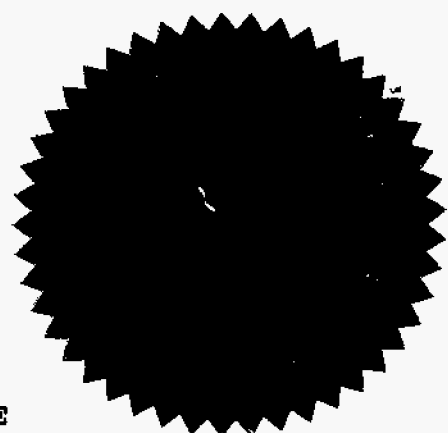


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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In the Matter of :
Consideration of BellSouth :
Telecommunications, Inc.'s :
entry into InterLATA :
services pursuant to Section :
271 of the Federal :
Telecommunications Act of :
1996. :

DOCKET NO. 960786-TL



PROCEEDINGS: STATUS CONFERENCE

BEFORE: COMMISSIONER JULIA L. JOHNSON
(via telephone)

DATE: Wednesday, August 21, 1996

TIME: Commenced at 8:00 a.m.
Concluded at 8:45 a.m.

REPORTED BY: JOY KELLY, CSR, RPR
Chief, Bureau of Reporting
Official Commission Reporter
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399

DOCUMENT NUMBER-DATE

08841 AUG 21 96

FPSC-REG-REG-REPORTING

1 **IN ATTENDANCE:**

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1 **APPEARANCES CONTINUED:**

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9 **Communications Company LD.**

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1 to go ahead and present your argument?

2 **MR. MCGLOTHLIN:** Yes. Today FIXCA moves for
3 an order compelling BellSouth to provide documents
4 which FIXCA requested in its amendment to the First
5 Request to Produce, Item 3.

6 By way of background, Commissioner, you'll
7 recall that during the oral argument on the first
8 response by BellSouth to several discovery requests,
9 BellSouth and FIXCA agreed to set aside Item 3 of the
10 request to produce, and to confer and attempt to work
11 out a resolution to that item.

12 We did meet -- FIXCA clarified the
13 information it was seeking to obtain through Item 3.
14 And BellSouth indicated it had objections to a portion
15 of that clarified response.

16 After that when you indicated that the
17 objections will be taken up today, FIXCA served an
18 amended and clarified version of Item 3, and BellSouth
19 formally responded with certain objections.

20 As amended and clarified, Item 3 of the
21 First Request to Produce seeks the following
22 documents: Please produce all cost studies together
23 with all underlying work papers and analyses performed
24 by or for BellSouth that fall within the following
25 categories.

1 The first category, all cost studies
2 performed within the last five years to analyze the
3 cost of each unbundled network element BellSouth
4 intends to offer in order to meet the unbundling
5 requirement in Section 251.

6 And then there are several more categories,
7 the first being the most recent cost study performed
8 prior to the passage of the Act to analyze the cost of
9 providing local service.

10 Then the other categories, the most recent
11 cost study performed prior to the passage of the Act
12 to analyze the cost of providing verticle services.
13 Similarly, the most recent cost study performed
14 analyzing the cost for providing toll services,
15 analyze the cost for providing switched access service
16 and to analyze the cost of providing private line and
17 special access service.

18 With respect to the last several, each asks
19 for the most recent cost study performed prior to the
20 pasage of the Act.

21 BellSouth has agreed to provide the studies
22 that were performed explicitly to analyze the cost of
23 the unbundled network elements. It has objected to
24 the other categories on the basis that the documents
25 are irrelevant and not calculated to lead to the

1 discovery of admissible evidence. And also that the
2 categories are overbroad and burdensome.

3 In its formal response, BellSouth also makes
4 several other assertions that I'll address in a few
5 minutes.

6 Let me begin by pointing out how we believe
7 these cost studies are relevant and pertinent to
8 issues in this proceeding.

9 Section 271(b)(2)(b)(2) of the
10 Telecommunications Act of 1996 requires the petitioner
11 for authority to engage in entries in interLATA market
12 to provide, quote, nondiscriminatory access to network
13 element in accordance with the requirements of Section
14 251(c)(3 and 252(d)(1), end quote.

15 To fully assess the requirements of this
16 item on the checklist it's been necessary to refer to
17 those parts of 251. 251(c)(3) establishes the duty to
18 provide to any requesting telecommunications carrier
19 of the provision of a telecommunications service
20 nondiscriminatory access and network elements on an
21 unbundled basis at any technically feasible point on
22 rates, terms and conditions that are just, reasonable
23 and nondiscriminatory.

