1 market. BellSouth can't find a single other carrier that
2 sells switching on a wholesale basis to other carriers.
3 That's why they're pricing it -- there is no market test to
4 their "market can bear," which is why when you look at the
5 numbers, there's 450,000 fewer competitors getting lines in
6 the BellSouth region today -- or 450,000 lines -- than just
7 six months ago. It's a 30 percent decline.
8 What you have is local competition collapsing at
9 the very same time that BellSouth's long distance market
10 share is approaching north of 60 percent. 271 is becoming
11 meaningless unless you act to set rates.
12 BellSouth's other argument is that they should be
13 able to charge special access rates, which are not
14 negotiated and in fact are established through exactly the
15 process that Dr. Taylor criticized. They're based from
16 historic embedded costs. Our main response to BellSouth's
17 special access argument candle is those services existed
18 when Congress adopted the telecom act. If all Congress
19 wanted to have available were special access services, it
20 would not have written Section 271 into the Act, because
21 they already existed. In fact, it would make BellSouth's
22 Section 271 obligation no different than any other ILEC that
23 doesn't have a 271 obligation at all. Again, it totally
24 vacates it.
25 So at the end of the day, our testimony explains

1 to you the basic just and reasonable standard as it has
2 traditionally been applied. We applied it using BellSouth's
3 cost information, we proposed rates that produce
4 substantially higher prices than what carriers get today and
5 we've explained that there is no market for switching, and
6 special access just isn't good enough.
7 Thank you.
8 MR. MAGNESS: Mr. Gillan is now available for
9 cross examination.
10 CHAIRMAN WISE: Commission.
11 MR. WALSH: Thank you, Mr. Chairman.
12 Good afternoon, Mr. Gillan. My name is Dan Walsh
13 on behalf of Commission staff.
14 THE WITNESS: Good afternoon -- good evening.
15 CROSS EXAMINATION
16 BY MR. WALSH:
17 Q I just wanted to start with a couple of areas of
18 clarification. Could you refer to page 16 of your
19 testimony, please? Beginning on line 4. You say that
20 BellSouth's penetration of the consumer and small business
21 market is approximately 60 percent. And you're discussing
22 the long distance market here, is that correct?
23 A Yes.
24 Q And then are you still discussing long distance
25 market at the bottom of this paragraph where you state that

1 BellSouth's wholesale lines have fallen by more than 400,000
2 in the last six months alone?
3 A No, those have been wholesale lines provided to
4 carriers for local exchange service, principally UNE-P and
5 UNE-L. Which by the way, on that 450,000 number, the
6 previous witness claimed that some of these might have gone
7 to UNE-L by itself. It's useful to note that in the six
8 months when these lines went down -- the lines for switching
9 went down by 450,000 lines in just six months, the total
10 gain in the BellSouth region for loops was 8000 lines. So
11 the idea that somehow all of these lines are going over to
12 some other configuration is just patently false. There's no
13 way 450,000 lines goes down and 8000 lines go up and it's
14 any significant migration from one to the other.
15 Q Thank you. I'd like to now refer you to page 19
16 of your testimony, beginning at line 8. Are you there?
17 A Yes.
18 Q You state that BellSouth has testified that its
19 concerns with the FCC's TELRIC methodology do not apply to
20 switching and transport network elements, is that correct?
21 A Yes.
22 Q And then you quote from the testimony of a Mr.
23 Robert McKnight on behalf of BellSouth in a South Carolina
24 proceeding, correct?
25 A Yes.

