

his business -- in this case by reselling it. See Okla. Order at 12 n. 63 (defining subscriber as one who agrees to take and pay for something). That is how such service typically is treated in state tariffs. It also is consistent with the goal of section 271(c)(1)(A) by ensuring the existence of a competitive alternative for a broad range of residential customers -- not just for those in large apartment buildings who purchase resold telephone service from the owners of the buildings. On the other hand, when a tenant purchases home phone service directly from a BOC or a CLEC, that tenant should be counted as a residential customer.

e) Implementation schedules. The statutory language is clear; the implementation schedule provision in Track B applies only if the state commission certifies that each CLEC has "violated the terms of an agreement approved under section 252 by the provider's failure to comply, within a reasonable period of time, with the implementation schedule contained in such agreement." (emphasis added). In order for the "implementation schedule" provisions of Track B to take effect, the implementation schedule must be part of an approved interconnection agreement. An implementation schedule imposed by a state commission that is not incorporated into an interconnection agreement, and thereby subject to judicial review pursuant to section 252, could not trigger Track B. If a state commission properly concluded that all requesting CLECs violated the terms of their interconnection agreements approved under section 252, by failing to comply, within a reasonable period of time, with the agreements' implementation schedule, Track B would apply. Even when an implementation schedule is in the agreement, Track B would apply only when CLECs have failed "to comply, within a reasonable period of time," with that schedule. Section 251(c)(1)(B). When an implementation schedule is negotiated and is placed into an agreement, it is subject to district court review. Moreover, the requirement that

implementation schedules be included in interconnection agreements ensures that CLECs' obligations are linked to ILEC performance.

Combinations.

While the Eighth Circuit decision vacated a Commission regulation that had prohibited ILECs from discriminatorily separating network elements that were already combined in its network, it did not compel ILECs to engage in such discrimination. The surest method for ILECs to assure nondiscriminatory access to combinations of elements is simply for them not to pointlessly break existing combinations apart. That being so, it is not surprising that most state commissions who have decided the matter have found, either as a matter of state law or as a result of binding interconnection agreements, that ILECs may not engage in this blatantly discriminatory conduct. While the FCC is currently without authority to prohibit this discrimination, it of course must take into account its marketplace effects in evaluating whether the local market is "irreversibly open to competition" in the course of a public interest inquiry in a section 271 application. That is, if a BOC voluntarily chooses to engage in discrimination so that there is no way in most markets for CLECs to offer ubiquitous residential or even small business competition, the local markets will not be irreversibly open as required by the 1996 Act.

In the alternative, the 1996 Act expressly provides that CLECs have a right to combine elements at "any technically feasible point." Section 251(c)(3) (emphasis added). An ILEC does not satisfy its obligation to provide access at "any technically feasible point" by offering access only at one technically feasible point. Addressing the combination of the key elements of loop and switch, the Commission has properly identified at least three technically feasible points of interconnection between the loop and the switch: CLEC collocated space, the main distribution

frame, and "logical" combination whereby these elements are connected electronically. Since each of these interconnections is indisputably "technically feasible," CLECs have a right to demand access at any of these points of interconnection, and the Commission should require ILECs to provide access at all of these points.

Access directly at the main distribution frame conceptually is the most straight-forward kind of access, and does not merit lengthy analysis here. The BOCs should provide such access to CLECs who request it.

Collocation is highly discriminatory and unlikely to be used by CLECs (at least if they have no other reason to collocate). In the real world, telephone companies do not pointlessly introduce multiple points of failure into their network by interposing couplers and jumpers and additional hardware that serve no functional purpose. The unnecessary added cost of paying for the construction and maintenance of a collocation cage also renders this choice uneconomical. Collocation is also unpredictable: collocation costs vary greatly from end office to end office, as does availability. The BOCs propose to "solve" this problem of their own creation by offering different kinds of collocation: shared collocation, "mini" collocation, "cageless" collocation, and so on. But none of these alternatives address the fundamental problem caused by imposing excessive costs and network complexities that serve no useful function.

