

MR. KRAMER: Those are already in the record.

THE WITNESS: Okay. Thank you. So documents of that nature. I don't have a list of them that I can really call to mind.

But I tried to find documents that were available to anybody that had an interest, rather than potentially coming up with internal documents that I would inadvertently write about and somehow release to the public.

MS. SAKS: Did you speak with anybody who was actually involved, anyone at AT&T actually involved in provisioning the 89 loops that Mr. Gold was asking about earlier?

THE WITNESS: I don't recall that I did. I did talk to the staff representative, in other words, the people that wrote the methods and procedures for the people that did do that work. But I don't recall having conversations directly with the people who did the provisioning.

MR. STARR: Mr. Gold, you may proceed.

BY MR. GOLD:

Q. Who is Tina Berard?

A. Tina Berard is one of the authors of the document that we were just looking at. I believe that -- I think she was, and as far as I know, still is a member

of the staff support to the LCSC.

Q. Who is Keri Lynn Morgan?

A. I don't know that person.

Q. Lynn Burkett?

A. I'm not sure. I have seen that name before. I believe she is in that same staff organization. I don't know Lynn. So I can't say for sure.

Q. You don't know who Ms. Berard, Morgan and Burkett talked to, if anybody, and what information they reviewed before they wrote the document we have marked as Exhibit 2, UNE, UNE-P to UNE Loop Commingling. Is that a fair statement?

A. That is a fair statement. I can't know from this document who she may have talked to.

Q. Whether or not she talked to the people who did the actual provisioning?

A. We may never know, yes.

MR. STARR: Let's go off the record for a moment.

(Thereupon, there was a recess taken at 11:56 a.m.)

(Thereupon, the proceedings were resumed at 11:58 a.m.)

BY MR. GOLD:

Q. Let's go back to your first Declaration.

A. Okay.
Q. And look at paragraph 37, please.
A. I'm there.
Q. Would you please read the first sentence?
A. The prior technical distinction between providing a UNE Loop to a CLEC's colocation space on the one hand, and providing that loop via a commingled arrangement on the other is the design work required.
Q. Now, in that situation, describing the difference between a UNE Loop in that case, would your same qualification make that statement more accurate; when we are talking about commingled arrangement, we are talking about an SL2 loop, correct?
A. Yes. Yes. I mean, in this very general statement of this very general sentence, yes, it does help to modify the second part of that that says and providing that loop to read providing that SL2 loop via a commingled arrangement, since that is the only loop that can be used in a commingled arrangement. Yes. That does improve the sentence.
Q. So would it be fair to say that the primary difference between an SL1 and an SL2 is the design work that goes in to an SL2?
A. I can generally agree with that, because the statement or the sentence includes the word providing in

the first part. So what we are talking about here is the provisioning of unbundled loops compared to commingling.

So yes, the principal difference then between the SL1 and the SL2 is the fact that the SL1 is not designed, whereas the SL2 is.

Now, having said that, the SL2 does have other attributes, that I'm sure we are going to talk about, such as test points and design layout records that are part of that that are not part of the SL1. But in terms of the provisioning, the principal distinction, in my mind at least, is that one is designed and one is not; the SL2 being the designed one.

Q. In the next sentence, you go on to describe and suggest that you can provide a voice grade UNE Loop to a CLEC's colo with no design, correct?

A. Right.

Q. In that case, we are talking about the SL1. Is that correct?

A. If the SL1 is what the CLEC chose. The CLEC might choose an SL2, and some do, for extension to the colocation. But yes, either an SL1 or an SL2 might be extended to a colocation arrangement along with a number of other loop types.

Q. If an SL2 is extended to a colocation arrangement, there is no design work involved?

A. Well, there is the design work that goes along with wiring of the test point, yes.

Q. Now, an SL1 has no remote access test points, correct?

A. That's correct.

Q. It is inventoried in LFACS, not in TIRKS?

A. That's correct.

Q. Now, if there is trouble on a loop in a colocation, in a colocated arrangement, AT&T is still responsible to fix that, are they not?

A. Let me make sure I understand the predicate. I think the answer is yes, but let me make sure I understand the predicate. So your predicate is that we just have an unbundled loop extended from the distributing frame to the CLEC's colocation. Am I correct?

Q. Let's stick with SL1s and SL2s.

A. Which is it?

Q. It's an SL1.

A. Okay. Very good. Yes, if the source of the trouble is in the loop, then it's AT&T's responsibility to correct that problem. And it's also the CLEC's responsibility, Saturn's in this case, before it calls AT&T, to determine that the trouble is not in its own network.

Q. But in that situation, which STS has an SL1 to a colocation arrangement, it calls up and says the problem is not in my equipment, AT&T is responsible to fix it?

A. Yes.

Q. And AT&T, deciding it's responsible to fix it, fixes it?

A. Yes.

Q. They do that far many times than -- strike that. They have far more experience in repairing troubles on SL1 loops without test points than they do fixing problems in colocated arrangements?

A. That should be right, since the -- since SL2s are a relatively smaller portion of all the loops provisioned than SL1s. Yes. It would follow that more trouble conditions have been reported to AT&T over SL1s than SL2s.

Q. Just the mere number of the SL1s?

A. Yes.

Q. When you put it in colocation arrangements, that the trouble that you have on SL1s compared to the trouble you have in UNE colocation arrangements, the difference is astronomical, isn't it?

A. I didn't follow your --

Q. You only have 89 universe of loops, voice grade

loops, provided on a colocated -- commingled arrangement?

A. There is where you threw me. You didn't say -- I don't believe you said commingled arrangement.

MR. GOLD: I apologize.

A. Yes. It stands to reason that the relative number of trouble reports on SL1s, if that is still the category we are comparing, to a subset of SL2 loops, that is those SL2 loops used in commingling, would be an even larger proportion in favor of the troubles reported on SL1s.

Q. Now, you go on in paragraph 37 to describe how you do colocation. You use a cross-connect at the MDF to connect the loop to single pair on a multi-paired tie cable between the MDF and the other distributing frames or racks. I'm sorry. I'm reading the wrong one. The AT&T -- let me start over.

A. If you will point me to where you are reading.

MR. GOLD: Page 37.

A. Paragraph 37?

Q. Paragraph 37. In a colocation arrangement, the AT&T technician disconnects the cable pair from the existing cross-connects, and connects it to the CFA assignment provided by the CI. Is that correct?

A. Yes.

Q. Now, in the cross-connection, there are no test

points, are there?

A. Let me try to answer your question. The test point is accessed -- is wired to via a cross-connection?

Q. In an SL1.

A. Oh, in an SL1, well, there is no test point associated -- provided with an SL1. So there is no test point associated with any cross-connections that would be made for the SL1.

Q. In an SL1, a technician from AT&T takes a wire or a jumper from the -- where the loop ends at the MDF and hooks it to the CFA on the CLEC's colocation equipment, correct?

A. Close. The technician, during the provisioning of an SL1, connects -- well, let me step back a pace even. If the loop had already been connected to AT&T's switch, for example, as a UNE-P arrangement, the technician would first remove the jumper between -- that is the cross-connections -- between the loop and AT&T's switching equipment, and would establish a new connection between the loop appearance or the main frame appearance of the loop and whatever distributing frame the CLEC's connecting facility assignment, or CFA, appeared on.

Sometimes it is on the main distributing frame, sometimes not. But in either event, the technician makes cross-connections to connect the loop to the CFA.

Q. And that cross-connection is a wire, is it not?
A. It's actually two wires.
Q. Two wires. In an SL1 situation, are there any test points on those two wires?
A. Not that AT&T would provide. The CLEC may provide its own test points in its colocation arrangement, and many CLECs did.
Q. Those test points on the colocation would not be on the cross-connections, would they?
A. They would not be on the cross-connections that AT&T provided. They would be attached to the loop once it was extended inside the colocation arrangement.
Q. Does --
A. But if they were there, it was because the CLEC provided those test points for itself.
Q. So those test points would be on the CLEC's own equipment?
A. Exactly, yes.
Q. They wouldn't be able to go to your MDF and put their own equipment on your MDF?
A. No, they wouldn't, but there would be no need to. If they were to install the equipment within their colocation equipment, they could effectuate the same types of tests remotely as AT&T does using the remote access test point.

Q. Is there any requirement in a colocation facility that the CLEC put test points in that are capable of testing the cross-connection loop?

A. AT&T does not impose that requirement. But as I mentioned a moment ago, a number of CLECs in the southeast did choose to provide that equipment for themselves, but we did not require them to.

Q. Now, wires are pieces of equipment and problems can happen on them, correct?

A. Certainly. Anything made by man can fail.

Q. And if the cross-connect fails, we are talking about a colocation SL1 situation, who is responsible for fixing those?

A. If you mean -- again, I think we need to be very precise. If we are talking about the cross-connection between the loop and the CFA, if that cross-connection fails, and I interject that only to explain that there are a number of other cross-connections that the CLEC may make for itself.

But if that cross-connection fails, then it's AT&T's responsibility to find the source of the problem and correct it.

Q. And in an SL1 situation, they find the source and correct it without test points on the loop or the cross-connect. Is that correct?

A. That's correct.

Q. And it's AT&T's responsibility to find the problem and correct it on the loop or the cross-connect whether or not the CLEC has chosen to install test points on its own equipment or not. Is that correct?

A. That is correct, but I will go back to what I said earlier, and that is that it is the CLEC's responsibility to confirm that the trouble is not within its own network before it contacts AT&T and places its trouble report.

Whether the CLEC finds it more useful to have those remote access test points in its colocation arrangement or not, or whether, instead, it dispatches its technician, if it needed to, to its colocation, those are decisions that the CLEC would make.

Q. And the CLEC would not have access to AT&T's equipment, correct?

A. If by AT&T's equipment you mean the cross-connection, the loop on the main distributing frame, no, we don't allow other companies' technician to work on AT&T's equipment.

Q. And that is for you all to work on that equipment?

A. Yes.

Q. Now, what -- as you pointed out, as I

understand it, it's first the responsibility of the CLEC to say it's not on my equipment, correct?

A. Correct.

Q. And if the CLEC tells you it's not on his equipment and it turns out to be, the CLEC is mistaken and pays you for it, does he not?

A. In some cases, yes, and in some cases, no. When I was still there, AT&T's technician was left with some discretion as to whether to bill the CLEC for certain dispatches or not. I don't know if that process has changed or not. I hope it's still as I left it, that we gave the technicians in the test center discretion to decide, you know, if a CLEC would be billed for dispatches or not. That's going back almost three years now.

But the intent was to recognize the complexity of certain types of trouble conditions, and that initial diagnoses were not always correct.

Q. Was part of your job involved in trouble -- fixing trouble conditions, overseeing?

A. Yes. I have had that job title before, yes.

Q. And generally, it would be in the ICA that would provide that the CLEC must isolate, first determine the problems are not on his own loop, before --

A. I'm not sure if it's codified in the ICA or

not, because I do recall that we had negotiated -- I'm struggling for the right term -- an operational agreement between AT&T and various CLECs that did have that requirement.

Whether that was codified into Saturn's Interconnection Agreement or not, or whether it was a separate operating agreement between the two companies, I don't know and don't recall.

Q. Now, if I understand, please tell me if I'm incorrect, a CLEC with colocation equipment, they do whatever testing they do and they determine the problem is not on their -- not with their equipment.

A. Right.

Q. They need to report to AT&T that there is trouble, and the problem is not on their side. Is that correct?

A. Yes. That is the operational agreement, is that the CLEC has looked at its own equipment and has concluded that theirs is not the problem. Therefore, it must be AT&T's.

Q. So the only information that AT&T is required to get from a CLEC is the trouble must be somewhere on the loop of the cross-connect, correct?

A. That is the requirement, but in having read lots and lots of trouble logs, there is a fair dialogue

that goes along, you know, between Saturn's technicians and AT&T's technicians at the time the trouble ticket is launched.

Now, if they want to put more -- so Saturn could say on this circuit, I have got a problem of no dial tone, and the problem is not mine it's yours, AT&T, and that could be all they said. Conversely, Saturn's technician might say: And here are the tests that we have done on our equipment, which would seem to indicate this kind of problem in your network.

They are not obligated to do that, but it's in both parties' best interests to be as forthcoming with whatever information is available as possible.

Q. And in any situation, in either situation, whether the CLEC gives you a ton of information and calls up and says, hey, I don't have a problem on my side, I have a problem on the circuit, you fix it, AT&T fixes it, doesn't it?

A. Yes.

Q. It's their responsibility to fix it?

A. Yes.

Q. And it's their responsibility to fix it with or without -- with or without test points? We are talking about an SL1.

A. I'm glad you said with or without. Because

that is -- so first of all, the answer to your question is yes. And let me say that there are, although not the remote access points within the central office that we have talked about so far, in cases of loops that are served by digital loop carrier equipment, there is some remote testing of the copper portion of that loop between the end user's premises and the digital loop carrier remote terminal that can be done remotely. The functionality would be called metallic loop testing, metallic line testing, or MLT for short.

In some of our equipment, there is the capability to test that portion the SL1, in this instance, between the end user's premises and the remote terminal, and determine whether that part is okay or not.

If we want to call that a test point, it's a test capability. So yes. Whether or not there are test points like that on the equipment, AT&T would use them if they were present. Whether they are there or not, it's AT&T's responsibility to find the source of the problem and repair it, return the loop to service.

Q. After the CLEC submits its trouble ticket to AT&T, does AT&T have dialogue with the CLEC to try to isolate whether a problem could be on the CLEC's side, or do they just accept what the CLEC says?

