BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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| In the Matter of | DOCKET NO. 990649-TP |
| INVESTIGATION INTO PRICING OF UNBUNDLED NETWORK ELEMENTS. | |

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PHASE TWO

VOLUME 7

Pages 1003 through 1129

PROCEEDINGS: HEARING

BEFORE: CHAIRMAN J. TERRY DEASON
COMMISSIONER E. LEON JACOBS, JR.
COMMISSIONER LILA A. JABER

DATE: Tuesday, September 19, 2000

TIME: Commenced at 9:30 a.m.

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

REPORTED BY: KORETTA E. STANFORD, RPR
Official Commission Reporter
FPSC Bureau of Reporting

APPEARANCES:

JIM LAMOUREUX, 1200 Peachtree Street NE, Atlanta, Georgia, 30309, appearing on behalf of AT&T.

DONNA McNULTY, MCI WorldCom, 325 John Knox Road, Tallahassee, Florida 32303, appearing on behalf of MCI WorldCom.

RICHARD MELSON, Hopping, Green, Sams & Smith, 123 South Calhoun Street, Tallahassee, Florida 32314, appearing on behalf of MCI WorldCom and Rhythms Links.

JOSEPH McGLOTHLIN and VICKI GORDON KAUFMAN, McWhirter, Reeves Law Firm, 117 South Gadsden Street, Tallahassee, Florida 32301, appearing on behalf of Florida Competitive Carriers Association (FCCA) and Z-Tel.

NANCY B. WHITE, BENNETT ROSS, and KIP EDENFIELD, c/o Nancy Sims, 150 South Monroe Street, Suite 400, Tallahassee, Florida 32301, appearing on behalf of BellSouth Telecommunications, Inc.

JEFFRY WAHLEN, Ausley & McMullen, 227 South Calhoun Street, Tallahassee, Florida 32302, appearing on behalf of ALLTEL.

JOHN FONS and Charles Rehwinkel, P.O. Box 2214, Tallahassee, Florida 32316-2214, appearing on behalf of Sprint-Florida, Incorporated.

SCOTT SAPPERSTEIN, One Intermedia Way, M.C. FLT.HQ3, Tampa, Florida 33647-1752, appearing

on behalf of Intermedia Communications, Inc.

MICHAEL A. GROSS, 310 North Monroe Street, Tallahassee, Florida 32301, appearing on behalf of Florida Cable Telecommunications Association, Inc.

KAREN CAMECHIS, 214 South Monroe Street, 2nd Floor, Tallahassee, Florida, appearing on behalf of Time Warner, LP.

FLOYD SELF, Messer, Caparello & Self, 215 South Monroe Street, Suite 701, Tallahassee, Florida 32302-1876, appearing on behalf of AT&T Communications of the Southern States.

JEREMY MARCUS, Blumenfeld & Cohen, 1625 Massachusetts Avenue, Suite 300, Washington, D.C. 20036, appearing on behalf of Rhythms Links.

CATHERINE F. BOONE, 10 Glenlake Parkway, Suite 650, Atlanta, Georgia 30328-3495, appearing on behalf of Covad Communications.

MICHAEL BRESSMAN, 5 Corporate Centre, 801 Crescent Centre Drive, Suite 600, Franklin, Tennessee 37067, appearing on behalf of BlueStar Networks.

MICHAEL SLOAN, Swidler Berlin Shereff Friedman, 3000 K Street, N.W., Suite 300, Washington, D.C. 20007-5116, appearing on behalf of Broadslate Networks, Inc., Incorporated, Cleartel Communications, and Florida

Digital Network.

BETH KEATING, DIANA CALDWELL and WAYNE KNIGHT, FPSC Division of Legal Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, appearing on behalf of the Commission Staff.

# I N D E X

## WITNESSES



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P R O C E E D I N G S

CHAIRMAN DEASON: Call the hearing to order. Could I have the notice read, please.

MR. KNIGHT: Notice was given on August 21st, 2000, in docket number 9900649, which is the investigation into the pricing of unbundled network elements that a hearing would be held at this time and place for the purpose set forth in the hearing.

CHAIRMAN DEASON: Thank you. I'm going to now request appearances, and I'm going to ask you to go slowly, because by the time we get through everyone, my hand's going to be tired.

MS. WHITE: Okay. Nancy White, Bennett Ross, and Kip Edenfield for BellSouth Telecommunications.

CHAIRMAN DEASON: Thank you.

MR. WAHLEN: Good morning, Commissioners; Jeff Wahlen on behalf of Alltel Communications, Inc.

MR. FONS: Mr. Chairman, I'm John Fons. I'm appearing on behalf of Sprint Communications Company Limited Partnership. Also appearing is Charles Rehwinkel.

CHAIRMAN DEASON: Thank you.

MR. SLOAN: Commissioner, I'm Michael Sloan with the law firm Swidler Berlin Shereff Friedman appearing on behalf of Broadslate Networks, Incorporated, Florida Digital Network, Incorporated, and Cleartel

Communications.

CHAIRMAN DEASON: Thank you.

MR. SELF: Good morning, Mr. Chairman. I'm Floyd Self of the Messer, Caparello & Self law firm appearing on behalf of AT&T Communications of the Southern States. I would also like to enter an appearance for Jim Lamoureux of AT&T's office in Atlanta.

MR. McGLOTHLIN: My name is Joe McGlothlin of the McWhirter, Reece law firm appearing for the Florida Competitive Carriers Association. I'm also authorized to enter an appearance on behalf of Z-Tel Communications Incorporated. I'd like to enter the appearance also of Vicki Gordon Kaufman of the firm.

CHAIRMAN DEASON: Thank you.

MR. MELSON: Commissioner, Richard Melson of the law firm Hopping, Green, Sams & Smith appearing on behalf of Worldcom, Inc. and also on behalf of Rhythms Links, Inc. I'd like to enter an appearance on behalf of Worldcom for Donna McNulty and an appearance for Rhythms Links on behalf of Jeremy Marcus of the law firm of Blumenfeld & Cohen.

CHAIRMAN DEASON: Sorry. Marcus is appearing on behalf of whom?

MR. MELSON: Rhythms Links, Inc.

CHAIRMAN DEASON: Thank you.

MS. BOONE: Good morning, I'm Catherine Boone. I work for Covad Communications Company and will be appearing on Covad's behalf.

MR. BRESSMAN: I'm Michael Bressman, and I work for BlueStar Net --

CHAIRMAN DEASON: Your last name again?

MR. BRESSMAN: Bressman.

CHAIRMAN DEASON: COuld you spell that, please.

MR. BRESSMAN: "B," as in boy, R-E-S-S-M-A-N.

CHAIRMAN DEASON: Thank you.

MR. BRESSMAN: And I work for BlueStar Networks, Inc. and appearing on their behalf.

MR. GROSS: Good morning. I'm Michael Gross, and I'm appearing on behalf of the Florida Cable Telecommunications Association. Thank you.

MR. SAPPERSTEIN: Good morning, Mr. Chairman, Commissioners. I'm Scott Sapperstein representing Intermedia Communications. I'd also ask that the Commission allow Joe McGlothlin to make an appearance on our behalf. He's indicated his willingness and request that I can be excused at the end of today.

CHAIRMAN DEASON: Very well.

MR. SAPPERSTEIN: Thank you.

MS. CAMECHIS: Good morning, Karen Camechis on behalf of Time Warner Telecom of Florida LP.

CHAIRMAN DEASON: Thank you.

MR. SLOAN: One other. I'd like to enter an appearance on behalf of Thomas Lotterman also with the Swidler Berlin law firm on behalf of the three clients I mentioned earlier.

CHAIRMAN DEASON: You're Mr. Sloan, right?

MR. SLOAN: Yes.

COMMISSIONER JABER: Thomas -- what was the last name?

MR. SLOAN: Lotterman, L-O-T-T-E-R-M-A-N.

CHAIRMAN DEASON: Could you name your clients again, please?

MR. SLOAN: Broadslate Networks of Florida, Incorporated, Cleartel Communications, Incorporated, Florida Digital Network, Incorporated.

CHAIRMAN DEASON: Okay.

MR. KNIGHT: And Diana Caldwell, Beth Keating, and Wayne Knight on behalf of the Commission Staff.

CHAIRMAN DEASON: Okay. Preliminary matters?

MR. KNIGHT: There are several outstanding motions in this docket. First, on September 11th, 2000, BellSouth filed a motion for leave to file corrected testimony and a corrected exhibit. BellSouth wishes to correct an omission in two areas in witness Page's testimony and the Exhibit JHP-3.

CHAIRMAN DEASON: Okay, any objection to this motion? Hearing no objection, the motion is granted. Next item.

MR. KNIGHT: Okay. BellSouth also filed an emergency motion to compel discovery responses from several parties. This motion has been addressed as it pertains to BlueStar, Covad, and Rhythms. The motion was still outstanding as it relates to Supra. Supra, however, has withdrawn from the proceedings, so the motion would be moved as for that.

CHAIRMAN DEASON: So, there's no need to take any action at this point.

MR. KNIGHT: Correct.

CHAIRMAN DEASON: Very well. Next item.

MR. KNIGHT: On September 13th, 2000, the Coalition, which is Broadslate, Cleartel, and Florida Digital, filed a motion for leave to file a corrected exhibit. They request leave to correct witness McPeak's Exhibit EM-6 to reflect the correct formulas in Column E of the spreadsheet. We have not had any responses to date.

CHAIRMAN DEASON: Any objection? Hearing no objection, show the motion's granted. Next item.

MR. KNIGHT: On September 15th, the Coalition, again, filed a motion for late-filed discovery responses

to Staff. The Coalition states that a change in attorneys handling the case resulted in the late service.

CHAIRMAN DEASON: Any objection? Hearing none, show that that is also granted. Next item?

MR. KNIGHT: Commission Staff filed a motion to compel Supra Telecom to respond to Staff's set of interrogatories. Again, that motion would be moved as to Supra at this time.

CHAIRMAN DEASON: Very well. Next item.

MR. KNIGHT: The Coalition, Broadslate, Cleartel, and Florida Digital, filed a request for qualified representative for Thomas Lotterman and Michael Sloan.

CHAIRMAN DEASON: Any objection? Hearing none, show that motion granted. And are there any other outstanding motions we need to address at this time?

MR. WAHLEN: I don't have a motion, Commissioner, but on behalf of Alltel, I'd like to be excused from the hearing. We don't have a witness, I have no cross. We're going to brief the case based on the record developed and would like to be excused from the hearing at this time.

CHAIRMAN DEASON: You're going to auction off your seat at the front panel?

MR. WAHLEN: Actually, there are others who

would like to leave, too, but I would like permission to be excused.

CHAIRMAN DEASON: Very well.

MR. WAHLEN: Thank you.

MR. ROSS: Mr. Chairman, Bennett Ross on behalf of BellSouth. There's one matter I don't believe that I heard Mr. Knight mention, but BellSouth has filed a motion to revise Mr. Varner's testimony and exhibit. Mr. Varner's testimony has been stipulated into the record, and that was filed on September 5th, 2000.

CHAIRMAN DEASON: Okay. So, when we stipulate that testimony into the record, you will be moving a corrected version; is that correct?

MR. ROSS: Yes, sir. It will correct -- primarily, just the exhibit itself will be corrected, and we've already filed that corrected exhibit with the Commission and served the parties with that corrected exhibit.

CHAIRMAN DEASON: When we get to that point, just clarify that's what you're doing to make sure the record is clear.

MR. ROSS: Thank you.

CHAIRMAN DEASON: It should not be a problem. Other preliminary matters?

MR. KNIGHT: There's also testimony and exhibits

of certain witnesses that have been stipulated and that will be entered into the record as being stipulated without cross examination and the parties, they wish to have those witnesses excused, if possible. We have a list of witnesses that are subject to possible stipulation. We may want to put an agreement on the record as to that.

CHAIRMAN DEASON: Let's begin with the BellSouth witnesses. There's three; is that correct?

MR. KNIGHT: Correct.

CHAIRMAN DEASON: Witnesses Page, Reid, and Varner? Any parties have any objection stipulating that testimony and accompanying exhibits? Staff has no objection. Commissioners? Okay. When we get to the correct stage of the hearing we will enter that testimony into the record, but for now those witnesses may be excused, will not have to appear.

FCCA, Mr. Gillan, any objection? Hearing no objection, likewise, he will be treated in the same manner.

Witnesses Pitts and Darnell for AT&T and MCI. Hearing no objection, that testimony then, likewise, will be stipulated into the record.

Witness Ford appearing for Z-Tel, any objection? Hearing none, same treatment.

Witness Barta for FCTA. Hearing no objection,

same treatment there.

And three witnesses on behalf of Sprint: Sichter, McMahon, and Cox; any objection?

MR. FONS: I believe, Mr. Chairman, witness Dickerson for Sprint, BellSouth has agreed to stipulate Mr. Dickerson and waive cross.

CHAIRMAN DEASON: Mr. Ross, is that correct?

MR. ROSS: That's correct, Mr. Chairman.

CHAIRMAN DEASON: Okay. Then, we can add Dickerson to that as well. You trying to leave, too, Mr. Fons?

MR. FONS: I'm getting there.

CHAIRMAN DEASON: Okay. No, objection then, that treatment also will be afforded for those witnesses. We will take care of that in a moment when we get to that phase of the hearing, we'll actually insert that testimony into the record.

MR. KNIGHT: Okay.

CHAIRMAN DEASON: But all those witnesses, as we've just described, can be excused for the remainder of the hearing.

Other preliminary matters?

MR. KNIGHT: There are also several requests for confidential treatment by BellSouth and AT&T since the prehearing conference. Staff plans to prepare orders for

the prehearing officer addressing these outstanding requests before the recommendation on this matter is brought to agenda.

At this time, there are a number of stipulated exhibits --

CHAIRMAN DEASON: Let's back up for a moment. This information has been requested confidential treatment and will be afforded such treatment until there is a disposition one way or the other, correct?

MR. KNIGHT: Correct.

CHAIRMAN DEASON: Okay. Very well.

MR. KNIGHT: There are also a number of stipulated exhibits, which can be marked for the record at this time. The numbering will pick up where Phase I of the proceedings left off. Similarly, the hearing transcript will take up the last page number from the Phase I transcript.

CHAIRMAN DEASON: Okay. The next hearing exhibit is Exhibit 60; is that correct?

MR. KNIGHT: Correct. And first, we'd like to enter the Official Recognition List for this proceeding. Staff recommends that it be marked as hearing Exhibit 60 and in lieu of reading this rather extensive list into the record.

CHAIRMAN DEASON: Do all the parties have this

list?

MR. ROSS: No, Mr. Chairman.

CHAIRMAN DEASON: Don't have the list.

MR. ROSS: I don't believe so.

CHAIRMAN DEASON: Okay. I think, it would probably be advisable to make that list available to everyone. I would anticipate the parties need some time to review this. What we will do, we will identify this as Exhibit 60. We will not move it into the record until parties have had a chance to review it.

And I would also ask, parties, that if there are items not on the list, which you wish to have included on that list, please, make a note of that, and we will modify Exhibit 60 to include those items, if there are no objections to including them. And we'll have one exhibit, which includes all of the items which will be officially recognized.

MR. KNIGHT: Okay. Next is Stip 1, which contains BellSouth's responses to discovery. And we ask that that exhibit be marked as Exhibit 61.

CHAIRMAN DEASON: We've got a long, long list of stipulated exhibits. Staff, have you made this list available to the parties? Are there any objections to the stipulated exhibits as identified by Staff?

And I know that stipulated Exhibit 16, which is

number 17 on Staff's list, that that will no longer be needed because of Supra's withdrawal, but with that objection, it would be much simpler just simply to identify these in mass and move them in mass.

MS. KEATING: Mr. Chairman, if I could just point something out. We did e-mail it to the parties yesterday, but I think some people were in transit. So, I'm not sure that everybody has actually seen the list. And in addition, there is one other exhibit that we'd like to substitute for, I believe, it's Stip 16 that was identified as Supra's responses to discovery.

CHAIRMAN DEASON: Okay. Let's make that change to your list. And then, what we will do is we'll make the list available to everyone, and we will identify all of the exhibits as you have them identified and at some future time we'll move them. What is the change that you wish to make?

MS. KEATING: The change would be to change Stip 16 from Supra's responses to discovery request to Sprint's responses to BellSouth's discovery request. And just to be clear, we handed out a cover sheet a few minutes ago that identified that as Stip 21, but I think if we just substitute it for Stip 16, which will be eliminated because Supra has withdrawn, I think, that will keep the numbering a little bit clearer.

CHAIRMAN DEASON: Okay. So, then, that would not necessitate any changes to the numbering system that you have, everything should flow.

