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BEFORE THE  
ALABAMA PUBLIC SERVICE COMMISSION

In Re: \_\_\_\_\_

Petition to Establish  
Generic Docket to Consider  
Amendments to \_\_\_\_\_ Docket No. 29543

Interconnection Agreements  
Resulting from Changes of  
Law \_\_\_\_\_

DEPOSITION OF  
JOSEPH GILLAN

2:00 p.m.  
August 16, 2005

Conference Room 415  
675 West Peachtree Street  
Atlanta, Georgia

Blanche J. Harris, CCR No. B-2290

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1 Deposition of Joseph Gillan

2 August 16, 2005

3

4 JOSEPH GILLAN,

5 having been first duly sworn, was examined and

6 testified as follows:

7 EXAMINATION

8 BY-MS.MAYS:

9 Q. Mr. Gillan, I introduced myself to you

10 briefly, but begin, my name is Meredith Mays, here on

11 behalf of BellSouth, and I'd like to go over some

12 things with you.

13 If you don't understand me, interrupt me or

14 ask for clarification. Otherwise, I will assume

15 you've understood my question when I asked it; okay?

16 A. Yes.

17 Q. Just some housekeeping matters. My records

18 thus far show you filing direct testimony and rebuttal

19 testimony in Georgia; you filed direct testimony

20 testimony in Tennessee and North Carolina, and I

21 believe you're filing testimony today in Florida,

22 Alabama, Louisiana and Kentucky?

23 A. Yes.

24 Q. Are you also going to file direct testimony

25 in Mississippi and South Carolina?

1 A. Presuming this deposition goes okay, yes.  
 2 Q. Okay.  
 3 MR. MAGNESS: Excuse me, Meredith,  
 4 I'm sorry to interrupt. And we did this  
 5 with the last deposition. We probably  
 6 should hear about the taking of deposition  
 7 by agreement of counsel.  
 8 MS. MAYS: Yes.  
 9 MR. MAGNESS: As stipulated in the  
 10 previous deposition.  
 11 MS. MAYS: It is. The same  
 12 stipulations that Mr. Magness used, we'll  
 13 use for this one as well.  
 14 (Whereupon, it was agreed that the  
 15 stipulations governing the deposition of  
 16 Eric Fogle will likewise govern the taking  
 17 of the deposition of Joseph Gillan.)  
 18 Q. (By Ms. Mays) And are you also filing  
 19 rebuttal in Tennessee today, Mr. Gillan?  
 20 A. Yes.  
 21 Q. Sitting here today, before we get into the  
 22 deposition, do you know of any changes or corrections  
 23 to the testimony or your exhibits that you have filed  
 24 thus far?  
 25 A. Yes.

1 typographical -- of direct. There is a -- in the  
 2 middle of that quote on line 23, where the capital "B"  
 3 is in the brackets, there's obviously been sentences  
 4 deleted from that quote.  
 5 And so there should have been four dots on  
 6 line 23 at the end of the prior sentence to indicate  
 7 that something had been excluded.  
 8 Q. So four dots between -- after the word  
 9 "loops" and before the bracketed "B"?  
 10 A. Yes.  
 11 Q. All right.  
 12 A. Substantively, if you go to page 10, on  
 13 line 11.  
 14 Q. Yes.  
 15 A. Where it says, "Normally, Bellsouth imposed  
 16 the increases retroactively," that has been stricken  
 17 in testimony ongoing since the rebuttal was filed.  
 18 But it has not -- it would still appear in the  
 19 testimony that was filed before that.  
 20 Q. Okay. So if I'm correcting your Georgia  
 21 direct, I need to cross out the words, "Normally,  
 22 Bellsouth imposed the increases retroactively," and  
 23 just have a period after the word "earners," is that  
 24 the correction?  
 25 A. I'm hesitating only because I have not -- I

1 with 2004 data. And we would -- I would expect us to  
 2 be filing that shortly.  
 3 But again, I have not had a chance to share  
 4 that with counsel and go through the process of  
 5 figuring out how we get that filed. But that would be  
 6 an update made possible by the testimony -- or the  
 7 discovery responses we got from you.  
 8 Q. Okay. Do those capture all of the changes  
 9 that you're aware of thus far, to your testimony?  
 10 A. Yes. And that change, I don't -- if I  
 11 recall, I don't believe it materially changed the new  
 12 wire center classifications, but it did update it for  
 13 2004.  
 14 Q. Okay.  
 15 A. And then one last -- since your question  
 16 was across all these testimonies.  
 17 Q. It was.  
 18 A. Yeah.  
 19 The only other significant change is that  
 20 in my direct testimony, there is a discussion -- in  
 21 Georgia, there's a discussion that criticized the  
 22 inability to look at 2004 data.  
 23 Once I had the discovery from you, I struck  
 24 that discussion and subsequent testimonies going  
 25 forward. So when you look, you'll see that that's

1 particular reason why you did not?  
 2 A. I've testified in the southeast for going  
 3 on 20 years. So it generally just seemed like a waste  
 4 of paper.  
 5 Q. Now, I have a copy of your CV from the 2003  
 6 statement cases from Florida. Would that be generally  
 7 correct here today if I were to look at that?  
 8 A. It would be correct for everything up until  
 9 the day it was filed. There would be more testimony  
 10 on it. I can -- you know, it's just one of these  
 11 things where in states where I'm familiar to the  
 12 commissioners, I haven't been attaching it to -- it's  
 13 been unnecessary.  
 14 Q. Okay. Now, you're a graduate from the  
 15 University of Wyoming; is that right?  
 16 A. Yes.  
 17 Q. When you refer to having a BA in economics,  
 18 what do you mean?  
 19 A. Bachelor of arts.  
 20 Q. Do you mean that your major is economics or  
 21 do you mean something else?  
 22 A. I guess I -- my major is in economics.  
 23 Q. And you have a master's degree in economics  
 24 as well; correct?  
 25 A. Yes.

1 gone, but it's gone simply because with the 2004 data,  
 2 there's no issue as to what year data do you apply.  
 3 Q. Anything else that you can think of?  
 4 A. No.  
 5 Q. And just -- I should have done this at the  
 6 outset, but your full name is Joseph Gillan. Do you  
 7 have a middle name?  
 8 A. No. I have a middle initial.  
 9 Q. No middle name.  
 10 A. We got to chose our middle names in my  
 11 family. So legally, it's just Joseph P.  
 12 Q. What is your current business address,  
 13 Mr. Gillan?  
 14 A. P.O. Box 541038, Orlando, Florida, 32854.  
 15 Q. Is your home address in Orlando?  
 16 A. No.  
 17 Q. Where is your home address, please?  
 18 A. I have two homes: One in Daytona, one in  
 19 Montana.  
 20 Q. How long have you had the Orlando address  
 21 as your business address?  
 22 A. Since I formed the consulting practice.  
 23 '87, I think.  
 24 Q. When you filed your testimony here in these  
 25 proceedings, you did not attach a CV. Is there any

1 Q. You don't have a PhD?  
 2 A. No.  
 3 Q. Do you have any formal legal training?  
 4 A. I've taken courses in business law. And  
 5 I've -- at one time, I held a Class B practitioner's  
 6 license in the state of Florida.  
 7 Q. What's a Class B practitioner's license?  
 8 A. There was a time in Florida where you could  
 9 be licensed to practice in front of the commission  
 10 either as a Class A, which would be someone who went  
 11 to law school, or a Class B, which would be somebody  
 12 who demonstrated knowledge of law specific to the  
 13 regulated industry in front of the commission.  
 14 Q. Did you have to go through any formalized  
 15 training to obtain that Class B practitioner's  
 16 license?  
 17 A. My recollection is that you had to apply  
 18 and demonstrate through -- in your application what  
 19 body of experience you had that qualified you as a  
 20 Class B practitioner.  
 21 Q. Okay. Are you a member of any professional  
 22 organizations?  
 23 A. Economics professional organization?  
 24 Q. Economics or telecommunications.  
 25 A. No.

1 Q. Can you walk me through them, please?  
 2 A. At some level, yes. If you go to --  
 3 Q. Why don't we start with Georgia, if we can.  
 4 Is that where you are?  
 5 A. Actually, all I've got in front of me is  
 6 Georgia.  
 7 Q. Okay. You don't have your testimony from  
 8 your profile testimony from the other states?  
 9 A. No.  
 10 Q. All right.  
 11 I do not.  
 12 Q. All right. Well, tell me, in your Georgia  
 13 direct testimony and/or exhibit, what changes or  
 14 corrections you have.  
 15 A. Okay. I'll try -- I'm doing this from  
 16 memory.  
 17 Q. Okay.  
 18 A. We have provided you -- there are some  
 19 edits that have occurred over time and we have given  
 20 you red lines of those. And I'm not going to remember  
 21 those. I'll tell you things I caught reviewing this  
 22 today and that I'm aware of that you wouldn't  
 23 otherwise be aware of.  
 24 Q. Okay.  
 25 A. If you go to page 20 -- and this is

1 am telling you about an edit that appears in those  
 2 other states, but I'm presuming that that edit will be  
 3 made to this testimony as well.  
 4 Q. Okay.  
 5 A. But -- in addition, there is a version of  
 6 JPCI that will be attached to the testimony you're  
 7 going to get today that has some red line changes in  
 8 it that I do not have with me and could not take you  
 9 through the specific changes. But you'll be seeing  
 10 that today.  
 11 Q. Are the changes to your exhibit in more  
 12 than one area or is there only one change or do you  
 13 know?  
 14 A. No. There's -- there are several changes.  
 15 But they're -- there's not many. But they're spread  
 16 around.  
 17 And then the only other change that I'm  
 18 aware of or that I can think other than talking to  
 19 you, is in my rebuttal testimony -- and it would be  
 20 exhibit JPC4.  
 21 Q. Yes?  
 22 A. That exhibit was prepared based on 2003  
 23 data. In the time since the discovery -- in the time  
 24 since the testimony was filed, I got your work papers  
 25 with 2004 data. And I have recreated this exhibit

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1 Q. Do you have relations, formal or otherwise  
 2 with the PACE Coalition?  
 3 A. Yes. They're a client.  
 4 Q. They're a client of yours?  
 5 A. Yes.  
 6 Q. The name of your business is Gillan &  
 7 Associates?  
 8 A. Yes.  
 9 Q. Is it incorporated?  
 10 A. No.  
 11 Q. Is it an LLC?  
 12 A. It's just a doing business as. It's not  
 13 incorporated. It's just the name on the checkbook.  
 14 Q. Do you have associates?  
 15 A. No. I periodically use other people on a  
 16 contract basis.  
 17 Q. But it's just you?  
 18 A. Yes.  
 19 Q. Have you ever had any occasion to take any  
 20 acting classes?  
 21 THE WITNESS: Can I get an objection?  
 22 MR. MAGNESS: No, I want to know.  
 23 THE WITNESS: No.  
 24 Q. (By Ms. Mays) Have you ever had an ILEC or  
 25 Regional Bell operating company as a client?