A. They generally accept what the CLEC has told them to be the case, and then they begin exploring potential areas of failure within the AT&T's network.

Q. Let's look at an SL1 without test points elsewhere on the circuit.

A. Okay.

Q. What would AT&T's practice be? The CLEC calls up, with an SL1, we don't have service, whatever, say we have no dial tone, what is AT&T's practice in that situation?

A. Well, the practice is differentiated a little bit by what the service arrangement of that SL1 is. As we discussed, there are various ways that you can produce one of those. It could be all copper, which is the simplest case, or it could be derived via one or more --

Q. Why don't we start off by being simple?

A. I hoped you would say let's start with all copper, because that is the simplest. There are no other testable devices in that all-copper loop. So in that case, AT&T would accept Saturn's trouble ticket, would use a technician in the Serving Wire Center, that is the central office in which the loop appears, the loop extending out to the end user.

And that technician would be loaded, as we use the phrase, with a trouble ticket, would use appropriate

test equipment, test gear, would locate that loop on the distributing frame, and would begin testing and would proceed from there.

Q. So let's stick to the simple situation so at least I might be able to understand that. The first thing that AT&T does when the CLEC reports there is trouble is to dispatch a technician to the service wire -- to the Serving Wire Center. Is that correct?

A. Not exactly. The call receipt center, while I was still there, that Saturn would call we called the CWINS, C-W-I-N-S. The technician in the CWINS center would do whatever they could about that trouble ticket to see are there any tests or not, and, you know, would also look, you know, to see if there was trouble history of that type on that loop.

In other words, the technician in the call receipt center would try to figure out, from whatever available information there was, what ought to be done next.

If there was no history, no testable points remotely, then their instructions would be to find a technician in the central office to begin testing and diagnosis of the problem.

Q. For example, no hurricane had just hit, an entire neighbor is not out, they would look for things

such as that?

A. Who is they? I didn't follow.

Q. The CWINS, they would first try to isolate whether there were other troubles such as --

A. Sorry. Go ahead.

Q. -- such as a storm?

A. Exactly. They would try to bring together all the information they did know, if there were cable cuts that they were aware of. In fact, when I was in that center last, you know, there were monitors that the technicians could see that told them about events like that, you know, there's a violent storm in Mississippi right now, or in south Florida, or there is a cable cut in this neighborhood.

And they would try to use that information to correlate is that related to the problem that I have got in this case.

If the answer is no, then they look at that discreet example, would pull up, you know, again, try to figure out is there a history about this loop. Is this the first report we have had? Are there other reports? Is there already a trouble ticket on this loop somewhere being handled by another technician in the center.

They do all these preliminary steps. If none of that reveals information about the nature of the

problem, then a technician starting in the central office would begin testing the loop and try to find the source of the problem.

Q. I understand at CWINS in that initial situation, there is no ability from the CWINS office to remotely test the circuit in any way?

A. Well, the predicate was an all-copper loop without test points.

MR. GOLD: Yes.

A. Yes. In that case, there are no testable devices on that all-copper loop that CWINS could execute.

Q. But if I understand, a CWINS representative gets a call. The first thing they do is to see if there is an obvious explanation, such as a power outage or storm, then looks at the history to make sure that this wasn't the same problem that happened a day ago?

A. Right.

Q. Then the very next step would be to dispatch a technician to the Serving Wire Centers. Is that correct?

A. Yes.

Q. Now, does it matter what time of day or what day it is, as far as CWINS is concerned, in dispatching that technician?

A. At the risk of sounding like I'm mincing words, yes, it does matter. Because if the technicians are

already in the central office, if it's during regular working hours, then they would locate one of those available employees and assign the trouble ticket to him or her.

If it's outside of the hours where that central office is staffed, let's say it's 3 a.m., then the CWINS uses another work group to locate a technician that can travel to that central office and commence the work.

Q. Okay. So excepting a circumstance when you have a hurricane or storm going out, irrespective of the time of the day, AT&T would dispatch a technician as soon as possible?

A. Yes. I agree with that. Yes. It would assign a technician to that ticket. If it's during normal working hours and that central office is normally staffed, then that time is much shorter than if it's in the middle of the night. A technician has to be located and physically has to travel from wherever he or she is and travel to that central office.

Q. And AT&T can do that, send a technician to a place, a Serving Wire Center, that is not currently inhabited, without affecting the integrity or reliability of AT&T's system. Is that correct?

A. I'm not sure what you mean by affecting the integrity or reliability of AT&T's system.

Q. Let me rephrase. There must be situations in which it takes some amount of time for a technician to be able to go and repair a problem?

A. Yes.

Q. Does that time it takes to repair a problem, in the cases we are talking about, does that affect the integrity or reliability of AT&T's network?

A. Yes, it does.

Q. How does it?

A. Because the term reliability, in my lay use of that, would be a description of how effectively AT&T was able to make repairs in a timely manner. And to the extent that that time takes longer rather than shorter, than I would say yes, the reliability of AT&T's network has been diminished.

Q. But you still do not require test points on SL1s, do you?

A. No, we don't, for a number of reasons. First of all, when -- let me start this way. SL1s and SL2s both existed well before commingling was a possibility for CLECs, and as far as I know, rates were set and have not been adjusted, you know, simply because of commingling, except for the COCI we talked about.

Having said that, in the UNE-P world, all of those loops were connected to AT&T's switch, and this

process that I referred to earlier called MLT, metallic loop testing, performed exactly the same capabilities as a remote access test point.

As rates were being set, CLECs were advocating for lower and lower nonrecurring and recurring rates. So I'm sure that there would have been a resistance, during that rate setting, to any notion that said let's put all these other devices on there just in case we ever want it.

So there's that part of the tension that says CLECs generally wanted cheaper, not more expensive, loops. I think to some degree, CLECs advocated that way, because they felt that they could accomplish the same objective of the remote access test point either by having a robust staff that they could dispatch, when they needed to, to their colocations and make the choices -- and make the tests, or would buy and install some of these devices that emulated the same effects that a remote access test point would have and put that inside their colocation.

So those were some of the tensions that resulted in there not being test points applied from AT&T's side of the provision of the loop to an SL1. So either the CLEC could do it themselves, but they would make a decision that that equipment or that functionality

is useful to me or it's not, I will either buy it or I won't. That is a function of, you know, what they expected their technicians to be capable of in the absence of those things.

So AT&T said, you know, first of all, you know, companies like Saturn, you are technically sophisticated, you have your own work force, you are big boys and girls, to use the vernacular. You can decide for yourself whether you want test points within your colocation or not. So AT&T created this loop that didn't have them. That is the SL1.

Q. If there were problems on a loop, whether it was an SL1 or an SL2, and assume, for whatever reason, that the test points were not installed or just did not work, is there anything regarding an SL2 that would take longer to repair than an SL1, assuming the test points were not there and not working?

A. Oh, presuming that the test points on the SL2 were either not working or badly installed?

Q. For some reason, we have an SL2 without test points. Would it take any longer in that situation to replace it, to fix it, than an SL1?

A. Hypothetically, I don't see, all other things being equal, why it would take more or less time to repair one over the other.

Q. They should be repaired in the same amount of time?

A. All other things being equal, I would expect that to be the case, yes.

MR. STARR: Can we go off the record?

MR. GOLD: Sure.

(Thereupon, there was a recess taken at 12:32 p.m.)

(Thereupon, the proceedings were resumed at 1:25 p.m.)

BY MR. GOLD:

Q. Now, if I understand the automated one-button design process, it automatically makes assignments between the loop and the D4 channel bank. Does it also make any logical connections?

A. Meaning logical connections through the digital cross-connection system, the DCS?

MR. GOLD: Yes.

A. Yes, it should.

Q. So besides making the assignments, it would also help make the connections in the circuit?

A. Yes. As I understand it, PRO-CDS interacts with another subsystem called C1/PREP, which is referenced in here. And together, they route through logical devices, set levels for the various devices.

I can't tell you exactly PRO-CDS does this, C1/PREP does that. But together, they cause those connections to be designed.

Q. I'm not going to go into that, because I'm not sure I would understand it. Let's talk a little bit about the process in which test points are installed on an SL2.

THE WITNESS: Okay.

Q. Is part of that process -- as far as the assignments, is that also automated?

A. Yes.

Q. As far as the connections, is some of that automated, as well?

A. Do you mean designing the connections between the loop and the test point?

Q. Making the connections between the loop and the test point, is that done logically with connections on the DCS?

A. In the cases I looked at in Florida, yes, all of those connections to the -- I'm sorry. You were talking about the test point?

MR. GOLD: Yes, sir.

A. No. I don't think I saw any of those where the connection to the test point was made through a DCS.

Q. Okay. But in Florida, what you were saying was

all the connections to -- that you were able to look at between the loop and the D4 were made automatically?

A. No. I can't say that. Whether they were made automatically or not, I can't know, because, as we talked about before, the designer has the ability to make certain assignments him or herself which would be reflective in the WORD document that is produced that would bear the label PRO-CDS design.

So I can't tell you that all the necessary connections were made, were put in place or picked out by the mechanized part of the process.

Q. The mechanized process has the capability of making those connections?

A. It's intended to do that, yes.

Q. So if I understand correctly, as far as the loop, the D4 connections, if everything worked as intended, the assignments and connections would be made automatically?

A. Again, I have got to quibble a little bit with your word.

Q. Mechanically?

A. No. It was the word made. I don't want to imply that the designer pushes a button and then physical connections are made, especially those that involve attaching a piece of wire from one place to another. So

yes, the connections are specified that will then be put in place during the provisioning process of the circuit.

Q. Aren't some of the connections logically made?

A. Some of them are, yes, and PRO-CDS would create instructions for those devices where logical connections could be made to do that at the time of provisioning.

Q. When we say logical connections, what do we mean?

A. Well, I use that phrase to mean something other than a physical connection, that is two pieces of equipment attached to each other by a wire. Instead, another device is in the middle of those two things. Both of the devices you want to connect are connected to that thing in the middle. It connects them digitally by establishing -- using a technical term, by establishing a time slot connection from one side of itself to the other. So they are nonmechanical. They are logical or arithmetically derived connections.

Q. Which do not need human intervention to make?

A. Except to the extent that a human has, in some cases, to execute the command that makes those connections.

Q. And if we take a look at the colocation arrangements, it does require a human to make the disconnect, as you pointed out, between the -- if it was

a UNE-P?

A. Yes.

Q. And then physically make the connection on the CFA specified by the CLEC?

A. Yes. There is human work, physical work, involved in that connection.

Q. Now, if we look at your second Declaration -- I'm not sure if I gave you that.

A. You gave me a copy, yes.

Q. By the second Declaration, I'm talking about your Second Supplemental Declaration. If we start looking at paragraphs 41 through 43, you talk about what is necessary to install and design the test points on an SL2. Is that correct?

A. Yes.

Q. And that's using a database called Switch?

A. Yes. It's not an acronym but yes, there is a computer system called Switch produced by Bell Communications Research. They have another name, too. It's not an acronym. It doesn't stand for anything, but yes, there is that process.

Q. And that automated system would allow an idle tie pair to be changed from available to be used from the test point?

A. Yes, with human intervention. Here's how

Switch is used in this setting. The overall design process does not establish all of the connections that are needed to make connections between the loop and the test point.

So as it says here in paragraph 43, when the technician gets to that point that he needs -- let me stop right there and say that the test points are not located physically on the main distributing frame. So there has to be a jumper, as we have used that phrase, to connect to them.

And those jumpers are -- in this case, those tie cables are inventoried in this system called Switch. So when he or she gets to the point to make those connections, then the technician queries Switch, and says I need a spare tie cable pair from here to here, selects it, and marks it and changes its status from idle to in-use during that provisioning process.

Q. Then he has to run the jumper?

A. Yes.

Q. Does he logically do the connections?

A. It tells him which tie cable pair to use. And he makes a jumper cable connection between the loop on the main frame, and that tie cable pair that gets him over to wherever the test point equipment is, and potentially has to make a connection there.

Q. Which is the same thing basically that the technician does in the colocation arrangements, moves a jumper from one point to another point?

A. Well, technicians do that all day long for a variety of reasons. So yes, they are placing jumpers in various settings.

Q. The automated system design says here is what you do?

A. Well, in this case, the automated system did not do that. Instead, the technician had to go into the database, find an idle pair, and assign it for his use or her use and provision that.

Q. The system will tell him which pairs are idle and which pairs are active, does it not?

A. Yes, but it doesn't do it automatically. You have to ask it.

Q. Okay. You ask it and it does it?

A. Your earlier question connoted to me that during this process the technician would be given that information along with the order, and that is not so.

Q. He has to ask for it? The computer can't read his mind, correct?

A. That is a good way to say it.

Q. Now, if we took a look at page -- at paragraph 24 of your initial Declaration, which is on page 10, and

also, I guess we start on 23 when you talk about test points, you don't mention Switch or any automated process, do you?

A. No. And I wasn't trying to name every system that might be invoked here in the provisioning. Here again, I was trying to give a fairly short description of what took place to connect a loop and a test point.

Q. Use of automated process cuts down on how labor intensive that is, does it not?

A. As a general proposition, yes. But balanced against that is the cost of the mechanized process itself. Sometimes that may be more than the labor that otherwise would have been expended.

Q. In your first Declaration, you were concerned how labor intensive the provision commingling was. You were not concerned with the costs of the automated process, were you?