24 252(d)(1) states that determinations by a
25 state Commission the just and reasonable rate for the

1 interconnection facility and equipment shall be based
2 on the cost determined without reference to a rate of
3 return or other rate base proceeding of providing
4 interconnection or network element, whichever is
5 applicable, and nondiscriminatory, and may include a
6 reasonable profit.

7 We contend that the cost studies to which
8 BellSouth objects are relevant to a consideration of
9 whether BellSouth has satisfied the item on the
10 checklist, 271(b)(2)(b)(2) because they are related to
11 the underlying standards of these two sections of
12 Section 251. "

13 Let me change here for a moment and address
14 the standard of discovery applicable here. It's found
15 in Florida Rules of Procedure 1.280. And basically a
16 request for discovery may be pursued if it is relevant
17 information that is reasonably designed to lead to the
18 discovery of admissible evidence.

19 Obviously -- we think obviously -- but the
20 studies are relevant because they pertain to the cost
21 of the network elements that are the subject of the
22 checklist. Even though by definition they are broader
23 than the specific element, by definition these studies
24 would incorporate the elements and encompass them in
25 the course of performing the study.

1 In other words, the bulk of the network
2 element implicitly or explicitly will be encompassed,
3 and will become an input to the overall study.

4 We contend that the request is reasonably
5 calculated to lead to the discovery of admissable
6 evidence because we believe that with the work papers
7 and with the study our consultant can analyze the
8 broader study, and by process of deduction or
9 inference or extrapolation, gain some insight as to
10 the costs attributable to particular elements that was
11 incorporated by BellSouth in the conduct of the other
12 study.

13 Now, how can we apply this to this
14 proceeding? We think this would be relevant and
15 pertinent, germane for several reasons.

16 First of all, and most obviously, the
17 information gained from analysis of these broader
18 studies, to the extent that BellSouth provides studies
19 of individual network elements, these broader studies
20 and the information derived from them serve as a check
21 to determine whether the -- whether BellSouth is being
22 consistent in its approach to the network element.

23 The cost of studies performed prior to the
24 passage of the Act determines -- serves as a frame of
25 reference or point of departure to determine whether

1 BellSouth has changed its approach to conducting
2 incremental cost studies as a result of the obligation
3 to provide these network elements on an ongoing basis.

4 Secondly, because the Act is so recent, and
5 because there has been no final determination of what
6 constitutes network element, it may very well be that
7 there will be no explicit studies offered with respect
8 to certain elements that we contend are appropriately
9 included as network elements. For that reason, the
10 derivation of information from broader studies to be
11 useful and pertinent and relevant to provide some
12 insight as to the cost of a network element where no
13 other information is available.

14 And third, one of the criterias that
15 BellSouth offered these unbundled elements on a
16 nondiscriminatory basis to the extent that the cost
17 studies performed for these broader categories
18 underlie the price that BellSouth charges for its own
19 service involving those network elements, that may be
20 useful to determine whether BellSouth is meeting the
21 nondiscriminatory criterion of the rule.

22 I'd like to refer the Commissioner to
23 Paragraph 680 of the FCC's First Report and Order,
24 that is 96-325. I'll read it. It's a short
25 paragraph. In that paragraph the FCC says "We note

1 that incumbent LECs have greater access to the cost
2 information necessary to calculate incremental cost of
3 the unbundled elements of network. Given this
4 asymmetric access to cost data, we find that incumbent
5 LECs must prove to the state Commission the nature and
6 magnitude of any forward-looking cost that it seeks to
7 recover in the price of an interconnection and
8 unbundled network elements."

9 This revised and amended request for certain
10 cost studies is actually a modest effort to partially
11 remedy this asymmetric situation in which BellSouth
12 has exclusive custody of the cost information that is
13 going to be germane to a consideration of whether it
14 has complied with this particular portion of the
15 checklist, Section 271.

16 Finally, with respect to whether we
17 mentioned the standard that I discussed earlier, in
18 *Simons vs Jorg* 384 So.2d 1362, a Second DCA case in
19 1984, the Court said "relevant evidence is evidence
20 tending to prove or disprove a material fact." We
21 believe that to the extent the broader cost studies
22 are a source of insight as to the cost of particular
23 network elements, that information will tend to prove
24 or disprove BellSouth's contention that the price it
25 proposes to charge for unbundled elements is cost

1 based within the meaning of the Telecommunications Act
2 in 1996 and implementing rule.