MS. KEATING: That's correct, it should flow.

CHAIRMAN DEASON: Okay. We need to make this list available to the court reporter as well. And what I will do is as you have these items identified on your list, they will be identified for purposes of the record with the hearing exhibit numbered as you have identified in parens following the item.

And after all parties have had an opportunity to review the list and indicate if there are any objections, then we will deal with those objections. If there are no objections at that time, then, all of these identified exhibits will be admitted into the record in mass.

MR. MELSON: Chairman Deason, can you tell me what the last number is on that list?

CHAIRMAN DEASON: Yes. My list shows Exhibit 89. So, it would be Exhibits 60 through 89.

MR. MELSON: Thank you.

(Exhibits 60 through 89 marked for identification.)

CHAIRMAN DEASON: Okay. Staff, just remind me at some future time, maybe after a break or whatever, we can address Exhibit 60 through 89.

MS. KEATING: Certainly.

CHAIRMAN DEASON: Okay. I believe, we are prepared to have opening statements, unless parties have other preliminary matters.

MR. ROSS: Mr. Chairman, one additional preliminary matter. At the prehearing last week, I believe, there was a discussion that was had about a demonstration that some of the parties wished to do to demonstrate loop conditioning. We discussed at that time with Commissioner Jacobs our desire to reserve the right to do a demonstration of our own.

What we have done is we have done a videotape of a loop conditioning project, actually in the field, that was performed within the last couple of weeks in south Florida. The videotape itself is -- the work took over four hours from start to finish. The videotape itself is about an hour and 15, an hour and 20 minutes of actual work being done. Some of it can be fast-forwarded for the convenience of the Commission.

We believe that it's important for the Commission to get a sense of really what is involved in a project from start to finish, which we don't believe can accurately be depicted in a sterile hearing room, but we understand the time constraints under which the Commission and all the parties are operating.

And what we would suggest is that the videotape be viewed, possibly during a lunch break at some point and time in the hearing so the Commission can, you know, have lunch, but at the same time see the video and see what the work involved in this process actually, is.

CHAIRMAN DEASON: I'm not going to do that.

MR. ROSS: Okay.

CHAIRMAN DEASON: If you want to identify that video as an exhibit and give me a copy of it, I'll look at it at my leisure, but I'm not going to use my lunch hour to look at your video, okay?

MR. ROSS: Could we have permission to use 15 minutes of the video or a portion of the video on cross examination of the individual who would be performing the demonstration on behalf of the ALECs?

CHAIRMAN DEASON: You want to use your video in cross examination?

MR. ROSS: Yes, sir. And we have the individual who can authenticate it, if that becomes an issue, who was there when it was done and who can attest to the fact that it accurately depicts what was done at a particular job, if that is an issue.

CHAIRMAN DEASON: Well, I don't know if that's ever been done before. Parties, you've heard the suggestion. I'm open for feedback.

MR. MELSON: Commissioner, I would like to think about it. My initial reaction is that we probably do not have an objection to that. Using it in cross may actually be better, because it would allow our witness to point out any aspects to the video that he feels may not be representative, so that may be a good solution. It may be -- we have not seen the video. Maybe, if we could arrange with Mr. Ross to see a copy of it before we have to make a final -- take a final position.

CHAIRMAN DEASON: Mr. Ross, which witness will you utilize this video during your cross?

MR. ROSS: I believe, the witness for the ALECs is Mr. Riolo, who was planning on doing the demonstration.

MR. MELSON: Commissioner, he is unlikely to be on the stand before Thursday, I would guess.

CHAIRMAN DEASON: Okay. Well, that should give us sufficient time, then, for Mr. Melson and whoever else wishes to preview the video to do that before cross examination takes place and maybe you all can reach an accommodation and help the chairman understand how you foresee this proceeding.

MR. MELSON: Thank you.

MR. ROSS: If it becomes an issue, Mr. Chairman, we're happy to do it as part of our direct case. We don't want to, you know, affect the flow of the case at all. If

the other parties prefer that we introduce it as part of our direct case, we're happy to do that as well.

CHAIRMAN DEASON: All right. Well, you all work it out and bring a resolution to the Commission, and we will make an accommodation. Other preliminary matters?

MR. BRESSMAN: Mr. Chairman?

CHAIRMAN DEASON: Mr. Bressman.

MR. BRESSMAN: BlueStar has transcript copies of a number of the depositions that we took, and I wanted to know if this would be the appropriate time to move them into the record?

CHAIRMAN DEASON: Staff, have those depositions been identified in your list anywhere?

MR. BRESSMAN: They have not been, I don't believe.

MS. KEATING: No, sir. The only deposition transcripts that we have marked are the ones for the depositions that we actually took.

CHAIRMAN DEASON: Have you identified the parties of your desire to have these depositions identified as an exhibit and entered into the record?

MR. BRESSMAN: Excuse me?

CHAIRMAN DEASON: Have you discussed this with the other parties as to your desire to have these depositions identified and entered into the record?

MR. BRESSMAN: Yes, I have. And, I believe, there was no objection.

CHAIRMAN DEASON: Okay. Do you have a list prepared of those depositions?

MR. BRESSMAN: I don't have a list prepared at the time, but I could give you some of them at the moment. We're still waiting for some of the other copies from court reporters.

CHAIRMAN DEASON: You prepare your list and you identify it with enough specificity that we can make sure the record is complete, and then we will go through the process just like I did with the Staff, giving them a number. And if there's no objection, at the appropriate time, we'll admit those into the record. Just remind me in case I forget.

MR. BRESSMAN: Thank you.

CHAIRMAN DEASON: All right.

MR. SELF: Mr. Chairman?

CHAIRMAN DEASON: Yes.

MR. SELF: We also have two deposition transcripts. We have the copies. We've discussed this, I believe, with the parties in advance. If we could go ahead and identify and give those numbers now.

CHAIRMAN DEASON: I know it's only two items, but I want a list from you as well, Mr. Self, and we'll go

through that process.

MR. SELF: Thank you.

MR. ROSS: Mr. Chairman, BellSouth would also like to introduce into the record the depositions of the four Sprint witnesses whose testimony has been stipulated to, and we will provide a list.

CHAIRMAN DEASON: Yes, you learn quick. Okay. Other preliminary matters?

Okay. I understand there's been 20 minutes per side allocated for opening statements, is that correct?

MR. McGLOTHLIN: That's correct.

CHAIRMAN DEASON: Okay. Mr. McGlothlin, are you going be handling that or is it going to be allocated to various --

MR. McGLOTHLIN: On the ALEC side of the table, we've allocated that among five attorneys. Commissioner Deason, I would expect or my anticipation was that the opening statements would proceed in the same order as the witnesses and that BellSouth would go first. We'll -- at your pleasure, but --

CHAIRMAN DEASON: I'm just trying to determine who is going to be arguing at this point, Mr. McGlothlin. Who is the five, yourself and --

MR. McGLOTHLIN: I will be the first to argue, then Jim Lamoureux of AT&T, Rick Melson, John Fons, and

Michael Gross.

CHAIRMAN DEASON: Okay. And that's the order in which --

MR. McGLOTHLIN: That's correct.

CHAIRMAN DEASON: Okay. BellSouth?

MR. ROSS: Mr. Chairman, I'll be doing the opening statement.

CHAIRMAN DEASON: The entire 20 minutes?

MR. ROSS: Well, we were thinking about spreading it, but I couldn't delegate.

CHAIRMAN DEASON: Okay. Before you begin, Mr. Ross and Mr. McGlothlin, I'll address this to you, and I don't know if you're the appropriate one or someone else in your list there; at some point, I want you, both sides, to address the effect of the Eighth Circuit's decision, what, in fact, it has on the proceeding.

Primarily, I'm interested in whether the effect of what we do here today, over the next several days, and the process we go through and the decision that we make, what meaning does it have? What impact does it have? How lasting it going to be? Or are we here at an exercise that is simply going to have to be redone in a short period of time?

And if that is the case, I'm going to ask the question as to why are we doing this now? And I want very

specific answers to those questions. I want guidance. We're taking a lot of time and resources. And I don't mind taking that time and resources, if what we're doing has meaning and impact and some lasting effect. And if that is not the case, I'm going to want an explanation as to why we're here.

And, Mr. Ross, if you did not anticipate addressing that, I will give you some latitude to give you a few more minutes of your 20, but if you can incorporate it within your 20, I would appreciate that.

Mr. McGlothlin, the same with you or whomever is going to address that.

MR. McGLOTHLIN: Okay.

CHAIRMAN DEASON: Very well.

MR. ROSS: Thank you, Mr. Chairman. I'll try to address your concerns in the scope of my opening.

Mr. Chairman, Commissioners, the purpose of this proceeding is to establish just and reasonable rates for unbundled network elements that the ALECs may want to purchase from BellSouth in the state of Florida.

Every party in this proceeding acknowledges the importance of the task that faces this Commission. The establishment of just and reasonable rates is critical to the continued development of local competition in the state of Florida.

The establishment of just and reasonable rates for unbundled network is a balancing act. On the one hand, the Commission must balance -- must ensure that BellSouth is fairly compensated for the use of its facilities. On the other hand, the Commission must ensure that ALECs pay no more than BellSouth's forward-looking cost of such facilities.

There's no question as a result of the Eighth Circuit's decision that there is some uncertainty as to certain aspects of the legal standard that controls the outcome of this case. The statute, however, is quite clear. And the Telecommunications Act of 1996, specifically, requires and provides guidance to this Commission in establishing rates. And it sets forth a standard that requires that rates be just and reasonable and that those standards be based on cost and that they may include a reasonable profit and that they be nondiscriminatory.

The FCC has taken that statute and adopted rules of its own that set forth specific requirements that the FCC felt were appropriate in establishing cost-based rates. Some of the FCC's rules are relatively noncontroversial in the sense that most of the party, all the parties, really, to this proceeding, agree that costs must be forward-looking.

The disagreement was on the question of from who's perspective must costs be forward-looking? The FCC had adopted what we commonly refer to as the hypothetical most efficient provider standard so that the Commission's task under the FCC's rules was to develop costs using the most efficient technology limited only by the existing wire center locations.

Everything else was to be structured, what we call the scorch node approach, from the ground up using really the most efficient technology and assuming the most efficient provider in the marketplace. The Eighth Circuit said that that hypothetical standard was wrong, that the FCC had violated the Telecommunications Act of 1996, because the cost must actually be the cost that the incumbent is actually going to incur on a going-forward basis.

So, instead of looking at the hypothetical standard under the Eighth Circuit's view, the Commission's task is to establish rates that actually reflect BellSouth's actual forward-looking cost. The status of the Eighth Circuit's rule, of course, the ruling is somewhat up in the air as several parties have correctly pointed out, the Eighth Circuit has not actually issued its mandate. Several parties, including several incumbents in the FCC, have asked for a stay of the FCC's

mandates so that the issue can be appealed to the United States Supreme Court.

The common view is that the Supreme Court will be inclined to grant certiorari, if for no other reason, than the Supreme Court is already looking at the FCC's pricing rules in the context of a decision from the Fifth Circuit on the universal service case.

But, of course, it's impossible to predict what's going to happen, whether the Eighth Circuit will grant a stay, whether the Supreme Court will take cert, what will happen ultimately if the Supreme Court does review the decision.

From BellSouth's perspective, however, the uncertainty that does exist with respect the status of the FCC's pricing rules does not effect the importance of this proceeding. The task before this Commission -- this Commission has looked at rates before, and it is engaged in the balancing act that I have described. It did it first in 1996, which seems like a lifetime ago to many of us in the context of the original AT&T and MCI arbitrations.

And as you'll recall, there was uncertainty at that time about the FCC's pricing rules, but on jurisdictional grounds. Now, the Commission looked at costs again in April of 1998, again, in the context of the

AT&T and MCI arbitration, to look at additional network elements, and to establish rates for collocation. So, I believe that the Commission, you know, since the Telecommunications Act of 1996, as a result of litigation, there has been uncertainty inherent as part of this process.

Chairman Deason, your question about the lasting effect of a decision by this Commission, I can't tell you with certainty that a decision by the Commission in this proceeding will have lasting effect. It certainly will have an effect in the sense that the Commission must establish rates for certain elements for which this Commission has not established rates.

The best example would be the new elements that BellSouth has been required to unbundle as a result of the FCC's 319 order. This Commission has yet to establish cost-based rates for those particular elements and, by law, we're required to offer those elements to ALECs in the state of Florida and have been for some time, but we need guidance from the Commission as to the appropriate rates to establish for those elements.

It may -- it could be months, it could be years before the dust finally settles on the Eighth Circuit's proceeding and the effect of the Eighth Circuit's ruling on the FCC pricing rules. But, I believe, the view of

BellSouth and, I believe, the view of most of the parties here is that cost-based rates are important. We need to have appropriate rates in place for competition to continue to flourish in the state of Florida. And none of us want to have to go through this process more than once every several years, but it is uncertain at this time as to exactly how the Eighth Circuit ruling will bear out in terms of this proceeding.

At the very least, and Ms. Caldwell and Mr. Stegeman, on behalf of BellSouth will address this in more detail, that the original cost studies were designed to comply with the FCC's pricing rules. And from BellSouth's standpoint, the FCC's pricing rules essentially set the floor, if you will, for appropriate rates.

The Eighth Circuit's decision, in our view, essentially holds that the rate level should be above the floor as set by the FCC. BellSouth has indicated, and we reiterate today, that we are willing to live with what we believe would be the lower rates under the FCC's view than if rates were set in compliance with the standard adopted by the Eighth Circuit. But at some point and time, depending on what happens with the Supreme Court, the rates will need to be revisited.

COMMISSIONER JABER: Mr. Ross, may I ask you a question on the legal effect of the stay? You made

reference that the parties have asked for a stay of the Eighth Circuit's decision. If that stay is granted, what's the legal effect? And how is the state Commission affected by that decision?

MR. ROSS: If the stay is granted, Commissioner, the FCC's pricing rules will remain in force as they exist today. And really, that would not affect this proceeding at all, because as I indicated earlier, BellSouth has designed its cost studies in order to comply with the FCC's pricing rules. So, if those pricing rules continue in effect, a stay would not have an affect on this proceeding, in BellSouth's view.

Although, it's hard to tell from the mountain of paper that's been filed in this case. The task facing this Commission, actually, is somewhat easier than the task that the Commission has faced in prior cost proceedings.

And the reason that is, is because here you do not have a case of dueling cost studies. As you may recall from prior proceedings, AT&T and MCI would come out with their model, BellSouth would come with its model, and the Commission would have to make a decision as to which model was more appropriate.

Here, you don't have that decision to make. The parties have, essentially, agreed to use BellSouth's cost

studies. And all of the pricing proposals that the parties will make in this proceeding are based on BellSouth's cost studies.

The task facing this Commission also is a little easier this time around because of the fact that you have some guidance, you've looked at costs for unbundled network elements before. And if I could, I'd like just to pass out a couple of charts Ms. White will hand out in just a minute.

And what these exhibits will do is just to give you a frame of reference to compare some of the pricing proposals that you will see. And this is just one element out of literally hundreds for which the Commission is being asked to establish rates.

But this will give you a frame of reference to determine the rate the Commission has already established for the element and looking simply at a 2-wire voice-grade loop contrasting that with the rate proposed by BellSouth and the rate being proposed by AT&T and MCI.

Now, I should state at the outset here that AT&T and MCI is the only party that has actually made a comprehensive rate proposal, other than BellSouth for all of the various elements. The pricing proposals that you will see from the data ALECs are limited primarily to the loops and subloop elements for which these companies are

interested in for providing xDSL service.

So, the contrasting rates that you see on the chart marked 2-wire voice-grade loop, those are really the only two specific proposals that are before the Commission on a price for this element.

And as you see, the Commission-approved rate for this 2-wire voice-grade loop is $17. And this was established in 1996 in the AT&T/MCI arbitration. BellSouth's statewide average recurring proposal is $20.35 versus $8.00 from AT&T and MCI. And you can see the difference in the nonrecurring rate proposals as well.

Now, even though all of the ALECs use BellSouth's cost studies as the basis for their pricing proposals, it's difficult to recognize BellSouth's cost studies by the time the ALECs have finished with their adjustments to BellSouth's cost studies.

And if you look at the chart that's labeled loop conditioning, this is an element for which the Commission must establish rates that's part of the FCC's 319 order. And as you'll hear in the testimony when we talk about loop conditioning, you're talking about essentially removing load coils and removing bridge tap from a copper loop in order to make it capable supporting an xDSL service.

You can see in the far left-hand column,

BellSouth's proposed rates. AT&T and MCI propose that BellSouth recover nothing when it performs loop conditioning. The Coalition has their proposed rates ranging from $9.76 for removing load coils on short loops to $31 on long loops.