A. No. I was not concerned with cost in that analysis. I was showing the relative differences in human intervention, in, you know, unbundled loops extended to colo versus unbundled loops used in commingling.

Q. In both, the technician runs jumper pairs, jumper cables?

A. But in different volumes, yes.

Q. Now, are SL2s ever provisioned to colocated arrangements? I believe we talked about that earlier.

A. Yes, they are.

Q. And if an SL2 was provisioned to colocated arrangements, would there be test points?

A. Yes.

Q. Now, if AT&T were to provide an SL2 to a colocated CLEC, we would follow the process that you described in your first Declaration as the -- what you referred to as a relatively simple process with the technician taking the jumper and moving it from one place to another, correct?

A. Yes. In the case of the SL1, yes.

Q. And as far as the technician is concerned, there would be no difference between the provisioning of an SL1 loop to a colocated arrangement or an SL2 loop to a colocation arrangement absent the test points?

A. Absent the test points, the two processes would be similar, yes.

Q. They would be the same, wouldn't they, absent the test points?

A. Yes. They should be.

Q. I mean, the inventorying in TIRKS is something done automatically by the system, isn't it?

A. You hit on the example or the point I was about

to make. The processes would not be identical, because the SL1 is not inventoried in TIRKS, whereas the SL2 loop is inventoried in TIRKS, including those that are just simply extended to a colocation arrangement.

So the information that is presented to the technician is slightly different because it comes from two different sources. That is why I hesitated at your word identical.

Q. Okay. On paragraph 40 of your Second Supplemental Declaration -- I will find it in a minute. Do you recall making a Declaration that improving the rates for the SL2 loop, the FPSC, the Florida Public Service Commission, effectively concluded that the cost associated with the design steps relating to both the loop and COCI were to be recovered in the nonrecurring rates for the SL2 loops?

A. Yes.

MR. GOLD: And I know it's not important, but we will find it.

THE WITNESS: Yes, it is. It is in 45.

MR. GOLD: I'm looking at the draft. That is why.

MS. SAKS: It's on page 4.

BY MR. GOLD:

Q. That statement is not true, is it?

A. Yes, it is true.

Q. When you said effectively concluded, you meant that they did not actually conclude?

A. No. I meant that it had that effect. The Florida Commission did not -- in its setting of the nonrecurring rate for the COCI, did not consider any design steps. The only elements of the nonrecurring rate for the COCI were related to wiring steps, not CPC personnel steps.

Therefore, since there was no design time attributed to the COCI, but since it must be designed, there is only one other place that that cost could have been recovered, and that is through the nonrecurring rate of the SL2.

Q. Now, you can't point to anything in the cost study performed that backs that up, can you?

A. No. That is why I carefully chose the phrase effectively concluded, because their order had -- by not establishing a nonrecurring rate for the COCI that had design work attributed to it, the effect of their order was to attribute that cost, instead, to the SL2.

Q. The SL2 also had a cost study, did it not?

A. It did. And in that cost study, CPC work was attributed to that cost.

Q. And in the cost study for the loop, it did not

attribute the design cost to the COCI, did it?

A. I'm sorry. In the cost study for the loop?

Q. It didn't say hey, we have these design steps for the COCI?

A. No. You are correct. It was silent on that. It didn't say instead, we will recover a cost, whatever it is, someplace else. So the effect of all that was there is only one nonrecurring charge that is assessed in this commingling arrangement that seeks to recover, other than Special Access, that seeks to recover this design work, and that is the nonrecurring rate for the SL2.

Q. That is based upon your deduction, not based upon anything you could point to or demonstrate in writing.

A. If by writing, you mean by reading of the Commission's order, no.

Q. Or AT&T's cost study?

A. No. I deduced from the only places that were cost -- I looked at the input to the cost studies and saw where they included design time and where they did not, and I concluded from that that there was no design work attributable to the COCI.

Q. So in a colocation arrangement, a CLEC uses a -- orders an SL2. They would not order a COCI, would they?

A. No.

Q. So those -- according to you, those CLECs that order an SL2, would be overpaying for the cost of the COCI, because they would be paying for design work that they are not getting?

A. You said for the design work of a COCI. I don't think that is what you meant.

Q. When they order an SL2, they are paying for design steps of a COCI, according to you, and they are not receiving any design steps, are they?

A. In the predicate you set out where the SL2 is only extended to the colocation arrangement, yes. In the grand scheme of things, when all of those costs are aggregated together and the incidences of those, of costs being applied to centers, yes.

Some loops would, I suppose you could say, the CLEC would be overcharged, and in other cases would be undercharged. But that is kind of the nature of cost studies.

Q. When you were doing the cost studies for the SL2 loop, that was in what year?

A. I'm not sure exactly the last time that was visited. It predated commingling.

Q. So you weren't even considering commingling in those cost studies?

A. That is correct. But all of those costs were being looked at in the context of setting a rate for the COCI, which, you know, did follow after the initial cost studies for the SL2. And the conclusion was to leave the SL2 rate alone and not attribute design work to the COCI.

Q. So when the SL2 rates were being charged, were being fixed, you included -- AT&T included prices for a COCI that were never being used at any time that the CLEC did commingling?

A. No. Mr. Gold, you know I didn't say that.

Q. Is that statement false?

A. It is. What you just said is false. No. The cost study did not artificially include things that AT&T knew at that time would never be used by a CLEC. And if AT&T had, I'm sure that that would have been brought to the attention of the Commission and said we don't even understand what this COCI is all about.

Why is it being -- why is cost being attributed to a loop that I want to buy one day? That did not happen.

Q. It didn't happen, because the cost of the COCI is in the COCI, and the cost of the SL2 is in the SL2. Isn't that correct?

A. That's not correct. The entirety of the cost of the COCI includes required design steps. Apparently,

at the time that the COCI rates were being set, the Florida Commission chose not to review and change the rate for the SL2, and that is what we have today.

We have a design element attributable to the SL2. And if AT&T recovers the cost at all, which it's equally possible that the design work that is attributed or expended towards the COCI is not recovered. That is equally possible.

So it's either being recovered as the nonrecurring for the SL2, or it's not being recovered at all. But there is not a design step attributed to the COCI, according to the rates that the Florida Commission set.

Q. Your statement on page 4 that the Florida FPSC effectively concluded the costs associated with the design related to both the loop and the COCI were to be recovered in nonrecurring rates for the SL2 might be untrue? You might not -- according to you, you might not recover them at all?

A. No. I don't think so. I mean, they were actively looking at these rates, and chose to leave the nonrecurring rate for the SL2 alone, and, instead, to set a rate independently for the COCI.

MS. SAKS: I don't quite understand, Mr. Milner, what significance you draw from the fact that

the Florida Commission decided to leave the SL2 rate alone.

Why does that translate, in your mind, to a finding that the design costs associated with the COCI would be captured in the rate for the SL2? Maybe I'm misunderstanding what you are saying altogether. Could you explain?

THE WITNESS: Well, because there is no other place for it to be recovered.

MS. SAKS: Or they can decide it can't be recovered at all.

THE WITNESS: Or they might have concluded that.

MS. SAKS: Okay. Was there data presented to the Florida Commission regarding the design costs of the COCI?

THE WITNESS: I don't think so. The version of the cost study that I saw did not have any inputs for CPC or any other worker, other than the worker that was actually going to wire the COCI together.

BY MR. GOLD:

Q. Mr. Milner, isn't it equally plausible that there was no design cost associated with it, because design was done automatically and recovered elsewhere?

A. That is not a true statement. Whether the

design is done automatically or manually, there is a cost that is attributed to it. If the machine does it, the machine costs something. So using the machine costs something. If a human did it, then there is a cost there, too.

Q. Would you turn to paragraph 32 of your second supplemental deposition?

A. Okay.

Q. You identify one of the design steps necessary in provisioning a COCI as follows: As part of the COCI design process --

A. I'm sorry to interrupt. Are we in 32?

MR. GOLD: Yes, sir.

A. How does the sentence start?

MR. GOLD: As part of the design process, the italicized part at the very end.

THE WITNESS: All right. Thank you.

Q. As part of the COCI design process, the designer determines the expected transmission levels to be delivered at the CFA. The transmission levels are determined automatically or mechanically, are they not?

A. They can be, yes.

Q. Can you point me to a portion of the SL2 NRC cost study that recovers a cost associated with that activity?

A. No, I can't, because that cost study was not modified once commingling COCIs were the subject of the Commission's review.

Q. If you point me to the design steps you associate with COCI in steps 34 through 38, which are at the very end, the italicized portion, you cannot point to the design, the NRC cost studies that recovers the costs in any of those. Is that correct?

A. If you mean the cost study that originally set the rate for the SL2, correct. It's not discretely identified in there.

Q. Would you agree that there are three primary components of a commingled circuit in the way STS uses the circuit? One, an unbundled loop; two, a central office channel interface or COCI; and Special Access facilities?

MR. STARR: Alan, I couldn't hear you. Would you repeat it?

BY MR. GOLD:

Q. Would you agree there are three primary components of a commingled circuit in the way STS uses the circuit? An unbundled loop is one, a central office channel interface is two, and three is Special Access facilities?

A. Because you used the word primary, I will agree

with that characterization of the commingled circuit. There are other pieces of equipment that were used for Saturn's commingled arrangements that you just didn't -- that you didn't just now name.

Q. In the ICA, the loop and the COCI are two separate rate elements, are they not?

A. Yes.

Q. And in the draft of your second Declaration, which I believe you have before you --

A. Which one is that? I thought I had the final.

MR. GOLD: The one that says June 4th, 2010. I think we marked it as Exhibit 2. It's marked as Exhibit 2.

A. I have Exhibit 2 as this.

Q. How about 1 or 3?

A. Yes, 1, June 4. Yes, this is the draft.

Q. Now, in your draft, in paragraphs 7, 8 and 30, you tried to combine them together as one element, did you not?

A. You know, I saw Saturn's response to that, and Saturn suggested that I was trying to invent a new unbundled network element, but that was not my intent. I was trying to streamline the discussion of this.

In my writing, a new network element in a document does not make it an unbundled network. Only a

state commission could create a new unbundled network element. That was certainly not my intent.

I was trying to streamline the discussion of the design steps that went with the loop and with the COCI, and talk about those collectively compared to the Special Access arrangement. There is no intent to create a new UNE, or to combine phrases that didn't ordinarily go together.

Q. But you did try to combine the functions and design process of the loop and the COCI in the draft of your second Declaration?

A. No. I would not characterize it that way at all. I use the phrase loop/COCI. They remain discreet pieces of the commingling arrangement. If I had come up with a new phrase, loop C or something else, perhaps I would be guilty of what you are saying.

But I used exactly the same phrasing as I had been using all along, that is loop and COCI.

Q. Now, if we look at your first Declaration, I can't find the term COCI or central office channel interface any place in that document.

A. You may not see those phrases, but the description is in there as to what those things do. In fact, if you would like, I will point it out to you. I talk about the -- well, let's just start in my initial

Declaration. I will find the part where I talk about the seven work steps.

MR. KLINEBERG: Paragraph 37.

A. Is it paragraph 37? Thank you. If you look in paragraph 37, parenthetical one, I talk about a cross-connection at the main distributing frame to connect the loop to a single pair or multi-pair tie cable between the MDF and the distributing frame or to a rack of equipment referred to as D4 channel banks, and it goes on.

That connection and the D4 channel bank is the first part of the COCI. That is the jumper, as we called it earlier. That sentence continues on the next page. And it says, the second parenthetical, the pair on the multi-pair tie cable is connected to a single input on the D4 channel bank, and that is the second part of the COCI. That is the low-speed card.

I didn't use the phrase COCI, but I think I accurately described the parts of it.

BY MR. GOLD:

Q. You were describing the design steps associated with the SL2 UNE Loop, were you not?

A. No. I was describing the overall composition of a commingled circuit, which happens to use an SL2 loop.

Q. Okay. Now, you were talking about, were you

not, how much more difficult it was connecting the loop to a commingled arrangement than a colocation?

A. Those were not my words. I didn't say much more. I used the term complexity of one process over the other.

Q. So it is not much more complicated?

A. It is more complex. That is what I said.

Q. Much more?

A. In my opinion, yes.

Q. Now, STS has never complained in this case regarding the costs of any of the Special Access that it's paying for, has it?

A. Not to my knowledge, no.

Q. STS has not complained at all in this case, has it, regarding the price that it pays pursuant to the ICA for the COCI, which is a UNE?

A. To my knowledge, no.

Q. STS has complained regarding what it believes is an exorbitant cost for the SL2, has it not?

A. That is the substance of this complaint, yes.

Q. I don't know that it's just the substance, but it's part of it. Now, weren't you, in your initial Declaration, omitting the references to the COCI because you were trying to justify the complaints regarding the cost of the SL2?

A. Certainly not.

Q. Why didn't you mention the COCI in your first Declaration?

A. I didn't see a reason to introduce a new phrase when what I was trying to do is set out a general description of the links along the way that distinguish a commingled arrangement from a colocation arrangement.

Q. We are not just talking about a phrase, are we? We are talking about separate rates and elements in the ICA?

A. As I pointed out in paragraph 37, if that's where we were, I named the two parts that compose a COCI.

Q. But you don't mention -- you don't attribute any design steps to this COCI in either of your first two Declarations.

A. Well, first of all, these seven steps that we keep coming back to don't specifically, you know, limit the amount of design activity that might be required to make the commingled circuit operate.

Q. When I look at 37, you are talking about distinctions of providing a UNE Loop.

A. I'm not sure I understand how my use of the phrase COCI would make Saturn more acceptable of a nonrecurring rate that they, obviously, took issue with.