3 In *Calderbank vs Cazares*, 435 So.2d 377,
4 Fifth DCA case, 1983, the Court said that "In order to
5 demonstrate that a request is designed to lead to the
6 discovery -- reasonably calculated to lead to the
7 discovery of relevant evidence, the logical connection
8 between the request and the information sought must
9 either be readily apparent, or the party seeking
10 discovery must show the reasoning process based upon
11 facts and inferences."

12 Here we contend that in demonstrating what
13 we believe is incontrovertible, that is that the
14 broader cost studies necessarily encompass information
15 concerning the individual network element that
16 comprise the overall service, it is reasonable to
17 expect that someone well versed at such studies, given
18 access to the study and to the methodology and to the
19 underlying work papers, can discern and derive
20 information about the individual elements.

21 We believe that would satisfy the
22 requirement that would show a reasoning process that
23 supports the proposition that this request is
24 reasonably calculated to lead to the discovery of
25 admissible evidence.

1 Let me just mention now a couple of specific
2 responses in BellSouth's objections. Among other
3 things, BellSouth says that with respect to this
4 broader category of cost studies, the information is
5 not, in their words, "broken out" in a manner that
6 would show information about individual network
7 elements.

8 We believe that it is not necessary that the
9 information within the cost study be neatly segregated
10 then easily lifted out of it. All that is necessary
11 is that we show a reasonable basis to believe that
12 someone who is -- followed those studies can discern
13 or derive the information from everything that has
14 been incorporated.

15 There's no point in the objection --
16 BellSouth says nothing in the request of studies that
17 would shed light on the information you seek.

18 Very briefly we think that begs the
19 question, they're saying in effect you're not entitled
20 to have it because there's nothing in there that is of
21 benefit to you. We believe that is not for BellSouth
22 to unilaterally determine.

23 And finally, BellSouth says the unbundled
24 network elements are provisioned and designed in ways
25 that are different than the provisioning of the wide

1 variety of services for which FIXCA has requested cost
2 studies. If anything, that statement fuels our
3 request to see those cost studies. Because as I said
4 earlier, one of the obligations under the Act is that
5 BellSouth offer these network elements on a
6 nondiscriminatory basis, and specifically, in the same
7 order to which I alluded earlier, the FCC has said
8 that means they must offer the elements at a quality
9 no less than the quality they provide their own
10 service where it is technically feasible.

11 If anything, the statement that these
12 services, these elements are provisioned and designed
13 in ways that are different, entitles us to see whether
14 they are different in a way that defeats the
15 obligation that BellSouth offer the elements in a
16 nondiscriminatory basis.

17 I'm almost through.

18 In addition to the relationship to the
19 obligation that BellSouth be nondiscriminatory in its
20 provision of network element, we think that's another
21 conclusory statement that doesn't really serve as a
22 legitimate objection to our request.

23 **COMMISSIONER JOHNSON:** I didn't hear the
24 last thing you said. "In addition --"

25 **MR. MCGLOTHLIN:** In addition to the

1 relationship between this statement and the statutory
2 obligation to provide access to elements on a
3 nondiscriminatory basis, this is another example of a
4 conclusory statement as opposed to a valid objection.

5 And to the extent there are some
6 differences, we think that a consultant working with
7 the study could account for those differences in the
8 way he derives or extrapolates the information on
9 individual network elements.

10 Finally, with respect to the contention that
11 the request is overbroad, I'd like to point out that
12 when BellSouth complained about the breadth and the
13 time frame included in our original request, we took
14 that objection to heart and we've narrowed the
15 request.

16 The original asked for all studies in all
17 categories completed within the last five years. With
18 respect to all studies other than those performed to
19 analyze individual network elements, we now ask only
20 for the most recent study in each category performed
21 prior to the passage of the '96 Act. So we think it's
22 narrowly drawn and that BellSouth has not met its
23 burden of demonstrating that the request is overbroad
24 or burdensome.

25 With that I'll conclude except I'd like to

1 have a short opportunity to respond to Mr. Carver's
2 argument.

3 **COMMISSIONER JOHNSON:** Certainly. You
4 directed us to a document, FCC document. Was that the
5 interconnection order or was that some narrative that
6 went with the order? And what was the paragraph
7 number and actual document title?

8 **MR. McGLOTHLIN:** It's the First Reporting
9 Order, FCC, I think order 96-325, and Docket 9698 and
10 95185, issued August 8th, referring to Paragraph 680,
11 at Page 331.