The Data ALECs would, again, propose that BellSouth recover nothing. Now, in fairness, although I didn't see it in their testimony, the prehearing order suggests that the Data ALECs would propose certain rates if, in the Data ALECs' words, the Commission inappropriately establishes a rate for line conditioning. Again, it's not in the testimony, but the prehearing order does contain a couple proposed rates, and I did want to be fair to the ALECs and not suggest there's no rate proposal at all.

As you can tell from the proposals for loop conditioning, the ALECs want to pay as little as possible, and in some cases nothing at all, for the use of BellSouth's facilities. However, make no mistake about it, just and reasonable rates are not necessarily synonymous with cheap.

As the Commission well knows, getting into the local telephone business is not an inexpensive proposition. It's not easy. Adopting the rate proposals that are being put forth by the ALECs, in this case, would

not result in just and reasonable rates. It would result in artificially low rates that would -- such that ALECs would have absolutely no incentive to invest in telecommunications infrastructure in the state of Florida.

The best example I can give you of that is under AT&T's and MCI's proposal, the basic, most basic, voice-grade loop that you can purchase in the state of Florida under AT&T and MCI's proposal, they would be able to buy in Miami for just over $4.00.

Now, if you can buy a loop from BellSouth for just over $4.00, who, in their right mind, would ever invest to put in a loop of their own to serve customers? And the answer is nobody.

Adopting the rate proposal of the ALECs also would result in subsidizing competitive entry on the backs of BellSouth's retail ratepayers and its stockholders. These things cost money, and somebody's got to pay for them.

Just to give you a quick overview of the case. Daonne Caldwell, who has appeared before you several times, will sponsor BellSouth's cost studies. Some of these studies are familiar to the Commission, others are new. One of the new studies, new models, that BellSouth is introducing in this case is the BellSouth Telecommunications loop models, also known as the BSTLM.

Mr. Jim Stegeman, who is one of the individuals primarily involved in developing the BSTLM will discuss the model, and he will also refute some of the proposed changes to the BSTLM advocated by AT&T and MCI.

As a result of the FCC's 319 order, BellSouth must meet certain additional unbundling obligations. You will hear from Ron Pate, Jerry Latham, and Keith Milner on behalf of BellSouth, who will address BellSouth's efforts to satisfy these additional obligations.

Finally, one of the most hotly-contested issues in this case will be nonrecurring costs, the work activities, and the work times also involved in provisioning unbundled network elements for the ALECs. You'll hear from H.B. Greer, on behalf of BellSouth, who will indicate that those work activities and the work times underlying BellSouth's cost studies are reasonable.

Finally, Mr. Chairman, Commissioners, it's important to understand that some of the issues in this proceeding involve much more than costs. And, in fact, there are service-affecting issues that the Commission needs to keep in mind in deliberating some of the issues. And I will give you a couple of quick examples about that.

Some of the carriers who are interested in providing xDSL service will tell you that a loop is a loop and that BellSouth should not have different options for

its various xDSL-capable loops. As the Commission knows from establishing rates, BellSouth has a variety of flavors of xDSL-capable loops that it offers ALECs to purchase.

It's important from BellSouth's perspective that ALECs and ALECs end users understand, on the front end, what it is they can expect to get from BellSouth. And when BellSouth provides an xDSL-capable loop, it designs that loop to make sure it meets certain design criteria so that everybody knows on the front end what the loop is capable of doing.

BellSouth does not want to be in the position, and I don't think the Commission wants end users to be in the position, of having a service that doesn't work because the loop that they bought doesn't do what they want it to do. The only way to avoid that problem is so everybody understands on the front end what's being purchased.

Another example is loop conditioning. And I've given you the proposals, rate proposals, for loop conditioning. An issue in this case will be should BellSouth condition 10-pair at a time, 25, or 50-pair? The parties agree that you should be conditioning, typically more than -- if a Data ALEC wants one loop condition, it doesn't make sense to just condition that

one loop, that some multiple ought to be conditioned at the same time for efficiency purposes, but there is a disagreement as to what that number ought to be.

You will hear from H.B. Greer who will tell you that there are service-affecting issues associated with the removal of load coils and bridge tap and that customer service can be affected if BellSouth simply opens up a binder group and starts removing load coils and bridge tap, simply to artificially reduce the cost of loop conditioning as urged by some of the ALECs in this case.

Finally, you will have to deal with the issue of access to subloops. This is an issue that you've actually dealt with before in the context of the MediaOne arbitration in which this Commission rightfully, in BellSouth's view, determined that there are technical feasibility issues associated with direct access to subloop elements.

Make no mistake about it, direct access is cheaper in terms of cost, and that's why it's being advocated by some of the ALECs in this case, but low cost has service-affecting trade-offs. And you will hear from Mr. Milner, who will go into great detail about the difficulties of inventory and quality control and network reliability that are inherent in the proposal for direct access advocated by some of the ALECs in this proceeding.

All of these factors, the cost issues, the service-affecting issues, must be taken into account by this Commission in establishing just and reasonable rates for the various elements in this proceeding. BellSouth's cost studies are reasonable, the inputs that they have used are appropriate, and BellSouth submits that the Commission should use those studies and those inputs in establishing just and reasonable rates in this proceeding.

Thank you, Mr. Chairman, Commissioners.

CHAIRMAN DEASON: Thank you. Mr. McGlothlin?

MR. McGLOTHLIN: Commissioners, I think, I will begin by addressing Chairman Deason's question. And after I give my answer to that, we will return to our prepared comments, which we have attempted to coordinate.

In terms of considering the impact, if any, of the Eighth Circuit's decision on this proceeding, it's important to bear in mind that within the universe of possible cost model or study methodology, the FCC has basically two choices, embedded or forward-looking. And it chose a forward-looking cost model standard.

The Telric theory is an example of a forward-looking cost model. In its decision, the Eighth Circuit endorsed the use of forward-looking cost for the FCC's purposes. As a matter of fact, it said that the FCC was within its discretion to adopt forward-looking costs

and that the forward-looking costs were consistent with the intent of the '96 act, which was to encourage competition.

The problem that the Court had with the Telric was with respect to the degree to which the Telric methodology optimizes the network. And so, my point is that the Telric study falls within the family or the category of forward-looking costs, which the Court endorsed, and that the issue or the aspect of the Telric with which the Court found fault was a technical refinement of the forward-looking methodology.

Now, in terms of the application of that court decision to our exercise, there are legal considerations, there are technical considerations, and there's some practical considerations.

Mr. Ross has talked about the legal considerations, and that is, basically, we don't know what course the legal proceedings would take from here, but we can be confident that it's going to be two years, possibly three, possibly longer, before this all plays out and there's finality as to whether the decision of the Eighth Circuit stands or is modified after everything is said and done.

As a practical matter, we've dealt with this consideration in the context of motions to bifurcate and

to suspend that GTE and Sprint filed some time back. And in those motions, the moving parties tried to make the case that the priority of this Commission should be to take no action until we had that finality in place and until this is resolved.

But we argued that when you consider the importance of this case to the development of competition, it's more important to go forward now. And you can go forward now with the knowledge that the Telric model is an example of a forward-looking cost study, and you may comfortably assume that you can use it for the exercise in this case.

And the worse thing that could happen, if after everything is said and done, two years or more later, if the result is that a different standard comes out of all of that, the worse that can happen is that you revisit and modify or adjust the effort in this case. And we think that is a far wiser course and to hold everything in abeyance and risk the possibility that two or three years may go by before taking action needed to develop competition in Florida.

COMMISSIONER JABER: Mr. McGlothlin, is it as a matter of law that we would revisit the finding or would -- is it a matter of law that we apply new law prospectively?

MR. McGLOTHLIN: Well, in terms of the worst-case scenario, I think, there would be a prospective application of whatever stand results from that exercise. And in one more point, as to the technical impact of the decision. In his testimony, Joe Gillan addresses this.

And he makes the point that from the standpoint of a cost analyst applying the cost methodology of the impact of the Eighth Circuit's decision is to tell the analyst that the network elements that were optimized in the Telric example suddenly become no longer variable. And for that reason, are no longer germain to the setting up of the resolution of the cost and setting of prices. So, he makes the point that if you apply a Telric study to this exercise, that sets the ceiling permissible rates in this case.

Now, granted BellSouth's witness takes issue with that, as a matter of dispute, and there's evidence addressing this, and among other things that you'll consider, you'll consider which witness is right on that question. But whether you conclude that the rates coming out of a Telric model represent the ceiling of permissible rates, and the only direction you can go is down after that or whether you conclude that it's at the low point, and the only place to go is up, in either event, the witnesses agree that, as a starting point, from a

technical matter, you can use a Telric cost study properly applied with appropriate adjustments that we're going to recommend as a vehicle for setting rates in this case all because the Telric example is an example of a forward-looking cost study, which the Eighth Circuit says is appropriate for rate setting in this exercise.

COMMISSIONER JABER: Let me ask you the same question I asked BellSouth. If the parties are granted a stay of the Eighth Circuit decision, what legal effect does that have on the parties? Basically, what's the status of the law? And second, what affect does it have on the state Commissions?

MR. McGLOTHLIN: I think, I agree with Mr. Ross's answer. If there is a stay in effect, then the FCC's rules continue in effect, and we go on course until something different effects that.

CHAIRMAN DEASON: Do you agree with Mr. Ross that their cost study complies with FCC rules? I know that there are ways of -- you disagree with inputs and some of the -- and I'm not saying that you agree with everything in it, but do you agree that the Telric -- that their model is a Telric model and that it would meet the definition under the FCC rules?

MR. McGLOTHLIN: With your permission, I'm going to defer that to one of counsel who follow me, because

there are others who have been closer to that subject than I.

CHAIRMAN DEASON: Very well.

MR. McGLOTHLIN: And I hope, if the other counsel have any additional remarks on that subject, you will allow them a little discretion as well.

Commissioners, we agree that this is an important case, but for various different reasons than those that Mr. Ross described. As FCCA witness, Joe Gillan, says in his testimony, the rates for unbundled network elements or UNEs that you set in this case will determine the level, breadth, and focus of competition in Florida's local market.

In December of 1998, the FCCA and other parties filed a petition in which we stated that a general investigation of the high level of UNE prices is critical to making facilities-based competition feasible in Florida.

More than a year and a half later, exorbitantly high UNE rates are still in place. And statistics show that there is still virtually no competition in the local market in Florida. The tables attached to Mr. Gillan's testimony make this point.

Based on those tables, ALECs have something like 2/10 of 1% of the residential lines in Florida and maybe

1/2 of 1% of the business lines. And more to the point, if anything, ALECs are losing ground, not gaining ground, to the ILECs in terms of who's adding lines.

When you contrast this with recent experience in New York and Texas where ALECs are using the UNE platform to make real headway in market penetration in a local market, you have to ask what's wrong with this picture? We ask for an opportunity to demonstrate that based on experience and based on better information than was available when you first set rates, we can demonstrate that UNE rates are overstated in Florida and are impeding competition.

Getting to the point of a hearing on BellSouth's UNE rates has been a long and arduous process. But now the evidence is in, and the evidence vindicates our assertion that competition in Florida has been stifled by unjustifiably high nonrecurring charges, high switching rates, and other competition-crippling features.

BellSouth's present and proposed UNE rates are, we know, an impediment, but now that the evidence is in, we also know that they are not cost-based. The ALECs participating in this case agree with the proposition that correctly implemented with proper inputs, the new BellSouth cost model can be used as a basis for setting rates in this case.

The question is not whether the model can be used, but whether -- what are the proper inputs to the model. And in this regard, one of our witnesses observed a revealing paradox about BellSouth's presentation.

On the one hand, as a result of what we agree are internal improvements to the new model, the new BellSouth model constructs a network with much less plant than did the former version of the model. Yet, the UNE rates that BellSouth proposes in this case are about as high as they ever were.

So, let's see, we've got lower plant investment, but we have rates as high as ever. It's clear that something does not compute. The analyses performed by the ALEC witnesses that you will consider this case prove again, as it were necessary, that what comes out of a computerized study is only as reliable and only as worthy of use as the quality of the assumptions and the data that are given to the model.

The counsel who follow me are going to describe several specific instances in which BellSouth has overstated the results of the cost study by inflating costs through inappropriate and self-serving assumptions which, when corrected, result in significantly lower costs.

Once you have reviewed the competing testimony,

I'm confident you will conclude that the record demands the rates proposed by BellSouth be lowered dramatically. And as you take the actions afforded by the record developed in this case, you can have confidence that your decision will foster the growth of competition in Florida. Thank you.

CHAIRMAN DEASON: Thank you, Mr. McGlothlin.

MR. LAMOUREUX: Good morning. I'm Jim Lamoureux of AT&T. Let me begin by addressing one other aspect of the Eighth Circuit's decision.

First, I want to reiterate what both Bennett and Joe said; that is, as of today, because the mandate has not issued from the Eighth Circuit, the FCC's rules remain in effect and remain binding on this Commission. And unless and until that mandate issues, that will continue to be the case. So, if a stay is granted and the mandate does not issue, then the FCC rules will remain in effect and will remain binding on this Commission.

And also, I want to just make clear what the legal effect of the Eighth Circuit decision is with respect to what this Commission has to do. This Commission is not within the jurisdiction of the Eighth Circuit, if an appeal were to take place of this Commission's decision, as in an interconnection agreement type proceeding. The effect -- the legal effect of the

Eighth Circuit's decision is to remove the binding effect of the FCC rules that the Eighth Circuit vacated. So, if the mandate were to issue --

COMMISSIONER JABER: What does that mean? Doesn't federal law preempt state law? And I understand we're not under the jurisdiction of the Eighth Circuit, but in the grand scheme of things, aren't we going to follow -- aren't we required to follow what the Court's interpretations of the FCC rules are?

MR. LAMOUREAUX: Yes. And I want to make clear, the effect of the Eighth Circuit decision is to remove the binding effect of the FCC rules on this Commission and all Commissions.

However, this Commission is still obligated to follow the Act. And the Act requires the establishment of rates for UNEs based on a standard set forth in the Act. Although the Commission is no longer obligated to follow the FCC's rules, interpretations, of what's in the Act, this Commission still has its own authority to interpret what the Act means and could very well determine, on its own authority, that the Act requires Telric pricing as set forth in the FCC rules.

If this Commission made that decision, and an appeal took place of that decision, that would go up to the Fifth Circuit -- oh, I'm sorry, the Eleventh Circuit.

The Eleventh Circuit is not required to follow the Eighth Circuit's interpretation of the Act. Or did I get the circuits mixed up?

COMMISSIONER JABER: Right. So then, we might have conflicting circuit court opinions.

MR. LAMOUREAUX: Which happens all the time. One circuit is not obligated to follow the other circuit's interpretation of the Act. And the only way to resolve that would be a Supreme Court decision.

CHAIRMAN DEASON: Let me ask the question at this point.

MR. LAMOUREAUX: Go ahead.

CHAIRMAN DEASON: I'm a little confused. You've indicated that this Commission, the Florida PSC, has the authority to interpret the Act. I think that makes a lot of sense, but what I've been told is no, if the FCC interprets the Act, then it doesn't matter what you think the act says, you've go to do what the FCC says the Act says.

MR. LAMOUREAUX: I should have added that point. This Commission is obligated to interpret the Act within the constraints of whatever existing FCC rules are out there.

CHAIRMAN DEASON: Okay. And you're saying the current rules are now in effect, and they will stay in

effect unless the Court's decision reverses those rules; is that right?

MR. LAMOUREAUX: Until the mandate of the Eighth Circuit issues, which vacated that one FCC rule, that's right.

CHAIRMAN DEASON: Okay. And how does that happen? What triggers that?

MR. LAMOUREAUX: It's a procedural process of the Eighth Circuit. The Eighth Circuit has handed down its decision, but then there's a further administrative or procedural process, if you will, called the issuance of the mandate of that Eighth Circuit. Essentially, it's a piece of paper that the Eighth Circuit issues to the FCC officially directing the FCC to vacate that rule. And that --

CHAIRMAN DEASON: Now, let me ask you this. Does that mean, then, that the FCC just doesn't apply that rule for that jurisdictional area of that court or --

MR. LAMOUREAUX: No. The Eighth Circuit -- it's important to remember how we got to the Eighth Circuit. That was a multi-district consolidation. There were numerous appeals, originally, of the FCC's rules. And there's a lottery process that when you've got a lot of different rules pending and you consolidate that into one circuit, you conduct a lottery, and it happened that the

Eighth Circuit won or lost that lottery, depending on your perspective. And so, the Eighth Circuit's jurisdiction over the FCC rules is binding everywhere.