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1 A. Yes.  
 2 Q. Who?  
 3 A. ILECs, I have had Illinois Consolidated  
 4 Telecom Company, Pacific Telecom. The Wisconsin State  
 5 Telephone Association, Cable & Wireless in the Cayman  
 6 Islands, Regional Bell Operating Company, Indiana  
 7 Bell, and Quest.  
 8 Q. When was the last time you submitted  
 9 testimony on behalf of an ILEC or an RBOC?  
 10 A. I think it was the beginning of last year.  
 11 Might have been the end of the year after.  
 12 Q. 2003 or 2002 -- or I'm sorry, 2003 or 2004?  
 13 A. It all kind of blurs together. But yeah,  
 14 somewhere in that time frame.  
 15 Q. And which client?  
 16 A. Quest.  
 17 Q. What did you file testimony about for  
 18 Quest?  
 19 A. It was an expert report in a civil  
 20 litigation involving Quest and the CSX Railroad.  
 21 Q. How do you usually obtain clients?  
 22 A. They call me.  
 23 Q. Do you advertise?  
 24 A. No.  
 25 Q. How many cases do you work on, on average?

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1 A. It varies significantly. I'm not sure an  
 2 average would be meaningful. Maybe two to three a  
 3 month, maybe, as an average. Maybe less.  
 4 Q. How are you compensated?  
 5 A. By the hour, plus expenses.  
 6 Q. What's your hourly rate?  
 7 A. Three hundred dollars.  
 8 Q. Does all of your compensation come from  
 9 your consulting practice?  
 10 A. Yes.  
 11 Q. Now, did you come to get -- how was it that  
 12 you got involved in this case?  
 13 A. I do -- I have done work for CompSouth over  
 14 a number of years. They called me.  
 15 Q. Who?  
 16 A. I think Jerry Watts, but I'm not entirely  
 17 certain.  
 18 Q. Do you know when he called you?  
 19 A. Sometime around the time that the TRRO was  
 20 issued or maybe slightly before that.  
 21 Q. And you had a relationship already with  
 22 Jerry Watts?  
 23 A. ITC DeltaCom has been a client for a number  
 24 of years. CompSouth has been a client for a number of  
 25 years. The organization that preceded CompSouth had

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1 been a client for a number of years. So I had all of  
 2 the affected members.  
 3 Q. You referred to the organization that  
 4 preceded CompSouth. What was that?  
 5 A. Many of the members of CompSouth had  
 6 belonged at one time to an organization call the  
 7 Southeastern Competitive Carriers Association.  
 8 Q. Is that still an organization today?  
 9 A. I don't know.  
 10 Q. What were you asked to do by Jerry Watts?  
 11 A. When I was originally retained, it was just  
 12 to be available to be the witness in what was expected  
 13 to be these generic change of law cases. There was no  
 14 specific direction other than that.  
 15 Q. Were you asked to be an expert witness?  
 16 A. Well, yes. I mean -- but, you know, we  
 17 don't actually walk around and talk like that.  
 18 Q. What did he -- other than saying he wanted  
 19 you to be a witness in the generic change of law, were  
 20 you given any other instruction?  
 21 A. Not as an instruction. I mean, at the time  
 22 I believe that the dockets were just opening up.  
 23 Maybe they weren't even opened yet. I recall they  
 24 were petitions that BellSouth may have filed  
 25 initially. I can't remember the genesis.

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1 But there was an expectation that the  
 2 Commission -- the FCC would issue a TRRO that its  
 3 implementation would be carried out for these cases  
 4 throughout the southeast. And just as I had worked  
 5 with many of these companies on the implementation of  
 6 other FCC orders through the past, through similar or  
 7 comparable proceedings, that I would be doing that in  
 8 this one.  
 9 Q. And the other work that you've done for  
 10 CompSouth, has it all been at the state commission  
 11 level?  
 12 A. Generally, yes. I think there have been  
 13 occasions where I've helped them put together  
 14 something filed at the FCC. But none -- although I  
 15 have a general recollection, that has happened, no  
 16 specific example comes to mind.  
 17 Q. When you say help them put together, did  
 18 you help them file comments?  
 19 A. I don't recall the specifics. It might  
 20 have been comments or it might have been a petition in  
 21 opposition to something. It might have been an ex  
 22 parte. I don't recall what the legal form was. I  
 23 just know that there have been times in the past where  
 24 something happened at the FCC that had particular  
 25 significance to CompSouth and CompSouth participated

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1 in some -- in some way.  
 2 Q. Do you recall where you ever provided an  
 3 affidavit -- you, yourself -- to the FCC on behalf of  
 4 CompSouth?  
 5 A. I don't recall. I'm not saying that it  
 6 hasn't happened. I just don't recall any specific  
 7 instance where that happened.  
 8 Q. Have you had occasion to go to the FCC and  
 9 on behalf of CompSouth, orally -- provide oral  
 10 presentations?  
 11 A. Not that I recall. But I have been at the  
 12 FCC maybe a hundred times. And there certainly have  
 13 been issues where I was there for a group of carriers,  
 14 and CompSouth may have been part of that mix. I just  
 15 don't recall the specifics, if that happened or didn't  
 16 happen.  
 17 Q. After Jerry Watts contacted you about these  
 18 cases, what did you next do in relation to the cases?  
 19 Were you -- do you understand my question?  
 20 A. I think. But I believe at about the same  
 21 time that he contacted me, he contacted Mr. Magness.  
 22 And the next step probably would have been to prepare  
 23 a budget estimate.  
 24 Q. Okay. Did you prepare -- do you recall  
 25 what your budget estimate was?

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1 A. No. No. It was -- it was a living budget  
 2 estimate.  
 3 Q. Do you recall how much you have billed  
 4 CompSouth to date?  
 5 A. No.  
 6 Q. Do you know who you send your bills to?  
 7 A. Yes.  
 8 Q. Who?  
 9 A. Rose Mulvaney Henrick.  
 10 Q. And what company is she with?  
 11 A. Bercb Telecom.  
 12 Q. Do your checks come from Bercb Telecom or  
 13 do they come written on somebody else's account?  
 14 A. I -- I don't know. I send the bills out.  
 15 There is an associate: Mrs. Gillan. She gets the  
 16 checks when they come in.  
 17 Q. Okay. Did you write your testimony in this  
 18 case?  
 19 A. Yes.  
 20 Q. Other than your testimony, have you given  
 21 other information to CompSouth in the form of reports  
 22 or letters, that sort of thing?  
 23 A. No.  
 24 Q. Do you know who the members of CompSouth  
 25 are?

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1 A. Not a detailed list; no.  
 2 Q. As I understand your testimony, you have --  
 3 it represents the consensus views of CompSouth; is  
 4 that a fair statement?  
 5 A. Yes.  
 6 Q. Does it represent the consensus of all of  
 7 CompSouth's members?  
 8 A. Yes. It -- in the following sense:  
 9 However many members of CompSouth there are, the ones  
 10 I'm most familiar with are the ones that speak up.  
 11 I'm not aware of any issue in the testimony  
 12 for which there's any disagreement on the position.  
 13 That said, however, each -- many of the  
 14 members of CompSouth are in individual negotiations  
 15 with BellSouth and many of them have different  
 16 business plans.  
 17 And so I'm aware that there are times where  
 18 they've -- they may have indicated that one or more of  
 19 the companies had taken a different position in the  
 20 negotiations. But in an effort to try and turn the  
 21 industry around, they all supported what the CompSouth  
 22 testimony says, even if there may have been different  
 23 contract language quoted by individual members in  
 24 bilateral negotiations with BellSouth.  
 25 Q. What are -- who are the CompSouth members

1 that speak up?  
 2 A. ITC DeltaCom, Nuvox, Xspedius, MCI -- and  
 3 I'm just trying to go through names as momentum.  
 4 This is the type of question that can get a  
 5 consultant to a group in trouble.  
 6 And then there are others. But to tell you  
 7 the truth -- Synergy. And sometimes voices that -- I  
 8 recognize the pattern in the voice, but I can't attach  
 9 a name to it. Most of the discussions are on  
 10 conference calls.  
 11 Q. Okay. If I could take you -- you have your  
 12 Georgia testimony, I believe; correct?  
 13 A. Yes.  
 14 Q. You've given some figures at -- do you  
 15 recall some testimony where you're talking about the  
 16 UNE -- the percentage of UNE based competition in  
 17 Georgia? It's actually on page three. I found it.  
 18 A. Yes.  
 19 Q. What is that? What are those percentages  
 20 based on?  
 21 A. The first one would be the -- the numerator  
 22 would be the number of lines on UNE-L and UNE-P  
 23 reported on BellSouth's Form 477 to the FCC for June  
 24 of 2003 or -- yeah. June, 2004, I'm sorry.  
 25 And then the denominator would be from the

1 FCC's local competition report for that same period,  
 2 the total number of CLEC lines in Georgia reported by  
 3 the FCC.  
 4 The second of those percentages would be --  
 5 the percentage would be the number of lines on UNE-P  
 6 from the Form 477 report, divided by the number of  
 7 lines on UNE-L, I think. Hold on.  
 8 No, actually that comes from -- that  
 9 actually is the same -- it's UNE-P divided by UNE-P  
 10 plus UNE-L. But the source of that data would have  
 11 been your first quarter investor report. And it would  
 12 data out by state.  
 13 Q. Would the -- whatever percentages you use  
 14 in other states be based on the same process where the  
 15 first percentage, the competition in all of Georgia,  
 16 is UNE-L plus UNE-P divided by total CLEC lines in the  
 17 state?  
 18 A. The first number would be the same in all  
 19 the states. The second number, I think in some -- and  
 20 I'd have to go back and check -- the second number in  
 21 some of these states, since the time this testimony  
 22 was filed, the FCC released the Form 477 reports for  
 23 December, 2004. And I would have -- I believe I used  
 24 that data to come up with the second percentage, which

1 A. Correct. I think the sentence is not  
 2 correct in that it says it's may not. And obviously,  
 3 one of the choices is that it may. But we have not  
 4 been able to reach a new consensus.  
 5 Q. Is this an issue where there are -- there's  
 6 disagreement within the body of CompSouth where some  
 7 carriers believe they should go back to March, 2005,  
 8 and others think they should apply from the date an  
 9 interconnection agreement is signed?  
 10 A. I think it's partially that. I think it's  
 11 also partially a desire to find an inequitable  
 12 solutions when they recognize that there's a number of  
 13 changes all happening, and there's a belief that they  
 14 should happen together.  
 15 And we just haven't quite frankly had the  
 16 time to figure out yet a way to make an alternative  
 17 proposal.  
 18 Q. Do you expect to be doing that before the  
 19 hearing in Georgia?  
 20 A. I expect to be trying; yes.  
 21 Q. If an individual CompSouth member signs an  
 22 amendment with BellSouth to their interconnection  
 23 agreement, and it captures TRO changes and TRRO  
 24 changes, what is your position as to how this  
 25 docket -- an order in this docket would relate to that

1 particular member's amendment?  
 2 MR. MAGNESS: I'm just going to  
 3 object in that it calls for a legal  
 4 conclusion about the nature of the  
 5 contracts and their legal affect.  
 6 THE WITNESS: And I was going -- I  
 7 don't know. Because I don't actually --  
 8 I've not talked with anyone that's in that  
 9 particular circumstance as to whether -- as  
 10 to what they think their rights are under  
 11 the amendment that they signed.  
 12 Q. (By Ms. Mays) Your testimony -- you do  
 13 state that your belief is that individual members  
 14 should be able to negotiate with BellSouth; correct?  
 15 A. Yes.  
 16 Q. And they should -- do you also believe that  
 17 they should be able to come to whatever terms that are  
 18 mutually agreeable to that member and BellSouth?  
 19 A. Yes.  
 20 Q. Now, when you talked about the actions that  
 21 are necessary to effectuate the transition, it's your  
 22 testimony that a CompSouth member needs only place an  
 23 order with BellSouth to receive transitional rates; is  
 24 that right?  
 25 A. I think -- I need you to restate that or...