MR. GOLD: We don't take issue to the recurring

rate of the COCI.

A. I meant to say the nonrecurring rate for the SL2.

MR. GOLD: We don't take issue to the nonrecurring rate of the COCI.

A. I didn't say the COCI. I said the nonrecurring rate for the SL2.

Q. How many design steps do you associate with the COCI until your Second Supplemental Declaration?

A. Well, let's look at them. What I'm looking for -- I think it's italicized where it talks about --

Q. Design steps?

A. -- the design steps that are attributable to --

MR. GOLD: I counted seven of them.

A. I'm sorry?

MR. GOLD: I counted seven, but I became an attorney because I couldn't be an accountant.

A. No. I'm looking for the paragraph reference where I summarize the design steps. Here we go. So I'm looking for Part B. Okay.

The discussion of design steps being part of the COCI began at 31. And that is all summarized in paragraph 39. It says, there at the bottom: These design steps are shown in the fields indicated in Exhibit B by Items A through G, A, B, C, D, E, F, G, seven of

them. I think that was your count, as well.

Q. Yes, sir. In your Declaration here and elsewhere, I don't see any footnotes to go for authority. For the seven design steps, where did you -- for the COCI, 31 through 38, where did you get that information from?

A. From the WORD document itself, which is, in this case, Exhibit B for the Loop N COCI portion of this commingled arrangement.

Q. Do CLECs use D4 channel banks for other purposes than commingling?

A. Do they?

MR. GOLD: Yes.

A. They could.

Q. AT&T sells CLECs -- or not sells. That is the wrong word -- makes D4 channel banks available for CLECs to use in cases other than STS and commingling?

A. I would need to go back and see if there is a price element somewhere for an unbundled D4 channel bank. But D4 channel banks have been around for a long time, and are used for things other than commingling.

Had there been a request of a CLEC for AT&T to unbundle its D4 channel banks, there would have been a rate established for that. I just can't recall.

Q. In what other instances do CLECs, that you know

of, use D4 channel banks?

A. They may not. I said that they could.

Q. What could they use them for?

A. They could use them for the same purposes that AT&T uses them. That is to, for example, establish a service that is referred to as foreign central office or foreign exchange service. That is where a customer is located in one central office but appears to the world as having been served by different central offices.

Q. In those instances, they don't order a D4 channel bank, but they would need to order a COCI. Is that correct?

A. There would be an analogous connection made if the -- I have to ask you this. In that hypothetical, did the CLEC order an unbundled loop from AT&T to use with that D4 channel bank?

Q. Does it matter?

A. It certainly matters. Because if the answer to that is yes, then an analogous COCI would have to be created to connect that loop to the D4 channel bank in that setting.

Q. When you say analogous COCI, what do you mean?

A. Well, I mean the same equipment would have to be put in place to connect the loop to that D4 channel bank. Whether we call it a COCI or we call it anything

else, it would still have to be there.

Q. In that case, you are using COCI simply as a cross-connect, right?

A. No. I'm using a COCI to mean the cross-connect, the jumper that we have talked about, and the low-speed card of the D4 channel bank.

Q. What if the answer was no?

A. Then the answer would change, because then if all the CLEC was doing was acquiring a D4 channel bank, then that D4 channel bank would be extended into the CLEC's colocation arrangement. Then the CLEC would use its own loop, or somebody else's, or however they intended to use the D4 equipment.

Q. The D4 channel bank is a MUX, is it not?

A. We talked about that earlier. It depended on your use of that phrase multiplexing. It has that capability in that it can aggregate 24 individual DS0 signals onto a single DS1. If you like the phrase multiplexing in that context, then that's fine.

Q. You pay for the D4 Special Access?

A. We went through that earlier. You pay for the low-speed card in the D4 channel bank via the provisions in the Interconnection Agreement. But the channel bank itself is provided as part of the Special Access.

Q. Without the low speed, the MUX doesn't work,

does it?

A. No, it wouldn't work. That is why I said that the CLEC would acquire the low-speed card as an unbundled network element. If that is all it wanted, that low-speed card would be connected somehow to the CLEC's colocation arrangement.

Q. Is that the case, or is AT&T charging twice for the MUX, once in the COCI and once in the D4?

A. The COCI and the low-speed card in the D4 are the same thing. So there cannot be any double charging for it.

Q. What about if they are the same thing and you pay for two -- you pay for it in UNE and you pay for it in Special Access, isn't that double charging?

A. No, it's not double charging, because you are not paying for the same thing. You are paying for the high-speed connection out of the D4 channel bank, and the channel bank itself is Special Access. And you are paying for the low-speed card, which happens to plug into that channel via the local Interconnection Agreement.

Q. The D4 is not just a high speed, is it? It is a MUX, from low speed to high speed?

A. Yes. Again, it has multiplexing capabilities. And there is no double charging, because parts of that rack of equipment are paid for through -- via special

incentive through Special Access, and one part of it, that is the low-speed card, via the local Interconnection Agreement.

MR. GOLD: Let's look at your Second Supplemental Declaration.

THE WITNESS: Okay. The file version or the draft version?

MR. GOLD: We will stick with the file version this time.

THE WITNESS: Okay.

MR. GOLD: Let's begin on page 5 Section A.

THE WITNESS: All right.

Q. And these are design steps that are part of Special Access?

A. That's correct. Yes. That's where that discussion commences, yes.

Q. And in there, you are talking about what you believe are the design steps required for the Special Access portion of the commingling arrangement?

A. Yes.

Q. Where did you get the information to put in there?

A. I derived it from the WORD document of the -- that is shown in Exhibit A that depicts all the connections in the subject Special Access arrangement.

Q. And the WORD document -- the Special Access is ordered and put into place prior to the generation of the WORD document, is it not?

A. No. You said it was ordered and put in place prior to the creation of the WORD document. The circuit cannot be put in place unless a WORD document exists.

Q. The Special Access portion is ordered and installed prior to the WORD document, is it not?

A. No. The WORD document is created as part of the provisioning process. This work is done to design the circuit, and then the work, the connections are made.

You seem to suggest that the WORD document does not exist until the circuit is in service, and that's the part I object to.

Q. When are Special Access aspects of this ordered?

A. Of the commingling arrangement?

MR. GOLD: Yes. Why don't we take a look at a diagram that might be helpful. If you could label this as Exhibit 4.

(Whereupon, Milner Deposition Exhibit 4 was marked for identification and attached to the transcript.)

MR. GOLD: You have the official one.

THE WITNESS: Oh, great.

BY MR. GOLD:

Q. Do you have any quarrels with what we marked as Exhibit 4?

A. As to its being technically accurate?

MR. GOLD: Yes, sir.

A. At least two issues that I would take with this drawing.

Q. Okay. Would you please tell me them?

A. First of all, this drawing does not show the test point that the loop would be attached to. And second, it does not show the digital cross-connect system. Perhaps it does. Let me make sure that it shows -- yes.

Since you showed the special -- since you showed all of the green as Special Access, there's one more connection that is made through a digital cross-connection system to get to the D4 channel bank, which is shown in Exhibit B. And I can walk you through that, if you would like.

MR. GOLD: First, let's take care of part of it. If you can mark this as Exhibit 5, please.

(Whereupon, Milner Deposition Exhibit 5 was marked for identification and attached to the transcript.)

BY MR. GOLD:

Q. Did I take care of one of your quarrels?

A. I have a quarrel with you. You draw it in a different place. But yes, you show the SMAS point as being wired from and to the main distributing frame, yes.

Q. What was the other problem?

A. The other issue is that -- I think I can only explain this using Exhibit B. And that is to show that in between steps or call-outs A and D is a digital cross-connect system that is not shown on your drawing here.

Q. Isn't the digital cross-connect the second green?

A. It's a different one. In this case, the -- it's a little difficult to use the diagram as it is, because the D4 channel bank itself is accessed, as this WORD document shows, through digital cross-connect equipment.

MR. GOLD: If we can mark this as Exhibit 6.

(Whereupon, Milner Deposition Exhibit 6 was marked for identification and attached to the transcript.)

BY MR. GOLD:

Q. If you could turn to the third page of Exhibit 6, does that depict what you are talking about, the DCS?

A. Let me take a moment. There's lots of --

there's four different -- would you like to point me to one of them?

MR. GOLD: Plan 1A.

A. 1A. Yes. That seems to properly show -- unfortunately, it doesn't show the test point on here, but it does show the imposition of the 10DCS to get to and from the D4 channel bank, and then back from there to the Special Access point of interconnection.

Q. Is the DCS a logical connection to the D4?

A. It is.

Q. Which means it's not done with physical work?

A. Well, again, the design steps may or may not involve physical work. But pushing the button to create a logical connection across the DCS is not a manual process. It's an electronic process.

Q. Is that a digital DS0 going into the DCS?

A. Going into the DCS? No. That is a digital DS1 going into the DCS.

Q. It is a 10DCS?

A. 10DCS can accommodate either DS0 level circuits or DS1 level circuits.

Q. Where would the test points be in Exhibit 5 1A?

A. You will have to help me with what DFI stands for. But it looks to me a number of equipment elements are left off this diagram. Oh, I know.

MR. KRAMER: We have been trying to figure that one out, too.

A. I know what an FDI is. Wait. This is a memory test now. But I can't recall. Digital facility interface, that is what it stands for. The digital facility interface in the central office is what connects the DS1 leaving the remote terminal, RT, and the other equipment in the central office on a DS1 basis. So that is a DS1 connection to the DFI, a DS1 connection to the 10DCS, and a DS1 connection to the high-speed side of the D4 channel bank.

Q. Where would the test points be?

A. They would be somewhere between, as you have depicted it here -- that's a real good question. Because I would have to go back and figure out whether the DFI is assigned to the main distributing frame or not.

But anyway, the -- it's probably between -- it's on that line that shows between DFI and the 10DCS, because the main distributing frame would sit in between there, as well, and the connection to the test point and then back to the main distributing frame and then forward.

Q. Okay. Mr. Milner, just if you take a look at the first page, this was a diagram done, as I understand it, by AT&T.

A. Well, it appears to be. This is the first time I have seen this document. The author is an AT&T employee, and it looks -- I recognize all the names on there as AT&T employees. So yes, this is likely an AT&T document.

Q. Special Access, when is it ordered in this process?

A. Well, some Special Access facilities have to be ordered prior to and installed prior to the loop and the COCI being ordered and provisioned, in order that there be a place for the loop and the COCI to attach.

Q. What about the D4 channel bank, when is that ordered and put in place?

A. Well, the D4 channel bank is one of those things in the central office that has likely been in there for years, possibly decades. So I can't tell you when it was put in there. But that, too, would have had to have been in place before the provisioning of the commingling arrangement, because the loop has to be connected to the D4 channel bank through the low-speed card.

Q. The same for those other aspects of Special Access that are depicted in Diagrams 4 and 5, I believe?

A. Diagrams? You mean Exhibits 4 and 5?

MR. GOLD: The two color diagrams.

A. Now that I found them, ask me again, please.
Q. Those are ordered and in place, what is highlighted in green there, prior to the provisioning of the loop. Is that correct?
A. Yes, provisioning of the loop and the COCI, yes.
Q. Now, going back to page 5, Exhibit A, design steps that are part of Special Access.
A. Did you say paragraph 5?
Q. Page 5, Number --
A. I'm there, yes.
Q. If we look at Section A, that goes from 11 to -- through 30, correct?
A. Yes.
Q. And if we start looking at what you italicize beginning on Paragraph 14, you talk about what you believe are design steps that are part of Special Access?
A. Yes.
Q. For example, if you look at 14, you say this assignment was made during the Special Access design process, correct?
A. Yes.
Q. So you attribute 16 steps that are part of Special Access?
A. I will trust your math and believe that you

counted the number of the lettered boxes correctly.

Q. And we already discussed the next section is the COCI, that there were seven steps that you accepted as part of the COCI design steps?

A. Correct. Yes, I did.

Q. Now we get to the short section. On page 13, design steps that are part of the unbundled loop. And the only design step that you associate with the unbundled loop is the design of the test points?

A. Yes, and the selection by the technician of -- who is essentially performing a design function by finding idle tie pairs -- tie cable pairs, rather, and assigning them to work on this. So yes, Item H is the design step related solely to the unbundled loop.

Q. That is your latest Declaration, that the only design steps associated with the unbundled loop are relating to test points, correct?

A. Yes.

Q. Let's look at page -- paragraph 44 of your initial Declaration.

A. Okay. You did say 44?

MR. GOLD: Yes, sir.

THE WITNESS: Thank you.

Q. Would you please read that?

A. Paragraph 44?

MR. GOLD: Yes, sir.

A. Certainly. It should be clear from the above discussion it is technically infeasible to commingle an SL1 loop with Special Access transport. By definition, an SL1 loop does not include the design work that is necessary to complete the commingled arrangement. Indeed, because it is not a designed loop, an SL1 is not even inventoried in TIRKS. And it, therefore, cannot be provisioned in combination with a Special Access service.

Q. There is no requirement that a loop must have test points before it can be inventoried in TIRKS, is there?

A. None that I could think of.

Q. There is none, is there?

A. None that I can think of.

Q. So if the only design work associated with the loop is the test points, what makes an SL2 loop a design loop other than the test points?

A. The fact that the loop itself is to be connected to something. In this case, I was discussing whether or not a nondesigned loop could be connected to the Special Access, and I said that it could not.