CHAIRMAN DEASON: Okay. So, that if that happens, if that procedural item goes forward, well, then, the FCC has to vacate its rule.

MR. LAMOUREAUX: If that mandate issues, that's right.

CHAIRMAN DEASON: Okay.

COMMISSIONER JABER: We don't expect that the mandate won't issue. Isn't it really a ministerial function?

MR. LAMOUREAUX: If a stay is granted, the mandate will not issue. And I agree with what Mr. Ross said about percurrent procedural posture before the Eighth Circuit, which is who knows? A request for stay has been filed. Some of the ILECs, including Verizon, have filed officially that they do not oppose a stay.

I cannot read the tea leaves any better than anyone else whether the Eighth Circuit will stay its mandate or whether it will go ahead and issue its mandate, I just don't know. But all I know is as of today the mandate has not issued. Because the mandate has not issued, the FCC rules remain binding and in effect on this Commission.

COMMISSIONER JACOBS: The request for stay is pending appeal to the Supreme Court, correct?

MR. LAMOUREAUX: The request for stay is before the Eighth Circuit. It's asked the Eighth Circuit to stay its own decision.

COMMISSIONER JACOBS: But pending appeal to --

CHAIRMAN DEASON: Well, now, are you asking us to go forward with the hearing today to follow FCC rules that could be vacated any day?

MR. LAMOUREAUX: Yes and no.

CHAIRMAN DEASON: Okay. Clarify that for me.

MR. LAMOUREAUX: As set forth by Mr. McGlothlin and Mr. Gillan's testimony, technically, what we're asking you to do, I don't think it makes a difference whether you debate the philosophy of whether it's the FCC rule or whether it's just the forward-looking cost standard post-Eighth Circuit. We believe that what we have submitted really would be true under either standard.

Having said that, I also believe that it is within this Commission's authority to interpret the state act, even though the Eighth Circuit has vacated the FCC rule, this Commission has its own authority to believe that that rule really does make sense and really does interpret the Act the way it should be interpreted and can follow that on its own authority.

You know, if someone could appeal that decision, that would go up to the appropriate federal circuit. They may believe the Eighth Circuit's decision is persuasive and may disagree and overrule. But as of today, the Commission has its own authority to interpret the Act, to find that the equivalent of the FCC rule is a reasonable interpretation of what's in the Act.

Two courts have, on similar issues, reached the same conclusion. If you remember, the Eighth Circuit not only vacated that one FCC pricing rule, but also what we call Rule "C" through "F" dealing with the combinations. There have been a couple of cases where a couple Commissions out in the west have required U S West to combine elements for various CLECs and relied upon "C" through "F" as the basis for doing that.

Well, U S West brought that before the Ninth Circuit and said the Eighth Circuit has vacated these rules. The Ninth Circuit had said that the Commission remained free to require U S West to do that, even though the FCC rules were no longer binding on that Commission.

COMMISSIONER JACOBS: In doing so, and that's an important point, because I want to figure out just how we get there; and I read through the Eighth Circuit decision, and they announce, in some manner, something that I would like for you to give me your opinion on.

I don't know what page of the opinion this is, but this is in the Court's opinion, it says, "We reiterate that a forward-looking cost calculation methodology that is based on the incremental cost and an ILEC actually occurs or will incur in providing the interconnection to its network or the unbundled access to a specific network elements requested by a competitor will produce rates that comply with statutory requirements of Section 252, sub D, sub 1, that an ILEC recover its cost of providing shared items."

Now, that is my understanding as what the Eighth Circuit is saying the FCC should have adhered to when it adopted its rule. And in vacating those rules, it's obviously saying that the Telric, in some way, form, or fashion did not. And what I hear you saying is that a state, pursuant to statute, could endeavor to meet this standard, which ostensibly, the Eighth Circuit would then agree with.

MR. LAMOUREAUX: Yes. The Commission, and any state Commission, at least outside the jurisdiction of the Eighth Circuit, has its authority to interpret what it believes is required under the Act. It could determine that it absolutely agrees with what the FCC rule was and that that's the proper interpretation of the Act.

It could also determine that it's read the

Eighth Circuit decision and it believes the Eighth Circuit's interpretation of the Act is the correct one of the Act and follow that.

COMMISSIONER JABER: What could you cite me to with respect -- let's say, we go forward based on your recommendation that it's within our legal purview to do that, what can you cite me or direct me to, to support the notion that any changes in the law or any future appeals would not result in our going backwards and revisiting the pricing issues, but rather applying new changes in the law or new interpretations prospectively? That's what I need to understand.

MR. LAMOUREAUX: Okay. Let me try to answer that in two parts. First, I would give you the cites for these two decisions that I referred to out west. And the first one is -- it's MCI Telecommunications Corp. v U S West 204 F3rd 1262. The other is a district court decision. It's U S West Communications v Hicks, civil action number 97-D, as in dog, dash 152 from the district of Colorado June 26th, 2000.

And again, what I would rely upon those decisions for is that even in the absence of an FCC rule on a particular subject or even an FCC rule to vacate if the state retains jurisdiction and authority to interpret the Act and apply, essentially, the equivalent of those

rules from the FCC that have been vacated as their own interpretation of the Act.

So, I'm not even sure there'd be a question of the Commission having to do something prospective, unless there was an appeal and the circuit that this Commission sits in happened to agree with the Eighth Circuit and said, no, the Commission couldn't do that. Now, I'm not aware of any decision, specifically, that said if that were to happen --

COMMISSIONER JABER: Let me make sure I understand what you just said. Are you saying if the Eighth Circuit reaches a decision that's not consistent with whatever the Florida Commission does that that Eighth Circuit's decision is not binding on the Florida Commission?

MR. LAMOUREAUX: It's binding as to removing the binding effect of the FCC rules on this Commission.

COMMISSIONER JABER: And isn't -- aren't those rules what we are relying on to interpret the Act?

MR. LAMOUREAUX: Absolutely, but this Commission still has its own authority within the constraints of whatever FCC rules exist to also interpret what's in the Act. And if an FCC rule has been vacated, you know, it's not binding on this Commission, this Commission can essentially fill in that gap under its own authority by

saying we believe that FCC rule, or the equivalent, is a valid interpretation of the Act, and we believe that's the right interpretation.

COMMISSIONER JACOBS: And indeed, doesn't the Eighth Circuit make that point in its decision? Well, it makes it a point in terms of the FCC. The way I read the Court's decision, it acknowledges that cost, the term cost is ambiguous and that the rule was an attempt to field such a gap. And what it, essentially, says is the FCC steered off path in its attempt to field that gap.

MR. LAMOUREAUX: That's right. And although that FCC rule is gone as a result of the Eighth Circuit's decision, this Commission can fill that gap, if you will, with its interpretation of the Act and its interpretation could be the same as the rule that was vacated, because this Commission, again, although it's not obligated to follow the FCC rule, it still has authority to interpret the Act unless and until the circuit, in which this Commission sits, says it did it wrong.

COMMISSIONER JACOBS: This is an important point. We may want to allow BellSouth to come back at this, but the argument here is that the preemptive effect of the rule, while valid, once that rule is removed, the preemptive effect that is likewise -- I don't want to say removed, but held in abeyance at least, whatever effect

there was in the preemption that came pursuant to the FCC rule is, at minimum, held in abeyance until the status of that rule is dealt with.

In that vacuum -- the argument is in that vacuum, whether that rule is in abeyance, a state can or arguably cannot, step in and exercise authority under the statute.

MR. LAMOUREAUX: That's right. And I believe that -- maybe, correct me if I'm wrong, but I believe NARUC has essentially issued a memorandum that has held the same thing. And I want to make clear also, if this goes to the Supreme Court and the Supreme Court interprets the Act in exactly the same way as the Eighth Circuit, obviously, that eliminates any leeway for any Commission anywhere to do something different. The Supreme Court is the final arbiter of the interpretation of what's in the Act.

COMMISSIONER JACOBS: Now, is our state mentioned specifically in this statute?

MR. LAMOUREAUX: Somewhere, I'm sure. In the cost standard, it's very specific that the state that has the obligation to establish a just and reasonable rate for interconnection in unbundled network elements that must be based on the cost determined without reference of a rate of return. It's clear that in the statute, in the Act,

it's the state that has the obligation.

CHAIRMAN DEASON: Why did the FCC ever adopt a rule to begin with, then?

MR. LAMOUREAUX: Because the Act also imposes obligations to promulgate regulations interpreting the Act.

MR. MELSON: Commissioner Deason, before we pick back up with the originally scheduled oral argument, can I address the effect of the Eighth Circuit's decision just briefly?

CHAIRMAN DEASON: Please do.

MR. MELSON: I think, it may come better now than trying to work it into what I wrote.

Don't lose sight of the fact that the Eighth Circuit vacated one subparagraph of the FCC's rules. The rule is entitled, "Forward-looking Economic Cost." The requirement for total element long run incremental cost remains the only thing that got or that would be deleted is the provision saying that the network that you look at should be based on the use of the most efficient telecommunications technology currently available and the lowest cost network configuration.

All of the other Telric principles, forward-looking, allocation of common costs, inability to consider embedded costs, all of those other provisions

remain in effect, in any event.

The BellSouth cost study is really driven by its assumptions. We don't believe that as filed the BellSouth cost study and the results it produced complied with the FCC rules, and our testimony said as much.

And we don't believe that with the BellSouth inputs the result complies with the FCC rules that would remain in effect. However, the cost study with the proper adjustments and with the proper inputs is probably capable of producing a result that complies, either with the full panoply of the FCC rules or with the FCC rules with this one provision stayed.

And what we're asking you to do in this hearing is to listen to the testimony of our witnesses, to listen to the adjustments that we believe need to be made and then to come up with a result that is consistent, at least with all of the provisions of the FCC rules that clearly remain in effect.

And yes, there may be some work for you to do in the future on a prospective basis two to three years down the road once the dust settles, but I'm not sure that with a cost study that looks at the time frame 2000 and 2002, that your decision here would have much life beyond that time period in any event. I think, you're always going to be coming back to look at some point.

CHAIRMAN DEASON: Let me make one thing clear. If we're talking about establishing rates for two years in telecommunications, that's a lifetime, okay?

MR. MELSON: Yes, sir.

CHAIRMAN DEASON: I mean, if we do something here today that's going to last for two years, it will be time well spent.

MR. MELSON: I agree. And in a practical sense, I think, you're doing that, because I think the rates you set here will go into the next round of interconnection agreements.

CHAIRMAN DEASON: I don't want to see a situation where we make a decision before our order is issued, we're confronted with petitions for reconsideration deciding some standard that's changed because of a court decision or FCC decision or whatever and we're trying to page our decision in midcourse.

MR. MELSON: Commissioner, I don't think any of the parties to this proceeding anticipate that you would be asked to change your decision until the Supreme Court has ruled and the dust has settled to that extent. And I can't guarantee many things, but I would be willing to guarantee that isn't going to happen before you reach your decision.

CHAIRMAN DEASON: Let me ask you another

question. You indicated that BellSouth's study is a framework that can be utilized under whatever standard we adopt, because it's forward-looking. I mean, we know that we're going to have to adopt a forward-looking standard. I don't think that's an issue. The question is what do you mean by forward-looking?

MR. MELSON: Right.

CHAIRMAN DEASON: You accept the BellSouth study as a framework. The real driver is the inputs that go into that study. And, I think, you also indicated that with the proper inputs that BellSouth's study would even meet the FCC standard; is that right?

MR. MELSON: I believe, it would.

CHAIRMAN DEASON: Okay. Now, does that mean, though, that if we were to adopt your inputs 100% and you say that would meet the FCC standard, then, would we be in violation of the Eighth Circuit's decision?

MR. MELSON: I don't think so, for the same reasons the other counsel have told you. You -- if that rule, if the mandate issues in that rule is vacated, you're not obligated to follow that provision of the rule. But until the Supreme Court definitively answers the question, you have the discretion to interpret the Act as you're going to apply it in Florida.

CHAIRMAN DEASON: Mr. Ross, do you agree or

disagree with that?

MR. ROSS: Yes, thank you, Chairman Deason.

CHAIRMAN DEASON: I hate for the interruption, but I'm trying to understand here.

MR. ROSS: And I will confine my discussions only to the legal issues that have been discussed this morning. The one point that I think has been overlooked by the counsel here is the Florida Public Service Commission participated as a party in the proceedings before the Eighth Circuit.

Therefore, this Commission is bound by the decision of the Eighth Circuit; notwithstanding the fact that the Eleventh Circuit has not spoken on this issue. The Florida Public Service Commission was a party, it is bound by the decision of the Eighth Circuit to vacate the FCC's rules just as much as BellSouth is as a party and just as much as the FCC is as a party to that proceeding.

CHAIRMAN DEASON: So, you're saying that if we had not participated as a party then we wouldn't be bound by the decision?

MR. ROSS: No. What I am saying is that argument that Mr. Lamoureux has given you is that you might have some flexibility, if you were not a party, to apply state law and to fill the gaps might have just a tad bit more credence than it does given the fact that you're

bound by the Eighth Circuit's decision.

I don't agree with Mr. Lamoureux at all that this Commission, or any state Commission, can participate as a party in a proceeding before an appellate court, have an appellate court issue a decision that's binding on that party, and then decide, hey, it's optional. I'll decide not to apply it.

I'm sorry, Commissioner Jacobs, you wanted to --

COMMISSIONER JACOBS: Is it state law or federal law that we'd be applying?

MR. ROSS: And that's exactly the point, Commissioner Jacobs. It is clear that we are applying federal law. The standard by which this Commission must establish rates is a federal standard. It's under the Telecommunications Act of 1996, 252-D of Title 47 of the United States gov.

And let's also be very clear here. What Mr. Lamoureux is suggesting that you can do is, okay, the FCC has said a hypothetical network is the way by which to establish cost-based rates. And the Eighth Circuit says that violates the Telecommunications Act of 1996.

How is it that the Florida Commission can then lawfully impose that exact same standard that violates the '96 act? And it doesn't matter whether you do it under the Commission's decision to fill in the gaps under

federal law or state law, the result is exactly the same.

If the FCC cannot do it by rule, how is it that the state Commission can do it by order? And I think, that's the issue that Mr. Lamoureux and the other parties really have not come to grips with. I don't disagree with the notion that if some state Commission out in Colorado didn't participate and the Eighth Circuit has to make a decision interpreting the '96 Act, it's entitled to do that.

But that is not the situation that we have in this case. And I believe that this Commission is bound to follow the Eighth Circuit's decision and to apply that decision in whatever form it may ultimately take down the road.

COMMISSIONER JACOBS: What interpretation of 252-D-1 should be given -- let's assume that the mandate will issue. What interpretation should we follow in that instance?

MR. ROSS: Well, I think, as Mr. Lamoureux correctly pointed out, Mr. Melson correctly pointed out, the other FCC rules which were not vacated by the Eighth Circuit are just as binding today as they were before the Eighth Circuit's decision.

So, you're bound by the statute, just and reasonable rates, and the standards set forth in the code.

You're bound to apply forward-looking network architecture, and you're bound to allocate joint and common costs pursuant to the FCC rules.

What you're not bound to do, and what if you did do would violate the law, is establishing rates based upon a hypothetical network or a most efficient provider. And that's the point that I don't think -- I think, this may be lost in this discussion here is that if the FCC's rules are, in fact, vacated and the Supreme Court enforces the Eighth Circuit decision, that efficient standard does change the landscape. And I --

COMMISSIONER JACOBS: Is it possible -- and this is the point that I would be really interested in hearing, I can agree that the Court really went off in looking at the hypothetical network issue, but isn't the real issue as to what extent we come close to your cost of providing unbundled elements?

MR. ROSS: Yes. I think that the issue is really do you -- have you actually determined the actual cost that BellSouth will incur on a forward-looking basis in provisioning these particular elements to these particular carriers?

COMMISSIONER JACOBS: And the argument has to do to what extent embracing that standard deviates from your cost.

MR. ROSS: Yes. An example might be some of the parties advocate here that you ought to use the inputs that this Commission adopted in the universal service proceeding using Sprint as the example of the most efficient provider.

Well, in a hypothetical world, you know, that might be an appropriate decision to make, but I don't see how you can reconcile adopting costs for Sprint in this proceeding can be reconciled with the Eighth Circuit's decision that you need to establish the rates based upon the costs that BellSouth will actually incur in provisioning unbundled network elements, not Sprint, and not some other hypothetical efficient provider.

So, I disagree with Mr. Melson and Mr. Lamoureux that this Eighth Circuit decision is just, I think, the words were only one thing as part of the FCC rules. It's a big one thing under the FCC's rules. And, I think, that's the reason why AT&T, MCI, and the FCC have all indicated that they intend to seek certiorari before the United States Supreme Court.