12 **COMMISSIONER JOHNSON:** Thank you very much.
13 Mr. Carver.

14 **MR. CARVER:** Thank you, Commissioner.

15 First of all, let me begin by saying that
16 what we're arguing about here are not cost studies to
17 support the unbundled network elements because we've
18 agreed to those. I've also initially have to disagree
19 with Mr. McGlothlin's assertion that their request has
20 been narrowed. In point of fact, each time the
21 request has gotten a little bit broader. And I'd like
22 to talk briefly about the history of this request.

23 When they first admitted it to us, and I'm
24 paraphrasing here, but the bottom line was it asked
25 for cost studies that related to whatever we were

1 doing to satisfied our obligations under 251. We
2 objected to that and in the main our objection was
3 that we simply didn't know what they were talking
4 about. So the oral argument on that objection was on
5 a Wednesday. Two days later, there's a telephone
6 conference under which their consultant, Mr. Gillan,
7 tells us what the interrogatory was designed -- I'm
8 sorry, the request to produce was designed to elicit.
9 He said that he wanted cost studies to support the
10 various unbundled network elements that we would be
11 offering to sustain our 251 obligation. We agreed to
12 produce this. We agreed then orally, or a little bit
13 later that day, and there's never been an issue about
14 that.

15 Mr. Gillan went on at that time and said he
16 also wanted cost studies for any other services other
17 than the unbundled network elements that would include
18 as components, I guess, something that would be
19 analogous to a network element. And that's the best I
20 can do of explaining what he was after.

21 And then I asked him at that time for a list
22 of what he meant and he gave me several categories by
23 way of illustration.

24 Subsequently, we received finally a written
25 request to produce with a new request from

1 Mr. McGlothlin and it got even broader. And this one
2 they were not only asking for information not just for
3 our offering, but for other services. This time they
4 were asking for other services without the facial
5 limitation those things having any relation to the
6 network elements. And I think this is an important
7 distinction, because although I thought Mr. Fons
8 original request was objectionable, he at least was
9 trying to tie it in some way to the particular network
10 elements.

11 If you look at the amended and clarified
12 third request to produce, though, beginning with
13 Item B and moving on from there, it doesn't make any
14 mention whatsoever of the network elements. It just
15 says that FIXCA wants the most recent cost for -- in
16 effect every service we provide they ask for cost
17 studies for local service, cost studies for all
18 verticle services, cost studies for all toll services.
19 Cost studies for every switched access service and
20 cost studies for every private line and special access
21 service.

22 Now, I'm sure that there's probably
23 something we sell that they've neglected to ask for
24 but there can't be very many services at this point.
25 Because those categories are so incredibly broad that

1 I think they catch just about everything we sell under
2 tariff. We're talking about cost studies for, at a
3 minimum I would say, hundreds of services, perhaps
4 thousands of services. The breadth of this request is
5 just absolutely staggering. Again, they want cost
6 study, with a few exceptions, everything we sell.

7 Now, obviously a lot of the elements in
8 those cost studies are going to relate to things that
9 have absolutely nothing to do with this proceeding
10 even if you accepted every portion of Mr. McGlothlin's
11 argument. Many of these are going to be completely
12 unrelated in any theoretical or real world sense to
13 the particular network elements, but nevertheless,
14 FIXCA wants all of this information.

15 We also believe that aside from the
16 overbreadth, that the request for all of this
17 information is just not relevant.

18 There is a particular reason for having cost
19 studies for the unbundled network elements, and
20 that's because unbundled network elements are
21 provisions in a particular way, and as a result of
22 that provisioning, there are particular costs
23 associated with it. To look at another service and
24 say "Well, you have got a component of something in a
25 network element that is sort of similar to something

1 in some other service so your costs should be the
2 same, or maybe they shouldn't be the same, but we want
3 to see those other costs", to me is an incredibly
4 attenuated linkage between those other services and
5 what is really at issue here. I'd like to give you
6 two or three examples.

7 In a lot of instances there's just no
8 argument whatsoever that the category of services that
9 they've asked for are going to have anything to do
10 with the unbundled network element. And I'll give you
11 an example.

12 One of the elements that we've offered, and
13 we've filed these cost studies in the AT&T proceeding
14 and we've offered them here also -- would be for
15 loops. Well, with verticle services there shouldn't
16 be any loop cost. The verticle services by definition
17 platformed upon the local service and a loop is
18 associated with the local service. To the extent
19 we're talking about those particular elements,
20 verticle services should have absolutely nothing to do
21 with that whatsoever.