To make that happen would be -- or the only way that that could occur would be then to take the unbundled

loop and design it such that the loop routed to a D4 channel bank and then out of the D4 channel bank and on to the Special Access.

There is no other way to connect a voice grade analog loop to Special Access except by going -- in a commingling arrangement, other than going through this D4 channel bank.

Q. But as we discussed, that the only design work associated with a loop is putting test points on it, otherwise, you have no design work associated with a loop. The design work is with the COCI and the Special Access?

A. True enough, but there is nothing in between to connect those two things. Now, the alternative course would be to not -- for the CLEC to not use an unbundled loop, but rather say let's just you use Special Access all the way from the customer's premises to wherever the CLEC wanted that circuit to go.

So long as you are trying to combine an unbundled loop with Special Access, there's got to be something that makes those connections. And that something is, as we have a been talking about, the COCI, and it must be designed.

Q. Can I connect an SL1 to the COCI?

A. No.

Q. Why not?

A. Because the SL1 is not a designed loop.

Q. Now, let's take a look at paragraph 23 of your initial Declaration. Before we go there, what documentation exists that says only design loops must be attached to the COCI?

A. Well, it says that in the CLEC information package that is in the record here, and it defines the types of loops that can be connected, and the only one that is a voice grade loop is the SL2.

Q. Well, the CLEC information packet says what loops can be commingled, correct?

A. Yes.

Q. It doesn't say what loops can or cannot be connected to a COCI, does it?

A. It depends on how you are using the term COCI. As we have been using it all day to be part of a commingled arrangement, then yes, it does have to be.

Q. COCIs always have to be part of a commingled arrangement?

A. No. That is general purpose term that is used to describe a number of different things. But I thought you were talking about the sort of COCI we have been discussing for the last four or five hours now.

Q. I have been discussing COCI as that term is

used in the ICA.

A. Good, because that is how I have been using it as well.

Q. So we are on the same page. It doesn't say in the ICA that COCIs are limited to commingling, does it?

A. The only place those COCIs are described -- well, one place that those COCIs are described, not the only place, but in that CLEC information package where it describes commingling, it describes the types of loops that can be used. The only type of voice grade loop is the SL2.

By exclusion, that means to me, and I think to any other reader, that any loop types that aren't enumerated there could not be connected to that type of COCI, including the SL1.

Q. You get that all, just so I understand, from the CLEC information package and no place else?

A. I didn't say that. I said that is one place that would -- I mean, this document that we looked at earlier, which is Exhibit 5, also limits this type of arrangement, this commingling arrangement, to the SL2.

Q. We are talking about the limitation of the COCI in an SL2?

A. It talks about the COCI. If you would like, I will take the time. It says the central office

interface, which the low-speed card and jumper, will be a part of the UNE Loop order COCI replaces colocation. It's the very same COCI. It's described in this document. It's described in the CLEC information package, and I don't know how many others, but it is in at least those two, with the same limitations.

Q. When you say with the same limitations, when I look at limitations, it's this can only be used someplace else, commingling is only limited to that. You haven't shown me any of that language in any of those documents.

A. Well, let me do so now. I disagree that I haven't done that. Chapter 5 in the UNE, UNE-P to UNE Loop Commingling, 5.1, types; only one type of commingled loop is available for this process, two-wire unbundled analog voice designed SL2. If that is not a limitation, then I don't understand the meaning of the word.

Q. Sir, I agree with you. Let's move on. AT&T has limited the use of commingling to SL2. We disagree with it, but the fact that you have limited it is one of the bases of why we are here today.

Could you please read the beginning, I guess, three sentences of paragraph 23 of your initial Declaration?

A. Sure. Did you say the first three sentences?

MR. GOLD: Yes, sir.

A. Okay. SL1 and SL2 loops are both analog voice grade loops. Although the same basic loop facility can typically be used to provide an SL1 or SL2 loop, there are two main differences between them. First and most important, an SL2 is a designed loop. That means that before an SL2 loop is provisioned, design work is undertaken by AT&T engineers. I think that is the end.

Q. I have described the design work necessary to support further below. Second, SL2 loops have test points wired in the loops that permit remote testing in order to locate trouble conditions, correct?

A. Those sentences are there, too, yes.

Q. Now, the distinction between an SL1 loop and SL2 loop are two, as you pointed out. One is design; two is test points?

A. Yes.

Q. In your second supplemental deposition, you say that the only design done to the loop is the test points?

A. The only design performed against the loop portion of the commingled circuit is wiring to and from the test point.

Q. So is the design portion of the loop the mere entering of the loop into TIRKS?

A. No.

Q. TIRKS and the test points?

A. Excuse me?
Q. TIRKS and the test points?
A. Is that a question?
MR. GOLD: Yes, sir.
A. I don't understand it. What do you mean?
Q. What design work, after looking at your Second Supplemental Declaration, is done on the SL2 loop?
A. The SL -- the design work that is done is to establish a connection to and from the test point between the loop on the main distributing frame and the test point, wherever it resides.
Q. Is inventorying it into TIRKS part of the design work?
A. It is the output of the design work.
Q. So is the output of designing the test points put into LFACS -- is put into TIRKS? Excuse me.
A. Yes. Once the design is complete, then that design is recorded, inventoried, in TIRKS, as well as the equipment components that are used to make it up. They are shown as in use and how they are assigned. All that information is inventoried and maintained in TIRKS, once the design is completed.
Q. Let's look at paragraph 53 of your Second Supplemental Declaration.
A. Okay. I'm there.

Q. Would you mind reading it, please?
A. Paragraph 53?
MR. GOLD: Yes, sir.
A. Certainly. Without remote access test points, the center receiving the CLEC's trouble report must attempt to determine whether the source of the problem is within the loop portion of the commingled circuit, within the Special Access portion of the commingled circuit, or within the CLEC's equipment. Typical operational agreements require --
MR. GOLD: You don't need to continue.
THE WITNESS: Okay.
Q. Now, that sentence, we could substitute the CLEC with STS, could we not --
A. True.
Q. -- and still be a true sentence?
A. Yes. Yes.
Q. So when you receive a trouble ticket from STS, the trouble center must attempt to determine whether the problem is within the loop, Special Access, or within the CLEC's equipment, correct?
A. Well, I said the loop portion. By extension, anything that is not Special Access.
Q. The loop portion would be the loop and the COCI?

A. The jumper and all of that, yes.

Q. Along with that would be the special low-speed card?

A. The jumper and the low-speed card, correct.

Q. If STS has a suspicion that the trouble may lie with the UNE Loop, would the parties' ICA govern the responsibility of the parties?

A. Yes.

Q. Would that be Attachment 2, Section 1.134?

A. You would have to show it to me.

MR. GOLD: I thought you would ask that. It's in the record. I'm not going to mark it. I don't want to kill a forest by bringing the whole ICA. So I took the first page and the attachment to it.

THE WITNESS: Okay.

Q. In Section 1.13.41 reads: STS will be responsible for testing and isolating troubles on network elements. STS must test and isolate troubles to BellSouth network before reporting the trouble to UNE Customer Wholesale Interconnect Network Services, CWINS center.

Then it goes: Upon request from BellSouth at the time of the trouble ticket, STS would be required to provide the results of the STS tests which indicates a problem on the BellSouth network. Correct?

A. That is what it reads, yes.

Q. So first, what is a trouble ticket? Let's be clear on that.

A. Well, a trouble ticket is a formal notification, in this case, from Saturn to AT&T that it has a problem for one of its customers, that Saturn has looked at its own equipment and has concluded that that trouble does not -- is not caused by Saturn's equipment, but rather by AT&T's.

So then it provides formal notice of what the trouble is, as it says here, and as we talked about earlier, about any other information that Saturn may have about that trouble ticket. And then it's in AT&T's hands to find the cause of that trouble, and if it's on AT&T's network, to resolve it, return the service to the customer.

Q. This obligation of STS applies whether it's using a colocation facility or using a commingled network. Is that correct?

A. It appears to do that, yes.

Q. Now, if we look at paragraph -- the first sentence on paragraph 53 which we just read, you said without remote access test points, the center receiving it must determine whether it's on the loop within the Special Access portion or within the CLEC's equipment,

correct?

A. You left out the word portion behind loop. So loop portion, yes.

Q. I was trying to speed it along, but I thank you for the correction. Now, STS has to first determine whether or not the problem is within its own equipment. That's its obligation?

A. Yes.

Q. So that is something that the center does not have to determine, does it?

A. No. As the sentence here presumes, it is not explicit, although it talks about this elsewhere, it says the center receiving the CLEC's trouble report. So at that point, it's implicit that the CLEC has already done whatever work it wanted to do to test its own network, and has, in fact, placed a trouble ticket with AT&T's repair center.

Q. Okay. So the center will accept STS's explanation, I tested it, my own equipment, it's not there. The center doesn't go out and retest STS's equipment, does it?

A. No. No. Well, not directly. It may have the effect of testing Saturn's equipment. For example, one of the capabilities of the remote access test point is that it can open up the connection and actually try to

bid for dial tone within Saturn's equipment, its switch, and actually place a call through Saturn's switch. So that is testing of Saturn's equipment without being hands on to that equipment through the remote access test point.

Q. If Saturn has done its testing correctly, there's no need to do any remote -- to double test its equipment?

A. No. I wouldn't agree with that. And the reason I would not, I think it's highlighted in the Fox's Carwash example. The most difficult types of troubles to isolate and repair are those that we call intermittent. The customer complains, the service -- it is out of service. By the time Saturn did its own testing, the service may be back in service, or conversely, by the time sat turn gave its trouble ticket to AT&T and AT&T did its own testing of Saturn's switch, found the problem was not there anymore.

Q. Why do you have Saturn test its equipment whatsoever?

A. To the extent possible, to expedite the whole process of finding what is the source of the problem and fixing it.

Q. That is Saturn's obligation to test its own equipment?

A. Yes. In fact, that is a general proposition throughout the industry, that carriers that interconnect with each other, before they launch trouble tickets to each other, determine that their own equipment is not the problem.

Q. Now, what are the testing abilities of the digital cross-connection system, the ones that are in the diagram that we have given to you on the Special Access side?

A. Well, those systems are able to examine the -- are able to determine whether traffic is traversing the links established within the DCS equipment itself. In other words, it is able to tell whether circuits are attached to it, if those connections are mapped to other places, and if so, can traffic go from one part of the DCS to another.

Q. It has remote testing ability?

A. Most of them do, yes.

Q. The ones used in STS's network do have remote testing capability?

A. In terms of the DCS equipment, I believe that is a true statement. I didn't inventory them all to see. That is generally a true statement, that DCS has remote testing capabilities.

Q. What about the D4 channel banks, the ones that

are used in STS's network?

A. Is your question whether or not there is remote access into the D4?

MR. GOLD: Yes.

A. I could find no evidence that that was the case. In other words, in the devices that AT&T uses in its network for D4 equipment, none of those have remote access test capabilities.

Q. Only the DCS?

A. Well, not only the DCS. Other devices have test capabilities, including, as we talked about earlier, certain vintages of digital loop carrier remote terminal equipment can be remotely accessed as well. So not only DCS. But in the context of what we are describing here, DCS has remote access; D4 equipment does not.

Q. Other than the DCS, STS's network as proposed by AT&T, what has remote access testing capabilities?

A. You mean apart from the remote access test point, the SMAS point that we talked about?

Q. I am talking about Special Access.

A. Just the Special Access?

MR. GOLD: Yes, sir.

A. Any of the multiplexers, any of the DCS equipment that are used within the Special Access portion likely have remote access testing capabilities.

Q. It is fair to say in STS's network, that you can remotely test the entire Special Access portion of the circuit?

A. Presuming that all of that Special Access is composed of equipment that has remote test capabilities, then that should be a true statement, yes.

Q. I am talking about STS's network.

A. I didn't do an inventory of the entirety of the Special Access circuits that Saturn acquires, but I would expect that to be the case.

Q. So you would expect in STS's case, that that Special Access portion can be tested remotely?

A. I would expect it could be, yes.

Q. Please tell me if the following statement is true. In STS's commingled network composed of unbundled voice grade loops and Special Access circuits, AT&T is able to test various points on the Special Access portion of the commingled circuit remotely. AT&T --

A. Could you stop right there? That is a fairly long sentence.

MR. GOLD: Certainly.

A. Yes. I think I can agree with that, because it was describing the Special Access portion of that arrangement.

Q. AT&T can use those Special Access test points

to isolate the location of troubles occurring in the portion of the network between the high-speed, that is, the DS1 side of the D4 channel bank and STS's switch?

A. I would agree with that.

MR. GOLD: Please tell me if the following statements are correct, and I will break them down.

THE WITNESS: Please do. Thank you.

Q. It has been getting long. In STS's commingled network composed of unbundled voice grade loops connected to Special Access circuits via D4 channel banks, AT&T is able to test points on the commingled network remotely?

A. It -- I will generally agree with that. It said points. It cannot test all points on the commingled arrangement remotely.

Q. AT&T can isolate the location of troubles occurring on the portion of the network element between the high-speed side, that is the DS1 side of the D4 channel bank in STS's switch?

A. It can do that, and the -- in that instance, the testing of the high-speed side of the D4 channel bank would actually be done at the DCS equipment to which that high-speed link is connected.

Q. In addition, AT&T has remote testing capability at the 01 digital cross-connect system, DCS, in which the commingled circuit passes. Would you agree with it?

A. I agree with it. That is what I just said, that testing of the high-speed portion of the D4 would be done at that 01DCS.