Logical combination is another technically feasible method of combining loop and switch. The Eighth Circuit did not specify that "separating" had to be physical separation. Indeed, given that some network elements, such as signaling or IDLC loops, cannot be physically separated, as the agency responsible for making sense of that court's ruling, the Commission should not assume that the court was requiring physical separation. The Commission should

require logical combination under its existing (post-Eighth Circuit) legal authority for CLECs who request it.²

OSS.

a) **The Proper Role of Manual Processes.** As both the Commission and the Justice Department have repeatedly acknowledged, electronic flow-through is perhaps the most critical aspect of effective OSS. Such flow-through is critical for all of the relevant OSS functions: pre-ordering, ordering, provisioning, billing, and repair and maintenance. Wherever the standards-setting bodies have provided an electronic OSS solution, and wherever it is clear that they will provide such a solution, the BOCs should make electronic OSS available. To date, almost a year and a half after the Commission ordered the BOCs to have these OSS in place, not a single BOC has satisfactorily implemented these electronic, industry standard, systems.

The BOCs' response to this has been to demand that the Commission engage in entirely hypothetical speculation about whether there may be some OSS that properly involves some amount of manual processing. This demand is intended solely to divert attention from the BOCs' failure to provide industry-standard OSS, a roadblock that has contributed greatly to the absence of meaningful local competition some two years after the Act's passage. The proper answer to the question about manual processing is that both the Commission and the Justice Department have set out detailed OSS requirements that the BOCs have not met. The BOCs should meet them. If and when the BOCs honor their contractual and regulatory commitments, there will be time enough then to consider whether at the margins there are OSS subsystems or fields that are so little used and so complex as to make electronic OSS unnecessary.

²MCI is continuing to evaluate this matter. If and when we develop any further analysis of this option, we would be happy to share our analysis with the Commission.

b) BOC Responsibilities Related to OSS Integration with CLEC Back-End Systems

The BOCs are required to provide OSS that enables CLECs to integrate the OSS with their backend systems at least as well as the BOCs' own backend systems are integrated. Thus, the BOCs must provide system to system interfaces, not interfaces that only allow CLECs to create a far inferior form of integration through, for example, some sort of screen scraping process.

Once the BOC has created a system to system interface (which should be done after obtaining input from CLECs and should be based on industry standards), the BOC must provide accurate documentation to enable CLECs to integrate the interface with their backend systems in a manner that will enable the systems to function smoothly. Once accurate documentation is provided, MCI agrees that it is the CLEC's responsibility to perform the actual integration, although the BOC must provide knowledgeable experts who can answer CLEC questions as the development process occurs. The CLECs, of course, need a reasonable period of time in which to perform the development and integration taking into account the fact that national CLECs like MCI may be undertaking development efforts in many regions simultaneously. So long as CLECs are undertaking reasonable efforts, the OSS interfaces cannot be judged operational until they have been shown to work effectively to process commercial orders all the way from the CLEC's back-end systems through to the BOC's back-end systems.

This is the very test set forth by this Commission in its Michigan Order. Under this test, the BOC must generally rely on evidence of successful commercial usage to prove operational readiness unless the absence of commercial usage is attributable to the competing carriers' business decisions. Mich. Order ¶ 138. In other words, where the absence of commercial usage results from the fact that OSS development by the CLECs necessarily requires time or where the

CLECs' OSS development has been delayed by impediments created by the BOCs, the BOC must wait to show the readiness of its OSS until there has been sufficient time for the CLECs to overcome those obstacles and for commercial usage to arise.

Unbundled Local Switching.

a) **Standards for Complying With Checklist Requirements.** Both in its First Report and Order, ¶¶ 397-427, see 47 C.F.R. § 51.319(c), and in its Michigan Order at ¶¶ 319-331, the Commission described in some detail what the BOC must do to satisfy the statutory requirement that it provide unbundled local switching ("ULS") as a precondition for long-distance entry. Nothing in the subsequent decision of the Eighth Circuit raised any questions about these now-settled rules, and we are aware of no recent technological developments that require that the rules be revised. The BOCs are fairly on notice of what they must do to satisfy this checklist requirement, and there is no need for the Commission to revisit this area.

Checklist item four requires applicants to provide unbundled local switching, and checklist item two requires nondiscriminatory access to network elements in accordance with the requirements of section 251(c)(3). The First Report and Order defines unbundled local switching to be a network element, a conclusion that was not challenged in the Eighth Circuit. 47 C.F.R. § 51.319(c). Consequently, as the Commission found, "to fully implement items (ii) and (iv) of the competitive checklist, an incumbent LEC must provide nondiscriminatory access to unbundled local switching." Mich. Order ¶ 319.