22 Even in those instances, though, where there
23 may be some common component between the network
24 elements that we have unbundled and other services,
25 the cost studies are not going to yield any relevant

1 information for a couple of reasons.

2 First of all, let's say they were talking
3 about a two-wire voice grade loop as an unbundled
4 element. That's not a residence line and it's not a
5 business line; it's something that has to be
6 provisioned in a particular way. It has to be handled
7 in the central office in a certain way and treated in
8 a certain way so it could be sold standing alone, and
9 that generates certain costs. And those costs are
10 reflected in our cost studies and, again, we've
11 offered to provide those.

12 It doesn't make sense to say that because
13 there's wire there and there's wire involved in local
14 service that we have to provide all of the cost
15 studies for local services, because using them to --
16 for example, to provide a residence line is somehow
17 going to shed light on the underlying cost of
18 providing the unbundled network element. That simply
19 doesn't make any sense.

20 The flip side of that is the cost studies
21 for many of the network services are not going to have
22 particular components broken out in a way that would
23 shed light on the unbundled elements at all. In other
24 words, something that we're offering as an unbundled
25 element simply isn't a part of, or else isn't

1 separately identified within the larger cost study for
2 the other service. So looking at it, it's not going
3 to -- it's just not going to shed any light on it and
4 it's not relevant.

5 I'd like to respond specifically to two
6 things that Mr. McGlothlin writes. First of all, in
7 his citation to the FCC order, I can't argue with what
8 the order says. I do argue with what he, I guess, is
9 implying based on that order.

10 The order says the burden is upon the local
11 exchange companies to support the costs of the
12 unbundled elements they provide, they offer. I can't
13 argue with that. That's why we've provided cost
14 studies; that's why we've provided testimony in the
15 arbitration dockets where that's an issue, and that's
16 why to the extent it's an issue here we will need to
17 do the same thing here.

18 That in no way justifies a fishing
19 expedition into other services or costs for other
20 services that are unrelated to the unbundled network
21 elements.

22 The second thing I want to address, I guess,
23 is his comments concerning my objections, which are
24 that to the extent these other studies are different,
25 that makes them somehow more relevant rather than less

1 relevant.

2 With all due respect, I just can't
3 understand the sense in that at all. I mean the
4 notion that if we have different cost studies that
5 take different things into consideration, the services
6 are configured differently, they're provisioned
7 differently, and, therefore, they are not at all
8 comparable to the costs for the particular elements,
9 that those differences are somehow relevant. I think
10 clearly those differences make these other studies
11 irrelevant.

12 Again, there's no relevance here but I think
13 what makes this request particularly objectionable is
14 not just the fact that it's for irrelevant
15 information, but for the fact that it's for incredibly
16 sensitive competitive information, and that it is so
17 broad.

18 Again, what FIXCA is asking for here is to
19 know the underlying cost of absolutely everything we
20 market and sell in the state of Florida without
21 exception. Most of that, even if you accept his
22 argument, has nothing to do with the cost of anything
23 that would even be a component in a unbundled network
24 element. Most of it is totally irrelevant. And again
25 for the reasons I've stated, even to the extent they

1 are common components, those unrelated cost studies
2 are not going to shed any light on the cost in these
3 proceedings whatsoever.

4 For all of those reasons we believe that
5 this question is clearly objectionable, and we ask
6 that you -- well, let me ask you this, I have one or
7 two other comments. Can I, in effect, have, I guess
8 it would be surrebuttal to Mr. McGlothlin, or should I
9 finish up now?

10 **COMMISSIONER JOHNSON:** It would be
11 preferable if you finished up now, but to the extent
12 he raises something you need to address, I'll
13 entertain that.

14 **MR. CARVER:** Okay. Let me say one thing. I
15 think I've demonstrated in the comments I've made that
16 these have no relevance, but let me say this: We're
17 very hesitant to turn all of this over to FIXCA simply
18 because they think it's relevant. So if you do
19 believe it has any relevance -- again, we don't think
20 it does, but if you do we would request that you
21 conduct an in camera inspection and see for yourself.
22 Because I think when you look at these you can see
23 that there is nothing in these unrelated cost studies
24 that would be useful to FIXCA in the context of this
25 docket. And as I've stated in my papers, I believe

1 that their reasons for wanting this information are
2 other than what they've stated. But again, to the
3 extent you are inclined to entertain their reasoning,
4 I would request that you make an in camera inspection
5 of the documents. Thank you.

6 **COMMISSIONER JOHNSON:** Thank you.