1 Q. Is it your testimony that once a CLEC  
 2 places an order to migrate from Section 251 services  
 3 to some other service arrangement, that the  
 4 transitional rates apply upon the submission of the  
 5 order?  
 6 A. No. But I -- what the testimony is, is  
 7 that the transitional rates apply. They place an  
 8 order to take them off of the 251 UNE, which is deemed  
 9 price under transitional rates to something else.  
 10 The testimony is that those transitional  
 11 rates would continue to apply until that order is  
 12 effective; until it's implemented. I think that's  
 13 what you meant.  
 14 Q. Let me make sure I understand. Let's say  
 15 you have a CompSouth member today, they have an  
 16 interconnection agreement with UNE-P switching prices.  
 17 A. Oh, okay.  
 18 Q. In order to migrate from UNE-P to something  
 19 else, they need to place an order with BellSouth;  
 20 correct?  
 21 A. Correct.  
 22 Q. Once they place that order with BellSouth,  
 23 what happens to the rate they are paying to BellSouth  
 24 for their service?  
 25 A. Well, let me make sure I understand. They

1 have a UNE-P arrangement. They're paying transitional  
 2 rates now; correct?  
 3 Q. No.  
 4 A. Well -- because the contracts have not been  
 5 amended. You're right.  
 6 When the contracts are amended then they'll  
 7 pay the transitional rate. The question that we still  
 8 have open is: What rate applies retroactively back to  
 9 March 11th.  
 10 And that's the one that we're still working  
 11 on. On the going forward basis, once the  
 12 interconnection agreement is amended, the transitional  
 13 rate, then they start paying that without question, up  
 14 to the point that the arrangement gets moved to  
 15 something else.  
 16 Q. When the arrangement gets moved to  
 17 something else, is it your testimony that they would  
 18 then pay the price for something else?  
 19 A. For something else; right.  
 20 Q. Does it depend on when the transition from  
 21 the UNE-P to something else happens?  
 22 A. Well, their -- their obligation would be to  
 23 place an order to the something else by March 11th of  
 24 next year. Then whenever you implement that order,  
 25 the transitional rate disappears to the something

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1 else. If they place the order before March 11th  
 2 and ask you to move it before that time, then  
 3 presumably the rate for the something else kicks in  
 4 and you have the something else.  
 5 Q. Why do you reach the conclusion that  
 6 CompSouth members only required to place an order by  
 7 March of next year?  
 8 A. Cause I believe the FCC orders gives the  
 9 commission the ability to reach that finding. And as  
 10 a practical matter, once the order is placed with you,  
 11 then how long it takes is an issue that you have to  
 12 resolve. It's not something that the CompSouth member  
 13 can control.  
 14 Q. You've read Ms. Tipton's testimony when she  
 15 talked about some of the language in the TRRO about  
 16 some of the tasks that are necessary to effectuate a  
 17 transition; haven't you?  
 18 A. Yes.  
 19 Q. And your reconciliation of the FCC's order  
 20 is simply that the orders can go in by March 10th,  
 21 2006 and the CLEC is in compliance with what the FCC  
 22 has set forth?  
 23 A. Yes.  
 24 And I think the real problem we have in

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1 their switching is something other than the rate in  
 2 that contract plus one dollar?  
 3 A. Yes. I believe that would be true,  
 4 particularly if the -- that the commission concludes  
 5 that transitional pricing, period, is applied  
 6 retroactively to March 16th.  
 7 It's a double-edged sword. If the FCC  
 8 reached in and modified all those contracts to give  
 9 you higher rates and the state commission agrees with  
 10 that, then one of the prices that the FCC, I believe,  
 11 reached in and changed was the rate for customers  
 12 below DSI.  
 13 Q. And what do you base that on?  
 14 A. The comment on page 14, where the FCC  
 15 refers to, "The transition period applies to all  
 16 bundled up circuit switching arrangements used to  
 17 serve customers at less than DSI capacity level."  
 18 Q. Do you base it on anything else other than  
 19 that?  
 20 A. No.  
 21 Q. And is it your testimony then that the FCC  
 22 has effectively rewritten the contract as it relates  
 23 to that unbundled switching customer with less than a  
 24 DSI but more than four lines?  
 25 A. Yes. If, in fact, a commission concludes

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1 this proceeding isn't that issue. It's the issue of  
 2 coming to an agreement upon what the then -- the menu  
 3 of other things BellSouth must make available exists.  
 4 Q. Can you go to your direct testimony for me,  
 5 on page 14.  
 6 A. (The witness complies.)  
 7 Q. You have -- you talk here about  
 8 transitional rates for switching. Is it your  
 9 testimony that a CLEC that has an interconnection  
 10 agreement that contains switching rates for a customer  
 11 who has more than four lines but less than a DSI is  
 12 not obligated --  
 13 MR. MAGNESS: Could those on the  
 14 phone mute your phones, please?  
 15 Q. (By Ms. Mays) Let me start again.  
 16 You have a CompSouth member and they have  
 17 an interconnection agreement with BellSouth. In the  
 18 interconnection agreement, I want you to assume they  
 19 have a rate for switching and it is a rate for  
 20 switching with a customer with more than four lines  
 21 but less than a DSI circuit.  
 22 Are you with me so far?  
 23 A. Yes.  
 24 Q. Is it your testimony that for that  
 25 particular CLEC, that the transitional pricing for

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1 that the FCC reached in and redid the contracts for  
 2 trying to apply transitional pricing, in advance of  
 3 the contracts being amended, one of the categories of  
 4 lines that is subject to that transitional pricing are  
 5 the lines below DSI.  
 6 Q. I take it from your testimony that you have  
 7 some concern with BellSouth, and particularly with  
 8 Pamela Tipton attaching an entire Attachment 2.  
 9 Is that a fair characterization?  
 10 A. Yes.  
 11 Q. And your concern is that as it relates to a  
 12 particular CLEC, they may not have any issues with all  
 13 of Attachment 2.  
 14 Is that your concern?  
 15 A. Well, as a general rule, the issues that  
 16 the members of CompSouth have been working with me on  
 17 relate to the limited set of issues that the testimony  
 18 attempts to address, and which come out of principally  
 19 the TRRO.  
 20 We did not view this proceeding to be less,  
 21 BellSouth's Attachment 2 was somehow being binding on  
 22 anybody.  
 23 I mean, if you want to go revise your  
 24 standard offer to people at the conclusion of this,  
 25 you're free to do so. We just don't think that this

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1 case should be about some sort of approval of that  
 2 attachment in a blanket sense.  
 3 Q. How do you envision the results of the  
 4 commission's order actually being implemented?  
 5 A. When the commission issues an order and  
 6 either -- and picks one form of contract language  
 7 versus the other, it's a starting -- it's an  
 8 opportunity for carriers to then go back and ask that  
 9 that contract language be incorporated into their  
 10 agreements, or to work with BellSouth on some other  
 11 approach to get those decisions rendered into their  
 12 agreements.  
 13 I think, as we indicated in the rebuttal  
 14 testimony, the idea that the commission would give a  
 15 relevant limited period of time for everyone to go out  
 16 and then take the results from this to go work into  
 17 their individual contracts is not unreasonable.  
 18 We have the same problem you do. We have a  
 19 variety of members that have different contracts with  
 20 different -- some of them are effective; some of them  
 21 are expired; some of them look one way; some of them  
 22 look another way.  
 23 It's the best way we can manage of trying  
 24 to get the commission to focus in on these issues and  
 25 then the parties would be obligated to work it into

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1 change their mind?  
 2 A. I mean, I'm assuming that until you sign a  
 3 contract, you're always able to change your mind on  
 4 parts. I mean, you might have taken things off the  
 5 table, but I don't know that that means that you --  
 6 that you're legally obligated to not put it back on  
 7 the table before the contract is actually signed.  
 8 Q. What about a CLEC who has not had any  
 9 meaningful discussions with BellSouth about Attachment  
 10 2; do you understand that part of BellSouth's goal at  
 11 the end of this proceeding is to implement changes  
 12 across the board with all CLECs.  
 13 Do you understand that?  
 14 A. Yes.  
 15 Q. So if there has been a CLEC that has not  
 16 come to the table at all, and they need to have a new  
 17 Attachment 2, do you have an actual objection to that  
 18 particular -- commission stating, "This is a legally  
 19 compliant version of Attachment 2 that can serve as a  
 20 default?"  
 21 A. Yes. I don't believe that -- I don't  
 22 believe that's the way they act as structure. That  
 23 they can oppose a default on that carrier.  
 24 Q. So if a --  
 25 A. Or that they can permit you to impose a

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1 their contracts.  
 2 Q. Let me give you a scenario. Let's suppose  
 3 you have a CompSouth member who has negotiated  
 4 individually with BellSouth. And they have reached  
 5 agreement on some, but not all of the language in  
 6 Attachment 2.  
 7 Is -- what you believe should happen is  
 8 that they should come out -- an order would be entered  
 9 in this proceeding and that they would take parts of  
 10 that order and fill in the gaps for their Attachment  
 11 2?  
 12 A. If those issues are issues that they've not  
 13 come into -- reached agreement with BellSouth on, yes.  
 14 The commission has rendered a judgment on the  
 15 disputes.  
 16 And so now both parties would have to  
 17 incorporate into an agreement. If have other areas  
 18 that you had agreement on, then you have other areas  
 19 that you have agreement on.  
 20 Q. What if you had an area that as a CompSouth  
 21 member has said, "We have no issue here," but they  
 22 have not signed a contract.  
 23 If the commission comes back and addresses  
 24 an issue that they have orally stated to BellSouth  
 25 that they've reached agreement on, are they allowed to

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1 default on that carrier. You must understand from our  
 2 perspective -- never mind.  
 3 Q. Are you finished with your answer?  
 4 A. Yes.  
 5 Q. I was trying to get a hypothetical to  
 6 somebody who hasn't negotiated at all. And I'm just  
 7 trying to understand when you object to Attachment 2  
 8 in its entirety, is there a difference in your mind  
 9 with a carrier who has negotiated parts of Attachment  
 10 2 versus a carrier who has never negotiated any part  
 11 of Attachment 2.  
 12 A. I haven't actually thought about this  
 13 particular scenario, but I do not believe that the  
 14 commission can adopt an Attachment 2 that is  
 15 compulsory to carriers.  
 16 Q. I want to talk to you about high capacity  
 17 loops and transport, if I could.  
 18 Do you know the total number of wire  
 19 centers that, based on BellSouth's view, would meet  
 20 the FCC's unbundled -- the test the FCC has set forth  
 21 for -- I'm not saying this right.  
 22 The FCC has laid out certain wire centers,  
 23 and you have that in your testimony?  
 24 A. Yes.  
 25 Q. And once those tests are satisfied, you

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1 would agree with me that BellSouth is not obligated to provide high capacity loops and transport in certain wire centers? Right.