So, I do not agree with the premise that has been put forth by Mr. Lamoureux and Mr. Melson that you adopt rates, and whatever rates you adopt using BellSouth's cost studies and their inputs complies with both the FCC's rules and the Eighth Circuit's decision. I

just do not agree with that.

CHAIRMAN DEASON: You're saying that we can adopt your study and with inputs -- with certain inputs that you disagree with, that it may bring the results of your study to the point to where it violates the Eighth Circuit's decision.

MR. ROSS: Absolutely. And I also want to be very clear, I want to be honest with the Commission in terms of the timing. It's my understanding that the petition for certiorari will be filed before the Supreme Court convenes the second Monday in October at which point and time the Supreme Court decides what cases to take.

It is not outside the realm of possibility that the Supreme Court will take this case for certiorari and will decide this case before the Commission actually issues its order. Because my understanding was under the time schedule that the Commission's order in this case is not expected until the spring of 2001. I'm not saying it's possible, I'm not even saying it's likely. I'm just saying it could happen. So, I do think the Commission needs to understand that.

From BellSouth's standpoint, that doesn't change our position that we need to go ahead and do this thing, but the Supreme Court can act quickly if it's so inclined, particularly since it has the Fifth Circuit case already

under review.

CHAIRMAN DEASON: Mr. Melson, were you finished with your -- I know we had -- I interrupted Mr. Melson, and Mr. Melson interrupted you.

MR. MELSON: I think, I was finished with regard to the Eighth Circuit, unless there were any questions.

CHAIRMAN DEASON: Okay. Mr. Lamoureux, you can continue.

MR. LAMOUREAUX: I'm happy to put down the lightning rod for the Eighth Circuit discussion. If I can say one more thing, a collateral estoppel type argument, without getting into it, obviously, we disagree. We'd be happy to put arguments about why we don't think collateral estoppel really would apply when we brief the issue later.

What I was going to address in my part of the opening statement were the cost studies and one particular element that we're talking about. First of all, as to the cost studies, I'll reiterate what Mr. Melson said, which is that first of all, I presume we all appreciate that there are not dueling cost studies in this proceeding, as Mr. Ross talked about. If nothing else, that probably eliminates about 7 or 8 witnesses that we used to have when we'd go forward with these cases with two competing cost studies.

What that means is that we do agree that as

filed, we do not believe the BellSouth cost studies comply, either with the pre-Eighth Circuit Telric standard or the post-Eighth Circuit whatever standard.

However, we believe that the BellSouth cost studies do have the framework that with appropriate modifications to inputs and assumptions, could produce rates that comply, either with pre-Eighth Circuit FCC standard or the post-Eighth Circuit -- I'll continue to call it whatever standard, because I don't have an acronym for it.

And what has been the task of the AT&T and MCI witnesses in this proceeding to do is to strip away the veneer of the nonforward-looking assumptions in the BellSouth cost studies to get at that framework so that it then can be rerun and so that then can produce the rates that do comply with the appropriate forward-looking cost standard.

And just as some examples, some of the issues that will be discussed in our witnesses' testimony, as things that need to be stripped away, are failure to use truly forward-looking material inputs in the cost studies, double counting of inflation factors, allocation of fiber and structure costs by DSO equivalents rather than on a per-pair basis; use of factors that artificially inflate the material prices and inappropriate inputs in the

switching cost studies.

Those are all very specific assumptions and inputs that we believe are not really forward-looking, and when you put them in an otherwise framework produce not forward-looking results. And that will all be discussed, specifically, by our witnesses in their testimony.

The one element I want to talk about in particular is something called network terminating wire and intrabuilding network cable, NTW and INC. Quite simply, what these things are in multi-tenant buildings, apartment complexes, high-rise buildings, these are the last segment of cable that go to the tenants in those buildings. These issues are paramount interest to facilities-based carriers who want to serve tenants in multi-tenant buildings.

So, for AT&T with our acquisition of MediaOne and TCI, we have a lot of coaxial cable that runs by multi-tenant facilities. We want to be able to buy from BellSouth that last component of cable to be able to serve all of the tenants in those garden apartments, in those high-rise buildings.

And we want to be able to do that to truly get -- provide residential local competition in Florida and elsewhere. I don't think it's any secret why we have bought a lot of those cable facilities. We want to be

able to use them to provide telephony over that, among other things.

In many areas, a large segment of the population lives in multi-tenant dwellings. And it's very important to get the rates right, to be able to serve those tenants. In addition to the rates, you know, one of the assumptions behind these cost studies is exactly how we're going to gain access to that network terminating wire and that INC.

The manner in which you gain access drives the cost that you pay for that stuff. And so, implicit in BellSouth's cost studies are various assumptions about how they're going to give access to NTW and INC. The FCC UNE remand order made very clear that its intent was to provide ALECs maximum flexibility to interconnect with the incumbents' subloop elements, such as NTW and INC.

And what you'll see through our testimony is BellSouth has taken completely the opposite track. Rather than maximum flexibility, they've just about made it as hard as possible for us to gain access to that stuff, not only making it difficult for us to do, but also driving up the cost. And that's what our witnesses on that subject will talk about on that element in particular.

Thank you.

CHAIRMAN DEASON: Thank you. Mr. Melson?

MR. MELSON: Commissioners, my portion of the

opening statements is going to address four issues; two of which I think are probably important, all of the ALECs in this proceeding and two of which are of particular importance for the ALECs that want to compete for high-speed data service, the DSL providers.

The four issues are the importance that you study the same forward-looking network architecture in both recurring and nonrecurring cost studies, that you establish the appropriate definition of a DSL-capable loop for costing and pricing purposes.

We'll talk about the reason that a properly-defined DSL-capable loop, the cost for that should be the same as the cost for a comparable nondesigned voice-grade loop. And finally, the importance of setting nonrecurring charges as an appropriate level that won't be a barrier to the introduction of local competition.

First, on the network architecture issue, BellSouth's testimony says that it agrees in principle that both the recurring and nonrecurring cost studies should be based on the same forward-looking network architecture, but we believe the evidence will show that that principle hasn't been carried through in their cost studies.

For example, their recurring cost study does

three different scenarios; what they call a combo scenario, which models a network that uses forward-looking integrated digital loop carrier. They've got a second scenario that models a network that uses an older universal loop carrier, and that's called their BST 2000 scenario. And they've got a third all-copper scenario that they use for some purposes that models an all-copper network that doesn't exist today, that's not forward-looking, will not exist in the future.

We believe the evidence will show that only the first of those scenarios, the combo scenario, reflects a forward-looking network design that BellSouth actually plans to build, not a hypothetical network, but one they would build. And that design should be the basis for setting all of the recurring and nonrecurring rates in this docket.

The evidence is also going to show that BellSouth doesn't even consistently apply a single scenario to develop the recurring and nonrecurring cost for the same element. For example, for DSL-capable loops, they use an all-copper scenario for the recurring study, which has no load coils, no excessive bridge tap. For the nonrecurring cost study, though, they propose a loop conditioning charge to remove load coils and to remove bridge tap that are not present in their recurring cost

study.

Now, why is it important that you use the same network design for both the recurring and nonrecurring cost study? Because the FCC pricing rules that will remain in effect say that in total recurring and nonrecurring, you can't recover more than BellSouth's forward-looking costs; yet, you can't test compliance with that rule if you've got recurring charges set on the basis of one network design and nonrecurring charges set on the basis of a different network design.

Second point I want to address is the definition of an xDSL-capable loop. BellSouth's cost studies define at least four times of DSL-capable loops, each with a different recurring charge and different nonrecurring charge. BellSouth treats each of those as a design loop, which means the loop comes bundled with some things. It comes bundled with a test point, comes bundled with a designed layout record, comes bundled with order coordination. And because they're bundled, the costs, the nonrecurring charge that BellSouth proposes for those, includes all of those extras.

The evidence will show the Data ALECs don't want and don't need a variety of loop types. What we need is the ability to look -- get loop make-up information to look at particular loops that serve particular customer

locations and to decide for ourselves whether that loop, with or without conditioning, is capable of supporting the service that we want to provide. The other thing we need is an assurance that once we identify that specific loop that we can order the specific loop. And once we order it, that we get to keep it, that we don't get rolled over in the future to some other facility; for example, when BellSouth comes in and does network rearrangements or upgrades.

The third point, what is the appropriate rate for a DSL-capable loop? The basic loop, type of loop, used to provide plain-old telephone service or POTS is a nondesigned 2-wire analog voice-grade loop. And that's sometimes known as an SL1. And you'll hear that a lot in this proceeding as distinguished from an SL2, which is a designed loop.

In a forward-looking network, which is what we're supposed to be studying, a basic SL1 voice-grade loop is exactly what a data ALEC needs to provide any type of DSL service. In fact, the original idea of DSL was that you would use the existing network, you wouldn't have to add things to be able to be able to offer this high-speed data service.

The evidence will show though that in a forward-looking network DSL service can be provided either

over all-copper loop, as is probably the most common configuration today or over a fiber-fed digital loop carrier loop, simply by putting the appropriate plug-in card in the loop carrier cabinet.

Since a DSL loop doesn't need to be designed, doesn't require anything beyond what's necessary to provide voice-grade service, we believe the testimony will show that both the recurring and nonrecurring charges for that DSL-capable loop should be the same as for the SL1 voice-grade loop. And that contrasts pretty significantly with BellSouth's proposed charges in which the nonrecurring charge, for example, can range from three to six times what you see for a voice-grade loop.

Fourth and final point, the level of nonrecurring charges. Commissioners, today, I believe nonrecurring charges are one of the biggest barriers to entry in Florida. And I'll confess that when we did the MCI and AT&T arbitrations back in 1996, nobody, including myself and my clients, really paid much attention to nonrecurring charges.

We've learned our lesson, and you will hear a lot in this proceeding about nonrecurring charges. What does that appearance teach us? It says we need to focus on the nonrecurring charges just as much as we do on the recurring charges.

We believe the evidence is going to show that BellSouth's nonrecurring charges are too high for several reasons. They include a level of manual processing, manual work effort that's inconsistent with an efficient forward-looking network. They include involvement by numerous work groups, some of whose only job appears to be to check the work that other groups do or to check the work that electronic systems are supposed to be performing. And finally, where manual work is legitimately required, we believe they include task times at strained credibility.

As one example, we've talked about the demonstration Mr. Riolo is going to do. He's going to perform a demonstration of opening a splice case, removing bridge tap from 25-pair of wires, closing the splice case, even with his commentary, that demonstration's going to take less than 15 minutes. That contrasts with 2 1/2 hours that BellSouth includes in its nonrecurring cost study for that same activity.

In summary, we urge you to reject the inflated assumptions that drive the nonrecurring cost study. As Mr. Lamoureux said, we believe they're inflated assumptions in the recurring cost study as well. You need to look at both. And if you do that and set rates that recover BellSouth's costs and are fair and reasonable, but

cover their forward-looking costs, not some inflated cost, I think that's the best thing you can do to promote competition as we go forward in Florida.

That concludes my piece of the summary.

CHAIRMAN DEASON: Thank you. Mr. Fons.

MR. FONS: Thank you, Mr. Chairman. I'm going to talk about an issue that has not been spoken about by either BellSouth or any of the other parties this morning, and that's an issue that is very, very important, because if we're going to get to the recovery of cost, we're going to have to do it on a basis that reflects reality.

And one of the realities of this world, and particularly in Florida, is that costs are not the same everywhere throughout the state of Florida, either within the -- between the companies that are providing local service, the incumbent local exchange carriers, but also within the incumbent local exchange companies themselves.

Costs vary between geographic areas, they vary between urban areas and rural areas. And one of the things that the Act says is that there must be a recovery of your cost. And the FCC, in its rules, and a rule which has not been affected by the Eighth Circuit, requires that your cost be deaveraged to better reflect those costs so that you will be able to recover the cost of the high-cost areas and in the low-cost areas, but that the rates that

you charge for the provision of unbundled network elements in those areas, those rates reflect the costs of that area.

If you have a companywide average rate, one rate for unbundled network elements, then, those -- that rate will not adequately or accurately reflect the actual cost providing the unbundled network element, for example, in a low-cost, high-density urban area. That average rate will be substantially higher than the cost for providing the service in that area and, therefore, there will be an overrecovery of costs by using an average rate.

So, the FCC has imposed a rule that you must deaverage your rates, at least to three zones. And to the extent that there are substantial cost differences in addition to that, then you can more than three cost zones. It's the position of the ALECs in this proceeding that you should have more than three cost zones, because the cost, if you just go to the three zones, you really haven't reached the level of granularity that you need to adequately reflect the cost.

What BellSouth has proposed -- well, let me just back up and say everybody, I think, agrees, all the parties, BellSouth, and the ALECs agree that you at least have to unbundle the loop element. That is the predominant element that everybody's looking for. And

that should be unbundled to the extent that there are cost differences that justify an unbundled rate, a different rate for different areas within the geographic area served by BellSouth.

BellSouth has proposed for the local loop just three zones. And the way they have decided to aggregate their zones is that they don't look at the cost characteristics that a loop has in the various geographical areas, but instead, what they do is they aggregate, according to their historical rate groups. So, all of the wire centers that are in one rate group today will then form the basis of one of their three zones.

Well, rate groups have nothing to do with cost. Rate groups are established, I would dare say, back in the 1920s, in order to provide a -- some recognition to what was then called value of service.

And the value of service was based upon the number of customers that you could call. It has nothing to do with the cost of providing to those number of customers, because some wire centers cover -- have tremendous numbers of customers, but the break points are so broad that you don't capture the differential between the cost of providing that rate group versus the wire centers that are in that rate group.

Wire centers is where you're supposed to

determine the cost. That provides you with the greatest granularity based upon an administrative ease. So, wire centers ought to be grouped together, according to their cost characteristics, then they would provide the basis for a particular zone, a deaveraging zone, not whether or not they're in a rate group. That just doesn't make any sense.

In addition to the loop, Sprint, my client, believes that there are other elements that also require unbundling in an -- deaveraging to a greater extent; for example, switching. Switching is different. In fact, BellSouth, in its testimony, concedes that switching has cost differentials and yet BellSouth has not provided any deaveraging for switching and likewise for transport. That has different cost characteristics based upon geographic areas. And therefore, under the Act and the FCC rules, those must be deaveraged.

Now why --

COMMISSIONER JABER: Mr. Fons, may I ask you a question on authority for the state Commission to require more than three zones. I thought the FCC rule set forth a requirement for three geographic zones and, in fact, that the state wanted to have less. Didn't the state have to seek a waiver?

MR. FONS: No, they do not have to seek a

waiver. The rule is 51.507-F. And it says, "State Commission shall establish different rates for elements in at least, at least, three to five geographic areas within the state to reflect geographic cost differences. To establish geographically-deaveraged rates, state Commissions may using existing density-related zone pricing plans or other such cost-related zone plans established pursuant to state law."

The Commission, in its order, in the language leading up to these rules, specifically, pointed out that the state may establish more than three zones where the cost differences in geographic regions are such that it finds that additional zones are needed to adequately reflect the cost of interconnection and access to unbundled network elements.

COMMISSIONER JABER: There wasn't an FCC order after the rule was implemented on this topic, was there?

MR. FONS: Well, there was a rule after, because originally, the Commission stayed the impact or this requirement, but that stay was lifted, and each state was required to have deaveraged rules, I believe, by the 1st of May of 2000.

And, in fact, in order to meet that, the parties stipulated back in December to deaveraging in order to allow the state -- for there to be deaveraged rates, at

least on a loop basis in Florida at this point and time.

Why do you need geographically-deaveraged rates? It's not just a question of recovering costs. That's paramount, but there's another very important reason why you need to deaverage to reflect the various cost differences within BellSouth's territory. And that's simply that if you don't deaverage, then, what you've done is you've merely masked the difference, you've averaged all these costs together. And what it does is it sends the wrong signal to the marketplace.

And the signal that you need to send to the marketplace is a correct signal on whether or not the ALEC is going to make or it's going to buy. In other words, if the costs are such, then, the prices -- I should say the prices are such that the ALEC can provide the service cheaper for itself, then they ought to do that.

But those prices have to be based on cost. You don't want to do uneconomic provisioning. You don't want to require an ALEC to have to spend money unwisely to enter a marketplace. If the prices are deaveraged properly, then the ALEC will see that I can't build it any cheaper than that and that I ought to buy it. That's efficiency. That's the economic way to go. That's the way to bring competition to the consumers.

But if you don't deaverage, and you don't

correctly deaverage, then, you're going to send the wrong signals to the marketplace. And in the first instance, you're going to stifle competition. And the whole purpose of this is to bring competition and the benefits of the competition to the greatest number of consumers. That concludes my remarks.