7 Joe, do you have any additional --

8 **MR. McGLOTHLIN:** Yes, first of all, I don't
9 intend this argument to get bogged down in lengthly "I
10 said you said."

11 But very quickly, I'd like to point out that
12 when Mr. Gillan clarified the information that we were
13 seeking through the original request, he did so by
14 pointing out that the broader studies necessarily
15 encompassed individual network elements in the course
16 of arriving at the overall conclusion. And that they
17 were useful to him for that reason because he believed
18 he can, through an analysis of those broader studies,
19 gain some insight through the process of analysis, as
20 to the costs attributable to the component parts. And
21 if you'll recall in the correspondence that we
22 delivered to Staff counsel when we were addressing the
23 procedural aspects of this, Mr. Carver worried out
24 loud that even though I had characterized the five
25 categories generally in a accurate way, he was

1 concerned that now we were using those as illustrative
2 and that we were going to ask for even more than that.

3 You'll see from the amended and clarified
4 Item 3 that consistent with our telephone discussion,
5 we have limited the categories to the five that were
6 enumerated in the course of that telephone call.
7 After that, we further narrowed the request to be
8 limited in terms of the numbers of studies and the
9 time frame involved. So we do think it's clear that
10 we've narrowed the request.

11 Secondly, I'm sure it's possible for
12 BellSouth to point out one coast study that does not
13 cover a particular network element. But our point is
14 that collectively the broader cost studies incorporate
15 all the network elements that provide -- that comprise
16 the component parts of those services. And that is
17 why we have the five categories so that collectively I
18 think we have information about all of them.

19 Again, Mr. Carver asserts that these studies
20 will not shed light on the individual components but
21 again that begs the question. The point is that we
22 have shown a reasonable basis for believing that these
23 studies would be the source of admissible evidence
24 through an analysis of the underlying work papers
25 methodology. It's indisputable that the cost studies

1 will incorporate information about the component
2 individual network elements. It's indisputable, I
3 don't think BellSouth will dispute the fact that these
4 cost studies as they have been conducted for years,
5 are incremental studies in nature, consistent, and
6 with the type of study required by the
7 Telecommunications Act, and the FCC's
8 order implementing rule.

9 And so we think there is a reasonable basis
10 to believe that those studies will include a lot of
11 information that is obtainable to an expert analyst
12 and that is germane to the issues in the proceeding.

13 Mr. Carver worries about the sensitivity of
14 the document. That's why we have confidentiality
15 agreements and FIXCA and BellSouth have negotiated and
16 signed a confidentiality agreement that applies to
17 this proceeding.

18 He used the word "fishing expedition." The
19 reason I cited the earlier case of Calderbank vs
20 Cazares is because it has a good discussion that
21 provides analysis that distinguishes between what
22 might be called an unsupported fishing expedition on
23 one hand, and the type of logical connection that --
24 and reasoning process that satisfy the requirement
25 that a request be reasonably calculated to lead to

1 discovery of admissible evidence. And we believe
2 we've met that standard.

3 And, again, to the extent that the network
4 elements are provisioned differently and configured
5 differently, we think we're entitled to the type of
6 discovery that will enable us to understand exactly
7 what that involves. With that I'll conclude.

8 **COMMISSIONER JOHNSON:** Mr. Carver, I have
9 one question for you, or at least one aspect I'd like
10 for you to respond to.

11 The argument that you raised the issue of
12 the sensitive nature of the information but that you
13 all have signed a confidentiality agreement. How
14 would you respond to that, and why do you think that
15 is insufficient to protect the information and the
16 sensitive nature that you raised about the
17 information? And then if you could, follow up with
18 your proposal that we do -- explain your proposal to
19 me.

20 **MR. CARVER:** As to the sensitive
21 information, I mean, frankly, it makes me a little bit
22 nervous when their expert, Mr. Gillan, who testifies
23 for FIXCA, who testifies for AT&T, who has testified
24 for a variety of our competitors, asks for absolutely
25 every cost study that we have on every service that we

1 sell.

2 I think that certainly the confidentiality
3 agreement has some value, but I also think that if
4 information is competitively sensitive, then that's a
5 factor that militates in favor of not making it
6 discoverable, but it's not properly discoverable, and
7 when the request is overbroad.

8 Again, in this instance, we have Mr. Gillan
9 who is requesting this information. I think probably
10 because he would find it valuable in his role as a
11 witness, not because it has any specific relevance to
12 this particular docket or to the issues in this
13 docket. You know, again, the confidentiality
14 agreement is good as far as it goes. But when we're
15 talking about sensitive information that deals with
16 the entire scope of our business, the confidentiality
17 agreement just doesn't go far enough.