1 Q In the testimony excerpt you provided, Mr.
2 McKnight states that the distortions in the TELRIC results
3 are less evidence in switching and transport network
4 elements than in the calculation of unbundled loop elements,
5 correct? I'm looking at the second paragraph.
6 A Yes -- yes.
7 Q Okay. So is it accurate then to state that the
8 witness didn't quite testify that BellSouth's concerns were
9 not applicable to switching and transport, but rather that
10 the concerns were diminished in that context.
11 A I think the words say that, but I think when you
12 read the entire testimony, it's -- it would be wrong to draw
13 that -- that it was only merely diminished. I mean the
14 reality here is that BellSouth has testified that generally
15 they use the digital switching and the fiber optic networks
16 that are assumed by the model, in the forward looking model.
17 When you look at Georgia, for instance, I think you're at
18 100 percent digital switching, so there's not a question as
19 to whether or not the architecture matches up or the types
20 of facilities match up for this state.
21 In addition -- I mean the briefing will be clear
22 on this point. Ms. Tipton just got off the stand saying
23 that the filed TELRIC studies fully recover BellSouth's
24 forward looking costs as they filed them. Now they had
25 disputes about how people adjust them and so to make sure

1 that we weren't complicating this docket with disputes about
2 input assumptions, I used their filed TELRIC studies to
3 produce these rates. So there shouldn't be any remaining
4 question as to whether or not those TELRIC estimates are
5 their actual forward looking costs, because I think that's
6 exactly what Ms. Tipton just testified to.
7 Q You may have answered this question in part with
8 your explanation, but being that we don't have the entire
9 testimony from Mr. McKnight in your testimony, are you aware
10 of the underlying data support that Mr. McKnight relied upon
11 to determine that the TELRIC results for switching and
12 transport network elements are less distorted than loop and
13 transport?
14 A It was along the lines of what I describe, the
15 fact that there was -- you use the actual network topology,
16 you know, you actually look at where BellSouth wire centers
17 are when you model this, you're not trying to guess where
18 they should be, you use where they are. And that means
19 you're locked into where the transport rates actually go
20 between and it means you're locked into how many switches
21 they have.
22 We'll be glad to -- actually, I think the
23 testimony that this is cited from is already in the record
24 of this proceeding from phase one. It was a cross
25 examination exhibit and so it's already in the record in

1 this proceeding.
2 Q Okay, thank you. And I take it that you agree
3 with Mr. McKnight's conclusion on this point?
4 A Yes, and the reality is that TELRIC has been
5 maligned through repetition rather than substance. There
6 are issues about how analog or copper loop costs might get
7 estimated, but for the things we're talking about here,
8 those concerns don't apply and never have. Plus, the whole
9 notion of TELRIC as being too low is -- this is going to
10 sound too much like an economist, but when Dr. Taylor was up
11 here talking about incremental costs, the incremental cost
12 he was referring to is not TELRIC. The incremental cost
13 he's referring to is a much, much, much lower number than
14 TELRIC because TELRIC is not incremental in the way an
15 economist has used the term.
16 So the minute you agree to even compensate
17 BellSouth at "TELRIC", you're actually paying them a rate
18 the is already several multiples of their incremental cost
19 before you even get into the adjustments I made to make it
20 higher than TELRIC.
21 Q I'd like to switch now and ask you a few questions
22 about how you envision the Commission, the Georgia
23 Commission, going forward in this proceeding. If the
24 Commission sets just and reasonable rates in this proceeding
25 and the parties operate under those rates going forward, is

1 it your expectation that at some point, the Commission would
2 revisit those just and reasonable rates and set new just and
3 reasonable rates?
4 A I think it's possible. I think what would need to
5 happen is you set the rates now and you wait to see how the
6 market evolves and you wait to see what other information
7 comes to light. One of the things that didn't come out here
8 was that Dr. Taylor has, over time, explained that TELRIC is
9 too high as a price for BellSouth, so that BellSouth should
10 be able to price its retail services below that level. Now
11 over time if the Commission were to observe situations where
12 BellSouth is going into the retail market and pricing its
13 retail services below the wholesale rates that I'm
14 recommending here, then I think that might be a reason for
15 the Commission to come back and revisit them, perhaps with
16 the idea of looking at bringing them down, since BellSouth,
17 you know, would be engaged in a price squeeze, which would
18 be unreasonable and unlawful.
19 On the other hand, there might be other situations
20 that might cause the Commission to come back and look and
21 have an upward adjustment.
22 I think for right now, today, what this market
23 absolutely needs are these prices rather than basically
24 being subject to what BellSouth believes the market can
25 bear, which is them getting all the customers back. We're