CHAIRMAN DEASON: Mr. Gross.

MR. GROSS: Good morning, Chairman Deason, Commissioner Jaber, Commissioner Jacobs. My name is Michael Gross, and I'm appearing on behalf of the FCTA. Thank you for giving me the opportunity to speak this morning.

The resolution for the issues in this docket will have a profound impact on the development of local competition in the state of Florida. ALECs require the availability of reasonably-priced UNEs in order to compete.

New market entrants have not had the benefit of building their networks over 100 years as the incumbent carriers whose networks have been fully funded by ratepayers.

UNEs are the quickest path to competition under the '96 Act. This entry method permits competitors to buy parts of the incumbents' networks at cost-based rates, which include a fair profit for the incumbent.

A new entrant can use UNEs leased from an ILEC and construct its own facilities where it makes economic sense. The evidence, including the testimony of FCTA witness, Bill Barta, will show that appropriate deaveraged cost-based rates using a forward-looking cost methodology best replicate the conditions of a competitive market and promote competitive entry under the '96 Act.

Rates for UNEs should only be deaveraged where significant cost variations exist. Moreover, the deaveraging of rates for UNE combinations should be based upon the cost characteristics of the underlying network components. Nonrecurring charges should be cost-based and should reflect a higher degree of mechanization in the processing of orders. Surprisingly, BellSouth has proposed rates for 26 UNEs in its revised cost study that reflect increases of 10% or more.

Significantly, the increases are suspect, since they are based upon increased labor hours and additional work activities. The proposed rates, in the revised cost study, suggests that BellSouth has become less proficient in the processing of ALEC orders during the four months since its initial cost study was filed.

Consequently, the FCTA recommends that a rigorous scrutiny of BellSouth's revised study be conducted by this Commission in the course of this

proceeding. Thank you.

CHAIRMAN DEASON: Thank you. I believe that concludes opening statements. We're going to take a recess at this time. We will reconvene at 11:45.

(Recess taken.)

CHAIRMAN DEASON: Call the hearing back to order. Commissioner Jaber?

COMMISSIONER JABER: Mr. Chairman, I wanted to talk to you and Commissioner Jacobs and get your feedback on some -- a thought I had as the parties were making their oral argument or opening statements.

I looked through the prehearing order, and there isn't necessarily a specific legal issue on what the relevant law is. And certainly, I want input from the parties in their briefs on what the relevant law is, the state of the state, so to speak, when the briefs are finally due.

And it may be, Commissioner Jacobs, that that was contemplated in the issues as they are worded, I don't know. What gave me the idea was we don't know what will happen from now until briefs are due and then from now until Staff files its recommendation.

And certainly, Staff is capable of including those changes in their recommendations, but I don't know what vehicle the parties have to bring those things to our

attention. So, my thought was to identify an issue, but I just thought of it, and I'd be, you know, interested in having your feedback.

COMMISSIONER JACOBS: I think that's very appropriate. In fact, I came to that same conclusion, that it would be useful to have something for the parties to focus in on in their briefing.

CHAIRMAN DEASON: Do you have wording for the issue?

COMMISSIONER JABER: Of course not. And I think it would need to be broad.

COMMISSIONER JACOBS: Well, why don't we do this.

COMMISSIONER JABER: It's from a jurisdictional issue. It would be what is --

COMMISSIONER JACOBS: Since we don't have to do it right now, why don't we see if there can be some agreement amongst the parties as to the wording. And if not, then we can come up with some final wording, because we don't have to really do it until we're done.

COMMISSIONER JABER: Right, and I would ask Staff to think about it, too. I'm catching you off guard, but certainly we don't have to do it today, but if you all can get together and work on the appropriate language.

The purpose for me is twofold; to talk about

jurisdiction, to address jurisdiction, but also what authority exists at the time of our vote.

MS. KEATING: Actually, we had sort of talked about it amongst ourselves a little bit, and sounds like a good idea. It may be necessary to increase the page limit on the briefs to cover that.

CHAIRMAN DEASON: I didn't establish that.

COMMISSIONER JACOBS: Well, looking around the room, I don't see that that would be a very big problem right now. So, that -- I don't have a problem, if Staff doesn't have a problem. Okay.

COMMISSIONER JABER: Thank you, Mr. Chairman.

CHAIRMAN DEASON: Okay. I've been handed a list of proposed stipulated exhibits from AT&T. There are two items on that. Has this list been provided to all of the parties? Okay. Is there any objection to either of these two exhibits? Hearing no objection, then, item one on the AT&T list will be identified as Exhibit 90. I believe, that's the next number; is that correct?

MS. KEATING: That's right.

CHAIRMAN DEASON: And item two on the AT&T list will be identified as Exhibit Number 91. And once we get all of these exhibits identified, then, we'll go and actually move them into the record, but that's not being done at this point until we get them all identified.

Staff?

(Exhibits 90 and 91 marked for identification.)

MS. KEATING: Could we just confirm with the parties whether they've had a chance to finish reviewing Staff's list? And if so, we could go ahead and get those into the record as well.

CHAIRMAN DEASON: I'll ask the question. Have the parties reviewed Staff's list of proposed stipulated exhibits, Exhibit 60 through 89?

MS. WHITE: Staff's list is fine with BellSouth.

CHAIRMAN DEASON: Any objection to Staff's list? Hearing no objection, going once, going twice.

MR. LAMOUREAUX: I would just add that two of the exhibits are late-filed exhibits from depositions of two of the AT&T-Worldcom witnesses. We had to file revised late-filed exhibits this morning. So, we would just supplement the actual document with what we handed out this morning.

MS. KEATING: Those exhibits were contemplated to be included in the stipulated exhibit.

CHAIRMAN DEASON: All right. Given that understanding and clarification, then, show Exhibits 60 through 89 admitted. And I'll go ahead -- are there objections to Exhibits 90 and 91? Hearing no objection, show, then, Exhibits 90 through 91 also are admitted. So,

that brings us up-to-date. If there are more lists to be coming forward, just give those to me at an appropriate time, and we'll handle them in due course.

(Exhibits 60 through 91 admitted into the record.

CHAIRMAN DEASON: I believe, we're prepared to swear in witnesses? Staff, is that correct? Staff, can we swear in witnesses now? Okay. All witnesses that are going to be appearing that are here in the room at this time, please stand and raise your right hand.

(Witnesses collectively sworn.)

CHAIRMAN DEASON: Thank you, please be seated. I believe BellSouth, you have the first witness; is that correct?

MS. WHITE: Yes, Mr. Varner is the first witness, and he's also a stipulated witness.

CHAIRMAN DEASON: Okay.

MS. WHITE: So, at this time I would ask that Mr. Varner's revised direct testimony, consisting of three pages and filed on August 18th, 2000, his corrected revised direct Exhibit AJV-1 filed on September 5th, 2000. Do you want to do direct and rebuttal?

CHAIRMAN DEASON: We'll get direct and rebuttal at the same time, is my understanding.

MS. WHITE: Okay. His rebuttal testimony

consisting of 29 pages and filed on August 21st, 2000. And his rebuttal Exhibit, AJV-1, also filed on August 21st, 2000, I would ask that that be admitted into the record as though read.

CHAIRMAN DEASON: With no objection, show that testimony inserted into the record as though read. And you want to identify exhibits?

MS. WHITE: Yes. I would just identify his rebuttal exhibit and his direct exhibit as one, which would be number 92, I believe.

CHAIRMAN DEASON: Yes, 92.

MS. WHITE: And ask that that be moved into the record.

CHAIRMAN DEASON: Without objection, hearing no objection, show then the prefiled exhibits for the direct and rebuttal for Mr. Varner are admitted. And that is composite Exhibit 92.

(Exhibit 92 marked for identification and admitted into the record.).

BELLSOUTH TELECOMMUNICATIONS, INC.

REVISED DIRECT TESTIMONY OF ALPHONSO J. VARNER

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 990649-TP

(PHASE II)

AUGUST 18, 2000

Q. PLEASE STATE YOUR NAME, YOUR POSITION WITH BELLSOUTH TELECOMMUNICATIONS, INC. ("BELLSOUTH") AND YOUR BUSINESS ADDRESS.

A. My name is Alphonso J. Varner. I am employed by BellSouth as Senior Director for State Regulatory for the nine-state BellSouth region. My business address is 675 West Peachtree Street, Atlanta, Georgia 30375.

Q. HAVE YOU PREVIOUSLY FILED TESTIMONY IN THIS PROCEEDING?

A. Yes. I filed direct testimony in this proceeding on May 1, 2000. On June 29, 2000 I filed rebuttal testimony pertaining to the issues relegated to Phase I of this proceeding.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of this testimony is only to provide a Revised Exhibit AJV-1 to replace Exhibit AJV-1 that was attached to my direct testimony filed on May 1,

2000. The attached Revised Exhibit AJV-1 reflects the rates that BellSouth proposes to charge alternate local exchange carriers ("ALECs") for the Unbundled Network Elements (UNEs) and UNE combinations being addressed in this proceeding. The proposed rates contained in Revised Exhibit AJV-1 are equal to the costs contained in the updated cost studies filed by BellSouth on August 16, 2000. These updated cost studies are supported by the revised direct testimony of BellSouth witnesses Caldwell and Stegeman, who address the reasons for these changes in greater detail.

Q. ARE THERE ANY ADDITIONAL ISSUES THAT NEED TO BE ADDRESSED?

A. Yes. Although BellSouth has proposed rates equal to the results of its cost studies, the proposed rates for certain elements in Revised Exhibit AJV-1 were derived by adding two cost elements together. For example, the proposed nonrecurring rate for the ADSL-compatible loop without LMU (A.6.1) was derived by adding the loop cost (A.6.6) and the loop modification additive (A.17.4).

Also, the number of pages that comprise Revised Exhibit AJV-1 has been substantially reduced. The reduced volume of pages of the Revised Exhibit AJV-1 is due primarily to formatting changes, although certain elements have been restructured and others removed, such Line Sharing. Ms. Caldwell addresses these changes in her revised direct testimony.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes.

#224980

BELLSOUTH TELECOMMUNICATIONS, INC.

REBUTTAL TESTIMONY OF ALPHONSO J. VARNER

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 990649-TP

(PHASE II)

AUGUST 21, 2000

Q. PLEASE STATE YOUR NAME, YOUR POSITION WITH BELLSOUTH TELECOMMUNICATIONS, INC. ("BELLSOUTH") AND YOUR BUSINESS ADDRESS.

A. My name is Alphonso J. Varner. I am employed by BellSouth as Senior Director for State Regulatory for the nine-state BellSouth region. My business address is 675 West Peachtree Street, Atlanta, Georgia 30375.

Q. HAVE YOU PREVIOUSLY FILED TESTIMONY IN THIS PROCEEDING?

A. Yes. I filed direct testimony in this proceeding on May 1, 2000.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my rebuttal testimony is to respond to policy issues addressed in the direct testimony filed on behalf of various intervenors as it pertains to the issues being addressed in Phase II of this proceeding. Specifically, I will respond to the testimony of AT&T and MCIWorldCom's witness Mr. Greg Darnell, Florida Cable

Television Association's ("FCTA's") witness Mr. William Barta, Florida Competitive Carriers Association ("FCCA") witness Mr. Joseph P. Gillan, Sprint's witness James W. Sichter, Bluestar, Covad and Rhythms Link's witness Ms. Terry Murray, and Supra's witness Mr. David Nilson filed with the Florida Public Service Commission ("Commission") on July 31, 2000. I will also address the July 18, 2000 Eighth Circuit Court ("Eighth Circuit") ruling.

**Pricing Methodology**

Q. WHAT VALIDITY IS THERE TO THE CLAIMS OF MS. MURRAY AND MR. GILLAN THAT THE EIGHTH CIRCUIT'S RULING MEANS THAT ILECS MAY NOT BE ABLE TO INCLUDE SHARED AND COMMON COST IN PRICES?

A. None. The portion of the FCC rules requiring inclusion of the shared and common costs was not vacated by the Eighth Circuit Ruling. Rule 51.503(a) requires rates to be established equal to forward-looking economic cost. Rule 51.505(a) defines forward-looking economic cost as the sum of (1) the total element long-run incremental cost of the element, as described in paragraph (b); and (2) a reasonable allocation of forward-looking common costs, as described in paragraph (c). Forward-looking common costs include shared and common costs as defined in Rule 51.505(c). As noted above, the requirement to include shared and common costs is in Rules 51.503(b), 51.505(a), and 51.505(c). None of these rules was vacated by the Eighth Circuit.

Part of the confusion here is related to the use of the terminology "Total Element Long Run Incremental Cost" ("TELRIC"). TELRIC is only a part of the economic cost referenced in Rule 51.505(a)(1) above. However, as an abbreviated reference, most people use the term "TELRIC" to refer to the sum of TELRIC as defined in FCC Rule 51.505(a)(1) plus the allocation of shared and common costs in accordance with FCC Rule 51.505(a)(2).

Q. PLEASE ADDRESS THE IMPACT OF THE EIGHTH CIRCUIT RULING ON THE FCC'S PRICING RULES.

A. The Court eliminated the requirement for the incremental cost (TELRIC) portion of prices as described in 51.505(a)(1) above to be based on the FCC's efficient network configuration standard. That standard is defined in Rule 51.505(b)(1) as "[t]he total element long run incremental cost of an element should be measured based on the use of the most efficient telecommunications technology currently available and the lowest cost network configuration, given the existing location of the incumbent LEC's wire centers." The only portion of the FCC's pricing rules that the Eighth Circuit Ruling vacated and remanded was Rule 51.505(b)(1). The remaining portions of the FCC's pricing rules remain in effect and were not vacated by the Eighth Circuit Ruling as Mr. Gillan and Ms. Murray imply.

Regarding Rule 51.505(b)(1), the Eighth Circuit Ruling held that TELRIC "violates the plain meaning of the Act", finding that the Act requires that rates be based on "the cost … of providing the interconnection or network element … not the cost some imaginary carrier would incur by providing the newest, most efficient, and

least cost substitute for the actual item or element which will be furnished by the existing ILEC pursuant to Congress's mandate for sharing. Congress was dealing with reality, not fantasizing about what might be." This finding of the Eighth Circuit Court refutes several of the claims made by Mr. Gillan and Ms. Murray.

Q. IN ORDER TO COMPLY WITH THE REMAINING FCC RULES, WHAT SHOULD PRICES REFLECT?

A. Since all the Eighth Circuit did was eliminate the efficient network requirement, the remaining FCC rules require prices to reflect the total forward-looking cost of facilities actually used to provide a service. Unlike the Supreme Court's Remand of FCC Rule 51.319, which required the FCC to establish new rules, no new rules appear to be required to implement the Eighth Circuit's ruling. By eliminating Rule 51.505(b)(1), the Eighth Circuit left in place a set of rules that require prices to equal the total forward-looking cost of actually providing the services. Nonetheless, Mr. Gillan and Ms. Murray have attempted to not only retain the standard that the Eighth Circuit rejected, but to also have this Commission establish prices based on a more hypothetical framework than even the FCC previously required. Clearly, their attempts should be rejected.

Q. WHAT IS THE BASIS FOR THE RATES BELLSOUTH PROPOSED?

A. BellSouth's proposed rates equal the forward-looking economic cost as defined in the FCC's pricing rules before the Eighth Circuit's ruling. These rates equal the sum of (1) TELRIC (based on the efficient network requirement) plus (2) a

reasonable allocation of forward-looking common costs. The only reasonable interpretation of the Eighth Circuit's rationale for vacating and remanding the FCC's Rule 51.505(b)(1) is that the FCC went too far in its requirement that a hypothetical network be used to calculate TELRIC. Consequently, the rates BellSouth has proposed are below the level that the Eighth Circuit held was appropriate. As I explained in my direct testimony, BellSouth has maintained all along that the FCC's pricing rules did not permit full cost recovery. Obviously, the Eighth Circuit shares BellSouth's opinion.

Q. IS BELLSOUTH CHANGING THE RATES IT HAS PROPOSED IN THIS DOCKET BASED ON THE EIGHTH CIRCUIT'S RULING?

A. No. Whether or not the Eighth Circuit ruling is upheld, the ruling will certainly be challenged. Therefore, in order to continue to facilitate local competition until this matter is ultimately resolved, BellSouth is willing to have the Commission establish unbundled network element ("UNE") prices using BellSouth's cost study and proposed rates filed in this proceeding. Once the dust finally settles, it may be necessary for the Commission to revisit the prices it establishes in this proceeding.