18 Two things I'd like to address, and in doing
19 that I'll also talk about my proposal a little bit.

20 Mr. McGlothlin keeps talking about five
21 requests for studies, or five categories of studies.
22 Five studies haven't been requested. Instead what has
23 been requested are studies that relate to, at a
24 minimum, several hundred services. The process of
25 compiling that information, searching for that

1 information, looking for it wherever it may be, is
2 going to be incredibly burdensome. We don't believe
3 we should have to undergo that burden given the fact
4 it has no relevance. So, if we have to go through
5 that search, then part of the damage to us is going to
6 be done because we are going to have to spend a
7 tremendous amount of time compiling things that don't
8 really relate to this docket.

9 Of course, the other component of the
10 problem we have is that we don't want to turn the
11 information over to FIXCA. So that's why I suggested
12 if you believe that FIXCA's arguments may have some
13 merit, that you take a look at the cost studies.
14 Because I think if you do look at them you'll see that
15 there's lots there that is of relevance or really not
16 anything there that is of direct relevance to this
17 docket.

18 In terms of a proposal, I mean I could
19 certainly give you representative cost studies but I
20 imagine -- I don't know, one simple thing to do is we
21 could go ahead and go through the process, although I
22 would prefer not to, of seeing how many cost studies
23 we have for however many hundreds of services are at
24 issue, and giving all of those to you and let you
25 inspect them as you see fit. I think that's going to

1 be a tremendous amount of information and it's going
2 to be hard to do. So what I would prefer to do is to
3 provide some sort of representative sampling of the
4 types of studies that we're talking about so that you
5 can look at the format and see the types of
6 information they contain.

7 In terms of what that would entail, off the
8 top of my head I really don't have a suggestion. I
9 certainly would be willing to hear anything that you
10 or the Staff might want to propose. Or alternatively,
11 I could go back to the people at BellSouth who put
12 together cost studies and who are more knowledgeable
13 about them than I am and perhaps they can make some
14 suggestions to me as to what would be representative.

15 **MR. McGLOTHLIN:** Commissioner, may I
16 respond?

17 **COMMISSIONER JOHNSON:** Were you finished,
18 Mr. Carver?

19 **MR. CARVER:** Yes.

20 **COMMISSIONER JOHNSON:** Yes.

21 **MR. McGLOTHLIN:** Several quick points.

22 First, with respect to the adequacy or the
23 inadequacy of the confidentiality agreement, I'd like
24 to point out that under that agreement we have limited
25 access, limited to the attorneys and the witness. The

1 information will not be distributed to the individual
2 companies.

3 Secondly, with respect to the idea of an in
4 camera inspection, I believe counsel may be confusing
5 two things. The type of privileged information that
6 may warrant an in camera inspection and review by the
7 Prehearing Officer on one hand is not involved here.
8 What we have is our claim that we're entitled to see
9 the cost studies on a confidential basis because we
10 believe they contain relevant information, and that
11 under an expert's review they can be the source of
12 admissible evidence.

13 Now, in that regard, first of all, I think
14 the in camera inspection that he offers is
15 inappropriate for that reason. But in addition to
16 that, Commissioner, I don't think it's a slight to you
17 and me to suggest that neither one of us would be the
18 appropriate person to determine the worth of these
19 cost studies. Our expert consultant who has worked
20 with these methodologies and performs these studies as
21 his livelihood could gauge far better than anybody on
22 this call probably as to what is possible to derive
23 from them. So I don't think the idea of submitting
24 these cost studies for an in camera review is an
25 appropriate one.

1 And next I'd like to point out that if it's
2 a burden on anybody, it's going to be a burden on
3 FIXCA to perform the analyses. All that BellSouth has
4 to do is identify and provide the studies and to the
5 extent they complain about the number of studies, the
6 request is co-extensive and doesn't go any further
7 than the number of services they provide that are
8 pertinent to the analyses of network elements. So to
9 complaint about the number of studies is to complaint
10 that they offer too many services.

11 And, finally, I think I covered everything
12 with that.

13 **MR. CARVER:** May I respond very briefly and
14 I promise it's the last time I'll ask to speak.

15 **COMMISSIONER JOHNSON:** Briefly.