1 running out of time. You know, you can't lose nearly half a
2 million lines every six months before all the competition in
3 the southeast is gone.
4 Q Would there be a time where instead of setting new
5 just and reasonable rates, the Commission would no longer
6 require BellSouth to file just and reasonable rates, under
7 your expectation, and what would trigger that?
8 A I think under the law, the way you'd get to that
9 point is that BellSouth asks for and receives a forbearance
10 from the FCC from the obligations of 271. Now the ILECs
11 have tried to get the FCC to tell them that they're no
12 longer required to comply with 271 and the FCC has granted
13 them some relief for broadband facilities and been very
14 careful to make sure that it did not grant them any of that
15 relief for the elements that we're talking about here,
16 relating to DS1 loops and transport. But if you look at the
17 Omaha -- when the FCC granted Qwest forbearance,
18 deregulation for some of its retail services in Omaha, even
19 there, the FCC was clear, they wanted to continue the 271
20 obligations.
21 So at some point, it may be appropriate to relieve
22 BellSouth of the 271 obligations, but the path to that is
23 their requesting a forbearance action by the FCC.
24 Q If the Commission did not set just and reasonable
25 rates, would that be the same -- for the 271 obligations --

1 would that be the same thing as forbearance for BellSouth?
2 A I think as an effective matter, it would be the
3 same as forbearance. Now BellSouth's lawyers will argue
4 that it's not forbearance because it's not legally
5 forbearance, but what's the difference between being told
6 that rules don't apply to you and being told that you can
7 charge whatever you want? You know, in the real world,
8 those might -- you might have used two different words to
9 describe the same outcome. Right? Being told that you're
10 not going to be held to any kind of meaningful standard or
11 being told that the standard is gone has the same practical
12 effect in the real world. And I think that's one of the
13 problems here, BellSouth is trying to get, through a back
14 door of being able to charge whatever they want, something
15 that the FCC never granted them in the front door, which is
16 forbearance from 271 obligations.
17 Q And the process that you're recommending for the
18 Commission to determine just and reasonable rates is laid
19 out on pages 21 and 22 of your testimony, the two step
20 process?
21 A Yes, it is.
22 Q Okay. Your first step involves using the forward
23 looking prices that BellSouth proposed in Docket Number
24 14361-U, the cost docket; is that correct?
25 A Yes.

1 Q And for clarification, are you referring to
2 BellSouth's initial filing in the first phase of the docket
3 as supplemented with its testimony on cost of capital and in
4 the second phase of the proceeding?
5 A Yes, it was the latter of those. And I note these
6 are -- that very step of using their filed TELRIC not only
7 gives them more money, higher prices than the Commission
8 later found was appropriate for TELRIC, but if you look at
9 some of the trade secret documents that were distributed,
10 you'll see that these filed TELRIC rates are themselves
11 substantially above BellSouth's incremental cost, at least
12 for switching, which is -- which they provide the cost
13 information for in the exhibits Mr. Magness introduced.
14 Q Okay, and you got ahead of me a little bit on the
15 questions because I think you were --
16 A I'm sorry.
17 Q No, that's fine, I just wanted to point out that
18 there were -- as I understand your explanation of this first
19 step, you refer to two benefits that can be derived from
20 this first step. One being that the Commission will be
21 granting BellSouth -- maybe not a benefit, but support for
22 your proposal -- the Commission will be granting BellSouth a
23 higher rate of return on Section 271 elements than elements
24 offered pursuant to Section 251, and will also eliminate any
25 dispute as to whether the appropriate input assumptions have