Q. WHAT ROLE SHOULD THE EIGHTH CIRCUIT'S RULING PLAY IN THE COMMISSION'S EVALUATION OF BELLSOUTH'S PRICES?

A. As previously discussed, BellSouth's proposed prices are based on a methodology that produces costs that are below the level the Eighth Circuit deemed appropriate. The inputs to the model and the model itself are based on the FCC's efficient

network standard. Changes to BellSouth's inputs or operation of the model that drive prices even lower merely drive prices further below the level that the Eighth Circuit held was appropriate. In particular, the Commission should reject any attempt to base prices on a network standard that is even more hypothetical than the standard already reflected in Bellsouth's cost models.

Q. PLEASE RESPOND TO MR. GILLAN'S AND MS. MURRAY'S CONTENTIONS THAT ILECS WILL USE THE EIGHTH CIRCUIT RULING AS GROUNDS TO ABANDON ECONOMIC PRICING PRINCIPLES.

A. To the contrary, BellSouth believes that the Eighth Circuit's ruling reinforces economic pricing principles. Indeed, the Court's finding that TELRIC based on a hypothetical network violates the plain meaning of the Act makes clear that the Court does not view TELRIC based on a hypothetical network as a legitimate basis for setting prices. The fundamental fallacy the Eighth Circuit saw was that the FCC rules assumed the ILEC's existing network would be totally scrapped, and a totally new network would be immediately built using the newest technology. As the Eighth Circuit recognized, this is an unrealistic assumption, and certainly would not produce just and reasonable rates.

Q. ON PAGE 6, MR. GILLAN CONTENDS THAT THE ONLY DECISIONS THAT CAN AFFECT RESOURCE CHOICES ARE THOSE THAT OCCUR IN THE FUTURE. PLEASE RESPOND.

A. This is not true, but Mr. Gillan's error is irrelevant to the issue under discussion here. Past decisions have an effect on resource choices all the time. Typically, past decisions will narrow the scope of choices available in the future. For example, the choice of plant installed narrows the range of reasonable choices that can be made in the future as to how to provide a service. Let's say a carrier installs multiplexing equipment. That equipment will have two parts, one part is used for a number of lines and all of it must be purchased initially. The other part is installed as individual lines are ordered. Even if a newer technology becomes available, it still may be more economical to simply add to the existing system instead of buying both the common equipment and line equipment for the new system. Mr. Gillan would only permit cost recovery as if the new system were already installed and all you did was add to it. This is where the Eighth Circuit disagreed with Mr. Gillan, Ms. Murray, Mr. Barta, and the FCC. Clearly, assumptions about future investments are affected by past investment choices to some extent.

I agree with Mr. Gillan that knowledgeable people must make informed choices about what technologies and investments *would be* used in the future. However, the range of choices must be realistic. To some extent, the scope of choices is narrowed by past decisions. That was the fundamental fallacy of the FCC's efficient network standard. It assumed that the network would be completely remade with each new technological advancement and made no provision for the costs of such drastic turnover in plant. While selecting the most efficient technologies and investments choices is important, the most efficient choices are limited by the choices that are actually available. Scrapping the whole network each time technology changes is not an efficient choice.

No company completely overhauls its plant to instantaneously proliferate new technology. Such action is neither practical, possible nor economically efficient. If BellSouth did take such action, the resulting costs would be far higher than the costs the ALECs propose. The costs of drastically overhauling the network would properly include the remaining cost of the old technology plus the cost of the new technology. Of course, the ALECs don't want to pay for these remaining costs, but those costs don't simply vanish. Such costs must be borne by someone.

Q. DOES BELLSOUTH OBJECT TO USING A FORWARD-LOOKING COST METHODOLOGY TO SUPPORT PRICES, AS MR. GILLAN, MR. BARTA AND MS. MURRAY CONTEND?

A. No. However, BellSouth does disagree with their view of the role that forward-looking incremental costs should play and the way that those costs should be calculated. Long run forward-looking incremental costs define a level below which prices should not go, except in limited, temporary circumstances. However, they contend that forward-looking incremental costs define the highest price that should be charged. Indeed, the FCC's rules (before or after the Eighth Circuit's ruling) do not support this contention, and they can point to no economic theory for support. Of course, this Commission has historically recognized that long run forward-looking incremental costs establish the price floor, and the prices should also include a contribution to shared and common costs. For example, in establishing permanent rates in the AT&T/MCI/ACSI consolidated arbitration proceedings, the Commission determined in Order No. PSC-96-1579-FOF-TP dated December 31,

1996, that contribution above TSLRIC is appropriate, stating that "[t]he rates cover BellSouth's TSLRIC costs and provide some contribution toward joint and common costs." (Order, page 33).

Q. MS. MURRAY AND MR. BARTA CONTEND THAT A FORWARD-LOOKING COST ANALYSIS CANNOT CONSIDER HISTORICAL COSTS. PLEASE RESPOND.

A. Their discussion is irrelevant. BellSouth has not included historical costs either in its cost study or in its prices. However, the Commission should remember that BellSouth's proposed prices do not cover the actual cost of providing service.

Q. PLEASE RESPOND TO MS. MURRAY'S IMPLICATION THAT PRICES SHOULD EQUAL INCREMENTAL COSTS.

A. Ms. Murray is unable to directly say that price should equal incremental cost because she apparently knows it isn't true. In the example Ms. Murray provides on page 17, even the new firm recovers its total actual costs. Ms. Murray's statement that "competitive markets offer no leeway for recovering 'actual' costs that exceed efficient, forward-looking costs" is wrong because she implies that only incremental costs are recovered. She has been unable to identify any markets where her contention is supported. All she has succeeded in showing is that an efficient firm's costs get recovered in a competitive environment, but it is their total costs, and not just incremental costs, that get recovered.

Q. PLEASE RESPOND TO MR. GILLAN'S INTERPRETATION THAT THE EIGHTH CIRCUIT RULING SAYS THAT "AN APPROPRIATE COST ANALYSIS SHOULD ESTIMATE ONLY THE FORWARD-LOOKING COST OF THE NETWORK INCREMENT" AND THAT THE REMAINING FIXED COMPONENTS SHOULD BE IGNORED.

A. Nowhere in the Eighth Circuit's ruling did it limit cost recovery to a network increment. On the contrary, the Court concluded that the actual cost that will be incurred on a going-forward basis should be recovered. Even the FCC's pricing rules do not support Mr. Gillan's claim. As previously discussed, the FCC's pricing method that the Eighth Circuit addressed consisted of two parts – TELRIC plus an allocation of shared and common costs. The sum of these two costs was the price ceiling. The Eighth Circuit was addressing whether the proper forward-looking methodology was used in the TELRIC method mandated by the FCC. The FCC required use of a hypothetical network in the TELRIC part of their rules, and the Eighth Circuit said that the FCC was wrong. Indeed, the Eighth Circuit said that the incremental cost part of the price must reflect forward-looking actual costs. Mr. Gillan erroneously interprets the Eighth Circuit's criticism of the incremental cost part of the FCC's pricing rules to mean that the remaining parts, which the Eighth Circuit doesn't even address, are vacated. His view is completely without merit.

Q. PLEASE COMMENT ON MR. GILLAN'S RECOMMENDATION REGARDING WHICH COSTS TO INCLUDE AND WHICH COSTS TO EXCLUDE AS A "FIXED CONSTRAINT".

A. Mr. Gillan appears to be contradicting his own testimony and ignoring the Eighth Circuit's ruling. First, he says that a proper cost study would use a time horizon long enough such that all inputs are variable. But now, he claims the cost study should be done such that some inputs are fixed. He can't have it both ways. The italicized parts of the Eighth Circuit Ruling, as quoted by Mr. Gillan on page 12 of this testimony, also contradict his claims. The cost of facilities used by the competitors, whether "fixed" or "variable" under Mr. Gillan's chameleon-like use of the terms, should be recovered through the incremental cost portion of the prices. Furthermore, Mr. Gillan ignores the "actually used" standard as stated by the Court. Prices should not be limited to recovering the cost of the most efficient network as Mr. Gillan implies, but the network that will actually be used to supply the UNEs. Mr. Gillan is simply attempting to re-impose under a new theory the hypothetical network standard that the Eighth Circuit rejected.

Q. PLEASE COMMENT ON MR. GILLAN'S CONCERN THAT THE EIGHTH CIRCUIT RULING WILL CAUSE ILECS TO DELIBERATELY DEPLOY OBSOLETE OR INEFFICIENT NETWORKS IN AN EFFORT TO INCREASE ALEC'S COSTS.

A. Mr. Gillan is wrong again. There is nothing in the Court's decision pertinent to this so-called "issue". First, this allegation makes no sense because it would require the ILEC to increase its own costs to provide retail services. However, the ILEC must compete in the retail market with many non-ALEC providers. Second, even if BellSouth were inclined to engage in the irrational behavior postulated by Mr. Gillan, the nondiscriminatory obligations placed upon BellSouth prevent it from

engaging in such behavior. Third, if BellSouth were to act in an economically irrational manner and were to disregard its obligations under the law, an ALEC would certainly bring this to the Commission's attention long before such action could affect forward-looking costs. As such, Mr. Gillan's claimed concern has no effect on UNE price development.

Q. PLEASE RESPOND TO MR. GILLAN'S STATEMENTS ON PAGE 3 THAT BELLSOUTH'S "PERSPECTIVE ON UNE-PRICING WOULD TURN ECONOMIC THEORY ON ITS HEAD".

A. Mr. Gillan is viewing economic theory upside down. The problem here is that he is confusing the "ceiling" with the "floor". As I previously stated, long run forward-looking incremental costs provide the price floor, not the price ceiling. Nowhere in a competitive market can Mr. Gillan point to a place where incremental cost is properly equated to a price ceiling. Mr. Gillan is ascribing an improper role to incremental costs.

Q. IF FORWARD-LOOKING INCREMENTAL COSTS ARE NOT APPROPRIATE TO ESTABLISH THE PRICE CEILING, HOW SHOULD THE PRICE CEILING BE DETERMINED?

A. In a fully competitive marketplace, consumers establish the price ceiling by their decision to buy or not buy a product. In a less than fully competitive marketplace, regulatory agencies have used a number of proxies (e.g. fully allocated costs, competitive analogs, stand-alone costs) to mimic this price ceiling that customers

would otherwise create. The objective of these proxies is the same – to approximate a price that would be sustainable in a competitive marketplace, i.e., to mimic prices that allowed an efficient firm to recover its full costs. The important point is that actual costs must be recovered. Prudently incurred costs will be recovered in a competitive environment. These costs don't vanish simply because Mr. Gillan, Ms. Murray and Mr. Barta choose to ignore them.

Q. PLEASE RESPOND TO MR. GILLAN'S ALLEGATION THAT, DUE TO THIS COMMISSION'S HAVING SET UNE PRICES THAT ARE TOO HIGH, ONLY NEGLIGIBLE COMPETITION HAS RESULTED IN FLORIDA.

A. It is difficult to draw any conclusions about the degree of competition in Florida based upon UNE rates established by the Commission in the past. Mr. Gillan would have you ignore other events that have had significant bearing on the development of competition using UNEs. Some of these events include: (1) AT&T's decision to spend $100 billion to provide telephony over cable; (2) MCI's almost total rejection of the residence market for local service; (3) carriers' decisions to incorporate local service into their long distance special access services; (4) the level of existing retail rates; (5) IXC's desire to keep RBOCs such as BellSouth out of the long distance business; (6) carriers' decisions to utilize resale as their business entry strategy; and (7) consolidation in the industry that distracted potential competitors from market entry. Mr. Gillan apparently believes that none of these events has affected the development of competition in the past. In his incredibly myopic view, the only thing that mattered was the level of UNE prices.

Again, there is no rational way to equate the degree of past competitive development solely to UNE prices. However, I should point out that the significance of these events will likely be lessened in the future, so the level of UNE prices will have a greater impact going forward.

Q. PLEASE RESPOND TO MR. GILLAN'S CONTENTION THAT EXCESSIVE UNE PRICES WILL FORECLOSE COMPETITION, AND TO MR. BARTA'S INTERPRETATION OF YOUR TESTIMONY ON THAT SUBJECT.

A. They are being overly dramatic. The level of UNE prices that the Commission is considering here would not hamper, let alone foreclose, competition. They also misinterpret my testimony. What I said in my direct testimony was that UNE prices set too high would slow competitive entry, but would certainly not foreclose it altogether. Such a condition would cause competitors to enter via other methods. Of course, setting prices too high would give ALECs the maximum incentive to construct their own facilities and, in the long run, infrastructure competition would develop sooner. However, the incentive for the ALEC to compete by purchasing UNEs from the ILEC would be lessened. Of course, since the now-vacated FCC's pricing rules result in understated prices, setting prices too high is not currently a condition the Commission will encounter in this proceeding.

Q. PLEASE RESPOND TO MR. GILLAN'S CONTENTION THAT "LITTLE COMPETITION HAS EMERGED".

A. The accuracy of Mr. Gillan's contention depends on which segments of the market you examine. Obviously, facilities-based ALECs have focused their efforts on the more lucrative business markets and all but ignored the residential market. The hallmark reform of the Act, contrary to Mr. Gillan's claim, was removing the statutory barriers and creating a three-pronged means for competition to develop – build facilities, resale, and UNEs. ALECs have varied in their desire to use each of these means, so measuring competition based solely on UNEs is misguided. Mr. Gillan fails to point out how much local service is provided over the other technologies, constructing new facilities, special access, wireless, etc. All of these are facilities-based means to compete. The actual levels referred to in Mr. Gillan's Exhibit JPG-2 are misleading since ALECs start at a low base and ILECs start at a high base. In fact, on an annualized basis the growth rate for UNE loops was 120% while the growth rate for total ILEC lines was only just over 4%. Mr. Gillan's concerns that an ALEC's gain reflects growth and penetration is irrelevant if the point is to show the degree of competitive penetration. Competitive penetration is the same regardless of whether a competitor wins an existing customer or serves a new one.

Q. ON PAGE 18, MR. GILLAN CONTENDS THAT THE HIGH COST OF COMBINATIONS LIMITS ITS VALUE TO CUSTOMERS WHOSE SERVICES ARE COMPLEX AND EXPENSIVE. DO YOU AGREE?

A. No. Mr. Gillan is simply trying to provide an excuse for why facilities-based ALECs have focused almost exclusively on the urban business market. It is not the complexity of using UNE combinations that has driven their behavior; rather, it is

simple arithmetic. The margins are much higher in the urban business market than in other markets. That is the principal reason that competitors have concentrated on that market. In fact, Mr. Gillan's claim is belied by ALECs that claim the main reason they need UNE combinations – particularly the UNE platform ("UNE-P") - was to serve the mass market. His contention has also been contradicted by John Zeglis of AT&T when he stated that UNE combinations were just another form of resale. So AT&T obviously doesn't share Mr. Gillan's view about complexity.

Q. WHAT DOES MR. GILLAN'S UNE-P DATA FOR NEW YORK AND TEXAS SHOW?

A. First, his data doesn't show anything about the impact of UNE-P availability on local competition development in Florida, New York or Texas. UNE-P is available in all three states, so any disparity in ALECs' use of UNE-P in these states is not a result of availability. Second, Mr. Gillan conveniently ignores the most important factor that has driven increased UNE-P utilization in New York and Texas, which is not the availability of the UNE-P, but rather the imminent likelihood of an RBOC gaining interLATA relief. In New York, UNE-P has been available since mid-1998. Mr. Gillan's Table 3 shows that ALECs had 75,000 UNE-Ps in New York in June, 1999. By December 1999, just six months later, the number of UNE-Ps in New York had grown to 400,000. Interestingly, in September 1999, Bell Atlantic requested that the FCC grant it permission to provide interLATA service in New York. It was widely believed – even before Bell Atlantic's petition was filed - that Bell Atlantic would receive approval. The logical conclusion is that it was the

imminence of interLATA relief for Bell Atlantic in New York, not the availability of UNE-P that spurred the growth of UNE-P in New York.

Likewise, Mr. Gillan's data for the levels of UNE-P subscription in Texas follow a similar pattern. He quotes Texas data for December 1999 and January 2000. Of course, in January 2000, SBC requested that the FCC grant it permission to provide interLATA service in Texas. As with New York, the perception was that Texas had a high likelihood of succeeding. Indeed, Texas received interLATA relief in June 2000. Again, the high levels of UNE-P subscription in Texas are tied to the likelihood that interLATA relief was imminent for Texas. Based on his data, if Mr. Gillan wants to incent the growth of UNE-P utilization in Florida, one would think he would support BellSouth's entry into the interLATA market in Florida.

Q. ON PAGES 40-49, MS. MURRAY CONTENDS THAT ILECS SHOULD HAVE BASED ALL OF ITS COST STUDIES ON A SINGLE, CONSISTENT, FORWARD-LOOKING NETWORK ARCHITECTURE. PLEASE COMMENT.