16 **MR. CARVER:** Okay. Two points. I really am
17 at a loss to understand Mr. McGlothlin's logic here
18 because he says they want the documents because they
19 have what he calls a reasonable basis to believe they
20 might in some way lead to the discovery of admissible
21 evidence, but he doesn't want you to look at them to
22 see if his belief is actually true or not. And I
23 don't think there's a real distinction here that's of
24 any value between reviewing information to see if it's
25 privileged and reviewing information to see if it's

1 relevant. Again, I think if you take a look at these
2 documents, you'll see what I'm talking about.

3 Secondly, you said that the burden would be
4 on FIXCA to perform the analysis. Again, one of my
5 fears is that Mr. Gillan is going to use these in some
6 fashion, or at least acquire knowledge that he would
7 use somewhere else, so to the extent he simply takes
8 them and puts them in his files for future reference,
9 I don't think that's going to be a lot of burden.

10 But more to the point, Mr. McGlothlin also
11 says that FIXCA has experts and that their experts are
12 the ones who can really look at this and tell whether
13 or not they are of any value. Well, the Commission
14 has experts also, and we certainly would not object to
15 your having them reviewed by Staff members or
16 consulting with them to the extent that their
17 expertise is necessary. That's all I have.

18 **COMMISSIONER JOHNSON:** Staff, do you have
19 any questions or comments?

20 **MS. BARONE:** Yes. Commissioner Johnson, I
21 think what might be the proper thing to do is to go
22 ahead and review the transcript from today's
23 proceedings and then determine at that point if you
24 believe you need to look at the cost studies. It may
25 be we don't need to get to that point. If you do and

1 you decide that you want to hear further argument on
2 that point, we could arrange another conference call.

3 **COMMISSIONER JOHNSON:** Okay. Any other
4 comments?

5 **MR. MCGLOTHLIN:** One final brief comment.

6 I intended to cite one more case. It's
7 First City Development of Florida vs Hallmark of
8 Hollywood Condominium Association, 545 So.2d 502, and
9 I cite it for as bearing on the issue of whether
10 Southern Bell has satisfied its intention that the
11 request is an undue burden.

12 **COMMISSIONER JOHNSON:** Thank you very much.

13 I will be in the office tomorrow and I'll
14 review the transcript and the information. I should
15 be prepared to make a ruling on this, or provide you
16 with at least notice if I need additional information
17 on Friday, but I think you can expect a ruling as to
18 these issues on Friday.

19 **MR. MCGLOTHLIN:** Thank you, Commissioner.

20 **COMMISSIONER JOHNSON:** Any other questions
21 and concerns? I apologize, Monica, I didn't allow you
22 to make an appearance again.

23 **MS. BARONE:** That's okay. One quick
24 question. I would like for the record, just to
25 clarify with Mr. McGlothlin that he has withdrawn his

1 request for official recognition of the Ohio Public
2 Utilities Commission order?

3 **MR. McGLOTHLIN:** What I told Staff counsel
4 was that we submitted that request in conjunction with
5 a pending issue, and that if we have reason to want
6 the Prehearing Officer or the Commission to take
7 official recognition, we will raise that separately
8 again.

9 **COMMISSIONER JOHNSON:** So it has been
10 withdrawn at this point in time?

11 **MR. McGLOTHLIN:** Yes.

12 **COMMISSIONER JOHNSON:** Thank you,
13 Ms. Barone, I failed to mention that issue.

14 **MR. McGLOTHLIN:** Been withdrawn but you may
15 see it again.

16 **COMMISSIONER JOHNSON:** Certainly. Any other
17 issues? Being none, I think we can adjourn this
18 hearing. And again you can expect to receive some
19 ruling or notice on Friday afternoon. Thank you very
20 much.

21 (Thereupon, the hearing concluded at 8:45
22 a.m.)

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1 STATE OF FLORIDA)
 2 :
 3 COUNTY OF LEON)

CERTIFICATE OF REPORTER

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

6 DO HEREBY CERTIFY that the Status Conference
 7 in Docket No. 960786-TL was heard by the Prehearing
 8 Officer at the time and place herein stated; it is
 9 further

10 CERTIFIED that I stenographically reported
 11 the said proceedings; that the same has been
 12 transcribed under my direct supervision; and that this
 13 transcript, consisting of 36 pages, constitutes a true
 14 transcription of my notes of said proceedings.

15 DATED this 21st day of August, 1996.

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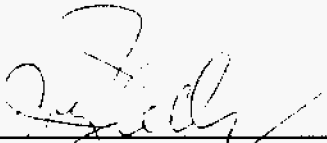
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