UNITED STATES
FEDERAL COMMUNICATIONS COMMISSION

In the Matter of:)
)
VERIZON & SBC v. ASCENT) Docket No.:
& PACE,) 96-98
LOCAL CIRCUIT SWITCH UNE)
CARVE-OUT DEBATE)

Volume: 1

Pages: 1 through 91

Place: Washington, D.C.

Date: November 17, 2000

HERITAGE REPORTING CORPORATION
Official Reporters
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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Room 5-B516
FCC Building
445 Twelfth Street, S.W.
Washington, D.C.

Friday,
November 17, 2000

The parties met, pursuant to notice, at 2:06 p.m.

APPEARANCES:

COMMISSION

Ms. Dorothy Atwood
Ms. Michelle Carey
Mr. Jon Reel
Mr. Glenn Reynolds

PANEL

Mr. Dana Crowne,
Allegiance Telecom, Inc.
Mr. Thomas Jones,
Willkie, Farr & Gallagher
for Allegiance Telecom, Inc.
Ms. Mary Albert,
Allegiance Telecom, Inc.
Mr. Augie Trinchese,
Verizon Communications, Inc.
Mr. Jon Banks,
BellSouth
Ms. Kathie Levitz,
BellSouth
Mr. Dave Scott,
Birch Telecom
Ms. Genny Morelli,
Pace Coalition
Mr. Joe Gillan,
Pace Coalition
Mr. Charles Hunter,
Ascent Network Services
Mr. Ed Shakin,
Verizon Communications, Inc.
Mr. Gary Phillips,
SBC Communications, Inc.

P R O C E E D I N G S

(2:06 p.m.)

MS. ATWOOD: Okay. Let's get started. I think it would be useful, since we're transcribing this, to identify who you are and who you're representing for the transcript, so that those that read this afterwards know who we are. For the FCC, it's Dorothy Atwood.

MS. CAREY: Michelle Carey.

MR. REEL: John Reel.

MR. REYNOLDS: Glen Reynolds.

MR. CROWNE: My name is Dana Crowne. I'm with Allegiance Telecom.

MS. ATWOOD: And I should say this. If we could speak clearly into the microphone.

MR. JONES: Thomas Jones, Wilkie Farr, for Allegiance.

MS. ALBERT: Mary Albert, also with Allegiance Telecom.

MS. LEVITZ: Kathie Levitz, Bell South.

MR. BANKS: Jon Banks, Bell South.

MR. SCOTT: Dave Scott, Birch Telecom.

MS. MORELLI: Genny Morelli, on behalf of the Pace Coalition.

MR. GILLAN: Joe Gillan, on behalf of the Pace Coalition.

MR. HUNTER: Charles Hunter, on behalf of Ascent.

MR. TRINCHESE: Augie Trinchese, Verizon Communication.

MR. SHAKIN: Ed Shakin, Verizon.

MR. PHILLIPS: Gary Phillips, SBC.

MS. ATWOOD: Great. Well, thanks for coming. I want to some spend a bit of time just getting some preliminary arguments out of the way and understanding -- we've had you come in and talk to us separately. We've got a lot of record on this proceeding. And one thing seems to be fairly uniform, and that is that no one likes the order as it stands, and that there are three moving parts, as I can tell, to the order now that we've discussed, that parties have brought to our attention.

The first moving part is whether we got it right with limiting it to the MSA -- Zone 1 top 50 MSAs. The other moving part is that we adopted the four-or-more line count, whether we got that right. And then, the other piece of this is the association with the EEL and the carve-out would be only available where the EEL was available. And so I guess it would be useful to just hear a little bit -- and I realize these will be general statements and we're going to get into the meat of each of these -- but just hear generally a few minutes from each side about kind of where you stand on each of those I mentioned and what you're asking this Commission to consider. And I don't know who would like to go first. Why don't we start with you guys.

MR. PHILLIPS: First, I think that, even among many of the CLECs, I think that favor more stringent unbundled switching requirements, there seems to be agreement that the Zone 1 restriction was arbitrary and should be eliminated. Speaking for SBC, the Zone 1 restriction means that unbundled switching relief would be potentially available in 64 out of our 3,000-plus wire centers, meaning about 2 percent of our wire centers. Those wire centers serve only one-sixth of the business lines in the top 50 MSAs and 3 percent of our lines overall, so it gives us virtually nothing.

And we think that the larger picture, it's arbitrary, because the zones were established by companies based on criteria that have really very little to do with the issue before the FCC today. Some companies made their decisions to establish zones based on circumstances that really have nothing to do with this and, therefore, there's a wide disparity, even among the ILECs as to how central offices were classified. I think in the case of Bell South, the zones are not even on a wire-center-by-wire-center basis but on a geographic basis. So there's a disparate impact among the ILECs Zone 1 requirement and we think it clearly needs to be eliminated.

With respect to the four-line cutoff, we think that certainly there is no basis in the record for raising that. We think that a cleaner, more logical cutoff would be just a clean, biz-res split. And with respect to the EEL, we think that there should be no requirement that there be relief conditioned on the availability of the EEL.

MS. ATWOOD: Okay. You guys want to --

MR. TRINCHESE: For Verizon, I won't spend much time on Zone 1. Obviously, we don't support a Zone 1 restriction. It wasn't intended to deal with UNEs or the provision of unbundled switching. It was an access structure and really has no relationship to UNEs at all, and we favor doing away with the restriction. As far as the four-line or more limit, our experience and our data has demonstrated to us that platform or unbundled switching is not being used to serve the business market. It's being served by, primarily, other carrier switches. There is switching available, and we'd like to see the restriction go away, in favor of res-biz split.

As far as the EEL goes, we don't believe that the EEL is -- should be a requirement of the unbundled --

the switching limitation. Rather, that it shouldn't have any relationship to it at all. And we have a pending court case in front of us that talks about new combinations, which hasn't been decided yet. It can create some problems with making it a requirement of unbundled switching.

MS. ATWOOD: Okay.

MR. HUNTER: On behalf of Ascent, I'd agree with Gary to one extent, that I do believe that Zone 1 is arbitrary to the extent that we think the Commission got it right to start with, that a lack of unbundled switching impairs, and clearly impairs, our members' ability to compete in the market. So, to the extent that there's a change in the geographic area, we think the geographic area should be shrunk to nothing. That is, it hasn't been our position on reconsideration, but that's where we would like this thing to come out.

With respect to four or more lines, we do think that --

MS. ATWOOD: So, therefore, it isn't your position, then.

MR. HUNTER: Excuse me?

MS. ATWOOD: If it's not your position --

MR. HUNTER: It's -- I mean, it's what our preference would be, particularly given the way the market has turned over the last six months. With respect to four or more lines, we do believe that was arbitrary, that there is no rational relationship to where the impairment would be if an impairment exists. We think the only rational linkage is to the T-1 facility. We think that that level should be increased to the T-1 facility. Absent increasing it to that kind of an, either a line threshold or physical facility threshold, our members are denied access -- denied viable, realistic access to their historically targeted market.

Our members, essentially, are small carriers that serve small business. UNE-P, effectively, is the only means -- viable means, by which our members can reach that market.

MR. GILLAN: On behalf of the Pace Coalition, I guess I'm going to take them in the following order. With respect to the line count, our fundamental view of this is that there is a digital divide in terms of people's ability to provide competitive services and that, fundamentally, analog lines are more efficiently served over UNE-P. When a customer gets large enough to be served on digital facilities then people can provide -- find other ways of meeting it. So, in terms of the four lines, we think it needs to be changed because it doesn't track correctly the break point between analog and digital services.

With respect to Zone 1, I'm going to have to disagree with Gary. I don't think there's unanimity that Zone 1 was arbitrary. In fact, I think that there was a logical basis for Zone 1, even though we no longer think that you necessarily need to apply it.

And here's the logic: In a world where customers can use their own facilities to serve digital customers, the question arises as to where are concentrations of DS-1 customer located? And while the zones were not created for UNE purposes, they were created to answer a very similar question. When the Commission granted the ILECs pricing flexibility for special access services -- services that are defined very much by the DS-1 break point, those are DS-1 customers -- it told the ILECs that they could come back with pricing flexibility plans that gave them pricing flexibility for these dense concentrations of DS-1 customers.

So, in terms of its usefulness, it's not an arbitrary conclusion, it was a conclusion that basically said the ILECs have told us this is where concentrations of DS-1 customers are, this is where we don't think it's necessary for switching to be available. Now, the ILECs may have applied all that logic arbitrarily, and so that the result has nothing to do with concentrations of DS-1 customers, but there was a logical tie.

That said, as a practical matter, we have taken the position that if a line count increases to match this break point between analog and digital service, then you don't need to focus exclusively on those end offices inside these large cities where their customers were concentrated, because carriers can reach out from those end offices and serve other DS-1-and-above customers in the city, and that the rule can be expanded in that sense, so that DS-1-and-above customers in the entire city would be subject to the ULS restriction.

Now, does that mean you're tied to an EEL? No, not in our view. Only because, realistically, the EEL that people were talking about in the environment leading up to this restriction was an unrestricted EEL that could be used for anything, and as a result of things that happened since then, the EEL really is nothing more than a special access circuit that a carrier can order and then roll if it meets the test. And that obligation exists outside the MSA, inside the MSA, with or without switching. There's no real reason to -- there is no tie any longer between what you're allowed to buy and whether they took switching on or off the table.

So, as far as we're concerned, just view it as separately, address it separately. The switching carve-out -- look at where are, you know, what type of customers can people serve efficiently? Our view is it's analog versus digital, and the best break point is just, has the customer obtained digital service at DS-1 or should you do some approximation of the line count?

MS. ATWOOD: Which would be?

MR. GILLAN: Our analysis is around 20 lines. Quite frankly, we'd still tell you the cleanest, simplest, most effective way is to just trust the customer. When they want a DS-1, they will buy one. And then, just don't let carriers buy a DS-1 from the ILEC and connect it to a DS-1 switch port. And you get, effectively, the same outcome without going through all this approximation. But we recognize that some customers that have not yet got a DS-1 perhaps could be served by a DS-1. It happens every day, and so, we've gone through this process of approximating it for you.