A. First, I agree that a consistent forward-looking architecture should be reflected by the network. That is what BellSouth did. However, I disagree with Ms. Murray's claims about how prices must be established to reflect such an architecture. For example, Ms. Murray's contention that it doesn't matter whether costs are classified as recurring or nonrecurring is incorrect. Nonrecurring costs are incurred at the time of service connection and must be recovered regardless of how long the UNE is used or remains in service.

Furthermore, Ms. Murray incorrectly assumes that the same network components are reflected in both the recurring and the nonrecurring prices. Recurring and nonrecurring costs for services are costed differently because they use network components in different degrees or use different components altogether. Recurring prices recover one set of costs, e.g. depreciation, cost of money and maintenance. Nonrecurring prices recover a different set of costs. For example, the cost of the technician installing the circuit for used by the ALEC is recovered through a nonrecurring price. Again, this nonrecurring cost is fully incurred when the service is installed, and must be recovered regardless of how long the customer uses the service.

Finally, Ms. Murray attempts to reintroduce a hypothetical network as the basis for prices. At page 46 of her testimony, she claims that "an incumbent can always limit its total recurring and nonrecurring costs to the costs of owning and operating a new modern network." The only way this occurs is if the incumbent instantaneously rebuilds its network to incorporate each new technology as it becomes available. Using Ms. Murray's car analogy, she is proposing the equivalent of saying that when someone buys a new car, they can simply default on any remaining payments for the old car.

Q. DOES MS. MURRAY'S AUTOMOBILE ANALOGY ON PAGE 42 ACCURATELY SUPPORT HER CONCERNS REGARDING COSTING NETWORK MODERNIZATION?

A. No. Ms. Murray's analogy makes no sense at all. First, if the old car becomes unreliable or doesn't have features that the owner wants, the owner would buy a new car regardless of the monetary difference in the choices. Second, her analogy is simply incorrect. In the premise for the analogy, she assumes that the car owner is only being reimbursed for upkeep of the old car. She then claims that premise is similar to someone being reimbursed for both the up keep of the existing car and payments on the new one. She uses this nonsensical analogy to support her contention that BellSouth is doing something that, in fact, it is not doing. BellSouth is not asking ALECs to pay for two different means of providing the same service. For example, when an ALEC orders an unbundled loop, BellSouth is not asking the ALEC to pay the full cost of that loop provided with one technology plus the full cost of providing it with a different technology. BellSouth is not "mixing and matching," we are simply asking to recover the cost of the functions BellSouth actually performs to provide a UNE.

Again, Ms. Murray's concerns about BellSouth using an inconsistent network design to calculate UNE prices is misplaced. BellSouth considers the same network architecture to develop its recurring and nonrecurring costs.

Q. MR. BARTA APPEARS TO IMPLY THAT A FORWARD-LOOKING ECONOMIC COST MODEL INCLUDES A REASONABLE PROFIT. DO YOU AGREE?

A. It appears that Mr. Barta misinterprets my testimony. A forward-looking methodology can be used to determine costs. However, limiting prices to the level

of cost recovery does not provide an economic profit. Mr. Barta must certainly agree with that.

Q. HAS MR. BARTA CORRECTLY INTERPRETED YOUR TESTIMONY REGARDING RECOVERY OF BELLSOUTH'S SHARED AND COMMON COSTS?

A. No. Contrary to Mr. Barta's interpretation, what I said was that setting prices equal to forward-looking incremental costs does not permit recovery of shared and common costs. Mr. Barta obviously has not kept up with the opinions of others in the ALEC industry, since many ALEC's are claiming BellSouth is not allowed to recover shared and common costs.

Q. IS THERE ANY BASIS FOR MR. BARTA'S CONCERN ABOUT BELLSOUTH INCLUDING "SUPRA-NORMAL" PROFITS IN ITS PRICES?

A. No. BellSouth has not proposed to include any economic profits in its prices. I have simply pointed out that BellSouth's proposed prices do not include a reasonable profit even though it is permitted to do so under the Act.

**Geographic Deaveraging**

Q. PLEASE RESPOND TO MR. DARNELL'S STATEMENTS THAT BELLSOUTH'S DEAVERAGING METHODOLOGY IS NOT IN COMPLIANCE WITH FCC RULES.

A. Mr. Darnell is incorrect. As I discussed in my direct testimony, BellSouth's methodology for establishing deaveraged UNE prices is based on the geographic boundaries of the existing rate groups. The fact that retail rates have been established using a rate group structure does not "create non-cost based deaveraged UNE rates" as Mr. Darnell contends. Contrary to Mr. Darnell's contention, and consistent with FCC Rule 51.505(d), BellSouth's proposed deaveraging methodology does not include any costs associated with offering retail telecommunications services. BellSouth proposes to group wire center costs by the rate groups where the wire center is geographically located. One advantage of this approach is that it provides more consistency between the structure of retail, resale and UNE prices. Further, customers who are located in the same geographic area and who have similar calling areas will be in the same deaveraged zone for UNE pricing.

In fact, the FCC recognized that existing deaveraged zones for other services provide a proper basis for determining the geographic zones applicable to UNE rates. FCC Rule 51.507(f)(1) specifically grants state commissions the ability to establish geographically deaveraged prices using "existing density-related zone pricing plans described in § 69.123 of this chapter, or other such cost-related zone plans established pursuant to state law." (emphasis added) Section 69.123 as referred to in this rule is the existing zones that apply to special access services. Clearly, the FCC agreed that geographic zones that existed for retail services were a proper basis to establish such zones for UNEs.

Mr. Darnell is equally incorrect in his contention that BellSouth's rate group approach violates FCC Rule 51.505(d) by considering the revenues of other services in the development of its deaveraged UNE prices. BellSouth has used the existing rate groups to establish the zones to which the deaveraged UNE prices apply. BellSouth's retail service rates or revenues are not included in any of the cost development to establish deaveraged prices.

Q. PLEASE RESPOND TO MR. DARNELL'S DISCUSSION ON PAGES 14-15 CONCERNING WHETHER BELLSOUTH'S DEAVERAGING PROPOSAL PROTECTS BELLSOUTH'S EXISTING RETAIL RATE STRUCTURE.

A. First, the rationale for BellSouth's deveraging proposal is not to protect BellSouth's existing retail rate structure. As I have explained, BellSouth contends that its proposal appropriately recognizes the proximity of customers to each other. Of course, BellSouth has consistently maintained that geographic deaveraging should not precede the implementation of an appropriate universal service support mechanism and/or the implementation of adequate rate rebalancing. However, since neither universal support nor rate rebalancing are being addressed in this proceeding, the Commission's goal at this time must be to establish deaveraged rates for UNEs that will promote local competition, given the existing retail rate structure and levels.

Indeed, local competition for many residential customers is currently constrained because retail residence rates are artificially low. As the Commission is aware, implicit subsidies exist in BellSouth's retail business rates in order to subsidize

high-cost residential service. As a result of these implicit subsidies, ALECs will continue to focus on serving business customers and low-cost residential customers, such as multi-dwelling unit residents. Absent BellSouth's ability to "rebalance" retail rates, deaveraged UNE prices based on the existing rate group structure best correlates with the retail market environment in Florida, thereby promoting competition in all areas of Florida.

Q. DOES BELLSOUTH'S PROPOSED DEAVERAGING METHODOLOGY "INSULATE ITS RETAIL RATES FROM COST BASED COMPETITION" AS ALLEGED BY MR. DARNELL?

A. No. BellSouth's retail tariffed rate for business local exchange service in Rate Group 12 is $29.10. BellSouth's proposed deaveraged rate for an unbundled loop that would apply to customers in that rate group is $16.17 (based on a Service Level 1 ("SL1") loop). Obviously, a rate of $16.17 for this UNE loop, even when the costs of switching and transport are added, doesn't provide "insulation" for BellSouth's retail rates.

Now, comparing BellSouth's proposed deaveraged rate of $16.17 to BellSouth's retail tariffed rate of $10.65 for residence local exchange service in Rate Group 12 points makes clear the point I raised in my direct testimony concerning deaveraging of UNE rates absent retail rate rebalancing. Again, this Commission is well aware that residence local exchange rates have been established at an artificially low level in order to promote universal service. BellSouth's proposed deaveraged rates cannot – and should not – follow this same pricing anomaly. What should be

painfully obvious is that geographically deaveraged UNE rates will result in increasing the ALECs' incentive to serve business customers, which will further reduce the implicit subsidies that are used to support the artificially low residence rates. Nothing short of significant reduction of implicit subsidies will stop this downward spiral.

Q. PLEASE COMMENT ON SPRINT'S PROPOSED "BANDING CRITERIA".

A. Mr. Sichter proposes that there be no more than a 20% difference between the rate for a particular zone and the forward-looking cost of any wire center included in that zone. There is no rationale for this arbitrary criteria. His proposal results in eight zones. Indeed, all Mr. Sichter's proposal does is decrease the likelihood that customers in the high cost zones will enjoy competitive alternatives, and provide a windfall to ALECs serving customers in the lowest cost zones.

Reducing UNE prices in the lowest cost zones doesn't translate into increased competition or lower consumer prices in those areas. Obviously, since ALECs have already targeted business customers in the lowest cost zones, ALECs are competing for these customers at the state-wide average UNE rates. Deaveraged UNE rates will only provide additional margin for ALECs in the lowest cost zones. Therefore, all that is accomplished by having more than three zones is that the contribution margin for ALECs is increased in the lowest cost zones.

In the higher cost zones where ALECs have not chosen to compete, increasing the price of UNEs in those zones certainly will not incent them to compete using UNEs.

If ALECs aren't currently competing in those areas by purchasing UNEs at the state-wide average price, a higher deaveraged UNE price certainly won't increase the likelihood of their purchasing UNEs to compete.

BellSouth's proposal for deaveraged SL1 loop rates results in over 60% of lines being rated at $16.17, and no line is rated higher than $25.56. Conversely, Sprint's proposal results in only 23% of lines being rated below $17.77, and many lines would be rated between $32.51 and $115.81. Of course, Mr. Sichter states that he would not be opposed to a wider range of deviation in the highest cost zone in order to reduce the number of zones. However, this concession means nothing because ALECs have no incentive to serve customers in the high cost wire centers using UNEs.

Q. PLEASE ADDRESS THE DEAVERAGING PROPOSAL SET FORTH IN MR. DARNELL'S TESTIMONY ON BEHALF OF AT&T AND MCI WORLDCOM.

A. Mr. Darnell states that his proposal is based on Sprint's deaveraging methodology as described in Mr. Sichter's testimony. However, his Exhibit No. GJD-8 which purports to provide his deaveraging proposal does not produce rates that are consistent with Mr. Sichter's methodology. Of course, Mr. Darnell's proposed rates as shown on Exhibit No. GJD-8 are based on the adjustments AT&T and MCI contend should be made to BellSouth's study. Other BellSouth witnesses address the inappropriateness of these adjustments. However, in order to illustrate the flaws in Mr. Darnell's proposal, I will use Mr. Darnell's proposed rates.

Mr. Darnell proposes six zones, and he claims that page 1 of his Exhibit No. GJD-8 provides the minimum cost, the mid-point cost, the maximum cost and the average cost for each of these six zones. However, his claim is incorrect. First, most of the minimum and maximum wire center costs he shows on page 1 don't correspond to the cost for any wire center as shown on pages 2-9. Second, even if the costs he uses on page 1 were accurate, he uses the maximum cost for each zone as the minimum cost for the adjacent zone. Consequently, it appears that he puts the same wire center in two different zones. This makes no sense. A wire center belongs in only one zone – the cost associated with that wire center can't be shown as both the maximum cost in one zone and the minimum cost in the next zone. Third, his proposed average cost for Zone 6 is an amalgamation that does not result in a price that is limited to the 20% spread that he ostensibly believes is appropriate.

Q. PLEASE ADDRESS SUPRA'S PROPOSAL THAT LOOP-RELATED ELEMENTS BE DEAVERAGED BASED UPON LOOP LENGTH.

A. On the surface, Supra's proposal, as set forth by Mr. Nilson, appears to have merit since distance is one of the primary factors that affect loop costs. However, from a practical standpoint, Mr. Nilson's proposal would be extremely burdensome and would provide little, if any, competitive benefit over BellSouth's proposal. BellSouth's engineering database that contains loop make-up information is not integrated with BellSouth's ordering and billing systems. Therefore, implementing distance-sensitive pricing for UNEs would take considerable time. Also, because it would not be appropriate to have a distance-sensitive rate structure for UNEs while maintaining a flat-rate structure for retail rates, a complete restructure of retail rates

would also be necessary. In any event, the FCC was obviously satisfied that averaging costs using no more than three zones is sufficient to deal with cost variations.

Q. ON PAGE 7, MR. SICHTER PROVIDES A LIST OF THE UNES HE BELIEVES SHOULD BE DEAVERAGED. PLEASE COMMENT.

A. BellSouth has proposed deaveraged rates for loops and sub-loops, as well as for the loop component of UNE-P and the Enhanced Extended Link ("EEL"). BellSouth's proposed rates for dedicated and common transport are distance sensitive, as are the dark fiber rates, thereby eliminating the need for geographic deaveraging of these elements. BellSouth witness Ms. Daonne Caldwell will further explain why there is no need to deaverage the transport element. I would note that no other party to this proceeding supports Sprint's view that any elements other than loops, sub-loops and combinations that include loops require deaveraging.

**Rates**

Q. PLEASE COMMENT ON MS. MURRAY'S PROPOSAL THAT LOOP MAKE UP INFORMATION SHOULD BE PROVIDED FREE.

A. Such a proposal is ludicrous. The price for providing loop make up information to ALECs should include all the costs required to make this data available to ALECs in an electronic medium. Ms. Murray is proposing that BellSouth eat all of those development costs and charge only for the ongoing data processing costs. There is no rational reason for this proposal.

Q. MS. MURRAY CLAIMS HER PROPOSAL TO PROVIDE FREE LOOP MAKE UP INFORMATION IS SUPPORTED BY OTHER COMMISSION DECISIONS. DO YOU AGREE?

A. No. Ms. Murray's assessment of the two proceedings she references is incorrect. Both of the orders she references only established interim prices, so neither of those state commissions has decided what the price should be. In the Texas case, Ms Murray has only quoted the charge for processing the request for loop makeup information. She has not indicated whether other charges apply to cover the development costs.

Q. HAS MS. MURRAY CORRECTLY STATED THE CHARGES THAT BELLSOUTH PROPOSES FOR LOOP QUALIFICATION?

A. No. The charge BellSouth proposes for Loop Make Up information is dependent upon the means by which the ALEC obtains the information. If the ALEC requests the loop makeup information on a mechanized basis then the BellSouth proposed rate of $.6888 would apply per dip. If the ALEC requests the information manually, then the rates BellSouth proposes would be $132.82 without facility number reservation or $138.61 with facility number reservation. Ms. Murray's proposal that BellSouth should not be able to recover its costs for providing loop make up should be rejected.

Q. DOES MS. MURRAY'S POSITION THAT BELLSOUTH SHOULD NOT BE ALLOWED TO CHARGE FOR LINE CONDITIONING COMPORT WITH THE FCC'S UNE REMAND ORDER?

A. No. The FCC recognized that load coils, bridge taps, etc. are often present on loops, and that the ILEC incurs costs in removing them. At ¶193 of its UNE Remand Order, the FCC stated that "under our rules, the incumbent should be able to charge for conditioning such loops."

Q. DOES MS. MURRAY'S POSITION ON BELLSOUTH CHARGING FOR LINE CONDITIONING COMPORT WITH COVAD AND RHYTHM'S PETITION FOR RECONSIDERATION OF THE FCC'S UNE REMAND ORDER?

A. No. Apparently, Covad and Rhythm's recognize that BellSouth is currently allowed to recover its costs for line conditioning. Obviously, if they didn't believe this was the case, then they would not have been compelled to petition the FCC for reconsideration of the UNE Remand Order. A copy of their petition is attached to my testimony as Rebuttal Exhibit AJV-1.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes.

(#224651)

(TRANSCRIPT CONTINUES IN SEQUENCE IN VOLUME 8.)

STATE OF FLORIDA

: CERTIFICATE OF REPORTER

COUNTY OF LEON )

I, KORETTA E. STANFORD, RPR, Official Commission Reporter, do hereby certify that the Hearing in Docket No. 990649-TP was heard by the Florida Public Service Commission at the time and place herein stated.

It is further certified that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript, consisting of 126 pages, Volume 7 constitutes a true transcription of my notes of said proceedings and the insertion of the prescribed prefiled testimony of the witness(s).

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

DATED this 21st DAY OF SEPTEMBER, 2000.

Koretta E. Stanford

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