Q. At the 01DCS, AT&T can test whether a signal is being received over a particular loop that is a given DS0 channel as it is carried over the high-speed side DS1 of the D4 channel bank toward the remainder of the Special Access facilities to STS's switch?

A. It can do that. What it cannot do is look beyond the high-speed portion of the D4 channel bank to see if there are problems further towards the end user's premises.

Q. In that, it can test beyond the Special Access portion?

A. Pardon me?

Q. It can test beyond the Special Access portion?

A. In which direction? Towards the customer's premises, or towards the remainder --

Q. It can test toward STS's switch, but test the loop going down there?

A. Well, we have mixed and matched terms here. The loop is not on the portion of the circuit you just described.

Q. You can test whether the signal is being received over a loop as it is carried over the high-speed

side of the D4 channel bank?

A. I agree with that. What I clarified or tried to clarify was that you can't -- from that 01DCS that you just described, you can't tell anything other than the fact that traffic is either being carried or not being carried from the high-speed side of the D4 channel bank to the 01DCS.

You don't have any knowledge about what happens on the low-speed side of the D4, for example, or any other point along the loop towards the end user's premises.

Q. As you acknowledged, through remotely STS's network, you can test within the Special Access portion of the commingled circuit?

A. Yes. And the Special Access portion being from the high-speed side of the D4 channel bank to the remainder of Saturn's network.

Q. So you can -- when a trouble ticket is called up, the center receiving the CLEC's trouble report must -- can only determine, without remote test points, whether the problem is in the loop portion of the commingled circuit?

A. The phrasing of your question is difficult.

Q. Let me rephrase. The CLEC calls up, says there is trouble. The CLEC goes, I have tested my equipment.

It's not in my equipment. You have the ability to test remotely after that whether the problem is on the Special Access side, as you so stated?

A. Correct.

Q. That leaves you to isolate whether the problem is on what you call the loop portion of the commingled circuit?

A. Correct. That would leave AT&T to deduce whether the problem was in the loop itself, some connection in the central office through the distributing frames, or to the COCI, including the low-speed card and the D4 channel bank.

Q. Now, with a colocated arrangement, the CLEC determines that it's not the colocation or the transport, correct?

A. You said they did. Could they?

Q. They could?

A. They could, yes, by either using those test devices we talked about earlier they could install, or by sending their own technician to the colocation to make the tests.

Q. So in both the colocated arrangement and in the commingling arrangement, what you may not be able to test for remotely is the loop portion. Is that correct?

A. Well, we have mixed and matched again. In the

colocation arrangement, without the test point, you are unable to test the loop that -- the unbundled loop connecting the end user to the colocation.

Q. And the cross-connect?

A. And the jumpers or cross-connects between the two, yes.

Q. In this case, you can't --

A. Sorry. Pardon me. Let me finish my answer first before you ask that question. In the context of commingling, without test points, AT&T's left to try to figure out is the problem in the loop, in the COCI, or in the wiring in the central office.

Q. That is determining whether the problem is in the loop or in the connection to the D4 channel bank, correct?

A. Yes.

Q. The same way you have to do it in a colocated arrangement?

A. No, because there are more elements that AT&T is responsible for in the commingling arrangement than it is responsible for in the colocation arrangement. There are other devices that could break and that AT&T would have to examine.

Q. And none of those other devices you can test remotely?

A. Well, the device we are talking about is the D4 channel bank on the low-speed side, and there is no remote access to the D4 channel bank. So that -- and without the test point, you could not test the properties of the loop from the customer's premises to the distributor.

Q. So you would have to send a technician?

A. Without a test point, yes, you would have to dispatch a technician. That is really the point I was trying to make here, is that without those test devices, you have to dispatch a technician, and however long that took would be time that the customer is still out of service.

Q. And however long that took for the customer to be out of service, the same situation would occur in a colocated arrangement, would it not?

A. Again, presuming a loop that did not have test points on it, yes, although again, there are fewer devices, there are fewer equipment elements that AT&T would be responsible for, so fewer places to look to find the problem.

The only place the problem could be would be in the wiring in the central office distributing frame or in the loop itself in that example.

Q. Now, in STS's situation when it reported

trouble tickets, when it reported trouble, what percentage of the trouble was found on Special Access as opposed to the loop portion of it?

A. I don't know the answer to that.

Q. Do you know if in every single case that the trouble was reported on Special Access and not the loop portion?

A. No, I don't, because the phrasing of your question is not that precise. You said the trouble was reported on Special Access. If you had said --

Q. Let me say the trouble was determined to be on Special Access as opposed to the loop portion of it?

A. So your question really is what portion of the time was the trouble found to be in the Special Access portion versus the loop and COCI portion. I don't know the answer to that.

Q. Now, if the trouble is on the Special Access portion, you are able to test it remotely anyway, correct?

A. Yes.

Q. So in those times in which the problem is to be on the Special Access portion, there is no down time whatsoever in repair, is there?

A. Well, of course, there is. The fact that you have isolated the trouble does not automatically restore

the equipment to service. If there is a problem in Special Access, one of these multiplexers or the DCS equipment, it has to be repaired or it has got to be routed around or some other steps taken to remediate that problem. It doesn't, you know, magically fix itself.

Q. No. But you have isolated the problem remotely, have you not, without dispatching a technician?

A. You have made the time of the overall outage smaller by having remote test access on Special Access than it would be otherwise. And by the same token, having test points on the loop portion minimizes or lessens the amount of outage during times where the problem is in the loop, because you have shortened the testing time.

Q. For those periods of time that it's on the loop. But when the problem's on Special Access, and you determine it remotely, the remote access test points on the loop doesn't add anything to the equation, does it?

A. In your hypothetical, no, but neither does it take anything away. The presence of a test point on the loop portion, which you said is not the problem, you are right, it doesn't help you isolate and correct a problem on the Special Access portion.

But likewise, having test points on the Special Access portion but not on the loop portion, you could

have a hundred test points on the Special Access portion but that doesn't help you if the problem turns out to be in the loop rather than the Special Access part.

Q. Well, it means that without dispatching a technician, you can locate problems on the Special Access portion?

A. Using remote access in the Special Access elements, yes, you can determine the source of the problem without dispatching a technician to do that. That is precisely the function that is meant to be replicated with the SMAS point on the loop portion of the commingled arrangement.

Q. You don't know whether it is one percent, five percent, ten percent of the time, that remote test points are relevant in a trouble ticket situation, do you?

A. I do know. They are relevant 100 percent of the time. Your question earlier was what portion of the troubles that Saturn has experienced were attributable to the loop versus the Special Access, and I don't know that off the top of my head.

Q. If 95 percent of the time STS had problems on Special Access, what would the significance of the remote access SMAS points be?

A. Well, I would say five percent of the time they are still useful. But the flip side of that is if only

one percent of the problems are because of equipment failures on the Special Access side, then 99 percent of the time the SMAS points on the loop portion are relevant and are useful.

MR. STARR: Let me object. I think we get this point. I think we understand this. Mr. Gold, what do you estimate to be the remainder of time that you need?

MR. GOLD: Give me a five-minute break. I will finish by 4.

MR. STARR: Okay.

MR. GOLD: I would rather 4:15, but I will finish by 4.

MR. STARR: All right. Let's take a five-minute break.

(Thereupon, there was a recess taken at 3:10 p.m.)

(Thereupon, the proceedings were resumed at 3:19 p.m.)

BY MR. GOLD:

Q. Could you please look at page 17 of your supplemental -- paragraph 17 of your Supplemental Declaration?

MR. KLINEBERG: You are talking Second Supplemental?

MR. GOLD: Just the Supplemental.

MR. KLINEBERG: Okay.

THE WITNESS: You said paragraph 17?

MR. GOLD: Paragraph 17.

THE WITNESS: I am there.

BY MR. GOLD:

Q. Paragraph 17 of your Supplemental Declaration is the only point in which you discuss test points, correct?

A. I will take your word on that so I don't go through 22 other paragraphs.

MR. GOLD: I did word searches and I could not find it.

THE WITNESS: I trust you.

Q. The Supplemental Declaration was in response to our Motion to Strike pleadings and testimony. Let me hand you a copy of that. And in paragraph 17 of your Supplemental, you are discussing paragraph 16 of our Motion to Strike, are you not?

A. Yes.

Q. Now, paragraph 16 of our Motion to Strike states: The terms of the AT&T 22-state generic ICA certainly includes commingling provisions, Section 6-3, and it, like the Texas ICA, expressly references the list of available commingled arrangements that includes the DS0 UNE Loop comminglable arrangement at Section 6.37,

which as Mr. Starkey explained in his Declaration, can only be a two-wire analog voice grade loop using the ICA vernacular, and which must be an SL loop under the AT&T 22-state generic ICA.

Further, there is no language in the AT&T 22-state ICA loop section for UCL or SL2. In addition, the AT&T 22- -- I'm sorry. In addition, in the AT&T 22-state ICA, test points appears to be optional in every case, thereby refuting AT&T's position that the SL2 is required in part because it includes test points that are somehow, according to AT&T, critical to a commingled arrangement.

Mr. Milner, are the sections that we quoted in the AT&T 22-state generic ICA in paragraph 16 that we paraphrased, are those true and correct?

A. They were true and correct at the time you made your motion, but I understand that there has been a revision in at least one section of that 22-state ICA since this time --

Q. And that one revision --

A. -- that bears on the topic here.

Q. And that one revision, if I understand, that at the time that we wrote this Declaration, that it referred to an SL1 loop as a two-wire analog grade loop in the ICA, correct?

A. Yes, sir. That is the part that I believed at the time to be an error, and has since been changed.

Q. In July, you eliminated a reference to SL1?

A. I didn't eliminate anything. The authors of that Interconnection Agreement amended the language of their agreement, and not at my direction either.

Q. Timing is a little coincidental, isn't it?

A. Is that a question?

MR. GOLD: Yes, sir.

A. Is it coincidental? You know, again, I don't know who contacted the authors to suggest that should be changed. It was not me. What other work they had to do and why they changed it when they did, I have no idea about. So is it coincidental? It could be. I just don't know.

MR. STARR: Can I ask a clarifying question?

MR. GOLD: Of course.

MR. STARR: Are we talking about Section 8.1.3.1 of the 22-state generic ICA dated July 1st, 2008?

MR. GOLD: And 6-3.7, yes, sir. Alex, would it be helpful if I gave you paragraph 16 of the Motion to Strike?

MR. STARR: I just want an answer to the question of whether it is Section 8.1.3.1 of the 22-state ICA dated July 1st, 2008.

MR. KLINEBERG: Correct.

MR. STARR: There is a reference in that section to an SL1, correct?

MR. KLINEBERG: Correct.

MR. STARR: Mr. Milner, is it -- are you saying that in your opinion, that reference was a mistake?

THE WITNESS: I'm convinced of that, yes.

MR. STARR: What is the basis for your belief?

THE WITNESS: Well, first of all, the fact that -- first of all, that an SL1 cannot be used in a commingling arrangement, which was the topic of that and other paragraphs.

If they said the SL2, then I would agree to that part of the discussion. Simply because the SL1 could not be used meant that that had to have been, in my view, had to have been an error.

MR. STARR: When was the reference of SL1 removed from the generic -- 22-state generic ICA, approximately?

THE WITNESS: I'm not sure.

MR. GOLD: October 15th, 2010.

MR. STARR: Jeff, do you have any reason to believe that is grossly inaccurate?

MR. KLINEBERG: No. That is correct.

MR. STARR: I'm sorry to take a little bit of

your time, Mr. Gold.

MR. GOLD: It's your time. That is fine

BY MR. GOLD:

Q. Also in that -- before we go there, the change in Texas did not have to do anything with the Declaration that the two-wire analog voice grade loop can be commingled. It only eliminated a reference to an SL1.

MR. KLINEBERG: Is that a question?

BY MR. GOLD:

Q. Isn't it true?

A. Is the question limited to Texas?

MR. GOLD: To the change in October in Texas.

A. Then I misunderstood your question. Please ask me again.

BY MR. GOLD:

Q. The only change that was done in Texas was the elimination of a reference to an SL1?

A. That is my understanding.

Q. The description of a loop as a two-wire analog loop capable of being commingled was never changed, was it?

A. I think -- I think you are right. I think you are right, because there was no need to change that part of the description. It was accurate as it was written.

MR. STARR: I'm sorry to interrupt again. Are

we talking about the Texas Interconnection Agreement or the 22-state generic ICA?

MR. GOLD: 22-state generic ICA.

MR. STARR: Is that your understanding?

THE WITNESS: Yes. I think you did say Texas earlier. But I understood you to be talking about the 22-state generic.

MR. GOLD: I apologize.

BY MR. GOLD:

Q. Also in the AT&T 22-state ICA, test points were optional in every case, was it not?

A. Can you show that to me? That is not my recollection.

MR. GOLD: I will give you the ICA.

A. What section would you like me to turn to?

BY MR. GOLD:

Q. In that -- whatever section you need -- there is no requirement that test points be used in any situation?

A. I don't think you want me to take the time to read 23 pages to see if test points are ever mentioned in here at all, whether they are required or not.

Q. When you replied to our Motion to Strike in which we made the allegation, in addition in the AT&T 22-state ICA, test points appear to be optional in every

case, you never denied that, did you?

A. I didn't deny it. But let me read the last sentence of paragraph 17 of my Supplemental. And what I said there, and I will quote: Thus instead of suggesting that commingling would be impossible without test points as STS's motion seems to imply. I simply describe what test points are and how they are useful in effectuating speedy repairs.