MS. ATWOOD: Okay. I have questions for all of you.

MR. SCOTT: I'm Dave Scott with Birch Telecom, and it probably bears describing a little bit about Birch, because many of you may not be familiar with it. We're a CLEC that has traditionally served underserved markets, and so, you'll find us serving a few large metro areas, like Allegiance, but most of what we do is serve smaller places than that. We serve 23 cities, we have approximately a quarter-million access lines of service, we have residential accounts, we have business accounts. Our average line size is about five. And about 72 percent of our accounts are residential one-, two- and three-line accounts.

The platform in the availability of the switch port has been absolutely essential in the growth of our business.

MS. ATWOOD: You said your predominant business is residential one, two, three or residential and --

MR. SCOTT: No. Residential accounts and small business, one, two and three size. From our perspective, using the platform to serve customers is essential for the viability of competition in these market segments. We can get into a lot of the reasons for that. Some of them are economic. Some of them are operational. But from our perspective, any limitations on that erode our capability of going in and serving these markets. We also see that the line limitation is probably the worst piece of it, from our perspective. Operationally, it's very hard to deal with. I'll give you an example. We have a three-line customer, and now they order the fourth line. What do we do? So, I guess that's the part of this that's been the most difficult for us, and we would agree with Joe that we really think the cleanest cutoff point is at a T-1 level, and so, we strongly encourage that.

I think that as we get into this debate, the jury is still very much out on the viability of competition using a smart-build approach, using single lines below the T-1 level. And in particular, given how our industry is absolutely being battered in the financial community, I think this is an important issue for the FCC. It's pivotal. And right now, I think the jury's out on whether competition for the mass market -- and when I say mass market, I mean residential and small business -- will be viable. I believe the availability of the switchboard to be at the heart of that.

MS. ATWOOD: Can I just ask -- and I promised I was going to ask everyone separately, but I just can't resist because we just talked about the viability of the market. From what I've heard from at least SBC and Verizon -- and we haven't gotten to Bell South yet, I'm not sure if you guys are going to talk or were intending to talk. I'm sure you will -- but I'm hearing them say there's a general understanding that they're not talking about going -- that there still is and ought to still remain an impairment in terms of switching for residential markets. Right? Is that correct? So, in terms of having a platform available for the residential market and in terms of the concerns you've expressed, it's a viable entry strategy for the residential market, at least my understanding of the record that's been developed in this recon, has been, in fact, that's not really contested. What we're really talking about is the small business market.

MR. SCOTT: Yeah, our focus has been on the small business market. I'll go on to say that I think you're going to greatly limit competition for residential, as well. The fixed cost of getting in and serving the mass market. We spend, in Birch's case, approximately $100 million on systems. And so, when we go in and market service, it's essential for the way we do business in the mass market that we get as many customers as possible. It's why we've chosen to serve large and small markets, residential and business subscribers both.

So if we are impaired from going in and serving the small business market, you will see an effect on the residential market, as well.

MS. ATWOOD: Well, okay. You would be -- in order to have the platform, we have to determine if you are, in fact, impaired, not that failing to give you the platform impairs you.

MR. SCOTT: Right.

MS. ATWOOD: There's a difference. But okay, I understand. And thanks for coming, too, to give us the company's --

MR. BANKS: John Banks, with Bell South. I guess we'll have to say something. Just briefly -- and our reason is that we've lost very substantial numbers of small business lines to CLECs. And a very substantial percentage of the market has been lost to CLECs. The CLECs that have taken these lines and this market share have used UNE loops with their own switches, with their own loop facilities. So, if the debate's about impairment, we've successfully lost an awful lot of the market share to CLECs that don't use our bundled switching or UNE platforms to serve distant cities.

So we feel that the switching exemption would be much more sensibly drawn between business and residential. And based on the market facts, I think even the Zone 1 restriction isn't linked to the impairment that CLECs might have, because we've lost share in the major downtown areas and Tier 2 cities and throughout the region. We think that, really, the UNE switching should be available for residential customers and not for business customers, and that's the only distinction that should be drawn.

MR. CROWNE: As I said before, I'm from Allegiance Telecom, and what I'd like to do is just give you a few words on our experiences. Allegiance started operations in August of 1997, and we did our first hot cut onto an unbundled loop about eight months following that. We are currently in 26 of the top 50 MSAs, and by the end of next year, we expect to be in another 10 of that same list of the top 50 MSAs. Our provisioning methods are almost exclusively unbundled loops into our own switching facilities, and we target primarily small and medium-sized businesses.

Should I pass these around? This should give you an idea of kind of what we're doing, what our experience is for the customers that we are putting onto unbundled loops. And I think some of this is pertinent to the discussion. I also find myself in the awkward position of tending to agree with our friends in the -- so if I begin to stutter at times, you're going to have to forgive me in that regard.

Basically, what this says is that 87 percent of our customers have 10 lines or less. In fact, what it doesn't say on here is that a significant percentage of those customers are actually less than three lines, that we have had a great deal of success hooking up customers using unbundled loops and also getting them a cut onto our network, although there are certainly issues in that regard.

The question regarding whether the economic boundaries -- obviously, there's a density issue. On the top, the DMSAs -- to take your three pivotal items in order. We're typically in the more dense markets, and we're in the more dense parts of those markets. And so, whether or not that boundary is arbitrary, I don't know. I can tell you that in some of the wire centers that we're in, we are experiencing less density than just the Zone 1, and we are experiencing a sufficient number of lines to make it a viable business.

In regards to your question regarding whether three lines or four lines is the right number, our economies on unbundled loops are basically per -- our fixed elements are per wire center, if you will, so, whether or not it's two customers with two lines or one customer with four lines, there are some differences in what our economies would be. However, typically, that's minor. So, we don't really see a reason for there to be a difference between a three-line and a four-line customer.

I can tell you that I also disagree with the assertion that the break point between DS-1 customers and DSO customers is at 20. Our numbers tend to be anywhere from eight to 10. That's highly sensitive to unbundled loop rates, and DS-1 costs, with there being more options on DS-1 than there are on unbundled loops, obvously. So we don't see a logical split at three or four, necessarily. In fact, I would see no reason to differentiate other than the biz-res.

MS. ATWOOD: When you say eight to 10 lines, do you mean that you'll move over to a T-1 with a customer who wants eight lines?

MR. CROWNE: Yeah. In practice, right now, we're doing it at 12. We've talked internally about lowering that to 10, and we have, in some jurisdictions, proved to ourselves that we could do it cost effectively at eight. However, like I said, that's highly sensitive to the current trends on unbundled loop costs.

MS. ATWOOD: And are you finding, just as your business case, are you entering through UNE loop and then, once the lines are up at a certain level, moving them over to a T-1, or are you finding there are T-1 customers that come in --

MR. CROWNE: We kind of do all of that, if you will. We've -- generally speaking, an existing analog customer is kept as an existing analog customer, and an existing T-1 customer is kept as an existing T-1 customer. However, we've had a great deal of success recently in integrated access devices that will be provisioned over. Some combination of DS-1 facilities or DSL facilities on an integrated access device, and that has brought that crossover point down because there's a lot of new equipment, DSL technology.

MS. ATWOOD: Okay.

MR. CROWNE: So, we're actually exploring in one option, right now, bringing that down all the way to four lines for that crossover point, but that has yet to be proven out. We haven't intentionally marketed a conversion like you're describing. In regards to kind of the time frame it takes to enter a market in this -- like I said, it was eight months before we did our first hot cut of an unbundled loop. We have, currently of those 26 markets that we're in, four of them are at EBA-Dow (phonetic) positive. We expect another four or about eight of those markets to be at EBA-Dow positive or a cash flow break even by the end of next year. Those markets came up one at a time over the course -- since kind of the middle of '98 till now. Typically, we've found that those markets are nearing break even at something less than 20 months.

MR. JONES: You actually meant the end of this year. The eight markets --

MR. CROWNE: By the end of this year. I'm sorry. Thanks. Twenty months as being the key, the sort of parameter that we're seeing. So, you know, although there are certainly some issues regarding hot cut, and most of that procedural in nature, and getting the systems developed, it certainly is a workable, viable business model. In regards to EELs, I'm afraid I don't have much opinion on that. We haven't any experience with EEL provision.

MS. ATWOOD: Okay. I have questions about hot cuts that I want to talk to you guys about, so I'll use that as a segue in just a second, but from what I've heard in the general discussion, there isn't anyone in this room -- I just want to make sure I've got it right -- that supports our continuing restriction on the EEL, because of -- maybe it's for different reasons, but there is nobody in this room that really supports a continuing association with the EEL. Am I right on that? Okay. And then, I also heard -- and I'm not exactly sure this is your position -- I heard some support for retaining the Zone 1. I didn't hear anybody say, however -- challenge our 50 MSA. I heard a challenge to the zone within the MSAs, but I didn't hear a challenge to the selection of 50 MSAs. In other words, some geographical limitations. Now, I think you have a different position, don't you?

MR. TRINCHESE: Yes.

MS. ATWOOD: But I want to make sure I have the record right.

MR. TRINCHESE: Our position, if the carrier is not impaired based on some logic of switching being available, whether it would be that there is switching available, they can get access to loops, they have co-location -- whether it's in the top 50 MSAs or any geographical area, the limitation should be lifted. We've demonstrated and put on the record that there are sufficient -- there are significant switches, as well as significant rate centers being served by CLECs outside the MSA to the extent that some of the areas outside the MSAs have as many switches and rate centers being served by CLEC switches that the 50 MSAs have.

So, depending on how many, you know, where the logical point is -- one switch, two switches, three switches -- there is a difference, but there is switching available, there is competitive switching available, we are being competed with, with CLEC switches outside of the 50 top MSAs, and we feel that you should take into consideration not a geographical restriction, but where CLECs have switches, have obtained NXX codes and are serving customers.

MS. ATWOOD: And what is the number of switches that they have? I believe our order talked about four switches. I mean, how do you determine that, if there's no geographical limitation or a presumption that a certain amount of -- because I believe that the original order, in a sense, made a presumption that there were a certain number of facilities in geographical restrictions. I mean, how would we --

MR. PHILLIPS: In an MSA?