2 A. Yes. Although how you actually go through to get this implemented is -- is the subject of this proceeding.

3 Q. Stick with the high level for a minute. Do you recall, sitting here, how many total wire centers BellSouth contends are wire centers in which it is no longer obligated to unbundle high capacity loops and transport?

4 A. I have no looked at it region wide.

5 Q. Have you looked at it on a state-by-state basis?

6 A. Yes and no. We have the data to look at your claims with respect to business lines. We don't really have the -- a vehicle yet to evaluate your claims.

7 We expect fiber based collocators. But I'm generally aware of Tipton Exhibit PAT4, I guess, that outlines what wire centers you claim meet the different tests for transport and with unbundling.

8 Q. Now, you take issue with the way BellSouth has interpreted the FCC's business line definition; is that fair?

9 A. Yes.

10 Q. And you believe that additional directions are needed to implement the FCC's rules?

11 A. I don't know if "direction" is the word. I believe that we have a dispute on business lines that will be from the commission, and the commission will decide which one of us is correct.

12 We have the beginning, I think, an emerging dispute on fiber base collocators, but it's not completely formed yet. Because the competitive side of the industry has just recently gotten the information to try and validate and/or challenge your fiber base collocator claims.

13 Q. Well, help me for a minute. Let's go to your rebuttal testimony exhibits. Your first rebuttal testimony exhibit is JPG2.

14 A. Yes.

15 Q. And what is the purpose of this exhibit?

16 A. The data that -- the detailed data that I had to evaluate your business line analysis was for 2003, not 2004, when I read the rebuttal testimony.

17 So the purpose of JPG2 was really to say, "If I analyze your claims under 2003, are they likely to still be meaningful," or is there such a difference between 2003 and 2004 that there's really no point in

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1 doing an analysis based on 2003.

2 And the conclusion I reached from the analysis was that not still -- since they're reasonably close, it makes sense to look at what kind of problems I see in the 2003 data, under the expectation that similar problems would be in the 2004 data.

3 Q. It is your -- you did state that at the end of the day, you want a state commission to use 2004 data; is that right?

4 A. Yes. And as I indicated, I'm going to refile JPG4, which is what I believe to be a correct calculation of business lines by wire centers using your 2004 data.

5 Q. Look -- if could take -- go over to JPG3.

6 You have -- tell me what this document is supposed to be.

7 A. JPG3?

8 Q. JPG3.

9 A. Okay. It's identifying what percentage of the total number of business lines in these wire centers was driven by your growing UNE-L up from lines to the full maximum capacity.

10 Q. Does this JPG3 show you which wire centers in CompSouth's view are no longer subject to

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1 don't believe we need to necessarily keep these confidential.

2 A. If you don't want to, that's fine. It came from a discovery response of backup information for 2003.

3 Q. Okay.

4 A. And I labelled it this way in an abundance of caution. But I agree, it probably doesn't need to be confidential.

5 Q. The first column, the 2003 claim business lines comes straight from the BellSouth's information that we have provided to you; is that correct?

6 A. Yes.

7 Q. And that is BellSouth's calculation of business lines?

8 A. Correct.

9 Q. You have then said business lines from UNE-L assumption in the next column over; correct?

10 A. Correct.

11 Q. What is that number? That's all UNE-LS?

12 A. All digital -- it would have been the DSI loop, DSI EEL and DS3 loop. Not the DS0 UNE-L.

13 Q. Do we have a dispute between -- as it relates to CompSouth and BellSouth, about BellSouth counting DS0 UNE loops in its business line

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1 Q. How is BellSouth supposed to know if a UNE loop is switched or not?

2 A. I think the easiest way is to use the factor that I developed. At some point, you're not going to know to perfection. But we have two competing alternatives: You did an assumption that all of it is used to provide switched services, and we know that isn't true.

3 But yet, you had database on your own use of these type of facilities that could be used to calculate what percentage of your facilities are used to provide switched business services. And that's the percentage I applied.

4 Q. Are you aware of any data source that provides a breakdown of UNE loops broken down into switched UNE loops versus non-switched UNE loops?

5 A. With perfection; no.

6 Q. So your business lines from UNE-L assumption includes DSI UNE loops, DSI UNE EELs and DS3 UNE EELs; is that right?

7 A. Yes. I mean, that's -- it's just from your work papers. It's the amount that you calculated. I just put them in that column.

8 Q. If you go over to JPG4, you have the same -- the first column is identical. And then the second

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1 A. Yes.

2 Q. And you believe that additional directions are needed to implement the FCC's rules?

3 A. I don't know if "direction" is the word. I believe that we have a dispute on business lines that will be from the commission, and the commission will decide which one of us is correct.

4 We have the beginning, I think, an emerging dispute on fiber base collocators, but it's not completely formed yet. Because the competitive side of the industry has just recently gotten the information to try and validate and/or challenge your fiber base collocator claims.

5 Q. Well, help me for a minute. Let's go to your rebuttal testimony exhibits. Your first rebuttal testimony exhibit is JPG2.

6 A. Yes.

7 Q. And what is the purpose of this exhibit?

8 A. The data that -- the detailed data that I had to evaluate your business line analysis was for 2003, not 2004, when I read the rebuttal testimony.

9 So the purpose of JPG2 was really to say, "If I analyze your claims under 2003, are they likely to still be meaningful," or is there such a difference between 2003 and 2004 that there's really no point in

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1 calculations?

2 A. I'm sorry? DSL?

3 Q. DSO. You said this column does not include DSO.

4 A. No. It probably over counts, because you can't be certain that they're used to provide switch business line services, but I did not make an adjustment to that line; that column is so inconsequential, I don't think it makes any difference.

5 Q. So when BellSouth counts business lines, you do not -- you don't take issue with BellSouth including all DS0 UNE loops?

6 A. I think it's more accurate to say that it's such a small number, that trying to go in to do it correctly wouldn't be worth it. Cause you just -- you don't know whether or not those lines are used to provide switch business line service. But there so few of them, I did not try and correct for any potential error in that column.

7 Q. It's your belief that the FCC's business line definition requires only switched lines whether they are switched lines of BellSouth or switched lines CLECs; correct?

8 A. Yes.

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1 column has corrections. "Retail lines" is the first -- is the next column over.

2 Do you see that?

3 A. Yes.

4 Q. What is that column -- what does that column represent?

5 A. That's the adjustment you made to your retail lines to increase your switched business lines to add whatever the remaining capacity on digital facilities existed.

6 Q. This is where if BellSouth had a retail DSI, and 18 units of the 24 channels were in service, we counted it as 24?

7 A. Correct.

8 Q. And so you have made that adjustment all the way in each -- in each of the wire centers listed here?

9 A. Yes.

10 Q. You have backed out if it was -- using the example I gave you -- if it was 18 or 24, you backed up six, for example?

11 A. Yes. I backed out what you added.

12 Q. Then what's the next column over?

13 A. It -- it then takes the same -- across all these wire centers, it takes the same percentage of

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1 business lines to maximum potential capacity that you  
 2 have and apply it to the UNE-L capacity for the CLECs.  
 3 Q. When you take both of those corrections,  
 4 you then show the corrected business lines?  
 5 A. Yes.  
 6 Q. And what you have told me today is that you  
 7 are going to refile this, based on 2004 data, but it  
 8 does not change any of the wire centers? Explain that  
 9 to me.  
 10 A. Well, if you look at the top five --  
 11 because this is all actually -- this is what I  
 12 actually looked at to draw that conclusion.  
 13 -- the relevant break point for DSI on  
 14 bundling obligation is 60,000 lines. Of the five  
 15 that you showed with your assumptions, I have two  
 16 continued to meet those requirements, three do not.  
 17 That same outcome exists in the 2004 data.  
 18 I haven't gone down and looked at the rest, but I know  
 19 that collection still fell out in the same categories.  
 20 Q. Once you've made your corrections, for  
 21 those wire centers that don't require both a fiber  
 22 based collocation and a business line account to meet  
 23 to qualify for relief--  
 24 You with me so far?  
 25 A. They don't need both. We're talking about

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1 "Significantly four of the five wireless centers where  
 2 BellSouth claims it need no longer offer DSI loop to  
 3 the 251 UNE. Our result is BellSouth's unfounded  
 4 assumption," and it continues from there.  
 5 Do you see that?  
 6 A. Yes.  
 7 Q. Can you identify for me the four of the  
 8 five wire centers on JFG4?  
 9 A. No. And the reason is -- and this is  
 10 inartfully worded -- in this section of my testimony,  
 11 I'm talking about how many -- how much of the results  
 12 are driven by your assumption without then going to  
 13 see -- without yet having performed my own analysis to  
 14 determine how many would still qualify even under my  
 15 assumption.  
 16 So you would see it not on JFG4, you would  
 17 see it on JFG3.  
 18 Q. You're not saying --  
 19 A. I think I actually deleted that in the next  
 20 rebuttal. Because once I have my own way of  
 21 calculating it -- I didn't mean to imply that all of  
 22 your results are unfounded. Just that assumption was  
 23 driving that result.  
 24 Now, just because your assumption was  
 25 wrong, doesn't mean that a more reasonable assumption