To meet this requirement, a BOC must show that it can make available to a CLEC the line port, the trunk port, and all of the "features, functions and capabilities of the switch," which the regulations define to include the basic switching functions as well as all other features,

including but not limited to dial tone, telephone number, white page listing, custom calling, customized routing, and features such as Centrex. 47 C.F.R. § 51.319(c). Critically, the regulations also require that these functions be made available to CLECs at parity, defined to require that a transfer of a customer through service by unbundled local switching should take no longer "than the interval within which the incumbent LEC currently transfers end users between interexchange carriers." Id. at 51.319(c)(1)(ii).

More particularly, a BOC at a minimum must have in place OSS sufficient to allow nondiscriminatory access to functions enabling a CLEC to preorder, order and provision the various functionalities that make up ULS. Moreover, the BOC must be able to bill the CLEC accurately for the various switching components, and to provide to the CLEC the necessary information to bill its retail customers, and to use ULS to provide exchange access service. Finally, in this regard, the BOC must provide the CLEC with the necessary OSS to repair and maintain the switching functions it leases.

Additionally, there are a host of issues that have arisen in the places MCI has ordered ULS that need to be resolved before this checklist item is fully implemented. Chief among them is price: NRCs associated with ordering switching typically are so high as to make this element for all practical purposes unavailable. The BOCs must also resolve on reasonable and nondiscriminatory terms other fundamental questions such as where to locate the point of interconnection between the local and long-distance network when the local network uses ULS, how termination of long-distance traffic is measured in such a network, and how signals can be routed to the CLECs' own OS/DA platforms.

b) FCC's Authority to Require ILEC Interconnection with CLEC OS/DA Platforms

The Commission has ample authority to require BOCs to make the software changes necessary to allow them to use their Feature Group D ("FGD") trunks to enable CLECs to interconnect their OS/DA platforms with the BOCs' switches. The Act requires BOCs to provide interconnection on terms that are "just, reasonable, and nondiscriminatory." Section 251(c)(2). In its First Report and Order, the Commission specified "that the obligations imposed by sections 251(c)(2) and 251(c)(3) include modifications to incumbent LEC facilities to the extent necessary to accommodate interconnection or access to network elements." ¶ 198. That understanding of the Act was expressly "endorsed" by the Eighth Circuit, Iowa Utilities Board v. FCC, 120 F.3d at 813 n.33. The Eighth Circuit drew a sharp distinction between this statutory obligation to modify the existing network, and what it determined to be an unlawful rule requiring BOCs to provide interconnection "at levels of quality that are superior to those levels at which the incumbent LECs provide these services to themselves." Id. at 812. The court interpreted the statutory phrase "at least equal in quality" to mean only that the quality be equal, so that CLECs may not order ILECs to build "a yet unbuilt superior" network. Id. at 813.

A rule requiring BOCs to make software changes so that they can interconnect with OS/DA platforms that use FGD signaling is squarely within the rule stated in paragraph 198 of the First Report and Order and endorsed by the Eighth Circuit. Nothing in the Eighth Circuit's ruling striking down the FCC's "superior quality" rules is to the contrary. CLECs do not want FGD signaling as opposed to MOSS signaling because they want some superior service the BOCs are not providing to themselves. The question here has nothing to do with quality at all it is simply a matter of two incompatible systems that need to be able to "speak" to each other

the interconnection required by the Act is to take place. The need for such a rule is plain: unless the BOCs are required to take the necessary steps to condition their networks, there will be insurmountable obstacles to interconnection, and one of the central requirements of the Act will be frustrated. As the Commission ruled, in findings that have not been challenged, the "incumbent LEC networks were not designed to accommodate third-party interconnection or use of network elements at all or even most points within the network. If incumbent LECs were not required, at least to some extent, to adapt their facilities to interconnection or use by other carriers, the purposes of sections 251(c)(2) and 251(c)(3) would often be frustrated." First Report and Order, ¶ 202.