MS. ATWOOD: In an MSA, yeah. And, of course, in Zone 1, too. But how would we approximate the standard that you're describing?

MR. TRINCHESE: Well, our position is that if a CLEC provides switching in an MSA, it's not impaired and other CLECs are not impaired who provide the switching.

MS. ATWOOD: So one switch.

MR. TRINCHESE: One switch would be the logical break point. And I'm not sure of the order that you'd actually --

MS. ATWOOD: We rejected the one switch.

MR. PHILLIPS: Yeah. I mean, I could give a little bit of data on that point.

MS. ATWOOD: Okay.

MR. PHILLIPS: And I just want to elaborate on one point in response to the Zone 1. The zones were established years and years ago based on competitive conditions that existed at that time, and they were based on pricing decisions at the ILECs, which were a product of special access competition years ago. So, it is not true -- and I would disagree with Pace on this point -- that the circumstances that related to the establishment of the zones at that time, today, are relevant to the status of competition as it relates to the ULS question before you.

And I would just say that the proof, and I mean, sort of the facts, to me, are definitive on this point. When the condition was first established, Ameritech had 17 wire centers, total, in its region in Zone 1, and Bell South had well over -- and GTE -- each had well over 100. Now, the status of competition in those regions certainly is not that disparate, was not that disparate, that there should have been such a disparate result. So I want to move off that point now.

Just in terms of where is competition, there are actually heavy pockets of competition outside the top 100 MSAs, but if you look at the top, just focusing on the top 50, I'll give you some numbers in the top 100. In the top 100, there are 40 MSAs in the SBC region that are in the top 100 nationally. And in 35 of those 40, there are at least four CLEC switches, using the number that the FCC established. In the top 50 MSAs, there are 20.

Twenty of the top 50 MSAs are in the SBC region. And there are at least four CLEC switches in all 20 of them. There are, in fact, at least nine CLEC switches in 19 out of the 20.

If you were going to move away from an MSA approach and move towards a how many CLEC switches are there in an MSA, if you went to a number like four, that would cover most of the top 100 MSAs, I think, if not all.

MR. SCOTT: I might want to point out, though, if we start looking at the level of competition, I really think it's completely unrelated to the number of switches. And I think I'll give a pretty vivid example of that. One of the switches that you count is in Kansas City, Missouri, and it's in SBC's territory owned by Birch Telecom. We do not use that for sub-T-1 traffic, because of difficulty in the economics of doing that is to the point that we actually use the platform to serve customers even where the switch is free. So, I think it's important to point out, in our view, that a correlation between the raw number of switches in a given market and the true level of competition, especially at the lower end of the market, is just not fair.

MR. PHILLIPS: Right. And our response would just simply be that I have no doubt that that is, in fact, your policy and your business decision, but it is not necessarily a business decision that reflects the practice of most CLECs. And I'll make one other point, and that is, it has been alleged in the record that when SBC goes out of region, SBC will be using the UNE-P to serve small- and medium-sized business customers. SBC strategy out of region is to put switches in, to put co-location in, and when we can reach our switch, we will serve that customer using unbundled loops or our own loops. If we're laying fiber, fixed wireless service, before we do -- before we use the UNE-P.

So, it is not true that we will be relying exclusively on the UNE-P to serve customers with DSO analog loops. If we can reach our switch, we'll serve a residential customer or a business customer using a bundled loop.

MR. GILLAN: I've really got to respond to that.

MS. ATWOOD: Yes.

MR. GILLAN: It's actually two things.

MS. ATWOOD: Okay.

MR. GILLAN: The first is buttressing Dave's point about the fact that you can't really look at a switch and tell what kind of track is on it. It doesn't -- the existence of a switch doesn't answer that. Measures that we do have that try to give us aggregate market statistics, like traffic floats, as we shared with you, show that the switches that are deployed, measured at the market level, are heavily, heavily, heavily weighted towards inbound traffic, which we all know means that those switches are serving some specialized needs. I'm not -- we're not saying that they don't serve any end users -- that obviously would be an exaggeration -- but they are heavily focused in different market settings.

Secondly, it's not a question that it's Birch's isolated business judgment. We believe that the case is that the consensus business plan is to use switches at digital facilities and above. There are some outliers. We don't disagree. On the other hand, when you look at those outliers, you have to look more critically at their business plan than to just ask, for instance, can Allegiance serve some lines? Allegiance gets, from their 10-Q, about 43 percent of their revenue from reciprocal comp and access charges that are substantially higher than the ILEC.

Now, whether that's a good business strategy or a bad strategy has nothing to do with my point. My point is that when you look at a company, if you're going to say that other carriers that have different focuses that are more interested in serving end users than in collecting access charge revenue -- whatever the case may be -- you can't make a judgment as to whether they would be impaired simply because of an isolated instance of a carrier saying they've managed to do something, without looking at, well, how did you do it, what are the facts behind it?

Finally, with respect to SBC's out-of-business strategy, I don't believe anybody said that you were going to exclusively use UNE-P, and I certainly -- if we gave you that impression, we didn't mean to. However, your business strategy -- this is proprietary. It is certainly the case that a substantial element of that strategy was UNE-P-based for an extended period of time. And while it is possible for you to come to the FCC and indicate, we will do something in the future, you also have to be able to explain, I think, how is it that you can overcome these problems that other people have experienced? It isn't that you've got business strategy hasn't been tried and failed. It has been tried by a number of carriers.

And finally -- and then I'll turn it over, because I'm running out of oxygen here. It isn't just SBC. We can look at other ILECs who are here to tell you that they can't do -- that UNE-P isn't necessary. Verizon is being asked by the Pennsylvania Commission to split itself into a wholesale and retail arm. When they sat there and said well, gee, how will this retail arm provide service, the answer was UNE-P. GTE, the former -- before they became Verizon, entered the market and tried to serve small business customers and exited it when they concluded that they couldn't do it on resale -- UNE-P wasn't available -- and when they recast themselves with a new business plan, they had moved away from the small business to the medium and large business on their own switch in San Francisco before abandoning that in favor of just becoming a larger incumbent.

It's not just us. They have a lot of money. They all have all these out-of-region states. They don't need to come and tell you that they intend to do or they can do or somebody else should do. They can do, but they haven't. And I just don't see -- you know, until somebody is able to show you market statistics of things other than negligible entry, or revenue streams that are unrelated to end users, that you should conclude that all this is actually so simple, when nobody's been able to do it.

MS. ATWOOD: Well, actually, can I just ask you -- and not using confidential information, but I think one of the carriers has put on the record a showing that says there is fairly substantial loss in what would be considered to be the small business --

MR. GILLAN: Oh, thank you.

MS. ATWOOD: -- market, and that loss is attributed to -- at a time when the platform was not available, which would lead one to conclude that the condition was such that somebody was able to lure those customers away.

MR. GILLAN: Okay. Well, without trying to divulge the confidential information, but if I start getting -- my assumption here is that methodology is not confidential, but the numbers themselves are confidential.

MR. BANKS: Certainly, pipe up.

MR. GILLAN: Okay. First, the definition of small business used, as I understand it, is a number greater than $100,000 a year in telecom revenues. And we estimated out what kind of line count we're talking about, it was several hundred lines. So, that concept of small is, to us, very, very large.

Secondly, the measure of lines lost was the carrier just adding up every disconnect it had seen since the Act was passed. So, if in March 1996, they disconnected a hundred business lines, a hundred business lines were attributed lost to CLEC. And next month, if they lost 150 business lines, 150 business lines were lost to CLECs. And they cumulatively added up every single one of these lines that has ever been disconnected and said lost to CLEC, without ever asking did the customer buy a different service from us, did the customer go into a different market.

There is no way -- this same carrier that reflects that it has, quote, "lost" all these cumulative lines has its own program to migrate customers from switched access lines on the higher-speed facilities, which I believe shows up as a disconnect and then a new service, and is currently reporting that its equivalent business line growth is 40 percent a year and has been at the 40 percent year for the last several quarters. There is no way that they're experiencing the kind of line losses that they're describing to you while at the same time they have programs to migrate those customers onto other facilities and that process is growing at 40 percent a year. It is completely bogus.

See, this is where you're supposed to say Joe, you're getting too far out. It's an extreme methodology to try and estimate the kind of losses that they're describing, and you can't draw any conclusion from it. And under a basis where they never look at whether the customer bought another service.

MR. BANKS: Okay. I'll say you're getting too far out. But I've talked to other CLECs about this, but

Bell South put the information on the record. And just briefly, the revenue ceiling, it's relatively high, but that's just a ceiling. This includes all customers below there, and we've recently put on some more information that tries to slice it more finely so that you can exclude what you might think are upper-end business customers if you want and just look at the very lowest end. You know, the one- to four-line customer, the four- to 10-line customer. The disconnects were all evaluated, and the only disconnects that we counted were ones where people reported they were going to a competitive carrier. So, I think the disconnect numbers are correct.

And I think that information shows that we've lost a lot of lines to small business competitors before there was even a UNE platform available to business, and it's our experience that the carriers we're losing to are the carriers that have put switches in and are using their own loops or our UNE loops and are more or less following the Allegiance plan, although Allegiance -- I mean, there are several other carriers like Allegiance that are present in our region that are taking up lines, and that we continue to lose a very significant share on a monthly basis of small business lines.

And the lines that we lose most of are at the lower end of the market, the one- to 10-line sort of customer that most CLECs have identified as the sort of customer that the Bell companies aren't so good at giving personal service to. And the CLECs have this model of giving more personal service to those customers. So, the information we've put out, I think, is pretty reliable. And I'll sit around and go through it in more detail, but they are real disconnects and they are real market share losses.

MR. TRINCHESE: Dorothy, I want to just go back to some basics here and just figure out if I've missed something in the process. I've heard the arguments about the digital divide and analog to digital, and I'm a little concerned here that we're kind of losing focus. As far as --

MS. ATWOOD: Perhaps you are. I'm kidding.