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1 grade equivalent. I don't believe that that direction  
 2 is the same as saying, just throw in unused capacity.  
 3 Capacity used for data services.  
 4 I don't believe that the rule was written  
 5 so that one part of it overrides every other part of  
 6 the rule.  
 7 Q. You talked a little bit about some fiber  
 8 based collocation and potential issues you had there.  
 9 Do you recall talking about that earlier  
 10 today?  
 11 A. Yes.  
 12 Q. What is your issue with respect to fiber  
 13 base collocation?  
 14 A. There's probably three. And I say  
 15 probably, because the first issue is we're still  
 16 struggling for a way to find out if what you say is  
 17 true is in fact true.  
 18 You chose the words in your testimony  
 19 carefully. So there are configurations that we  
 20 believe should not be counted that when we match it up  
 21 against your testimony, it doesn't appear to be clear  
 22 that you directed your people not to count them.  
 23 The most obvious is: When you have one  
 24 fiber network going into a central office, and in that  
 25 central office, it is cross connected to more than one

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1 testimony about fiber -- let me back up.  
 2 If you go to your rebuttal on page 24.  
 3 A. Yes.  
 4 Q. You use the word "fiber network" at line  
 5 six. Do you see that?  
 6 A. Yes.  
 7 Q. Where in the FCC's rules does it state that  
 8 one is to look at a fiber network?  
 9 A. That term could have been written to say  
 10 fiber based collocator and I meant the same thing.  
 11 Q. You interpret fiber based collocator and  
 12 fiber network interchangeably?  
 13 A. Yes. Because the fiber based collocator is  
 14 terminating a network -- terminating a fiber optic  
 15 cable that leaves the collocation. That would be a  
 16 fiber network.  
 17 Q. Have you asked any of -- have you asked any  
 18 carriers to identify their fiber based collocation  
 19 space; have you asked them to do that?  
 20 A. We're in the process of doing that. We are  
 21 aware that you've done that, and we're following up on  
 22 your discovery request for admission with our own.  
 23 We're not trying to serve every carrier in the  
 24 southeast, we're trying to validate our claims.  
 25 Q. What are you doing?

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1 transport.  
 2 Q. We're talking about transport.  
 3 If you're talking about transport and  
 4 you've made your corrections, for those wire centers  
 5 that meet just the business line threshold, will it  
 6 be your testimony that -- is it your position that  
 7 CompSouth members should stop ordering transport from  
 8 those particular wire centers?  
 9 A. I'm going to take that back to the group.  
 10 Q. Okay. Can you, sitting here today -- is  
 11 there any circumstance that you can think of in which  
 12 a CLEC could certify to obtain unbundled DSI  
 13 transport?  
 14 A. Well, as a 251 network element, no. Do  
 15 they have a right for it as a 271 network element,  
 16 yes.  
 17 So part of my hesitancy goes to your phrase  
 18 "quick ordering," because I think they're still  
 19 entitled to obtain the same service what we have as a  
 20 pricing dispute as to what price would apply to those  
 21 services.  
 22 Q. Okay. If you could go to your rebuttal  
 23 testimony at page 18 for me.  
 24 A. (The witness complies.)  
 25 Q. And at line six to ten, you state,

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1 wouldn't provide, you know, another wire center. And  
 2 that's what happened here.  
 3 Your assumption had four of them qualify.  
 4 A more reasonable assumption of that group of four  
 5 still had one of them qualify.  
 6 Q. What is the basis for your statement that  
 7 my assumption or BellSouth's assumption was wrong?  
 8 A. Because -- well, you're on beta. Nobody  
 9 provides switched business lines on the maximum  
 10 potential capacity of digital circuits. They either  
 11 have unused capacity or some blend of beta. And it's  
 12 a substantial percentage of that capacity is not used  
 13 in that way.  
 14 So the only question becomes: What's the  
 15 best way to estimate the percentage of that capacity  
 16 if it's not used in the required way. You assumed  
 17 that that percentage was zero. And that's just not  
 18 plausible.  
 19 Q. Why do you think the FCC included the  
 20 language in its business line count about -- I'm  
 21 paraphrasing -- but essentially to factor in all of  
 22 the capacity?  
 23 A. It didn't say factor in all of the  
 24 capacity. They told you for capacity that's used for  
 25 switched business lines, you should use the voice

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1 collocation case, if there's nothing in your  
 2 discussion of going out and counting fiber base  
 3 collocators to make it clear that your people were  
 4 directed not to count more than one network.  
 5 Q. If you had a carrier, say it's Atlanta Gas  
 6 Light. And they ran fiber into a central office. And  
 7 four CompSouth members purchased fibers from Atlanta  
 8 Gas Light and went to their collocation space.  
 9 Is it your testimony that you would only  
 10 count one of the four as a fiber base collocator?  
 11 A. Well, there's only one fiber based  
 12 collocator if Atlanta Fiber -- is that the --  
 13 Q. I just said Atlanta Gas Light. But...  
 14 A. Whatever.  
 15 -- is actually the carrier operating that  
 16 network and that network terminates. But once in  
 17 their collocation case and if they're offering  
 18 services to other CLECs in that wire center, you don't  
 19 count those CLECs that are obtaining services.  
 20 There's only one -- only one of those companies is a  
 21 fiber based collocator. That's correct.  
 22 And so based on your question, it sounds  
 23 like the difference that we perceive probably exists  
 24 does in fact exist.  
 25 Q. What do are you relying on for your

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1 A. As I described in my rebuttal testimony, we  
 2 first need to know who it was that you claimed were  
 3 fiber based collocators so that we could then address  
 4 our questions to those carriers.  
 5 Q. Have you actually submitted questions to  
 6 those carriers?  
 7 A. We are in the process of filing for those  
 8 carriers. Unfortunately, there was a computer glitch  
 9 yesterday that caused it to not get done yesterday.  
 10 Q. When do you expect to file discovery?  
 11 MR. MAGNESS: I expect it may be  
 12 filed now.  
 13 Q. (By Ms. Mays) Can you go to your rebuttal  
 14 at page 19.  
 15 We started talking about fiber based  
 16 collocation. You said you had three problems with  
 17 your fiber based collocation?  
 18 A. Yeah.  
 19 Q. What are the other problems? We went over  
 20 the fiber network issue, if I recall correctly.  
 21 A. Well, I've already given you two of them.  
 22 With UNEs, we are -- need a way to confirm what you  
 23 say, even if we didn't think there was a problem.  
 24 Even if we think you didn't necessarily  
 25 have a systematic flaw, we still need to validate.

1 Second problem is: We think we've  
 2 identified a systematic flaw, but we're uncertain.  
 3 Because as I said, your testimony isn't so detailed as  
 4 to directly address the concern we have.  
 5 And then the third one is we're aware at  
 6 least in one instance, that you are double -- well,  
 7 what we would consider double counting SBC and AT&T.  
 8 Q. So the first problem -- I just want to  
 9 summarize and make sure I understand it.  
 10 Your first problem was: You thought, "We  
 11 might have a systematic problem," but you weren't?  
 12 Sure. Did I say that right?  
 13 A. No. That's first general concern of, "We  
 14 need a way to make sure that what you say is true."  
 15 Even if you did -- even if we -- had no disagreement  
 16 about methodology, we need a validation tool.  
 17 Q. Your first issue is validation, generally?  
 18 A. Right.  
 19 Q. Is that an issue that you have with  
 20 BellSouth or just a general issue?  
 21 In other words, the FCC has -- you want a  
 22 method to validate. Is there anything that BellSouth  
 23 has done that prevents you from validating?  
 24 A. Not prevents us, but it -- until you told  
 25 us who the fiber based collocators were, we couldn't

1 out which set of wire centers. The results are  
 2 sensitive to whether you counted correctly or not.  
 3 And since it's a limited number of wire  
 4 centers, one way of possibly validating is get a  
 5 BellSouth person, a CLEC person and a commission staff  
 6 person go out and just look at these things.  
 7 Q. Okay. You started then with your second  
 8 concern, I believe.  
 9 A. Second concern is that we believe that  
 10 there appears to be, at least, the possibility of a  
 11 systematic difference and how we believe the rules are  
 12 to be interpreted and what you believe.  
 13 Q. And what is that systematic difference?  
 14 A. It is illustrated by your question. If a  
 15 provider -- if a carrier has a fiber optic cable that  
 16 comes in and terminates in their collocation cage,  
 17 that they provide services off of that in some way to  
 18 other collocators in that central office where your  
 19 people appropriately instructed to detect that and  
 20 exclude those other carriers as independent fiber  
 21 based collocators.  
 22 Q. And how do you intend to resolve your  
 23 second concern?  
 24 A. Well, again, the first one is: We know now  
 25 who you have claimed to be fiber based collocators and

1 Q. Do you know how many, if any, wire centers  
 2 the AT&T and SBC problem makes a difference?  
 3 A. Yes.  
 4 Q. How many?  
 5 A. I don't know -- I don't know the top end,  
 6 but I know it makes a difference in at least one.  
 7 Q. On in Georgia or one region-wide?  
 8 A. I know of one region-wide. I have not  
 9 looked at the Georgia high list collocator list yet to  
 10 determine whether that problem exists there as well.  
 11 Q. Is that the only instance where there's an  
 12 expected merger where you believe they should be  
 13 counted as one?  
 14 A. It's the only merger that's pending that  
 15 I'm aware of that...  
 16 Q. Do you believe anytime a carrier announces  
 17 a merger -- let me give you a hypothetical. Say  
 18 tomorrow, two of your members announced a merger.  
 19 Would your testimony then be that if those two members  
 20 had fiber based collocation arrangements you could  
 21 count them as one?  
 22 A. Yes. I believe that it would be.  
 23 Q. Regardless of whether or not the merger had  
 24 actually closed?  
 25 A. Well, but if the merger doesn't in fact

1 percentages relate to BellSouth's list versus your  
 2 corrections?  
 3 A. No. I don't recall the FCC percentages  
 4 being carrier specific.  
 5 Q. Let's talk about Section 271. Your  
 6 testimony is that BellSouth has to offer Section 271  
 7 elements through approved interconnection agreements;  
 8 is that right?  
 9 A. Yes.  
 10 Q. Is it your testimony that that is the only  
 11 way that BellSouth can meet its Section 271  
 12 obligations?  
 13 A. I believe an argument to be made that they  
 14 can satisfy it through a statement of general  
 15 available terms and conditions.  
 16 Q. So stated differently: The only way  
 17 BellSouth can satisfy its 271 obligations is through  
 18 an interconnection agreement or an SGAT?  
 19 A. Yes.  
 20 Q. And your testimony is also that any two  
 21 section -- Section 271 obligations have to be  
 22 arbitrated before a state commission; is that right?  
 23 A. They don't have to be arbitrated, but if  
 24 there's a disagreement, that that would be the  
 25 process. That's how you get approval to go on to