1 been used. Is that a fair characterization of your
2 testimony?
3 A Yes.
4 Q Okay. Now other than it being higher than the
5 return on elements subject to Section 251, is there anything
6 else that makes these rates appropriate for Section 271
7 elements?
8 A Well, I think at the end of the day, on the one
9 hand, BellSouth gets more money; on the other hand, CLECs
10 still have, I believe, a meaningful opportunity to compete.
11 They won't have the same opportunity to compete as they've
12 had in the past, but I think you'll still be granting them
13 an opportunity to provide some retail services in
14 competition with BellSouth. So that would be a benefit of
15 it.
16 If there's more, it's not coming to my mind right
17 now.
18 Q I didn't want to interrupt, but I wasn't sure --
19 you looked like you were still thinking.
20 A Well, I was, but that didn't mean anything came
21 out.
22 COMMISSIONER EVERETT: Getting old.
23 THE WITNESS: Not the age, it's the miles.
24 (Laughter.)
25 BY MR. WALSH:

1 Q Your second step is to increase the overhead
2 loading applied to the direct cost measure described in the
3 first step of your proposal, correct?
4 A Yes.
5 Q And in this discussion, you mention shared and
6 common costs, correct?
7 A Yes.
8 Q Now is that the only input that would have to be
9 adjusted in this part of the process, or are there others?
10 A No, that would be the only one.
11 Q Okay.
12 A The first part of the process gives you a generous
13 estimate of direct cost and the second part of the process
14 is then giving a recovery to joint and common, which is
15 basically the form of the new services test that the FCC
16 uses.
17 Q And are you recommending a specific increase?
18 A I increased all the allocations to 20 percent.
19 They varied inside the BellSouth cost models, but they
20 averaged around 15 percent and we increased them by about a
21 third, to 20 percent.
22 Q Okay. And on that, let me get you to refer to
23 page 31 of your testimony where you're talking about your
24 recommended flat rate.
25 A Yes.

1 Q This is for switching.
2 A Yes.
3 Q Okay. And if I could just get you to clarify
4 again, what was the particular number that you were making
5 the 20 percent adjustment on here, that you were talking
6 about in the testimony?
7 A I adjusted each of the rate elements that the
8 Commission uses for 251 switching, the port, the features
9 and the usage, and then rolled it all up into a single
10 composite flat rate per month.
11 Q Okay, and were there any other assumptions that
12 you made in coming up with that recommendation?
13 A Just the same assumption I did in the first step,
14 I used BellSouth's cost studies and not the cost studies the
15 Commission approved. Which, by the way, there was one other
16 benefit and I probably should state this very clearly.
17 Obviously we all know BellSouth is going to appeal this and
18 BellSouth is going to try and use every argument they can
19 and one of the arguments they're going to try and say is
20 that somehow this is recreating TELRIC based access. And so
21 I wanted to make absolutely clear that the prices we are
22 paying are above TELRIC levels. Now I don't think their
23 argument has merit, but I also want to make sure that the
24 Commission is in the strongest legal position possible.
25 Q Could you refer to page 26 of your testimony?

1 A Yes.
2 Q And you recommend here that a methodology to
3 calculate an estimate for the contribution to shared common
4 overhead costs, correct?
5 A Yes.
6 Q Could you explain, please, how the contribution to
7 the shared/common/overhead increase produces the rates for
8 loops, switching and transport that you recommend?
9 A Yes, basically what it is is that if you go back
10 into the cost model and reverse out whatever contribution
11 that BellSouth had used, which as I indicated varies
12 somewhat by different asset and different rate elements, but
13 they're around 15 percent, some are a little bit higher,
14 some are a little bit lower -- backed all those out in
15 effect, and then plugged in 20 percent. So BellSouth has a
16 higher contribution to shared and common costs in the rates
17 I propose. It's uniform, 20 percent across all of these
18 rates, whereas in the TELRIC studies, BellSouth had used a
19 variety of factors that varied by different rate element.
20 MR. WALSH: Mr. Chairman, I'd like to make a
21 hearing request at this time. Mr. Gillan, could you provide
22 all the workpapers, inputs and any runs of models you used
23 to produce these results?
24 THE WITNESS: Yes, we can.
25 BY MR. WALSH:

1 Q Thank you. Mr. Gillan, are you familiar with the
2 staff recommendation in the cost docket, Docket Number
3 14361-U?
4 A In general terms, yes.
5 MR. WALSH: Mr. Chairman, I'd like to provide the
6 witness with a copy of the staff's recommendation in that
7 Docket at this time.
8 CHAIRMAN WISE: That's fine.
9 MR. WALSH: I'll wait for a moment as it gets
10 passed out.
11 (A document was proffered to the witness.)
12 MR. WALSH: Mr. Chairman, I'd ask that the staff
13 recommendation be marked for identification as Staff Exhibit
14 Number 1.
15 CHAIRMAN WISE: So marked.
16 (The document referred to was marked for
17 identification as Staff Exhibit
18 Number 1.)
19 BY MR. WALSH:
20 Q Mr. Gillan, I'm not going to ask you questions
21 specifically on particular adjustments in the staff's
22 recommendation, but if you need to refer to anything before
23 answering the question, I wanted you to have that document.
24 In your proposal, you're starting with BellSouth's
25 proposed UNE rates in 14361-U. But if I understand your

1 analysis, you don't endorse those as UNE rates, you think
2 that they are inflated, correct?
3 A Yes, that why -- the charts that I've used and the
4 information I've provided in the testimony, in comparing
5 them to TELRIC compare them to the rates adopted by the
6 staff through the remand process.
7 Q And if the Commission were to adopt the staff's
8 recommendation at tomorrow's administrative session, then
9 that would be the Commission stating that they believe that
10 what is in the document that I just provided you is the
11 appropriate TELRIC rates going forward for those elements,
12 correct?
13 A Correct.
14 Q If this Commission wanted to -- instead of
15 starting with BellSouth's numbers, if the Commission adopts
16 the staff's recommendation, the Commission will not have
17 endorsed, but rather start with the costs, the TELRIC costs
18 that it found to be appropriate in determining just and
19 reasonable rates, what would you tell this Commission on how
20 to go from that to just and reasonable rates? What steps
21 should the Commission take?
22 A I think I would do two things. I think if you
23 were to do that, I would increase only the common cost
24 allocation to make a discrepancy between the two. And I
25 would make the comparison of the rates that you were

1 producing to the cost -- the incremental cost rates that
2 BellSouth is looking at in some of these documents,
3 specifically in documents that Covad was addressing,
4 BellSouth provides its actual, what it believes to be its
5 incremental cost of DS1 loops, and in the switching
6 documents, they have their incremental cost of switching.
7 And I think you'll see that using a 20 percent common cost
8 allocator like I used in your cost model is still going to
9 produce rates that are substantially above BellSouth's
10 incremental cost, which are, as I understood Dr. Taylor's
11 testimony, the lowest just and reasonable rate is that
12 incremental cost. Then you would see a higher rate being
13 proposed there.
14 Q And Mr. Taylor testified today that he believed
15 that it would work to the disadvantage of CLECs that have
16 entered into commercial agreements if the Commission were to
17 set a just and reasonable rate for 271 delisted UNEs. Were
18 you here for that testimony?
19 A Yes, I was.
20 Q Do you agree with that statement?
21 A No. The main competitor for these CLECs is not
22 each other, it's BellSouth. The disadvantage they all face
23 is that BellSouth's cost that is relevant to them in their
24 pricing decisions, and regardless of what Dr. Taylor said,
25 BellSouth does actually look at cost information when it