MR. TRINCHESE: Highly possible. The intent of the Commissioner's effort to determine whether a carrier was impaired or not was, I believe, to determine whether or not a carrier could compete for a particular customer or to serve a particular customer. The studies that have been put forward and the arguments we've been hearing today kind of avoid that issue. It includes in the argument a conversion of an existing customer's service to a different service, and the argument is based on the fact that if I had four lines today -- and I wouldn't say they're analog or digital -- if I had four lines today and I was a business customer being served by four lines or if I was being served by eight lines, that the only way that CLEC could compete for those lines is if they built a T-1 system out to that customer's premises and served that customer over a DS-1. Well, I'm a little -- that may be the way they elect to do business, but that's not something the Commission recognized was a viable determination of finding out whether they were impaired or not. In fact, in your order you specifically said you didn't want to see a business model that would drag you into the business they wanted to be in and technology selection.

MS. ATWOOD: That's true, but let me -- how I've distilled the way in which each of the parties comes at this is, I think you want to focus on the existing facilities, and they want to focus on the lack of ability to enter a market, whether you look at it as an economic or a market matter. And in some respects, the Commission rejected both of those approaches. To some degree, the Commission -- and to a large degree, the Commission in its impairment analysis said we look at a lot of factors, we don't focus just on facilities, we don't focus just on whether you lose money.

We look at a variety of factors, including the kinds of facilities, including the kind of market opportunities there are. And what makes this hard is the fact that you guys are both taking -- you're relying on kind of, I think, positions that aren't embracing the way in which the Commission looked at this, looking at more factors than just facilities or just economics. But if I can, I just want to probe a little, because I think I'm not necessarily understanding fully the argument that you're making, and I want to understand it a little bit better because it goes to an ex parte that you filed.

I understand your argument to focus on the reason that you're not going to go in and put in a T-1 for that customer -- or the reason you want to only enter the market for a small business customer with a T-1 is because operationally, you can't, in fact, -- it makes no sense for you because of the operational hurdles, the hot cut problems, the provisioning problems, for you to enter a market unless you have that dedicated facility, that large facility. Is that right?

I mean, you focus on the processes and the fact that you're going to -- it's a provisioning problem for you, it's a provisioning expense for you. As I understood the way in which you evaluated, it focused on the provisioning aspect, right? I mean, is that why the model doesn't work?

MR. SCOTT: Yeah, that's a big portion of the reason the model doesn't work. What we found, and what I think every CLEC has found -- probably including Allegiance, and I'll come back to, I think, a distinction between a lot of us in the experience Allegiance has seen -- is that problems with using the single loops and processing them. And I'll give you an example. When we process a single loop and send an order through Southwestern Bell's systems, we've had approximately 35 percent of the orders fall out of the automated process that now have to be dealt with one by one. It's actually a part of a complaint that we filed before the Texas Commission.

Subsequently, on the manually processed orders, 35 percent of those were in error status by Southwestern Bell. We found that provisioning intervals were inconsistent from Southwestern Bell, that the conditions of the loop were all over the map, that the difficulty of coordinating hot cuts in the way we serve business, which is substantially different than Allegiance would approach it -- again, we're in a lot of different markets serving throughout the metropolitan area and not focusing on dense areas or major markets -- that it was a nightmare. And we found that the cost of provisioning a circuit was just off the charts.

Now, a difference here is that -- and I'll admit this, Allegiance is one of the best-financed CLECs in the industry. Allegiance has raised about, I think about $2.5 billion to finance its business plan -- and you look at its operating losses since they've started. I think they have the capacity of bearing a great deal more pain than almost anybody else in the industry, and in order to establish a market position, pay for that cost. But if the Commission is interested in the industry in general doing well, surviving, then --

MS. ATWOOD: But that's what I'm getting at, because, I mean, at least -- you're citing statistics in Texas, but the Commission found in Texas and in New York that the hot cut performance and the provisioning performance were, in fact, sufficient to allow the checklist to be met and --

MR. SCOTT: Actually, let me correct that. I think you found that that, coupled with the agreement that Southwestern Bell for UNE-P to be available and unrestricted in that state, that that was sufficient for the checklist to be met.

MS. ATWOOD: Well, true, but we looked at UNE-L and had to pass UNE-L in order for us to find in both of those states that, in fact, the performance and provisioning of hot cuts was done in a timely and cost-effective manner. And we can disagree over whether you thought we were right or not, but the fact of the matter is that we did find that, as a Commission, and so part of -- excuse me?

MR. PHILLIPS: Did the Texas --

MR. TRINCHESE: As did the Massachusetts Commission, the New York Commission and the FCC --

MS. ATWOOD: Well, the Massachusetts Commission has not -- I mean, this Commission has not found yet with the Massachusetts Commission, so we'll leave that off the table. But what I'm getting at is, if in fact what a lot of this boils down to -- a lot of your position boils down to is a problem of provisioning, then does it go away in the states where there's an acknowledgment that the hot cut performance is adequate?

MR. GILLAN: No. I mean, first of all, I think you have to appreciate the fact that one of the reasons you could reach that conclusion was the existence of UNE-P, and I think that that was where you were going. What you found, as I understand it, was that they're providing loops to the people who were asking for them at the levels they were asking, to meet the markets they were using at a level that met the checklist. The question you would have to answer, I think, to take away switching would be, all right, at the time I think you approved the Texas application, they were handling 2,000 unbundled loop orders a month and 22,000 UNE-P orders, a number which I'm sure has increased dramatically since then. The question is, what happens if you took those 22,000 UNE-P orders and tried to force them --

MS. ATWOOD: But you wouldn't be, right?

MR. GILLAN: Hold on. No, you're right.

MS. ATWOOD: Because you're talking about the residential market. That's off the table.

MR. GILLAN: No, you're not just talking about residential, you're talking about residential and small business. I mean, they may say -- and obviously, they did -- that people want to use this for residential service. That defies the whole existence of the Pace Coalition, which has people who serve both residential and business, but nobody, nobody, I think, believes that they can make it just serving residential. None of our members, none of the companies that we're talking to would have a business strategy if they really were ultimately cut back to being told, your principal competitor is going to be out in the market, not having to migrate any customers and being able to recover all of its common costs over business and residential, but we're going to tell you that if you get in the market to compete against that guy, you've got to take all those common infrastructure costs and recover it only on the residential side, which was something of a tangent from the larger point I was trying to make about the loop provisioning.

Your loop provisioning finding goes to that level for those customers. I don't believe -- what we're saying is that you couldn't have that 22,000 and all those other business -- I mean, how many business customers do you have?

MR. SCOTT: We have approximately 50,000 business customers.

MR. GILLAN: Yeah. That would not -- those would not -- those 50,000 people would be without competitive choice without this, as a practical matter.

MS. CAREY: I wanted to say to you, with the legal finding that the Commission made, when the Commission looked at checklist compliance, we looked to see whether the FAQ (phonetic) is provisioning that particular element reasonably and is capable -- has processing capability to serve as at reasonable foreseeable demand. And that is part of the checklist.

MR. GILLAN: But the reasonable foreseeable demand is only -- is itself the constraining factor here. There's only a certain volume of orders you should expect because there aren't -- they're just simply are not that many carriers. I mean, Birch went in and left. You read Focal's ex parte. You read MCI's ex parte, as I understand it, that they don't even use loops to migrate customers with analog service to digital. The customer already has to be digital, effectively, before you start deploying --

MR. PHILLIPS: And you have an ex parte that was filed not just by Allegiance but by four other CLECs, saying that they do, and SBC is, in fact --

MR. GILLAN: Hold on. No, no, no. They did not say that. They did not say that, because what they said was basically regurgitated back to the FCC, what you had found earlier. And you said do this again. Allegiance serves some of these customers, and we've already discussed that they have different revenue streams that not all CLECs have chosen to take advantage of. See Beyond doesn't do anything, they're not in the market. So, the probative value of a company that intends to do something in the future has got to be seriously limited. Time Warner gets 40 percent of its revenues from 10 customers, and its 10-Q represents that they only serve medium to large businesses. So, they're not even down in this small business category.

MS. MORELLI: And they're average line per customer is 48.

MR. GILLAN: So, I mean, while there are signatures on that, I mean, one has to place in perspective the business strategies of the companies that signed it.

MR. PHILLIPS: Let me make a few mentions in response. First, this was just a snapshot, but there is evidence other than the Bell South evidence. Verizon put evidence in the record. They took a snapshot, admittedly just a small snapshot -- New York in July -- but 99 percent of the lines ported -- and they put this in the record -- in New York in July were associated with orders of 12 lines or less, which means when the line is ported, the CLEC was using its own switch. So, in 99 percent of the cases in which there was a number of portability orders submitted to Verizon for a switch-based CLEC service, the service involved 12 lines or fewer. Number one.

Number two is, there is, I think, a logical gap in the argument when you talk about Time Warner focusing on large-business customers, because if you have a switch and you have co-location, there is no reason why you cannot, in fact would not, want to use that switch and co-location space to serve smaller business customers, as well. And there has been data put in the record by Pace about, you know, essentially arguing that unbundled loops are insignificant market entrance strategy, but the data is old data. Pace alleged that SBC has 167,000 unbundled loops in service. The number is 750,000. It's not even close.

MR. GILLAN: Are all those by themselves or are some of those unbundled loops that are sold as part of a UNE-P configuration?

MR. PHILLIPS: Those are unbundled loops not part of the UNE-P configuration, and they exclude DSL, as well.

MR. GILLAN: How do you know that?

MR. PHILLIPS: There's over 400,000 in just the Ameritech territories.

MR. GILLAN: Okay.

MR. PHILLIPS: And so, it's not an insignificant market strategy, it's a real market strategy, and it's one that is being used today.

MR. TRINCHESE: You almost got to the point I wanted to get to anyway, but that's fine. I think you're getting there. Just to -- well, to the point that -- this should be based on the ability to take over a customer -- and not on a business plan. But just to support what Gary said, of the 99 percent of the hot cut -- not hot cuts, of the numbers that we port that are associated with orders with 12 lines or less, 60 percent of those, 60 percent are even less than four lines. So, there are 40 -- those to their own switches, not our facility.