1 close, you can always go and add the wire center to  
 2 the list. But we can never correct for the mistakes  
 3 that you make. Or rather the -- if you assume that  
 4 the merger is not going to close and it does, we can't  
 5 go fix that situation in the same way you can fix a  
 6 merger that is expected to close but for some reason,  
 7 doesn't.  
 8 Since it's totally asymmetric in that  
 9 regard, it seems reasonable that the benefit of the  
 10 doubt that the expectation was satisfied.  
 11 Q. Is there anything in the FCC's rules or  
 12 order that you rely upon for your conclusion that you  
 13 should count AT&T and SBC as one?  
 14 A. Well, the rule requires that you count  
 15 affiliates as one. So what we're discussing is  
 16 affiliated when. Affiliated eminently, affiliated  
 17 now. I think the rule is effectively -- I think the  
 18 rule gives the state commission the latitude to  
 19 consider that the merger is eminent and approving and  
 20 counting them as one.  
 21 Q. Are you aware that the FCC set out certain  
 22 percentages when it adopted its wire center test, do  
 23 you recall those percentages at all?  
 24 A. Generally.  
 25 Q. Have you done any comparison of how those

1 Section 252.  
 2 Q. And each state commission would then  
 3 address the issue raised in the arbitration under your  
 4 view?  
 5 A. Yes.  
 6 Q. And a state commission could reach a  
 7 different conclusion -- one state commission could  
 8 reach a different conclusion than another state  
 9 commission; right?  
 10 A. As to?  
 11 Q. As to the issue before it.  
 12 A. Yes.  
 13 Q. And the -- you also believe that the  
 14 resulting interconnection agreement should be filed  
 15 with and approved by a state commission?  
 16 A. That's what I believe Section 252 says,  
 17 yes.  
 18 Q. What do you rely upon to reach the  
 19 conclusion that only an interconnection agreement or  
 20 an SGAT can satisfy -- BellSouth can only satisfy its  
 21 Section 271 obligations?  
 22 A. The language itself.  
 23 Q. Do you rely on anything else?  
 24 A. Well, I think the act says it, so I rely  
 25 upon the act. I noted that the court in Minnesota

1 even start the process. So we now have that and that  
 2 process is under way.  
 3 Secondly --  
 4 Q. Let me interrupt you, please, just to make  
 5 sure. So is your first problem now -- your first  
 6 concern now alleviated, relieved?  
 7 A. No. We still -- we're still not certain if  
 8 we asked these companies if they are that they'll  
 9 answer us.  
 10 Q. Your first problem was validation. You now  
 11 have the information, you can go out and try and  
 12 validate?  
 13 A. And try and validate. But the step had not  
 14 been accomplished.  
 15 Q. You have not actually gone out and  
 16 validated to date?  
 17 A. The discovery is in the process of being  
 18 sent to those companies. We don't have those answers.  
 19 Q. Okay. So how do you resolve your first  
 20 problem? If the company doesn't answer you, how do  
 21 you resolve your need to validate the data?  
 22 A. Well, one option -- which I have not  
 23 discussed with my group yet -- is now that we know how  
 24 many you claim exists, where they are, we can figure

1 we can go and try and determine from those carriers  
 2 what kind of arrangement that they have in the  
 3 collocation.  
 4 Q. And what will you ask those carriers?  
 5 A. Since I -- since that discovery is in the  
 6 process of being filed and I'm not sure I saw the last  
 7 version, I'll wait until we see it in an hour or  
 8 tomorrow or whatever. Because it'll be in that  
 9 discovery. At least as I understand how it was going  
 10 out.  
 11 The third concern was SBC and AT&T.  
 12 Q. And it's your contention that SBC and AT&T  
 13 should be counted as one?  
 14 A. As affiliates; yes.  
 15 Q. And that is based on what?  
 16 A. That it's just a timing anomaly that allows  
 17 you to claim that they're not one. Those carriers are  
 18 announcing that they expect that merger to occur by  
 19 the end of this year or early as next year. In many  
 20 of these states, if not all. They could have been  
 21 merged by the time the commission sits down to even  
 22 look at this wire center list, and we don't believe  
 23 it's reasonable to treat them as two separate carriers  
 24 when it's a known fact or as close to a known fact as  
 25 one can have that they're about to operate as one.

1 Section 252.  
 2 Q. And each state commission would then  
 3 address the issue raised in the arbitration under your  
 4 view?  
 5 A. Yes.  
 6 Q. And a state commission could reach a  
 7 different conclusion -- one state commission could  
 8 reach a different conclusion than another state  
 9 commission; right?  
 10 A. As to?  
 11 Q. As to the issue before it.  
 12 A. Yes.  
 13 Q. And the -- you also believe that the  
 14 resulting interconnection agreement should be filed  
 15 with and approved by a state commission?  
 16 A. That's what I believe Section 252 says,  
 17 yes.  
 18 Q. What do you rely upon to reach the  
 19 conclusion that only an interconnection agreement or  
 20 an SGAT can satisfy -- BellSouth can only satisfy its  
 21 Section 271 obligations?  
 22 A. The language itself.  
 23 Q. Do you rely on anything else?  
 24 A. Well, I think the act says it, so I rely  
 25 upon the act. I noted that the court in Minnesota

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1 concluded that to be true. And it was recognized that  
 2 checklist items had to be offered in interconnection  
 3 agreements.  
 4 So in a sense, I guess I relied on that as  
 5 well.  
 6 Q. You relied on the language of the act and  
 7 you relied on the Missouri commission decision?  
 8 A. I guess I didn't rely upon a Missouri  
 9 commission decision. I believed this before the  
 10 Missouri commission issued its decision.  
 11 Q. Have you reviewed -- have you done any sort  
 12 of analysis of all state decisions that have addressed  
 13 Section 271?  
 14 A. Not completely. I'm aware that there are  
 15 some that have concluded that they have the authority  
 16 and I'm aware that some have concluded that they  
 17 didn't have any authority over 271.  
 18 Q. Have you read each -- which state  
 19 commissions are you aware of that have addressed the  
 20 issue?  
 21 A. Massachusetts, North Carolina. I think  
 22 Tennessee has, although there's no written...  
 23 Missouri, Illinois may have, although I  
 24 can't recall whether they reached both 271 and state  
 25 law.

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1 And I indicated Massachusetts did not;  
 2 correct?  
 3 Q. You indicated Massachusetts. I didn't ask  
 4 you yet how they had addressed it.  
 5 A. I'm sorry. I believe Massachusetts  
 6 determined they didn't, and North Carolina concluded  
 7 that they didn't.  
 8 Q. And when you said didn't, you mean the  
 9 Massachusetts commission did not --  
 10 A. Have authority to establish -- to address  
 11 271 issues in arbitration.  
 12 Q. And you said North Carolina had reached  
 13 that same conclusion?  
 14 A. I believe so; yes.  
 15 Q. And with respect to --  
 16 A. I know we have not been successful in  
 17 getting them to a certain jurisdiction. I can't  
 18 recall how specific they were for the reasons that  
 19 they did.  
 20 Q. Have you done any type of analysis to try  
 21 to see if there's a trend in the state commission  
 22 decisions?  
 23 A. You mean a trend as in are more this week  
 24 than last week?  
 25 Q. No. I mean have you done any analysis

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1 that's looked at whether there are more state  
 2 commissions that have entered orders, such as a  
 3 Missouri order that you cite, as compared to state  
 4 commissions that entered orders similar to  
 5 Massachusetts?  
 6 A. No.  
 7 Q. Are you -- do you plan to do any such  
 8 analysis?  
 9 A. No.  
 10 Q. If a majority of states decided they did  
 11 not have 271 authority, would that change your view at  
 12 all?  
 13 A. No. Because what's going to happen? Where  
 14 the CLECs have won, the ILECs are going to appeal.  
 15 Where the CLECs have lost, I presume they're going to  
 16 appeal. Maybe they don't.  
 17 But eventually, the question's going to be  
 18 answered. And when the question gets switched, I  
 19 would assume either the states that concluded they  
 20 didn't have authority will then realize they do and  
 21 act, or the states that did act, if it goes the other  
 22 way, will be judged to have acted incorrectly.  
 23 Q. Are you aware that BellSouth has entered  
 24 into a number of agreements with carriers to -- what  
 25 it called commercial agreements?

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1 A. Yes.  
 2 Q. When you state that -- and I'm referring to  
 3 your direct testimony at page 12, at lines six through  
 4 seven. When you state that, "CLECs did not yet have  
 5 even basic information concerning one of the most  
 6 important options --"  
 7 You see that testimony?  
 8 A. I know I say it.  
 9 Q. What do you mean by that?  
 10 A. I believe -- I don't believe that you have  
 11 a 271 complaint offering out there. Those rates have  
 12 not been found to be just and reasonable. You don't  
 13 include performance measures as part of it, which I  
 14 believe is the 271 obligation.  
 15 So I believe there's a practical matter.  
 16 The CLECs still do not know what a 271 complaint  
 17 offering from BellSouth will look like, so they know  
 18 whether or not that's one of the things they should  
 19 consider in moving from 251.  
 20 Q. So you're not suggesting that CLECs do not  
 21 have information about BellSouth's commercial  
 22 offering --  
 23 A. No.  
 24 Q. -- are you?  
 25 You're suggesting they have information

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1 about the commercial offering, but they don't have any  
 2 other information?  
 3 I'm just trying to understand what you mean  
 4 --  
 5 A. They do not have information about a 271  
 6 compliant offer from BellSouth.  
 7 Q. What would a 271 compliant offering consist  
 8 of, in your view?  
 9 A. Just and reasonable rates, I think, with  
 10 continued performance monitoring, are the two that  
 11 come to mind most. It would have commingling  
 12 obligations.  
 13 Q. Are you aware that at least one of  
 14 BellSouth -- one of CompSouth's members has reached a  
 15 commercial with -- one of CompSouth's members has  
 16 reached a commercial agreement with BellSouth?  
 17 A. I'm assuming that that's correct.  
 18 Q. Have you asked that -- any of your member  
 19 companies for information about BellSouth's commercial  
 20 offering?  
 21 A. I'm not sure I understand the question.  
 22 Q. Well, have you asked your member companies  
 23 what BellSouth's commercial offering has, what the  
 24 terms and conditions are?  
 25 A. We've generally discussed it, and I've seen

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1 the ones that you've posted.  
 2 Q. You used different terms went you talk  
 3 about Section 271. Sometimes you talk about a  
 4 compliant offering, sometimes you talked about a  
 5 commercially meaningful offering, sometimes you talk  
 6 about a commercially viable offering.  
 7 Are those terms all supposed to mean the  
 8 same thing?  
 9 A. No. I'm not -- there is -- I believe that  
 10 the just -- that the pricing standard applies to your  
 11 271 obligation is just, reasonable, nondiscriminatory,  
 12 providing meaningful access.  
 13 So when I use commercial and meaningful,  
 14 I'm paraphrasing to the meaningful access part of the  
 15 standard that the FCC laid out.  
 16 A 271 compliant offering would be an  
 17 offering that complied with all four requirements, in  
 18 terms of the pricing.  
 19 Q. Just, reasonable, nondiscriminatory, and  
 20 what's the fourth?  
 21 A. Meaningful access.  
 22 Q. And when you refer to commercially viable,  
 23 what do you mean by that?  
 24 A. Well, to me, if it provides meaningful  
 25 access, then it's a commercially viable offering.