Not only does the Commission have the authority to require BOCs to modify their networks so that CLECs can make use of their OS/DA databases, it should exercise that authority. Virtually all CLECs use FGD, while the BOCs use MOSS. It is technically feasible for either the BOCs or the CLECs to deploy a system to translate between MOSS and FGD. The only question is how this translation can be most efficiently accomplished. Obviously it is more reasonable and efficient to have the translation done once by the BOC, so that all CLECs can receive FGD signaling, than to have each CLEC separately purchase and install translation equipment. In fact, the only reason the BOCs object to making this modification is that they would rather have each CLEC go to the expense of purchasing, installing, and operating its own translation equipment. The result of such inefficient interconnection could well be that CLECs will as a practical matter be unable to use their own OS/DA platforms. The Act, and the Commission's regulations, give the Commission ample authority to insist that interconnection

facilitated in a reasonable and efficient manner, with costs borne in a competitively neutral fashion.

c) FCC's Authority to Make Findings Related to Technical Feasibility.

In reviewing an application under section 271, the Commission is obliged to consider whether the BOC has met its obligation to provide interconnection and access to network elements "at any technically feasible point." In an aberrant decision, the North Carolina state commission has held that it is not technically feasible for a BOC to unbundle customized routing, a critical component of unbundled local switching. BOCs apparently have suggested that the FCC must accept without independent review this finding in passing on a subsequent section 271 application. This is not so.

The FCC indisputably has authority to implement the Act's provisions involving "technical feasibility." The BOCs challenged the substance of these Commission rules, and the Eighth Circuit upheld the Commission's definition. 120 F.3d at 810. At the same time, no party before that court challenged the Commission's definition of customized routing as a "feature[], function[], and capabilit[y]" of a switch, 47 U.S.C. § 153(29), and therefore a "network element" that must be unbundled.

The BOCs nevertheless argue that the FCC ceded its authority on this point to the states, such that it now is bound by whatever judgment the states make on this question. This is simply not the case. Instead, in its definition of "technically feasible" enforced by the Eighth Circuit, the FCC gave substance to this requirement by determining, for example, that "feasible" means "capable of being accomplished," and not merely "currently possible," ¶ 202, and that factors such as economic concerns and space limitations should not be considered in evaluating

technical feasibility. Id. The Commission then went on to identify many particular points of interconnection that it found to be technically feasible, and, as to others, determined that "incumbent LECs must prove to the appropriate state commissions that a particular interconnection or access point is not technically feasible." Id. 198.

By setting standards and then directing state commissions to resolve disputes that arise in negotiating interconnection agreements by imposing on the BOCs the burden of proving that those standards have been met, the FCC says nothing at all about its own authority to review state judgments in the context of section 271 applications. In this context, a comparison to the FCC's authority independently to assess BOC prices in section 271 proceedings that was the subject of the Eighth Circuit's mandamus order is instructive. In that order the court found determinative the fact that "the FCC has no valid pricing authority over these areas of new localized competition," and that the FCC could not "participate" in determining prices. Slip Op. 4. The court found that the FCC's assertion of jurisdiction to determine BOC compliance with the checklist's pricing requirements was a back-door method "which will coerce state commissions to adopt its vacated pricing rules," and as such an elicited attempt by the FCC to "reassert its authority to establish prices." Id. at 5.

In contrast, in reviewing in the context of a section 271 application a state determination that a particular point of interconnection is technically infeasible, the Commission frequently would be doing no more than assuring that its own rules have been complied with. Thus in North Carolina, the state commission ruled that customized routing is technically infeasible on the theory that customized routing might lead to exhaustion of line class codes, which are necessary for one kind of customized routing. MCI v. BellSouth, Complaint filed May 28, 1997,

No. 5:97-CV-425-BR-2(E.D. N.C.). As MCI is currently arguing in a complaint in federal district court, this ruling is predicated on a definition of "technical feasibility" that is directly contrary to the FCC's definition, pursuant to which capacity concerns are not an appropriate ground for finding something technically infeasible. There is no merit to the suggestion that in a section 271 proceeding the Commission lacks the authority to review a state commission judgment to ensure the state's fidelity to the FCC's own, lawful, regulation.