As far as unbundled loops, Verizon East -- not the GTE territory itself -- to date has 400,000 unbundled loops in service. Those do not include DSL loops, they do not include any loop other than a two-wire analog loop. 400,000 of them.

MR. GILLAN: In a territory of 13.8 million business lines.

MR. TRINCHESE: Excuse me.

MR. GILLAN: Almost 14 million business lines.

MR. TRINCHESE: I'll let you know when I'm done. We've ported two million numbers. Those numbers went to CLEC switches. From a business perspective, for the first eight months of this -- I'm sorry, to October 8th of this year, we've lost 360,000 lines to customers in the Verizon territory that were served with 12 lines or less. Those customers have gone. And the numbers we have on platform demonstrate that 93 percent of the platform that Verizon provides is provided for residential use.

MS. ATWOOD: Can I just ask you guys to comment on that fact, because I want to find out how we are differing on the facts here.

MR. GILLAN: I'm not going disagree with him necessarily on the fact, but on the context.

MS. ATWOOD: Just in terms of percentage. I mean, is it in fact true on the context of the platform that it's beyond a vast majority, that over 90 percent -- let me put it that way, because we won't quibble on 3 percent -- but over 90 percent goes to the residential piece, and we're really talking about of the cut, of the market for platform.

MR. SCOTT: I'll give you some numbers. I certainly can't talk about the Verizon territory at all, but I can talk about Missouri and Kansas, and we've taken Southwestern Bell filings for the number of lines that were lost in the states of Missouri and Kansas: 145,378 Kansas, 127,596 total lines lost to CLECs. Now, the thing that puzzles me here is that Birch has 32 percent of those lines in Missouri. And I can tell you that they are -- a large percentage of those are on the platform and that all of those that are on the platform are serving business customers.

So, it's a completely different situation in Missouri and Kansas. 51 percent of the lines that were lost to competitors have been lost to Birch. And a large percentage of those are businesses that are on the platform that we would otherwise not be able to serve.

So, I mean, I don't know, we've got a lot of facts swirling around.

MS. ATWOOD: And those businesses are four lines or less.

MR. SCOTT: Those are going to be a distribution of lines. I would say that about 60 percent of those are four lines and less. We could get the exact distribution. About 90 percent of them are less than 12 lines.

MR. CROWNE: Since Allegiance has been mentioned a couple of times going around table since last I spoke -- just a couple of things here. We measure small businesses, small and medium-sized businesses as 25 lines or less. We don't have a revenue ceiling. We very carefully track what we perceive the market to be, which is generally public information as far as number of lines -- business access lines -- in a wire center. We find that, overall, across Allegiance in all 26 of those markets, we have penetrated approximately 2.2 percent of what we perceive to be our available market, which is small- and medium-size businesses in the geographic regions that we serve.

That 2.2 percent represents, also, well over 50,000 different customer names, hardly a negligible entry. I can't speak to the CLEC industry as a whole, but I can tell you that if the 2 million ported numbers in Verizon territory is accurate, we aren't getting our share, because we've only got about 600,000 ported over nationwide, and that's in all territories. So, put those numbers in perspective. The only other observation I'd say to some of the comments that have come around regarding Allegiance is that I would not characterize Allegiance's ability to execute based on it being exclusively due to our ability to raise capital. Quite the opposite.

I think the cause and effect is somewhat backwards on those two elements. And there really is no secret to what we're doing. Basic block and tackling. Getting in, getting the problem solved, escalating to the regulatory bodies when appropriate, but working on a day to day basis.

MR. SCOTT: This isn't an insult at all. In fact it's a compliment, but you guys started with how much inequity before you had operations? Several hundred million dollars?

MR. CROWNE: One hundred million.

MR. SCOTT: One hundred million dollars in equity. How much pledged at that point?

MR. CROWNE: Actually, that was the pledged number. We had operations, I believe it was about half that.

MR. JONES: This is a red herring. I mean, this ability to raise capital doesn't really mean -- I mean, as the travails of the X-DSL providers recently demonstrated, it doesn't really mean anything. But I just would like to address this ex parte that was also filed by the CLECs. The reason -- some of those CLECs have not focused on the small, medium business market yet, but they're actually going down-market increasingly as they find that they can do so efficiently. That's the very point of that ex parte. You know, they haven't been heavily involved -- accept Allegiance -- recently in this proceeding, because they really haven't considered that to be an important part of their business plans.

But the Time Warner telecoms of the world are certainly seriously working to build their entry for that market segment to go down to the smaller customers. See Beyond hasn't started serving anybody, but I take it that that's sort of part of the analysis here. See Beyond is a startup company that is planning, they're looking at all the entry barriers as they exist right now, and they're planning to deploy switches to serve exactly the small business customer market that you're talking about here. So I think they're highly relevant, actually, to this analysis.

You also mentioned -- and again, I think this is a bit of a red herring, but I think it's worth responding to it briefly -- 43 percent of revenue that Allegiance gets from recip comp and access charges, I presume that access charges would be collected by any of the companies in question that are trying to use the UNE-P as an entry mechanism, because that's one of the great advantages of the UNE-P, is that you get access charges. And that's also revenue associated with end users, so I don't really know what that has to do with anything.

MR. SCOTT: I think you have to point out that there are widely different rates that are being charged by access. We mirror the rates of the dominant company.

MR. PHILLIPS: How is this relevant?

MR. JONES: Yeah. You have to take this market as it exists. I mean, there are entry barriers and market opportunities in, you know --

MR. PHILLIPS: The implication of the statement was that Allegiance does not have a quote unquote "real business plan," and they're out to just skim recip comp but, I mean, in fact, it's quite evident that Allegiance is consistently pointed to by analysts as one of the CLECs that is best positioned precisely because they have revenues that are not based upon regulatory arbitrage, like recip comp and excessive access charges.

MS. ATWOOD: Can I lead us back down to the -- I mean, we can discuss the success of Allegiance, but I would like to get us back to the issue here -- excuse me?

MR. GILLAN: Well, I don't think anyone ever answered your question about the 93 percent.

MS. ATWOOD: Yeah. And what I really wanted to get at was I was just trying to get an understanding here because it's been a bit of a -- there's been a lot on the record and it's been difficult for us to assess what really -- what percentage of this market is -- the small business market is being served by the platform. You know, you've discussed when it makes sense for you all to go into the market and that that is through a platform strategy, but the question that still remains at least as murky for me in understanding this is, first, I have trouble understanding what you all think of as a small business, because that tends to be widely different depending on who you ask. It's 25 lines, it's $100,000 in revenue, it's less than four.

You know, I mean, everyone has a different conception, so I have an issue about what is small business. But from the perspective of assuming there is some form of a uniform understanding of a small business, how much of that is served by the platform market? And that was what I was getting at to try to understand. I believe that your position would be very little of it, 10 percent of the platform market is small business.

MR. GILLAN: Here is the concern that I'm -- we have worked very hard to try and make you understand that we're not AT&T, we're not MCI, we are the new carriers that are coming in. And no disrespect to AT&T or MCI, but -- and I don't mean any implication of disrespect -- these carriers are coming in trying to offer services, putting together different packages, deploying facilities, X-DSL strategies, all kinds of things. It's clearly the carriers trying to innovate. At this level of carrier, okay, these carriers are relying heavily -- that we're representing -- on the platform.

Now, will that show up in the statistics that Verizon cites very easily? No. Because of the fact that in the Verizon territory, the two big carriers, AT&T and MCI, have bought the platform exclusively to serve the residential customers, it's very hard for those statistics to show our existence through just all those lines that those carriers have purchased. So when they tell you that 93 percent of the lines are for residential, what they're really telling you is AT&T and MCI use the platform to serve residential customers. What we're trying to tell you is that for those of us that are trying to bring competitive products into the smaller business market, which we're really defining sort of as analog customers that haven't gone digital yet, the platform is a very important, necessary requirement.

But are you going to see us in those aggregate statistics when they're dominated by AT&T and MCI? I think not. And that's the only phenomenon you see with the 93 percent.

MR. BANKS: But your question remains, because I think you can look and see how many business lines we've lost to CLECs and ask what percentage of that is served over the UNE platform. And I didn't come with that number, but I suspect that, well, it was zero percent up until February of last year until the union remand order took effect.

MS. ATWOOD: Just one question about your statistics on the zero percent. You offered the platform, it was just a lot more expensive, right?

MR. BANKS: Yes.

MS. ATWOOD: So, it wasn't that the platform wasn't available, it was that it was really expensive.

MR. BANKS: It's my impression that no one used the UNE platform to serve business at the market rate. We had a few thousand UNE platform business lines.

MR. GILLAN: We have members in the Bell South region who are using it who are starting up, who are coming to the Bell South region. It is true that Bell South's strategy of keeping up, refusing to offer this until February of the year 2000 has delayed you seeing this --

MS. LEVITZ: No, but we have two customers who prior to February had signed onto our UNE-P offering that had the professional service charge in addition to the UNE rate charge.

MR. SCOTT: Let me talk about that --

MR. BANKS: We can figure out the percent. I think it will be very low.

MR. SCOTT: Since we're kind of the poster child for UNE-P, I think it's -- working with these aggregate numbers, I think maybe our own experience in composition of business might be more illustrative. We've got about 210,000 access lines in service right now. We started using platform in any scale whatsoever back in May of '99 in a launch in Texas. All of our lines in Texas are done under the platform. All are serving small business. Today, about 65 percent of our total base of lines will be done under the platform, and 100 percent of the incremental lines. Actually, higher -- more than 100 percent, because we're converting some of the resale lines to the platform as we grow our market share.

The numbers are a lot lower in Missouri and Kansas, because we had to fight for the ability to do the platform state by state. Texas was out ahead of everybody else. We've begun a program to expand into the Bell South region and the reason that a lot of people haven't been doing UNE-P, and we don't see a large number nationwide is, it's been a state-by-state development. And so, a lot of us are just getting going, a lot of companies are just gearing up to do this. It's not a simple thing to do from a systems perspective.