Q. So in Texas, and the 22-state ICA that was in existence at the time we filed our Motion to Strike, test points were not required. Is that a true statement?

A. It was not a true statement, but that appeared to be the case based on the error referencing SL1s. Since SL1s don't have test points, that is what made it a true statement. But it was an error that made it a true statement.

Q. Well, the changes did not require -- the 22-state ICA did not change SL1s to SL2s?

A. No, sir. They do not.

Q. They do not require test points any place, do they?

A. SL1s do not require test points. That's correct.

Q. And there is no SL2 in that 22-state agreement?

A. Again, I would have to go through here and do a

word search, but I will take that subject to check.

Q. Referring back to your Supplemental Declaration in paragraph 17 --

THE WITNESS: Okay. I'm there.

Q. -- you highlighted -- you said in paragraph 16 of its motion, STS discusses the 22-state generic ICA and states that test points appear to be optional in every case, thereby refuting AT&T's position that an SL2 is required in part because it includes test points that are somehow, according to AT&T, critical to a commingled arrangement, emphasis added. Is that correct?

A. That is a correct reading of that statement.

Q. The critical is what you emphasized that was not in the original quote, correct?

A. Correct.

Q. And in emphasizing the word critical, you are taking issue to STS's statements that we attributed to you that test points are critical to a commingled arrangement. Is that not correct?

A. I take issue to the connection of the word critical with a commingled -- to the following three -- four words, critical to a commingled arrangement, which when I read that seemed to imply that you could not have a commingled arrangement without test points, which is not what I said.

MR. GOLD: Okay.

A. So to clear the record, I do believe that test points are necessary for the proper testing of those loops used in commingling, that is SL2s. As I said here, could you have a loop connected without a test point? Yes. It's possible.

I don't think that is the right way to do it, but I was not -- I was clarifying that I was not saying that it would be impossible, rather that they ought to be there for network reliability reasons.

Q. You didn't use the word impossible. We utilized the word critical. Is that --

A. That's right.

Q. And critical means something completely different than impossible, does it not?

A. I'm not a grammarian. So I don't know the formal definition of both of those words. When I took that word into context of the rest of Saturn's statement, it seemed to me that you were implying that I had said that you couldn't have a commingling arrangement without test points, and that is the part that I objected to.

Q. Now, would you agree that an acceptable definition of critical is having a decisive, necessary or crucial importance in the success or failure of something?

A. Subject to check, I will accept that definition. And the word necessary was in there. It, again, connotes that that arrangement could not be put in place without that test device, which is not what I said.

Q. At the time of the Supplemental Declaration, according to your expert opinion, test points do not play a decisive, necessary or crucial importance in the success or failure of commingling?

A. I did not use that word. I didn't you use that definition because I didn't use the word critical.

Q. You objected to my use of the word critical.

A. Exactly, because your use of the word critical describing the commingled arrangement, in my view, connoted that you couldn't have that without test points, and attributed that to me, which I did not say.

Q. If you could read: Later in paragraph 71 of my initial Declaration, I said. It's on page 17.

A. Yes. I'm there.

Q. If you could you please read that to the end of the paragraph?

A. Sure. The quoted part -- well, let me start: Later in paragraph 71 of my original Declaration, I said, quote: First, test points are needed to sectionalize troubles on the SL2 loop in order to effectuate speedy repairs of these complex circuits, end of quote. Thus

instead of suggesting that commingling would be impossible without test points, as STS's motion seems to imply, I simply describe what test points are and how they are useful in effectuating speedy repairs. That was and is a correct statement.

Q. What you were objecting to was the necessary there? Necessary was too accurate -- was not accurate, was too strong of a word?

A. I'm sorry. Was that a question?

MR. GOLD: Yes, sir.

A. Are you asking me if the word necessary is too strong?

MR. GOLD: Yes.

A. No. It's the implication of reading the entirety of your paragraph 16 that it would be impossible to have a commingled arrangement without having wired in a test point. That is the part that I disagreed with, and that is why I took the effort to explain that while that was possible to do, that is, to wire a circuit that did not have test points, that without them, you would hamper the ability to effectuate speedy repairs.

So that was the context that I said my reading of your paragraph and my response in paragraph 17.

Q. You ended up by saying -- describing test points as useful?

A. They are used and they are useful.
Q. So you objected to critical, you objected to needy, and you characterized test points as useful?
A. They are useful. When properly used, they are useful in determining the location of the trouble and effectuating speedy repairs.
Q. Useful, necessary, and critical are different things, aren't they?
A. Again, I didn't write dictionaries. That is not what I got paid to do for 40 years.
Q. It might be useful if I had a red Ferrari and I get to work every morning and I would be so happy --
A. Or you may decide to go someplace else.
Q. -- but I can't convince myself it is necessary. Now, in your Second Supplemental -- in your Supplemental Declaration, your second one --
A. The second?
Q. -- the one you are looking at now, the Supplemental --
A. Thank you.
Q. -- the only thing you describe test points are they are useful. You didn't say they were necessary for network reliability, did you?
A. You know what? No. I didn't use other words. What I did do in here was to talk about the result of

having test points used on commingling arrangements, and the fact that they were good for minimizing outage times and effectuating speedy repairs. That is what I said.

Q. You didn't mention network integrity as well, did you?

A. I didn't think I needed to, because the definition of technical feasibility, which is the topic we are sort of broaching here, you know, embraces both of those concepts of network reliability and integrity, and the ability of AT&T to maintain its network.

Q. You didn't say that they could not effectuate timely repairs without remote test points, did you?

A. I didn't say it that way, no.

Q. You said it was useful?

A. It is useful.

Q. Let's look at your first Declaration. I have you raise test points in four places.

A. I have quite a stack of paper here.

MR. GOLD: I will do my best not to give you any more. I have 17 minutes remaining.

THE WITNESS: You will be my hero. Thank you.

Q. You first mention it at paragraph 23, which is on page 10.

A. Okay.

Q. In paragraph 23, you say second SL2 loops have

test points wired in the loops that permit remote testing in order to locate trouble conditions. And you talk about test point being a hardware device, and how you create a test point, correct?

A. That's correct.

Q. In 24, you talk about the nonrecurring rate captures a labor cost of physically wiring the test points. Is that correct?

A. That's correct.

Q. The next place is 34. There in the second to last sentence, you discuss that if a CLEC wanted an SL2 for its own business purposes, it could order one?

A. Yes.

Q. The last place you discuss it is on 71, which is what we raised in our Motion to Strike --

A. I am there, 71.

Q. -- in which you mention they are needed to sectionalize trouble in the SL2 loop?

A. Yes. I said that.

Q. And you explain that as you are describing how they would be useful?

A. In all those cases, I think I was describing how they are useful, yes.

Q. This is the only time that you said that they would be useful, necessary, or words of that type. Isn't

that correct?

A. No. No. Go back to the first reference. What paragraph was it?

MR. GOLD: 23.

A. I said that test points wired into the loops permit remote testing in order to locate trouble conditions. I didn't use any of those words, and yet I think you understood what I meant by that.

Q. Yes, sir. Now, let's look at your Second Supplemental deposition -- Declaration.

A. I'm sorry. Again? Did you say second?

MR. GOLD: The second.

THE WITNESS: Okay.

MR. GOLD: Paragraph 52.

THE WITNESS: I'm there.

Q. You wrote this Declaration. Is that correct?

A. I certainly did.

Q. There you say remote access capability is especially critical in cases where the loop must be tested, and you go on, in periods where the central office is not normally staffed.

A. That is what I said. Or in central offices that have no permanent staff.

Q. Earlier, you objected and found offense with our use of the word critical.

A. I limited my use of that word to cases where not having a test point would lengthen, rather than shorten, the outage duration in those cases where central offices -- during those time periods when central offices are not normally staffed or in central offices that don't have a permanent staff.

Q. We are in Miami, which is -- Ft. Lauderdale -- fairly populated. Would you say that all the central offices that STS uses has a permanent staff?

A. Do they have a permanent staff?

MR. GOLD: Yes.

A. First of all, I don't know the answer to that. But more importantly, having test points on these loops was not a decision that only involved Saturn. This is an offer that other CLECs -- or this is a product that other CLECs use, as well.

That is, other CLECs acquire SL2s not in the context of commingling, and they apparently like the test point that comes along with it.

Q. Now, test points, if I understand your opinion, are critical when somebody's not in the central office, and in only those cases in which the trouble is not on the Special Access side?

A. No. No. I can't agree with that. Because in my view, the test point is useful in minimizing outage

time in all of those cases, not only those cases, but in all those cases.

Q. Even when it's on Special Access and you have remote Special Access testing?

A. Yes, because it provides a means of looking at the loop remotely without dispatching, and telling whether there is some concurrent problem within the loop portion.

MR. GOLD: Alex, I hope I don't cause a heart attack, I don't have any further questions.

MR. STARR: We would like to ask a few questions. I want to preface my questions by pointing out that I may be moving quickly or asking my question in a fairly curt fashion.

It's not because I have any goal other than to get clarification where we need it and also to conserve time.

THE WITNESS: I appreciate that.

MR. STARR: Please take that into account.

THE WITNESS: I certainly will.

EXAMINATION BY THE FEDERAL COMMUNICATIONS COMMISSION:

BY MR. STARR:

Q. Could you take a look at paragraph 15 of your Supplemental Declaration? Let me also say to some extent, our questions may overlap with questions that

Mr. Gold asked, and I'm asking them again to some extent because I think that we still need clarification for our purposes.

THE WITNESS: I'm there, by the way.

Q. Okay. There's a statement that only by changing the SL1 into a designed loop is it possible to commingle it with Special Access facilities.

A. Yes.

Q. That is a refrain that appears quite often in one form or another throughout your Declaration and throughout AT&T's papers. What changes to the SL1 need to be made other than adding remote access test points?

A. In addition to the remote access test point would have to be the design steps and the work to make this loop connectable, if that is a word, to that COCI that we talked about earlier.

In other words, all those design decisions would have to be made on behalf of the SL1 which, in essence, once the test point is wired in, makes it an SL2, since in the loop facility, that is from the central office to the customer, that's not affected by whether it's an SL1 or SL2. The distinction is in the design steps and the work steps in the central office.

Q. Can you be more specific about what design steps you are referencing?

A. Sure. It's the design steps in my Second Supplemental that answer the question about what design steps are attributable to the loop, what design steps are attributable to the COCI, which are Parts B and C, I believe.

Q. I believe in your Second Supplemental Declaration, you say that the only design step that is part of the unbundled loop relates to designing the assignments, connections, and settings for the remote access test point.

A. That's correct. For that part of the commingled arrangement, that is all that has to be done.

Q. So is that all that has to be done -- is that all the changes to the SL1 that need to be made to turn it into a designed loop to be commingled with Special Access?

A. At that moment, yes. That's all that would have to be done to turn it into an SL2. But then to make that SL2 work in a commingled arrangement, that is to make it one continuous circuit, you would have to do those other things that are attributable to the COCI.

Q. All right. There are design steps that need to be made with respect to the COCI?

A. Right.

Q. And there are design steps that are necessary

to be made to the Special Access portion of the circuit?

A. Yes.

Q. But with respect to the loop portion of the circuit, the design necessary for that portion of the circuit is limited to the assignments, connections and settings for the remote access test point?

A. Yes.

Q. Is a remote access test point on an SL2 loop able to identify a problem on a part of the circuit other than the SL2 loop itself?

A. Yes.

Q. What portions of the circuit -- what else is it able to do?

A. Well, since the test point sort of sits in the middle of the overall connection, and because the test point can open that connection and test towards the customer's premises, or conversely, can test towards Saturn's switch, it can test simply all portions of the commingled circuit.

As I discussed earlier, you can pull up the test point. You open up the connection between the loop and Saturn's switch and the test point steps into the role of the loop. You can dial tone, you can dial digits, you can call yourself, you can make it ring. You can do all those things remotely through the test point.

So you can sort of look both directions on the commingled circuit and determine not only problems in the loop portion, but since you are able to test the other way and make call-through tests, you can test that part as well.

Q. The remote access test point on the loop can identify problems in the COCI?

A. Yes, it can.

Q. Can it identify problems in the Special Access portion of the circuit?

A. It can determine whether there is a problem somewhere along that connection that impedes the capability of interacting with Saturn's switch.

Q. Do remote access test points provide any testing capability that would be completely unavailable at any cost or at any time in the absence of those test points? What I'm getting at is you speak at length of the benefits that the remote access test points provide in terms of timing, quick isolation, reduction in the amount of manpower necessary.

But if a CLEC wanted to spend extra money or AT&T wanted to spend extra money to man every central office 24/7, have trucks available near every customer premises, is there anything unique about test points other than what you describe in your papers?

A. If we set aside the whole notion of time and whatever value that has, if we set that aside, then all of the tests that could be performed via the SMAS point could be done with some other equipment.

Q. In light of that, in the absence of remote access test points, in what way is AT&T's ability to retain responsibility for the management, control and performance of its own network impeded?

A. Well, it really goes to the last word you said, the performance of its network, in that, again, to bring time back into the discussion, any time that is -- any time that is used in determining the location or the source of the problem contributes to the overall outage duration suffered by the customer.

And to the extent that configurations make it harder and more time consuming to locate that trouble, then over time, the service quality of the network is degraded and the performance of the network is likewise degraded.

Q. Hypothetically, if AT&T were to commingle with Special Access a loop without remote access test points, would there be any heightened potential for harm to any part of AT&T's network that is not leased to the carrier with the commingled arrangement?