Section 271 "does not require the FCC to give the state commissions' views any particular weight. Unless the Commission concludes to its own satisfaction that the applying BOC has satisfied . . . the statutory requirements, it 'shall not approve the authorization.'" SBC v. FCC, __ F.3d __ (D.C. Cir. 1998), slip op. at 12-13. If the FCC concludes that a state commission has misapplied the law or its rules, or that events subsequent to the state commission ruling compel a different conclusion than that reached by the state,³ nothing in section 271, the FCC's rules, or any decision of the Eighth Circuit can fairly be read to strip the FCC of its authority to make an independent judgment as to whether the BOC has satisfied its obligations under the checklist with respect to customized routing or technical feasibility. In reaching that judgment, the Commission should of course give whatever weight is appropriate to relevant state commission findings, considering, inter alia, the state of the administrative record, the extent to which the state explained its decision and addressed the contentions of the parties, and

³In this regard, in addressing the issue of the technical feasibility of customized routing in a section 271 context, it would be relevant for the Commission to consider that aside from North Carolina, every state commission of which we are aware has found customized routing to be technically feasible. In particular, though the Kentucky Commission initially ruled that customized routing was not technically feasible, in its first order on reconsideration it reversed itself and required BellSouth to prove that customized routing is not technically feasible, and in its subsequent second arbitration order the Commission ordered BellSouth to provide customized routing to MCI.

subsequent developments. As to the technical feasibility of customized routing, where BOCs are offering or have agreed to offer customized routing in many states, the Commission should feel no compulsion to defer to North Carolina's singular judgment that it is nevertheless not technically feasible.

FCC's Authority to Require BOCs to Provide ITC Listings.

[This issue, as well as other questions on directory assistance, will be fully addressed in a separate submission that will follow shortly.]

FCC's Authority to Require BOCs to Pay Reciprocal Compensation for ISP Traffic.

The Commission has the authority to require BOCs to pay reciprocal compensation for ISP traffic. Section 251(b)(5) of the Act requires all local exchange carriers to "establish reciprocal compensation arrangements for the transport and termination of telecommunications."

Section 252(d)(2) in turn states that

For the purposes of compliance by an incumbent local exchange carrier with Section 251(b)(5), a State commission shall not consider the terms and conditions for reciprocal compensation to be just and reasonable unless--

- (i) such terms and conditions provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier

Although the Eighth Circuit struck down the Commission's pricing rules on reciprocal compensation, it did not strike down any aspect of the Act. The Act explicitly requires that reciprocal compensation be paid for "transport and termination of telecommunications," and the Commission is the agency charged with interpreting that statutory command. Thus, even if, arguendo, the Commission may not set actual prices or pricing methodologies for reciprocal compensation, it indisputably has the authority to interpret what type of traffic is subject to the

Act's reciprocal compensation requirements. Nothing in the Eighth Circuit's decision prevents the Commission from interpreting whether ISP traffic is "telecommunications" within the meaning of sections 251(b)(5) and 252(d)(2) and the structure of the Act.

Additionally, the regime proposed by the BOCs, whereby they treat ISP calls over their network as local, but would treat the same calls originating on CLECs' networks as interstate, is discriminatory, and the Commission has jurisdiction to determine whether a BOC is discriminating in its obligation to provide interconnection under section 251(c)(2). The Commission has already determined that ISP calls should be exempt from the access charge regime and treated as local end user calls. So long as the Commission maintains the existing pricing structure for ISPs as end users, there is no legal basis for treating ISP traffic differently than the traffic of any other similarly-situated end users for the purposes of reciprocal compensation.

Appropriate Uses of the Bona Fide Request Process.

Bona fide request (BFR) processes are not on their face illegal. BFR processes should be limited, however, only to legitimate cases where they are necessary to fulfill extraordinary requests from competing carriers. In such instances, the use of a BFR process can advance the pro-competitive goals of the Act by enabling greater flexibility between ILECs and CLECs regarding interconnection and access to unbundled network elements. In order for the BFR process to be appropriate, it must be reasonable and nondiscriminatory, so that non-routine CLEC requests are treated as efficiently as requests from the BOCs' own business units. It is critically important that BFRs should not be required for what should be ordinary business-to-business interactions. In such cases, requiring CLECs to comply with costly and time-

consuming BFR processes is discriminatory and is an unreasonable term and condition of interconnection in violation of the Act.

The Commission's Authority to Require BOCs to Provide Redundant and Diverse 911 Trunks.