And so, you'll see this become more and more important. Evidence the announcement that Clark McCloud made with the deal to do UNE-P as the expansion program into the Quest territory. And there's certainly a successful CLEC on the model of an Allegiance who knows how to build network, understands that, but has chosen to do a major expansion through UNE-P.

MR. CROWNE: In the U.S. West territories.

MR. SCOTT: In the U.S. West territories. And you're seeing that company by company, location by location, but the gaining factor has been the state of regulation, and it's been tougher in Bell South's region.

MS. ATWOOD: But is it the state of regulation or the provisioning problems?

MR. SCOTT: It's been the state of regulation.

MR. GILLIAN: You can't get the provision until there's something to buy.

MR. JONES: I would point out, though, that Clark has done very well in the absence of the UNE-P and has relied primarily on resale as its entry strategy and may just see that there are greater margins associated with --

MR. SCOTT: In a particular kind of resale, which was a grandfathered Centrex (phonetic) arrangement that looked a lot like UNE-P margins.

MR. JONES: Right. And not necessarily the top 50 MSAs we're talking about.

MS. ATWOOD: But can I ask you the question now about -- because this is something that I just want to explore with you for a minute, because I think I'm getting your position. Let's say you've gotten through the regulatory hurdles and let's say there is a platform available and let's say that platform -- this Commission has said the provisioning of UNE-L is sufficient, as it has in New York and Texas. Where in that world, where you're talking about the vast majority of platform -- admittedly, the big guys are coming in and they're 90-percent level and they're using the platform for residentials. You've got your innovators that are coming in.

But you've got a Commission decision that, in fact, says that the provisioning for the hot cut performance is adequate. Help me understand why at that point, your arguments relating to the decisions that you make under those circumstances don't equally counsel for you to move to facility deployment. And the reason I ask it -- and this is just because while we're talking, we have always assumed that the platform had been a transitional, I mean, most people viewed it as a transitional mechanism to a facility's competition.

MR. SCOTT: Let me describe. This is a real-world example.

MS. ATWOOD: Yes.

MR. SCOTT: Because I'm on the road raising additional financing for Birch to support our facilities' build-out, and I do agree with you, this will be largely transitional for CLECs as we deploy facilities. The difficulty for us right now, not only a problem with the capital markets -- and they've lost faith in the ability of this model to work, they certainly don't believe that UNE-L works, and you see it reflected in the stock prices of everybody -- but the significant problem that we face right now is we're on the cusp of a new generation of switching technology.

And so, for us to continue to grow, if we had to use the UNE-L, our approach could be to go with Legacy Technology and deploy that, which we couldn't raise the money to do, or to go to the next phase of it. So, when we go to -- I'll give you an example. We're making decisions right now about expansion into the Bell South territory. Our approach will be over time, as we're doing in Texas right now, deploying a DSL network, which allows us to, in our opinion, economically deploy a loop that would carry all of the customers' traffic, even the small business customer. But it's a single loop.

We're not trying to coordinate six different loops and all the pain associated with that, because with the next generation of switching equipment that we're now trialing in a proof-of-concept lab, we would be able to deliver fully integrated voice and data over those facilities. So, yes, UNE-P does provide the bridge to that next generation of switching equipment. And I know people will disagree. Those who have existing circuits which are in place will take a different approach to that bridge. But right now, for the vast bulk of the industry, there is no capital available for the deployment of switching equipment into these markets using UNE loops.

MS. ATWOOD: Before you comment, can I ask you to talk -- Pace to talk about that, because I want to just get the perspective of the position that you're advocating. I keep reading the position as, you know, this Commission, the costs associated with your entry and the need for a platform really relate to the fact that we have an endemic provisioning problem that increases the costs associated with it. And where this Commission has said -- and in fact, if I'm understanding it right --

MR. GILLAN: I understand, and I just --

MS. ATWOOD: So, I just need to hear your take on that or if I got it wrong.

MR. GILLAN: I can only go back to what I was trying to articulate earlier. I think the Commission's finding that they're providing loops in an adequate way is true for the types of things those loops are used for at the levels that they're used for. And I think, you know, there is no absolutely clear bright line here that says, boy, when a customer hits eight, he can go, all right? You're always going to look out in the market and see some loops being purchased by people. You're going to see it at levels that are commercially insignificant.

Now, that doesn't mean that individual carriers are insignificant or, you know, like Allegiance, but when you add them all up and you compare that level of competitive activity to the dominant provider, you're going to see that it's really burbling around at a relatively low level. And yeah, it will grow larger, you know, every time they file a report, there will be more loops sold. But, you know, you're still down here five years after the Act, in effect -- or four years after the Act -- at a very low level.

I don't think that you have a conflict between on the one hand saying they're providing these loops for the markets that they're used to the carriers that need them at the levels that those loops are useful at in a way that satisfies the obligations of 271, while at the same time saying but the problems that exist in that kind of process prevent mass application in the manner that Congress wanted this Act to work and that's there's an impairment that requires that carriers have the opportunity to buy loops and ports together. I mean, let's face it, the local switch element was not only listed in 271, but it's actually the thing that Congress used when it gave an example in the -- whatever that thing is, the conference report --

MS. ATWOOD: When they talk.

MR. GILLAN: Yeah, when they talk. You know, the advantage of being an economist is you don't know the correct words to apply to those things. At any rate, when they gave the example of we don't expect people to replicate things immediately, that they're going to need to buy things from the ILEC, it didn't give the example of the loop, they gave the example of a local switch in the report. So, I don't think that you have -- you know, I'm an economist and not a lawyer, but it seems to me perfectly logical to reach a conclusion about their ability to provision loops for the market that they're used in as being adequate for 271 while at the same time saying that those processes are just systematically incapable of handling the volumes and in serving the broad type market that you want to see over here for the small analog customers.

And the data supports that conclusion, because where you've got UNE-P, you've got lost of competition, and where you don't, you don't.

MR. SCOTT: It seems to me the same logic could be applied to saying that where fiber was connected to a building, that the loop itself wasn't a required element.

MR. TRINCHESE: We'd agree to that.

MR. SCOTT: I know you would, I know you would. But I thought about that one too, and it would focus this discussion on the switchboard, but I guess if I were Time Warner Telecom, I'd feel just as strongly about the existence and the availability of a functional fiber optic connection to Omnet buildings, that is true, but it's functional for a certain type of business plan.

MS. ATWOOD: Well, I would -- the question there is what did we look at when we were evaluating the high performance, and I would agree with Michelle. We did look at scalability. We looked at how this could translate to a larger market, we looked at -- and so it isn't just looking to see the performance, we looked to see how the performance was done in a larger scale. But I hear you saying more than that, I think. I think you're saying we can make that determination but that still doesn't -- that shouldn't necessarily influence our view as to whether there is a need to retain an entry strategy for this, CLECs, right? I mean, that's what you're saying.

MR. HUNTER: Yes. Plus, I think if you took the logic of your argument and took it to its extreme, there's no basis for keeping residential separate either, and I think everybody in this room agrees that there is. And then, you get back into the notion of saying well, what looks more like what? Does residential look more like small business because all are served on an individual loop basis?

MS. ATWOOD: Do you guys want to respond to that?

MR. BANKS: I'd respond by saying one common sense way that you would distinguish them is when you do the impairment analysis, you look to see whether CLECs are successfully competing for a group of customers. And they are very successfully competing for small business customers.

(Multiple voices)

MS. ATWOOD: Let him have it, and then you guys can have more time on that.

MR. PHILLIPS: First of all, there is a difference, and the difference is an obvious one. The revenue stream, in general -- I mean, there are exceptions, there are high-use residential customers -- but in general, the revenue stream available for serving a business customer, even a small business customer, is higher than the revenue stream available from serving a residential customer.

MR. SCOTT: Actually, our residential line is the same for both, so it's not completely the case. It's the same for both.

MR. PHILLIPS: Well, I think, as a national rule, that that statement is correct. And when you're a CLEC and you're making business decisions about where you're going to go, you're going to go where the money is first. So, you're going to go to wire centers that serve predominantly business customers, more business customers, and you'll be able to justify the cost of your own facilities, co-location, et cetera, in those wire centers much more readily than you would if the wire center was serving predominantly residential customers.

MS. ATWOOD: Can I ask if -- since you say that your figures suggest differently, if you have different figures, can you put them -- not immediately -- but would you mind putting those on the record.

MR. PHILLIPS: Different figures about?

MS. ATWOOD: About the revenue stream for a business customer. You said it's the national average. I mean, if there's some objective -- I'm just trying to get the best --

MR. PHILLIPS: Well, I mean, I can tell you just -- this is just in one state, but in Indiana, my understanding was, for example, you know, we get forty bucks for a business line that we provide -- Ameritech provides to a business, and the same thing is eight dollars when provided to residential customer.

MS. ATWOOD: I'm just asking could you supplement the record with that?

MR. GILLAN: But when you -- here's the concern when you look at it that way. The comparison isn't between what do I get in the basic local rate for a business customer versus the basic local rate for a residential customer? Because almost nobody buys just basic local exchange service. Residential customers don't have that purchasing pattern. I've been looking at Bell South's numbers throughout the Southeast, and it's less than, generally, 5 percent of the population by just basic local exchange service. So, what you do have is, when you include a bunch of these revenue sources, what we're finding generally is that residents buy more features, et cetera, --

MS. ATWOOD: Well, you want those --

MR. GILLAN: Yeah, but that's why --

MR. BANKS: The average revenue flows to both, and Gary's just giving an example of the basic line rates. But obviously, we would give you the actual real revenue flow.

MR. SHAKIN: He's persuading me to rethink this biz-res split. I think maybe we should have --

(Laughter.)

MS. ATWOOD: I've got you on the record. You're biz-res split here. You can't take that back.

MR. BANKS: A lot of this is coming down to a debate over whether a set of carriers that would like to use the UNE platform to serve businesses would be impaired if there was no UNE platform to serve businesses. You know, the answer to that is obviously yes.