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1 Paraphrasing.  
 2 All those things: Just and reasonable,  
 3 nondiscriminatory, meaningful access, would give you  
 4 commercial viability.  
 5 Q. When you refer to the term, "commercially  
 6 useful," is that something different?  
 7 A. No.  
 8 Q. And if I understand your testimony, you  
 9 believe Section 271 prices would potentially be  
 10 different than Section 251 prices, is that right?  
 11 A. Yes.  
 12 Q. Is it your testimony that a section 251  
 13 would, in fact, satisfy Section 271?  
 14 A. Yes. I think that's how you got into this  
 15 begin with. The 251 prices satisfied 271 at least  
 16 before the FCC articulated that the 271 standard is  
 17 just and reasonable.  
 18 Q. Do you believe that a Section 271 price  
 19 could be lower than a Section 251 price?  
 20 A. Yes. Actually, it could. And I'll tell  
 21 you just in general terms, why. I'm not advocating  
 22 one here. But just and reasonable, at least one way  
 23 to look at it, could be embedded costs. All right.  
 24 It is not true that -- a 251 price is a  
 25 TELRIC-based price. It is not true that TELRIC is

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1 always less than an embedded cost -- or rather --  
 2 yeah, that TELRIC is always less than an embedded  
 3 cost.  
 4 Because an embedded cost, you have  
 5 accumulated depreciation. If you buy an asset over  
 6 time, that asset becomes less and less valuable  
 7 through accumulated depreciation. And so the embedded  
 8 cost of that asset declines each and every year.  
 9 When people do TELRIC studies, though, they  
 10 assume that you bought things new, and as a result,  
 11 they're not marked down by accumulated depreciation.  
 12 So it's certainly conceivable that an  
 13 embedded cost-based price can be lower than a  
 14 TELRIC-based price. And since embedded cost-based  
 15 prices are also generally viewed as inside the just  
 16 and reasonable range, it is not true that a just and  
 17 reasonable price would necessarily always be above  
 18 TELRIC.  
 19 It could be a range of rates in which  
 20 TELRIC is sometimes near the bottom of that range, the  
 21 middle of that range, or the high end of the range.  
 22 It depends on the particular cost circumstances of the  
 23 assets in question.  
 24 Q. You don't have specific Section 271  
 25 recommendations at this time, do you?

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1 A. I will not until you supply the discovery  
2 that you haven't provided.  
3 Q. What do you need from the -- what do you  
4 believe you need from the discovery to provide a  
5 specific recommendation?  
6 A. The embedded cost information that we  
7 requested.  
8 Q. Do you --  
9 A. Was part of it.  
10 Q. I'm sorry. Go ahead. The embedded-based  
11 cost information?  
12 A. Yeah. It was the discovery questions that  
13 you objected to and didn't supply answers to involving  
14 the different cost bases for DSI switching and -- DSI  
15 loops and transport and local switching.  
16 Q. Do you know when the discovery period ends  
17 in the Georgia case?  
18 A. I think it ends yesterday.  
19 Q. Do you know what time frame is involved in  
20 submitting responses?  
21 A. No.  
22 Q. And is it your testimony that the FCC has  
23 explained its just and reasonable pricing methodology?  
24 A. Yes and no. It has -- it has directed  
25 people to the historic just and reasonable standard

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1 examination.  
2 Q. And if the commission did -- made such a  
3 finding, the transitional rates could apply after  
4 March of next year, correct?  
5 A. Well, yes. Although I think it would be  
6 fair to say that they would be -- they wouldn't be the  
7 transitional rates. They would be the interim, just and  
8 reasonable prices.  
9 Q. When do you think such a permanent rate  
10 investigation would end?  
11 A. It might have been able to end in this  
12 proceeding had we had the information. Or it could  
13 happen relatively quickly. I don't believe -- I don't  
14 believe it's the type of investigation that would take  
15 considerable time. The inputs are relatively  
16 straightforward. Embedded cost information, TELRIC  
17 information, whatever you chose to put on, in terms of  
18 what your rate proposal would be.  
19 There's a limited number of prices at issue  
20 at this point. And I would think that we would be  
21 able to do something like that pretty expeditiously.  
22 Q. Do you have any language in your testimony,  
23 separate from your exhibit, addressing what needs to  
24 be included in the embedded base of customers?  
25 A. No.

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1 that has traditionally applied in this industry.  
2 Well, that's a -- that's a pretty wide  
3 range of decisions. But they all, to my knowledge,  
4 require that the prices bear some nexus to cost.  
5 In everything that I looked at, in terms of  
6 just and reasonable pricing standards, there wasn't  
7 necessarily a specific formula per se, but there was  
8 always some nexus-backed cost; some cost measure.  
9 Q. So do you believe that the states have  
10 guidance they need to set just and reasonable prices?  
11 A. Yes.  
12 Q. When you talk about a separate, permanent  
13 rate investigation, what are you wanting a commission  
14 to do?  
15 A. What I envision is that you would answer  
16 discovery on cost information, we would make a rate  
17 proposal, you'd make a rate proposal. The commission  
18 would have some sort of proceeding to judge the  
19 relative merits of two proposals and render a  
20 decision.  
21 Q. Are you asking that the commission find the  
22 transitional rates satisfy the just and reasonable  
23 standard?  
24 A. Yes. At least on an interim basis until  
25 they have the opportunity to do a more thorough

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1 Q. Why do you think that BellSouth should tell  
2 the CLEC what needs to be converted when it comes to  
3 Section 251 as opposed to the CLEC identifying to  
4 BellSouth those UNEs it wants to convert?  
5 A. I don't think anyone wants to convert  
6 anything, okay? I think it's more a question of your  
7 demanding the people to seek alternatives for certain  
8 circuits.  
9 As a practical matter, at the end of the  
10 day, the CLEC is going to want to verify what you  
11 think is out there, and you're going to want to verify  
12 what they think is out there. So the question really  
13 is: Who should be the first mover on the process?  
14 Since all of the changes, presumably, are  
15 more to your benefit, or you wouldn't be asking people  
16 to move circuits off of your network or onto some  
17 other arrangement, then it seems to be fair that you  
18 should have the burden of the first -- first mover of  
19 providing the information.  
20 Q. Do you have any language in your testimony  
21 that addresses this issue 12 about identifiable orders  
22 that are placed but not provisioned?  
23 I'm paraphrasing the issue. But other than  
24 your exhibit, do you have any language in your  
25 testimony?

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1 A. I mean, I do address the transition  
2 question to place the order, but they have a provision  
3 upon which -- that a transition price doesn't apply \*  
4 until the change is effected. But other than that,  
5 no.  
6 Q. Is it your testimony that there's a  
7 requirement that BellSouth be subject to a Section 271  
8 plan, a Section 271 SOM plan?  
9 A. Is there a requirement in the act? I don't  
10 think so. Except your public -- as I understand the  
11 271 orders, the FCC concluded that the public interest  
12 was satisfied because there wouldn't be backsliding.  
13 And the backsliding that they concluded wouldn't occur  
14 is partially a consequence of these performance  
15 penalty plans.  
16 So I believe that basically in effect they  
17 adopted a conditional grant that either they have to  
18 go back and reexamine whether the public interest will  
19 continue to be satisfied in the absence of such a  
20 plan, or that you have to keep the plan in place.  
21 I don't think you can unilaterally withdraw  
22 out of that performance plan and still remain in  
23 compliance with 271.  
24 Q. But obviously a state commission in this  
25 proceeding could determine that Section 271

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1 paid today, don't you?  
2 A. Well, they have to still fall within the  
3 just and reasonable range; yes.  
4 Q. Are you familiar with the FCC's  
5 supplemental order clarification?  
6 A. Supplemental order clarification? Not by  
7 that --  
8 Q. Not by that name?  
9 A. Are you referring to the special -- the  
10 EELS restriction order?  
11 Q. I am.  
12 A. Okay. Yes. Clearly goes by different  
13 names.  
14 Q. We use different shorthand  
15 Do you know if the FCC first talked about  
16 commingling in that order?  
17 A. They may have.  
18 Q. And when they talked about commingling,  
19 they talked about collecting a loop or EEL to tariff  
20 access services; right?  
21 A. I believe so. I mean, that was -- the  
22 concern they had then was not really a general  
23 commingling obligation that they were investigating.  
24 There was a concern about massive or significant  
25 substitution of UNEs for special access circuits.

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1 obligations not be subject to an SQM plan, couldn't  
2 they?  
3 A. They could find that.  
4 Just so we're clear, just logically -- and  
5 I'm not saying this is where that kind of finding  
6 would go -- one could then take that issue up to the  
7 FCC in terms of as an enforcement action after a state  
8 action, to reimpose it.  
9 Q. You would agree with me that UNE-P, what we  
10 know as the UNE-P, is no longer required under Section  
11 251; right?  
12 A. Not in a 251; that's correct.  
13 Q. But you do believe that Section 271  
14 offering should be identical to Section 251; is that  
15 right?  
16 A. Except as the price perhaps.  
17 Q. And -- but you've also stated that a TELRIC  
18 price could meet -- could be the same as a Section 271  
19 price; right?  
20 A. Well, I think yes. By definition there's a  
21 range of just and reasonable rates. And I believe  
22 that the TELRIC rate has at least been viewed as  
23 sitting inside that range.  
24 Q. And in fact, you say that Section 271  
25 prices could be just and reasonably close to the rates

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1 That was the concern that they were addressing --  
2 Q. When -- I want to go to the conversion --  
3 issues 15 and 16, which have to do with conversion.  
4 You don't have any direct testimony or rebuttal  
5 testimony on those two issues; do you?  
6 A. No.  
7 Q. And you don't have any direct testimony or  
8 rebuttal testimony on the line sharing or the line  
9 sharing transition plan; do you?  
10 A. Correct, with one exception. My  
11 understanding of the principal line sharing dispute  
12 between BellSouth and CompSouth goes to whether or not  
13 it's a 271 obligation. So there is some discussion in  
14 rebuttal testimony that Mr. Fogle's testimony doesn't  
15 go to whether or not it's a 271 obligation, and that  
16 is the dispute between us.  
17 Q. Do you believe that line sharing is a  
18 Section 271 obligation?  
19 A. It certainly would seem to be; yes.  
20 Q. What do you base that on?  
21 A. The way -- the way the loop is defined in  
22 Section 271 and the treatment of the line sharing as a  
23 network element in the 271 decisions granting the  
24 authority.  
25 Q. You also don't have direct testimony or