A. Let me make sure I understand your question.

If removal of the test points was limited to commingling of SL2s, is that the predicate?

Q. The predicate is you essentially have an SL1.

A. Okay.

Q. A commingling arrangement using an SL1 rather than an SL2. In that event, is there some heightened danger to AT&T's portion of the network, the nonloop portion of the network?

A. Yes, to the extent that the test point had functionality of testing into that Special Access portion of the commingling arrangement and making test calls of Saturn's network. So that capability would no longer be there if the test point, the SMAS point, were removed from the circuit.

Q. Are there -- I think I heard you earlier testify that in most, if not all, cases, the Special Access network has its own remote testing capability.

A. Yes.

Q. So is it true that the capability that the test point on the loop has to look into the Special Access side of the network, is that redundant of the capability that AT&T already has?

A. No. Well, in some cases, it is redundant, but then there are some tests that can be done at the remote test point that don't have analogs in the Special Access

testing.

And I list them in I guess the Second Supplemental Declaration, especially those tests that you can do from the test point that relate to what the operations folks call the ballistics tests. That is, testing of the electrical properties of the loop. That is sort of unique to the SMAS point.

You can test for resistance. I don't want to use a lot of technical terms. You can test for resistance, see if the conductors are flipped or crossed. You can look for alternating current where it ought not to be. You can test for capacitance.

I'm not an electrical engineer. But knowing how long the loop really is and then testing for capacitance says there is a problem X number of feet outside the central office. There are some others I can't draw to mind.

There are some other electrical tests that you can make of a two-wire circuit that don't have an analog in Special Access, remote access testing, short of sending a technician with a special kind of test they can do.

Q. Is there any capability in the loop test point for identifying problems on the Special Access side of the circuit that the Special Access test points don't

have?

A. Other than -- no.

Q. When there is a problem on the loop portion of the circuit, a commingled circuit, is it the CLEC customer that experiences those problems?

A. In most all cases, yes. In some cases, there may be impairment of the service which the customer is not aware of, or has not risen to the level they want to complain about it yet, noise or static on the line or lower transmission levels, things of that nature. For the most part, yes, problems in the loop affect the end user.

Q. In that event, is there a reason not to give the CLEC the choice of the level of service it wants to provide to its own end user customer? In other words, if a CLEC wants to take the risk that its service will be down for a particular customer for three days instead of half a day by foregoing remote access tests points on the loop, is there a reason why the CLEC shouldn't have that choice?

A. So long as there was an understanding and an agreement between AT&T and the CLEC that they took that risk on themselves. As a general proposition, I don't have a problem with that. You know, the CLEC ought to be able to tailor its service offering and its prices the

way it wants to, with one exception.

To date, all the comparisons of service quality that AT&T provides to its CLEC customers are codified in the Service Quality Measurement and in the SEEMS payments. So not only would there have to be an agreement between AT&T and that CLEC that the CLEC was assuming more risk, there would also have to be an agreement with the appropriate state commission that said AT&T, these loops are no longer part of that SEEMS calculus.

Because it would be unfair to penalize AT&T for delivering service substandard to its own but as good as the CLEC had wanted to pay for. That was kind of round about, but --

MR. STARR: I follow you.

THE WITNESS: Okay.

Q. Is it your understanding that remote access points are necessary on commingled loops in order for AT&T to avoid penalties under the SEEMS system in Florida?

A. No. I'm not saying that that is why there are test points, because test points have been around for a long time. In fact, the SL2 predates the SEEMS plans as well. SL2s have had test points on them since sometime in the late '90s when they were first designed and

implemented.

So no, there was not a linkage that said let's put test points on it, because some day in the future there may be a penalty plan, we don't want to get zapped by that, let's design this way. Instead, the notion was how reliable can we make this service, recognizing that it is more complicated than other services.

Q. Generally speaking -- I'm trying to understand your bottom line here -- are you saying that all other things being equal, a CLEC has the opportunity to choose the level of service it wants to provide its end user?

A. In general, I agree with that. The CLEC has to provide service offering to the expectation level that it wants to grant to its customer.

Q. As part of that, is a CLEC free to take the risk that it may disappoint its customers by making repairs that would be less timely than they might otherwise be if the CLEC had chosen to spend the money to buy remote access test points?

A. Yes. Now, that presupposes that there is an SL3 kind of loop that is designed such that it works in a commingling arrangement but does not have test points. In other words, there would have to be a new type of loop created and approved by the commissions and the rates set by the state commissions, as well as the other changes,

changing the SEEMS calculus and that sort of thing.

Q. That gets us back to my first few questions, which I thought we had wrapped up, but now I'm confused again.

A. I apologize for that.

Q. I thought your bottom line was that it is technically -- well, it is not, as an engineering matter, impossible to connect an SL1 -- to commingle an SL1 with Special Access?

A. We need to be a little more precise. As an engineering matter, you could start out with a nondesigned loop. You could add the design steps to connect it into a commingling arrangement and it wouldn't have test points on it.

But there still would be these design steps in the middle as well as the COCI. That is why I'm saying to put the decision as to what level of service and ultimately what price the CLEC wanted to have in its own hand would require a state commission to say here is a new kind of loop that doesn't have test points, but is designed such that it can be used.

Q. As an engineering matter, what is it that prevents a CLEC from seeking to commingle an SL1 with a COCI with Special Access?

A. From an engineering matter, that could be

done. That is possible, so long as either these mechanized processes that we talked a lot about this morning or the humans involved said connect this wire to this one, this wire over here, connect this to the low-speed side of the D4 channel bank, connect the output side over to here. As long as all those things were done, which are the design steps, yes, that could work.

Q. Those design steps are associated with the COCI and Special Access --

A. Yes.

Q. -- as I understood your testimony?

A. Yes. Exactly. Yes. So if we said the loop is not going to have a test point on it now, then the only design steps would be those associated with the COCI and with the Special Access. Yes. That's right.

MS. SAKS: I have a follow-up.

BY MS. SAKS:

Q. Mr. Milner, I think you were saying that in the absence of test points -- let me start over -- that absence of test points would affect the performance of the network. Is that what you said?

A. Yes. And let me clarify. In that term, I'm using performance to mean service performance, that is the grade of service offered to customers, how quickly things are found and fixed.

Q. So it would be the performance as experienced by AT&T's customer, whether it's Saturn, the CLEC, or Saturn's end user, that is who would experience any degradation of performance that was caused by the lack of test points?

A. Yes.

BY MR. STARR:

Q. Let me ask this question. I think I heard you correctly, but I just want to make sure. I think in response to Mr. Gold's question about whether an SL1 can be inventoried in TIRKS, your response was you could not think of any reason why it could not be. Is that an accurate statement?

A. Yes. It's accurate so far as it goes. You could take the same information that is in LFACS for a given loop, SL1, and put that information in TIRKS. That could be done.

MR. STARR: Just checking here. I kind of surprised myself that we were able to have a productive dialogue in such a short period of time. I'm checking. I think that those are all the questions we have. Thank you.

THE WITNESS: Thank you. Mr. Gold?

MR. GOLD: You still have one to go.

THE WITNESS: He doesn't count.

MR. KLINEBERG: Could I take just two minutes to consult with my colleagues?

(Thereupon, there was a recess taken at 4:13 p.m.)

(Thereupon, the proceedings were resumed at 4:19 p.m.)

EXAMINATION BY COUNSEL FOR THE RESPONDENT:

BY MR. KLINEBERG:

MR. KLINEBERG: Good afternoon, Mr. Milner.

THE WITNESS: Good afternoon, Mr. Klineberg.

Q. I promise to go through this very quickly. If I could direct your attention to the undisputed facts, which I'm not sure they were ever given an exhibit number --

MR. GOLD: They were not.

THE WITNESS: I do have it.

BY MR. KLINEBERG:

Q. If you look at paragraph 224.

A. And I'm there.

Q. Excellent. This was a question that Mr. Gold asked you, I think, at the very beginning of our day, and I just wanted to make sure that the record clearly reflects your testimony on this. If you could read the last sentence of paragraph 224, please.

A. If I'm in the right place, it says STS

compensates AT&T for Steps 1 and 2 in the COCI rates.

Q. Right. The reference to Steps 1 and 2 are, as I understand it, back to I guess it's paragraph 221 where you are listing the steps of the design process that you originally discussed in your opening Declaration?

A. Yes. It does point back to 221.

Q. So the Steps 1 and 2 there are the cross-connection at the MDF, and it goes on, and then the pair on the multi-pair tie cable is connected to a single input on the D4 channel bank?

A. Correct.

Q. When you say here that STS -- well, I shouldn't attribute this to you. This is the parties' joint statement of undisputed facts. When the parties said that STS compensates AT&T for Steps 1 and 2 in the COCI rates, is it your understanding -- when you agreed with that statement, was it your understanding that that referred to the design work associated with 1 and 2, or was it the provisioning steps that are associated with the cross-connections described in 1 and 2?

A. I hate to quibble with my own lawyer's question, but help me distinguish between do you mean design -- I mean provisioning to mean the effectuating of the design?

MR. KLINEBERG: That is what I mean.

A. Yes. That is what I meant. Yes.

Q. So I will ask it then a different way. Is it true that the design work associated with Steps 1 and 2 are compensated in the COCI rates?

A. Yes.

Q. I'm sorry. Let me make sure I understand. The design work associated with Steps 1 and 2, is that compensated -- does STS compensate AT&T in the nonrecurring charges for the COCI rates for the design work? Again, I'm distinguishing between the design and the actual provisioning.

A. Okay.

Q. So I'm just trying to make sure I understand. Is the design work associated with designing the steps that are part of the COCI, is that contained in the nonrecurring or recurring rates associated with the COCI?

A. Well, the design steps are not in the nonrecurring rate for the COCI. The only work that is included in the nonrecurring for the COCI is the work to actually effectuate the design, that is, to make the wiring connection.

Q. Okay. Thank you. Now, if I could then just -- on this same point, if I could just take you to your Second Supplemental Declaration, and that's paragraph 40 which we talked about.

A. Okay. I'm there.

Q. And I think in response to Ms. Saks' question, you indicated, as I recall, if the Florida Commission intended to allow for AT&T to recover for the costs of the design steps associated with the COCI, it must have done so in the nonrecurring SL2 loop rate. Do I have that correct?

A. Yes. Since my conclusion was that since there is no design element in the COCI, the only other place that it could be would be in the nonrecurring rate for the SL2.

Q. Right. So but just to clarify, there is no question in your mind that the design steps that you have described are necessary to effectuate a commingling arrangement, regardless of whether AT&T is compensated for it?

A. Correct. I have no doubt that all of those steps are required whether or not AT&T is compensated or how AT&T is compensated.

Q. Okay. Thank you very much. I just have one other series of questions here. Out of concern that this will sound repetitive, I just want to make sure the record is as clear as we can make it. This follows on some of Mr. Starr's questions.

In your view, seven hours in to the deposition,

could you just succinctly describe why is it necessary for AT&T to use a designed loop in a commingling arrangement?

A. Well, first of all, there is no alternative to that. When the product team first started trying to figure out how to establish commingling arrangements and they looked at what voice grade loops were available, there were only two varieties, SL1s and SL2s.

They looked at the attributes of the SL2 and said yes, it allows us to design those steps that would connect the loop as it terminates on the main distributing frame with whatever other equipment is required to get it from there to the Special Access portion of the commingled circuit.

So all of the design steps attributable to either the loop or the COCI, except for the design step of wiring in the test point, are meant to do exactly that, to make connections and assignments, in our case, to the D4 channel bank and from there to the Special Access circuit.

Q. So another way of asking the question is why is it infeasible to use a nondesigned loop for a commingled arrangement?

A. Well, because when the technician were -- if the technician were to get an order for a nondesigned

SL1, he or she would not know how to make that connection through these other equipment devices to connect that loop to the Special Access portion.

In other words, if the ordering rules were modified to allow -- all they did was allow an SL1 to be ordered, then the technician would get that order and it says I have got a loop here, and I have got a Special Access arrangement over there, and somehow I have got to figure out how to get this thing digitized and connected from here through that equipment and over there. It simply couldn't be done.

Q. So I guess another way of asking it is, does the SL1 rate in Florida, as far as you understand it, include any costs associated with design work by the Circuit Provisioning Center?

A. My understanding is it includes no costs attributable to the Circuit Provisioning Center for the SL1.

MR. KLINEBERG: Okay. I have no further questions.

MR. GOLD: I don't have any further questions.

MR. STARR: Terrific. I think we are done.

(Signature having not been waived, the deposition of W. KEITH MILNER was concluded at 4:28 p.m.)

ACKNOWLEDGMENT OF DEPONENT

I, W. KEITH MILNER, do hereby acknowledge that I have read and examined the foregoing testimony, and the same is a true, correct and complete transcription of the testimony given by me, and any corrections appear on the attached Errata sheet signed by me.

_____ _____

(DATE) (SIGNATURE)

CERTIFICATE OF SHORTHAND REPORTER - NOTARY PUBLIC

I, Dianna C. Kilgalen, the officer before whom the foregoing proceedings were taken, do hereby certify that the foregoing transcript is a true and correct record of the proceedings, that said proceedings were taken by me stenographically and thereafter reduced to typewriting under my supervision; and that I am neither counsel or related to, nor employed by any of the parties to this case and have no interest, financial or otherwise, in its outcome.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my notarial seal this 20th day of December, 2010.

My commission expires April 15, 2014.

_____

NOTARY PUBLIC IN AND FOR

THE DISTRICT OF COLUMBIA