MR. SCOTT: Except that we'd say it differently. I think there's a class of customer that would not get service because the carriers who target that would be impaired. And I think it's worth a very careful analysis of the distribution lines and the average line count between carriers such as Allegiance and Birch. You know, we don't cross paths much in the marketplace. That's an anecdotal statement, but I think 72 percent of our accounts are, as I said before, residential accounts or small business one, two and three lines. Our distribution is significantly different, and the bulk of our business is at the four-line and below. A five-line average versus a 10-line average is a completely different world.

MS. ATWOOD: But did that happen because of our rule? Or is your point --

MR. SCOTT: No, it didn't happen because --

MS. ATWOOD: So why isn't our rule not arbitrary?

MR. PHILLIPS: If a five-line and a 10-line average are completely different worlds, then why are you arguing that everything should be swept under the one- to 20-line rubric?

MR. SCOTT: Well, again I'm arguing that there's a sector of the market. When you look at an Allegiance customer that has seven or eight lines -- which would be a small customer for Allegiance, it would be a large customer for ours -- there is no much competition in that sector of the market. And so, what we're looking at it the fundamental thing that makes the provisioning of a loop either economic or uneconomic, viable or not viable, impaired competition in that or not. If you said look, go in and build a business, and we will give you the platform from one to four lines, have fun, we would not go into a market. I can guarantee that we could not support the business based upon that.

We supported a business where the platform is unrestricted, because of the 271 process, with Southwestern Bell. That's the only reason UNE-P is viable at one, two and three lines. Because we have to be able to -- we can't just go in and serve those accounts. It's ridiculous. Those are difficult, low-margin accounts. We serve them because on an incremental basis, we do contribute to that, but we need to be able to use that methodology for a wider sector of the market.

MR. GILLAN: And that's consistent across all of our members that, fundamentally, they're in that four to 20 range. Above that, customers are going digital.

Below that, I mean, they've got a lot of those customers and they can serve them, buy they're concerned about their ability to broadly serve this market as customers grow, et cetera.

MR. HUNTER: And from the Ascent members' point of view, if you remember, Ascent members generally are smaller, even smaller than the Pace members, although I believe most of the Pace members are members, as well. The decision is when do you jump from resale to platform? And that's the only real choice that most of our members have. The switch just is not that viable an alternative for many of our folks. If it's a one-to-four, or a one-to-three, they don't make the jump, because there's a watershed --

MS. ATWOOD: But if they're in the market.

MR. HUNTER: Excuse me?

MS. ATWOOD: It means they're in the market.

MR. HUNTER: They're in the resale market. Resale --

MS. ATWOOD: How is that -- how are you then impaired to be in the market if you have a resale entry?

MR. HUNTER: Because resale is dying, slowly but surely. The margins aren't there to support it. That's what we've been telling the Commission for a long time, that the margins do not support a viable operation. For our members to stay alive and to stay viable, UNE is their life raft. When our members move over -- and they've moved over in ever increasing numbers in both New York and Texas -- their operations which have been very marginal become viable operations, they start to grow, they start to expand. Absent the UNE platform, they slowly wither and die, and they are slowly withering and dying, because the margins for resale just do not support --

MR. GILLAN: Apart -- aside from the margins a little bit, the members of our group fundamentally have other types of innovations that they're either packaging, pricing or software or whatever that aren't resale-compatible. They wouldn't be able to offer the same vector of products. You know, basically, we have companies that are going in -- I'll give you a poster child example. They're serving the nuns that are running the hospice with 12, 15 lines, okay? That type of customer is not going to be attracting --

MS. ATWOOD: We can't criticize the nuns. I mean, they're telling the truth.

(Laughter.)

MR. SHAKIN: What we are hearing, though, is okay, so they're in the market serving very small business with resale, but that's dying, so don't pay attention to that. And yeah, platform is not really being used primarily for business, it's really mostly residential, but don't pay attention to that.

(Multiple voices.)

MR. SHAKIN: Let me finish, okay, please. The point that you all made was, for you, it is, but for when you look at the broader statistics, it may not be. That was what I heard, at least. And that's a fair point. When you say my business model is, I'm using it for business. And I don't think any of us are disputing that. What we are disputing, though, is that when you look at an impairment analysis and you say, are you impaired from entering the market, could you enter the market when you see the resale entry, when you see facilities-based entry, when you see coming in, in different ways, and then you can dismiss them one by one by one by one, but eventually, you have to acknowledge that we're losing significant small business customers, not at the 20-line level but at the five-level, the four-line level. We're losing those to people other than you all. And so, someone isn't impaired.

MR. HUNTER: I keep hearing that you're losing tremendous business customers. I hear this continually, and it somewhat appalls me when I look at the stats. You know, we can throw around numbers of 100,000 here, 200,000 there. We are six -- four years after the enactment of the Act. We've got a 4-percent market penetration, of which 1 percent is loops. We can get -- we can lose the forest for the trees here. There isn't a lot of activity, and the activity is there.

MS. ATWOOD: But that isn't the same as Bell South's --

MR. BANKS: I think even if you pick the really broad numbers, the box have lost roughly 5 percent of the market share. As you all know, the huge number of line customers is residential. Almost all of the CLEC market share we've lost has been in the small business segment. So, that 5 percent, you can multiply that by three, four or five to get the market share we've lost in the small business segment.

MR. SCOTT: Let me ask again, what is the small business segment defined as? I don't think I heard that clearly.

MR. BANKS: Well, I think we decided that no one's quite sure, but we could decide that the information that we've putting on the record lately, you can make your own distinction, you can draw the line at 10 or 20 or 50.

MR. SCOTT: But when you talk about these numbers, are we talking about $100,000 a year and less? Is that generally the area?

MR. BANKS: We have a very high, probably compared to what you would think, threshold for defining what we see as small business. If you look through the information, you can lop off the top half, okay? That just makes the percentages that we've lost higher.

MR. SCOTT: So, when we look at the information, we can go back and see what percentages have been lost, and you're saying that when we see that for one 10-line business customer or the sub $5,000 a year customer, that your percentages are even higher for large businesses.

MR. BANKS: Yes. I mean, you know, we've been dismissing CLECs one by one, but one that does very well in our region is Nextel, and their single most popular package is a $99 a month package for small business. And the people that buy that are not large businesses, and they're not medium-sized businesses. They're small businesses. This is $99 for a local and LD and access.

MS. ATWOOD: Well, I guess my question then becomes are these isolated instances or are we talking about systematic? Because we have to assess whether there is -- you know, if a few companies -- I'm just asking, if a few companies can enter a market, does that mean that there is no barrier for all companies to enter the market? And what I'm hearing you folks saying, it might be really useful if you spent some time going through, now that you've understood our clarification of the language that has you in it, if you would go back and look at ex parte, and I want to -- subject to confidentiality.

MR. GILLAN: Do we have a way of finding that? Because I have some other questions about that, and I know that our ability to evaluate that is limited without answers.

MS. ATWOOD: I would encourage that, because we really like to get our hands around, shortly, very fast, the kind of market we're talking about and the kind of loss in that market that that statistic shows, I think the Verizon statistics show that we're talking about a smaller percentage, which you have an explanation for in terms of overall platform. Can I just ask you what your view of what a small business is? That would help me. I mean, I realize we're talking about -- but it would help to understand, at least from the perspective we've been talking about, you guys. What's your company position on a small business?

MR. CROWNE: All of the stats that we've pulled together are basically in these lines, side segments, if you will. The buckets that you see on that chart on there. When we talk about the SMA marketplace, we're talking about customers with 25 lines or less, generally speaking. That can go higher, depending on the audience.

MS. ATWOOD: And you don't have any sense of how many of that 25 lines or less are people who are really 10 lines or less.

MR. CROWNE: Yeah. That's what this chart does.

MR. GILLAN: 91 percent.

MR. CROWNE: Yeah. I mean, this is how we're viewing it right now.

MS. ATWOOD: Okay.

MR. CROWNE: Under 10 is 81 percent of the -- or 91 percent.

MS. ATWOOD: And how do you -- you define it as a $100,000.

MR. GILLAN: No. That was -- I made that up to try and protect his confidentiality, although think that that number is confidential.

MR. BANKS: Actually, we don't define it by line size, we do it by total billed revenue.

MR. TRINCHESE: And then how much the problem?

MR. BANKS: $250,000.

MR. TRINCHESE: $250,000.

MR. SCOTT: $250,00. We view it by total bill revenue, as well, and our would be roughly $3,000 even of $250,000.

MS. ATWOOD: $3,000?

MR. SCOTT: $3,000. Yes.

MS. ATWOOD: There's a small business that survives at $3,000?

MR. BANKS: This is expenditures on telecommunication services.

MR. SCOTT: Telecom expenditures of $3,000 here versus a quarter million.

MS. ATWOOD: Oh, right. You're right.

MR. BANKS: And let me just add that we did file an ex parte yesterday with some more line information. There are two --

MR. SCOTT: And so our average count would be five lines generating about $250 a month. That's $3,000 a year. You know, that's about 1 percent of the average spending is upper end small business -- small to medium-sized business customers. See, we're talking apples and oranges.

MALE SPEAKER: We've been trying to do it from the perspective of when does the impairment disappear, so --

MR. BANKS: Let me just say, you know, it is the upper end, but the great majority of the customers in our small business segment are in the one- to 10-line group. In other words --

MS. ATWOOD: But still, you're talking about revenue now, and he's talking about $3,000 in telecom. Is that analogous to a one to ten --

MR. SCOTT: Yeah, the great majority of the customers are just like Allegiance has said here, in the one- to 10-line group. And that's the same for us. Now, we just drew the ceiling really high, but, you know, if you take our ceiling and drop it, the fact that we've lost lots at the lower end is still true.

MS. ATWOOD: And are your $3,000 revenue -- communications revenue, is that -- what number of lines are those?

MR. SCOTT: That's about five lines.

MS. ATWOOD: Five lines.

MR. SCOTT: Our average line count is just a little bit under five. We have relatively few that would be over the average of Allegiance. Ten and above would be a pretty small percentage of that. I would point out, though -- and I think this is an important comment -- for us to go into a market, you know, we really can't make it just on the lower end. It's an important part of our business, but it's important for us to be able to provide UNE-P across the entire sub-T-1 market, in order to generate enough market share to cover the fixed cost of being in business. So, I don't --

MS. ATWOOD: And what are you doing now?