Pursuant to sections 251(c)(2) and 271(c)(2)(B)(vii), a BOC has the duty to provide interconnection on rates, terms, and conditions that are just, reasonable, and nondiscriminatory and in particular to provide nondiscriminatory access to 911 and E911 services. Thus, a BOC must provide 911 trunks in a manner that allows CLECs to offer 911 services that are equal in quality to the 911 services that the BOC offers to its own customers. Diverse and redundant 911 trunks are needed to ensure that CLECs can provide equal-in-quality services. Because 911 outages are more competitively damaging to CLECs than to the BOC, see Mich. Order ¶ 274, it is appropriate to require diversity and redundancy even if the BOC has chosen not to build similar diversity and redundancy into its own network.

Further authority for requiring a BOC to provide diverse and redundant 911 trunks can be found in the Commission's statutory mandate to promote the safety of life and property. See 47 U.S.C. § 151. Ensuring effective 911 service is an important part of the Commission's implementation of that mandate. See Mich. Order ¶ 257.

Conclusion

The Commission has ample authority to implement most of the critical provisions of the 1996 Act. For the Act to achieve its purpose and bring competition to monopoly local telephone markets, the Commission must make full use of that authority.

April 28, 1998

EXHIBIT WNS OSS Reply – 2

Deposition of Greg Berman and Jack Runnels of Albion

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

-----X
In the Matter of:)
)
INVESTIGATION CONCERNING THE)
PROPRIETY OF PROVISION OF)
INTERLATA SERVICES BY BELL SOUTH)
TELECOMMUNICATIONS, INC.,)
PURSUANT TO THE) NO. 96-608
TELECOMMUNICATIONS ACT OF 1996.)
-----X

Depositions of GREG BERMAN and JACK
RUNNELS, taken by MCI pursuant agreement of
counsel, before Carolyn J. Smith, Certified
Shorthand Reporter, Registered Professional
and Merit Reporter, and Notary Public, at
675 West Peachtree Street, Suite 4200
BellSouth Center, Atlanta, Georgia, on the
14th day of August, 1998, commencing at
approximately 9:45 a.m.

CHILDERS & SHELNUTT, INC.

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C O N T E N T S

	<u>Page</u>
Examination by Mr. O'Roark.....	7
Examination by Mr. Hopkins.....	86
Examination by Mr. Atkinson.....	127
Examination by Mr. Alexander.....	141

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2 Also Present:

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- 4 Mr. Jay Bradbury
- 5 Mr. Mark Turner
- 6 Mr. Dan Smith
- 7 - - o o 0 o o - -

8 (Pursuant to O.C.G.A. 9-11-28, the
9 reporter made disclosure.)

10 MR. ALEXANDER: I'm Tom Alexander, with
11 BellSouth, and we've given attorney appearances
12 previously to the court reporter, but I just
13 thought I would start it. MCI requested that
14 BellSouth make available witnesses from Albion.
15 Mr. Stacy, a BellSouth witness, has attached the
16 Albion report as a part of his testimony in
17 Kentucky Case 96-608.

18 And BellSouth is voluntarily producing
19 and Albion has voluntarily agreed to have
20 witnesses here for the parties to depose in the
21 Kentucky Case 96-608. Initially, MCI requested a
22 representative of Albion.

23 Subsequent to that, they requested a
24 specific individual in addition to the
25 representative. So there are in fact -- and that
person was Mr. Runnels. We have Mr. Runnels here,
again, appearing voluntarily by agreement. Excuse

1 me, there is no formal notice or subpoena issued.
2 And we also have Mr. Berman here from Albion
3 testifying.

4 BellSouth, as yesterday with the
5 M/A/R/C Research witness that MCI requested a
6 representative from, will be defending the
7 information attached to Mr. Stacy's testimony in
8 the case as it relates to Albion.

9 And that's the only purpose that
10 BellSouth has voluntarily agreed to produce these
11 individuals is to talk about the report in the
12 Kentucky Case 96-608 that Albion had done for
13 BellSouth in this, styled Ordering/Pre-ordering
14 Integration Interface Software. And Albion --
15 their letterhead is on that. And it's their work
16 product.