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1 rebuttal testimony on the line splitting issue; do  
 2 you?  
 3 A. That is correct.  
 4 Q. And you don't have direct testimony or  
 5 rebuttal on subloop concentration?  
 6 A. That is correct.  
 7 Q. Do we have a dispute with CompSouth on  
 8 subloop concentration?  
 9 A. I need to go back and review in more detail  
 10 Ms. Tipton's markup of our language and her rebuttal  
 11 testimony.  
 12 Q. You have not looked at her red line to your  
 13 JFPGI?  
 14 A. I have not had a chance to review that yet.  
 15 Q. Let's talk about --  
 16 MS. MAYES: Ten-minute health break?  
 17 (A recess was taken.)  
 18 Q. (By Ms. Mays) Mr. Gillan, I wanted to talk  
 19 to you about issues related to Greenfield, hybrid  
 20 loops and fiber loops?  
 21 A. Yes.  
 22 Q. You had -- your direct testimony included  
 23 proposed contract language on these issues?  
 24 A. Yeah.  
 25 Q. And when I look at your later contract

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1 language, it looks like you've added a limitation that  
 2 was not contained in your Georgia exhibit.  
 3 A. Not in the direct. It was included in the  
 4 rebuttal.  
 5 Q. In Georgia? -- well, let me state it  
 6 another way.  
 7 Have you provided a red line version or an  
 8 update to JFPGI in Georgia?  
 9 A. Not yet. I told you in the beginning, we  
 10 did --  
 11 MR. MAGNESS: I can tell you from a  
 12 sort of filing technical timing standpoint,  
 13 the revised one was filed in the four  
 14 states where direct was due today.  
 15 MS. MAYES: Right.  
 16 MR. MAGNESS: A revised version has  
 17 not been filed yet for Georgia. I expect  
 18 it will be. There was a red line put  
 19 together which we'll be getting to your  
 20 folks.  
 21 But one of the issues -- since  
 22 Florida was in the group today, the issue  
 23 was just a little bit different. The  
 24 numbering. So the red line is just a  
 25 little bit different for Florida and that

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1 A. Yes. But I was actually thinking of this  
 2 in terms of the enterprise DSI business market anyway.  
 3 And they didn't change the policy with respect to the  
 4 enterprise market. There was no errata on that issue.  
 5 Q. So you don't believe the erratas have  
 6 anything to do with our dispute?  
 7 A. I have not reviewed them with that purpose  
 8 in mind; no.  
 9 Q. Are you aware that this is one of the  
 10 issues that's pending in front of the FCC for  
 11 reconsideration?  
 12 A. And/or clarification; yes.  
 13 Q. When you refer in your Georgia rebuttal at  
 14 page 11, and lines two through three, to the packet --  
 15 the packet architecture in the TDM network.  
 16 A. Yeah.  
 17 Q. Are you suggesting that BellSouth has an  
 18 obligation to build TDM capability into a new  
 19 packet-based network?  
 20 A. No. No. But only that the FCC's  
 21 expectation would be there would be a parallel network  
 22 from which CLECs could still obtain DSIs to reach  
 23 customers. That it wasn't intending to isolate CLEC  
 24 from reaching customers using DSIs except where  
 25 there's findings of the nonimpairment question

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1 separately addressed.  
 2 Q. You're not suggesting that if -- just to  
 3 clarify -- if there was never any TDM capability, that  
 4 BellSouth has to then build TDM capability to serve a  
 5 CLEC customer, are you?  
 6 A. No. No. I don't think so.  
 7 Q. If I move to routine network modification,  
 8 the dispute we're having is where, for example,  
 9 BellSouth would not remove certain bridged tap or load  
 10 coil to long loops for its own customers, the CLECs  
 11 want BellSouth to be obligated to perform that for  
 12 them.  
 13 Is that a fair assessment of our routine  
 14 network modification?  
 15 A. I think that's the practical part of our  
 16 disagreement; yes.  
 17 Q. And it's your testimony that if BellSouth  
 18 would never do that for itself, that doesn't matter?  
 19 A. That's correct. The line conditioning  
 20 rules requires you to do it whether or not you offer  
 21 service to that customer or not.  
 22 Q. When you refer to BellSouth's DSL offering  
 23 as being housed in remote terminals, what do you mean  
 24 by that?  
 25 A. There was data that was provided in the

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1 context of your Fast Access product and whether or not  
 2 it should be -- you should continue to offer Fast  
 3 Access to customers who have chosen a UNE-P CLEC.  
 4 My recollection was that a substantial  
 5 portion of BellSouth's deployment of its DSLAMs were  
 6 in remote terminals and not in a central office. That  
 7 you had done that to shorten loop places to reach  
 8 customers.  
 9 Q. Turning to the EELs audit issue, we don't  
 10 disagree that BellSouth has a right to audit, do we?  
 11 A. Well, I think there's a -- not in a stark  
 12 sense. But there's a dispute as to whether or not you  
 13 have a right to audit no matter what, or if you only  
 14 have the right to audit with good cause shown. I  
 15 think that's the dispute basically.  
 16 Q. And what do you believe BellSouth has to  
 17 show to have the right to audit?  
 18 A. Well, the testimony outlines really  
 19 basically that you have to identify the basis for your  
 20 belief that there's something that needs to be  
 21 audited.  
 22 Q. You also suggest that the auditor needs to  
 23 be agreed upon by BellSouth and the CLEC?  
 24 A. Yes.  
 25 Q. You don't believe that BellSouth could just

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1 hire an auditor and let the CLEC deal with any  
 2 objections as to independence in the course of any  
 3 dispute resolution?  
 4 A. That's not our position. I think that the  
 5 reality is that it would be simpler if BellSouth and  
 6 the CLEC could agree on the front end.  
 7 Q. Do you think that BellSouth and the CLECs  
 8 can agree on the front end?  
 9 A. Yes.  
 10 Q. When you turn to the issue 30 -- one of  
 11 your CompSouth members, Nuvox and BellSouth have had  
 12 some disputes about auditing; are you familiar with  
 13 those disputes?  
 14 A. Not with any specifics; no.  
 15 Q. When -- on issue 30 and the entire  
 16 agreement, in your rebuttal testimony, you've taken  
 17 issue with the words "deemed amended," if I understand  
 18 it.  
 19 A. Yes.  
 20 Q. If you were to accept subject to check that  
 21 the words "deemed amended" were corrected to  
 22 "modified," would we have a dispute on that issue?  
 23 A. I don't understand that question. Say that  
 24 again.  
 25 Q. If I were to -- if Ms. Blake corrects that

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1 testimony, and she corrects it so that the words  
 2 "deemed amended" are replaced by "modified" so that --  
 3 A. I think the problem is "deemed."  
 4 Q. Right.  
 5 What you're stating is simply that we need  
 6 to enter into amendments that include language about  
 7 the Entire Agreement Rule, correct?  
 8 A. Yes. The Entire Agreement Rule is where I  
 9 illustrate the point. Because I think the only place  
 10 you use the words "deemed amended," the concern we  
 11 have is this ability to have a -- the contract changed  
 12 without half of the party being involved in that  
 13 process.  
 14 Q. The ability to change it without an  
 15 amendment?  
 16 A. Correct.  
 17 Q. And if it is BellSouth's position that it  
 18 wants its interconnection agreements amended to  
 19 include language, the actual language that  
 20 effectuates the Entire Agreement Rule, it's not your  
 21 testimony that CompSouth doesn't want to sign such an  
 22 amendment?  
 23 A. That is correct. Subject, of course, to  
 24 the fact that that rule itself is on appeal. It's not  
 25 an embracement of the rule.

Page 87

1 Q. Okay. With respect --  
 2 A. But I don't want to give the impression  
 3 that I'm necessarily saying that CompSouth would agree  
 4 to the language change that you're proposing. I'll  
 5 take that back to the group.  
 6 Q. Have you proposed any language on that  
 7 issue? It's issue 30, I believe.  
 8 A. No. I don't believe that's in our -- in  
 9 our proposal. The language on the all or nothing  
 10 rule. Not how does it end up in the agreement.  
 11 Q. The language that you have attached to your  
 12 direct testimony, JFG1, how did you develop that  
 13 language?  
 14 A. It was the product of -- I don't want to  
 15 say "committee" because that sounds too formal. But  
 16 there were the attorneys from the different companies,  
 17 Mr. Magness and others, worked on attempting to put  
 18 together contract language that would affect the  
 19 recommendations of the testimony.  
 20 Q. Are you aware of CompSouth or any of its  
 21 members proposing the language that you attach as JFG1  
 22 prior to the time you filed testimony?  
 23 A. My understanding -- and -- is that the  
 24 basic form of most of this language was presented from  
 25 talk at one point. And then over time, as it

Page 88

1 incorporated revisions from different members of  
 2 CompSouth, that it basically represents contract  
 3 language that one or more members of CompSouth have  
 4 presented to BellSouth at one time or another.  
 5 But it -- I can't trace for you this  
 6 provision was presented by this carrier, because it  
 7 was a -- it was a more cooperative effort than that.  
 8 And I can't represent to you with certainty that every  
 9 provision was presented in that way.  
 10 But that's my -- given the way the document  
 11 evolved, that's my understanding of its background  
 12 with BellSouth.  
 13 Q. So the actual language that you attached to  
 14 your testimony, in its entirety, is it fair to say  
 15 that BellSouth saw it for the first time with your  
 16 direct testimony?  
 17 A. No. Actually, I think -- I tried to  
 18 explain it the opposite. That language, while maybe  
 19 not in that form, was presented to BellSouth by  
 20 different carriers in -- over the past several months.  
 21 Every provision not necessarily organized in this way.  
 22 But these things weren't -- these things came from  
 23 other people who were also negotiating with BellSouth.  
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 2 carriers signed when they initiated negotiations with  
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 4 the output of their negotiations with you to other  
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 6 And so people try to walk a very fine line  
 7 between providing input but without trying to disclose  
 8 perhaps what your position was on various language  
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 10 But no, I do not believe that this is  
 11 something new to you in its entirety at all.  
 12 Q. Do you have any idea of when the piece  
 13 parts of this were presented to BellSouth by  
 14 CompSouth's members?  
 15 A. No. That I cannot do.  
 16 Q. And you don't know whether individual  
 17 pieces of it have been resolved as to one particular  
 18 CompSouth member in BellSouth either?  
 19 A. That's correct. Because of the fact that  
 20 people couldn't straightforwardly communicate portions  
 21 that had been admitted.  
 22 MS. MAYS: All right. Thank you, Mr.  
 23 Gillan. We're done.  
 24 (Deposition concluded at 4:07 p.m.)  
 25

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 4 Council of Georgia, I make the following  
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 7 Reporter, here as a representative of  
 8 Alexander Gallo & Associates, Inc., to report  
 9 the foregoing matter. Alexander Gallo &  
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 BLANCHE J. HARRIS, CCR-B-2290

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