1 prices. And when they have competitors, they look at
2 competitive prices too.
3 But all you're trying to do in establishing a just
4 and reasonable rate is to give a CLEC a fighting chance to
5 compete against the principal competitor in the marketplace,
6 which is BellSouth. Now some of those CLECs signed
7 agreements to get out of the market. I don't care what just
8 and reasonable rate you set. AT&T and MCI, today known as -
9 - well, small AT&T, but you know, known as SBC and Verizon,
10 they're not coming back. Those guys are gone forever. The
11 only people you've got left are these other carriers. Some
12 of them have signed agreements and they're on their way out.
13 Some of them have signed agreements, as the spreadsheet
14 showed, 70 percent of the ones that signed agreement, aren't
15 even in this state doing business. They don't have any
16 lines at all. Others have signed agreements that permit
17 them, if there's a 271 rate, to shift. Some of them may not
18 have. But all of those agreements expire in a relatively
19 short period of time.
20 Q Have any of those carriers, to your knowledge,
21 that entered into those agreements opposed the idea of
22 setting just and reasonable rates for 271 elements?
23 A Not a one, not a one. And some of them are
24 members of CompSouth and they're all aware of this case and
25 they've all supported it, if not financially, certainly

1 emotionally.

2 MR. WALSH: Mr. Chairman, that completes the

3 questions that I have. I'd ask that Staff Exhibit 1 be

4 moved into evidence.

5 CHAIRMAN WISE: It will be.

6 (The document, heretofore marked as

7 Staff Exhibit Number 1, was

8 received in evidence.)

9 MR. WALSH: Thank you.

10 CHAIRMAN WISE: Ladies and gentlemen, it looks

11 like it's a good spot to go ahead and break for the evening

12 and we'll go ahead and recess until tomorrow at what time,

13 what time is the notice for? Great, 1:30, thank y'all very

14 much.

15 (Whereupon, the hearing was adjourned at 5:50

16 p.m., to reconvene at 1:30 p.m. on February 21,

17 2006.)

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C E R T I F I C A T E

I, Peggy J. Warren, do hereby certify that the foregoing pages represent a true and accurate transcription of the events which transpired at the time and place set out in the caption, to the best of my ability.

Peggy J. Warren, CVR-CM, CCR A-171

CERTIFICATE OF SERVICE

I do hereby certify that I have this 5th day of April 2006 served a copy of the foregoing **Petition for Declaratory Ruling** by depositing a copy thereof, postage prepaid, in the United States Mail, properly addressed, upon:

Marlene H. Dortch
Federal Communications Commission
Office of the Secretary
445 12th Street, S. W.
Washington. DC 20554

Renee Crittendon
Acting Division Chief
5-C 122
445 12th Street, S.W.
Washington, D.C. 20554

This _____ day of April, 2006.

_____
Daniel S. Walsh
Assistant Attorney General

#393330

BEFORE THE GEORGIA PUBLIC SERVICE COMMISSION

In the Matter of:	
Generic Proceeding to Examine ISSUES RELATED TO BELLSOUTH'S OBLIGATIONS TO PROVIDE UNBUNDLED NETWORK ELEMENTS	Docket No. 19341-U

Hearing Room 110
244 Washington Street
Atlanta, Georgia

Tuesday, February 21, 2006

The above-entitled matter came on for hearing pursuant to Notice at 1:30 p.m.

BEFORE:

STAN WISE, Chairman
ANGELA ELIZABETH SPEIR, Commissioner
H. DOUG EVERETT, Commissioner
ROBERT B. BAKER, JR., Commissioner

* * *

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I N D E X

WITNESSES:	DIRECT	CROSS	REDIRECT	RECROSS
Joseph Gillan				
By Ms. Foshee	201	--	--	--
By Mr. Magness	--	257	--	--

EXHIBIT	FOR IDENTIFICATION	IN EVIDENCE
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5 - Gillan Summary Charts	271	271
BellSouth:		
3 - Gillan Tennessee Testimony	318	318
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5 - UNE-P DS0 Chart	318	318