17 Albion also has an attorney here. I'll
18 let you give your name.

19 MR. D'CRUZ: Jason D'Cruz from Hunter,
20 MacLean, Exley & Dunn here in town.

21 MR. ALEXANDER: And with that, is there
22 anything else we need to get started? I guess
23 we'll allow MCI -- need to swear the witnesses in
24 first today. Let's do that, and then we'll turn
25 it over to MCI to start.

1 MR. D'CRUZ: Are we going to do a
2 panel?

3 MR. ALEXANDER: Oh, we need to clarify
4 that. We have them sitting here together as a
5 panel. If you want them as a panel, that's fine.
6 If you don't, we can do them individually. We
7 would offer up Mr. Berman as the project manager
8 first, and then Mr. Runnels, in that order, if you
9 want them individually.

10 But just thought it might expedite them
11 to offer them as a panel. But it will be your
12 choice. The only caveat I would put in is if you
13 do them individually and a question comes up that
14 you should have asked the one first, there's not a
15 second deposition.

16 There's one deposition each, which I
17 think everybody agrees is fair, particularly if
18 we're offering them as a panel. With that
19 understanding, we will leave it up to the
20 intervenors' counsel to choose a panel or
21 individually.

22 MR. O'ROARK: Panel is okay with me.

23 MR. HOPKINS: Panel is fine with me,
24 provided that if we choose, we can direct a
25 question to a particular panel member.

1 MR. ALEXANDER: That's okay. However,
 2 if another one of these gentlemen thinks they are
 3 more appropriate to answer it, I think they should
 4 be allowed to respond after the one you've
 5 directed it to has given their answer. With that
 6 understanding, it's not a problem.

7 All right. I guess you guys are as a
 8 panel. And we'll let the court reporter swear you
 9 in.

10 GREG BERMAN and JACK RUNNELS,
 11 having been first duly sworn, were examined and
 12 deposed as follows:

13 EXAMINATION

14 BY MR. O'ROARK:

15 Q. Mr. Berman, Mr. Runnels, my name is De
 16 O'Roark. And I represent MCI. Let's start -- I
 17 didn't get to meet you before the deposition. Can
 18 you tell me who is who? Who is Mr. Berman, and
 19 who is Mr. Runnels?

20 BY MR. BERMAN:

21 A. This is Mr. Runnels. My name is Greg
 22 Berman.

23 Q. Have either of you been deposed
 24 before?

25 A. No.

1 BY MR. RUNNELS:

2 A. No.

3 Q. Has anybody explained to you what a
4 deposition is about and how it works?

5 BY MR. BERMAN:

6 A. Yes.

7 BY MR. RUNNELS:

8 A. Yes.

9 Q. Let me give you just a couple of ground
10 rules. As you can tell, I'm going to be asking
11 you a series of questions. We have a reporter who
12 is going to be taking down my questions and your
13 responses. If I ask you or if any other attorney
14 asks you a question and it's not clear to you,
15 feel free to say that and ask us to rephrase so
16 that we can be as clear as we possibly can.

17 Now I understand that you are both, as
18 Albion representatives, being represented by
19 counsel today; is that right?

20 BY MR. BERMAN:

21 A. That's correct.

22 Q. And your counsel is Mr. D'Cruz?

23 A. That's correct.

24 Q. Mr. Berman, let me direct a few
25 questions to you on general background. Can you

1 give us a thumbnail sketch of your educational
2 background after high school?

3 A. My educational background?

4 Q. Yes, sir.

5 A. My undergraduate degree is from Auburn
6 University in 1988, in operations research. I've
7 got a Master's degree from the University of Texas
8 in Dallas, 1991.

9 Q. What did you get your Master's in?

10 A. Information systems.

11 Q. Which is basically computers?

12 A. That's correct.

13 Q. After '91, can you give me a thumbnail
14 sketch of your employment background?

15 A. I worked for Texas Instruments in
16 Dallas for six years. After Texas Instruments, I
17 worked for -- started working for a consulting
18 company in Dallas called Montare International,
19 M-o-n-t-a-r-e.

20 Q. That was in roughly 1997?

21 A. No. That was in -- actually, let me
22 back into this. Prior to working for Albion for
23 two years, I worked for Brannon & Tully here in
24 Atlanta for two years. Started with Albion in
25 1996, June 1.