MR. SCOTT: What are we doing now?

MS. ATWOOD: Um-hum.

MR. SCOTT: In terms of?

MS. ATWOOD: Well, capturing that additional market share.

MR. SCOTT: You know, I would say -- I'd have to go back and look at some specifics on that, but I would say about a third of our business would come from the upper end of the market, you know, the five lines, six lines and above. About a third of the revenue stream for us. And given the fixed costs in the business, if you lop that off, we shut the door.

MS. ATWOOD: Well, it is lopped off, though, in top 50 in a sense.

MR. GILLAN: But not in the real world.

MR. SCOTT: Yeah, not in the real world of where we serve. We have access to the platform, again, as a state-level regulation. That's why this issue is so important. When we look at the economics of serving in the Bell South territory, it's a significant issue that we have to take even a fairly small area, under today's geographic limitation -- say, downtown Atlanta -- and strip out all that market. It may not look like a big thing cast against the entire metropolitan area, but it's a significant contributor to our business. But our operational plans do exactly that.

We don't have an alternative for providing service within that area, and we've chosen not to go in and sell a three-line customer that someday we would have to say I'm sorry, but we can't even give you a fourth line. That's the operational problem that we face. So, it makes the economic equation of going in and spending the fixed cost necessary to establish a position that serves broadly. And we serve more broadly than anybody who has brought into the conversation. We're serving small and big markets in a state. We serve entire metro areas, not just downtown or not just 30 percent of the central offices.

But to make all of that work is a complicated equation, and the economics are incredibly compelling, even with the Zone-1 access for the above-three-line customers available under the platform. So, that's what we're talking about here. All these things are linked, much as you said in the decision over whether the loop was something that met the checklist was a fairly complicated thing, that we need to look at a lot of factors. The same for our market entry.

And so, I think it's dangerous to think that there can be some compromise here that would still generate the level of competition for those customers at the lower end of the market, because you'll be eroding the viability of those players who are going to serve the lower end of the market.

MR. PHILLIPS: I'd like to make a couple of points. I would agree with the comment that was previously made. I mean, to a certain extent, this seems to be a debate about the business strategy of a subgroup in the industry, and there can be no doubt that their business strategy is a UNE-P-based strategy, but that really is not the question that's before you. The question that's before you is, is the CLEC compared without access to the UNE-P?

And I want to make just two points about that. One is, there are some facts that, I think, need to be brought to bear. Notwithstanding allusions to lack of access to capital, CLECs continue to deploy switches at a pace that is actually accelerating, based on the most recent data I could get, which is as of August 2000. This is LERT (phonetic) data. CLECs had deployed 1,330 switches. When you did the original UNE remand order, the data was for March of 1999, and it was 720. That means that CLECs are now deploying more than a switch a day.

Co-location. SBC has delivered 11,000 co-location arrangements. That's an average of 3.4 per wire center in its territory. In January through March of 1999, SBC and Ameritech combined were delivering 100 co-location arrangements a month. SBC is now delivering 700 a month. So, there is facilities-based deployment going on, and you have to ask a basic, common sense question. What are CLECs putting in all these switches for? And what are they putting in all these co-location arrangements for if they can't use that?

And I just want to make one other point, which is if you are a CLEC that is out there -- and there are. It's more than Allegiance, there are many -- that have facilities-based strategies for serving the small business market, the availability of the UNE-P does have an impact on the rollout of facilities. If you're a CLEC and you've got a facilities-based strategy, you put in switches, you put in co-location arrangements and then you expand gradually. And when you decide whether or not to go into a new central office, you've got to look at the revenue potential from that office, and you have to decide whether you're going to be able to recover your costs. And that depends on how much business you can bring.

If the market is crowded with CLECs that are deploying the UNE-P, your market share projections are going to be lower. So, there is another factor to consider here, which is, you know, if you've got facilities-based CLECs, you, as a matter of public policy, ought to take steps that encourage those facilities-based CLECs to continue to deploy their facilities and roll them out.

MR. SCOTT: Now, the same argument could be used to attack the loop availability, and Time Warner Telecom would make that if they were here. The second issue is, the time period they chose --

MR. JONES: Excuse me, I actually represent Time Warner Telecom, and I don't think they would make that argument.

MR. SCOTT: Timer Warner Telecom would not make the argument that allowing the UNE loop -- Allegiance goes in, doesn't have to build fiber to deploy to a building, doesn't hurt their approach of building fiber directly to Omnet buildings? The same argument that you said --

MR. GILLAN: Time Warner Telecom has made that argument.

MR. PHILLIPS: Do you want to just address my argument on the merits and not by analogy. If you're a

CLEC -- I mean, address it directly and on the merits instead of by analogy. If you're a CLEC --

MS. ATWOOD: No, Joe can you speak first.

MR. GILLAN: Yes. I want to talk a minute about the number of switches -- First of all, there's a question about the roll, "what does the word database measure?" And the LERT database is used for carrier routing purposes. There are clearly business strategies where carriers deploy switching devices that are used so that an ISP can get a broad footprint in an area, but which are not really intended to provide conventional services. They provide local services but not of the nature that we're talking about here, which goes, really, to the point. Simply because a switch is out there does not tell you what type of customers, what type of services, and even whether or not the strategy is viable.

When you look at all those switches, you have to ask are these voice over switches? Is that what it's designed for? If the CLECs were really still installing, you know, however many switches -- what did you say 1,000? What was it?

MR. PHILLIPS: 1,330 is the total.

MR. GILLAN: How many a day?

MR. PHILLIPS: More than a switch a day.

MR. GILLAN: More than a switch a day. I think Lucent would be a lot happier this morning than it is. Okay? I mean, this is just not an accurate picture of what's going out there, because of the fact that you have the phenomenon of access servers and other switching devices that are being deployed. Look at the minutes. I mean, all of these stories, factually have to come back together again.

MS. ATWOOD: Right.

MR. GILLAN: If there are these switches out there and they're providing a service, then you should see a lot of minutes coming from CLECs and not just a lot of minutes going to them, which, even in great scheme of things, is a small number of minutes.

MR. CROWNE: It's not a great number of minutes, but I thought it was interesting he chose that. What was the first date you said? Was it March of '99?

MR. PHILLIPS: It was the date at which the comments -- the cut-off for filing comments for the original UNE remand. There was no -- there was nothing that was put in the record in the original comment cycle.

MR. CROWNE: I'd warn anybody about using --

MR. PHILLIPS: There was nothing nefarious.

MR. TRINCHESE: You also have to understand --

MS. ATWOOD: And why would that be?

MR. CROWNE: I'd warn anybody.

MR. PHILLIPS: I think we had as of March '99.

MR. CROWNE: I'd warn anyway who tries use the LERTs (phonetic) to count the number of switch entities out there, because due to interconnection agreements, we've had to count -- some switch devices have to be entered in the LER multiple times. Because we tended to architect our switch networks with one switch that covers a wider geographic area.

MR. TRINCHESE: We understand that. And the way the data was gathered, it took all that into consideration, so we're pretty confident that the data that Gary's presenting here took all those issues into consideration. And whether there are 1,000 switches or 850, the fact is CLECs have switches, they have, in the Verizon territory alone, 8,300 NXX codes assigned to them, and they should be using them to provide local services. And if they're not, shame on them.

MR. CROWNE: Yeah. And I will tell you I tend to agree with him in that endeavor. Just be warned that strict switch count isn't going to necessarily get to the conclusion. And also, whether that switch is physically located in one MSA or another is not going to get you to the answer if you're looking for a simple test as to whether there's competition in the market. You know, a switch is not -- sometimes there are little switches --

MS. ATWOOD: And that, in fact, is what the Commission rejected. But I think we did in the order talk about the presence of multiple evidence of CLEC competition, and switches were one of the things we looked at.

MR. CROWNE: And it's quite obvious, if there are, you know, half a dozen NXX codes taken by competitors, then there ought to be a half a dozen NXX codes in that rate zone.

MS. ATWOOD: Can you guys help us, though, in terms of the record that they're presenting. I mean, you fundamentally challenge the notion of a level of competition in these regions. Is there evidence that you can point to apart from the useful study that you did with respect to the decision of a CLEC in when to employ its own facilities? Is there any evidence you would have us look to that would help us understand demonstrably the level of CLEC activity or lack thereof?

MR. GILLAN: Well, to tell you the truth, it would seem to me that when you look where UNE-P is available -- really available, not like just came on the market or whatever -- Texas and New York, when you look at that much competition and you look at places where it isn't, you going to see this giant difference. The difference -- that's the impairment. The difference between what can be and what happens without it.

MS. ATWOOD: But why isn't that also provisioning? Because, I mean, part of --

MR. GILLAN: It's the cumulative effect of all those --

MS. ATWOOD: Well, couldn't you also make the argument that what you're seeing in Texas and in New York is the fact that in Texas and New York, the provision -- they've worked the kinks out of hot cuts and they've worked the kinks out of the provisioning process.

MR. GILLAN: I don't think that their provisioning of loops is all that different in their states from other places. It's the --

MS. ATWOOD: How?

MR. GILLAN: I mean, I haven't looked at that question, but I don't know that that's the --

MS. ATWOOD: I think there would be people who would disagree with you on that.

MR. GILLAN: I'm not sure I could find anyone who's happy with anything, but I'm not sure what the difference in the loop is, okay? But I know that -- what does UNE-P -- you have volumes of orders that -- I mean, all these companies that we talk to, they don't even look at states that don't have UNE-P. And can only give you a warning about this. This table -- I'm sure it's accurate, because there is an existence in the marketplace is that there are more customers with few lines than there are customers with multiple lines, but if you did this chart on the number of lines that fell in these categories, it would be very different. We see a gap --

MR. BANKS: That suggests it would be even easier, then.

MR. GILLAN: If it's so easy, compete against these guys, okay? If you really think this is so easy, go compete against them. You guys, come over here. I want to see you.

(Laughter.)

MR. TRINCHESE: The interesting point is that this appears to be coming down to an argument -- as far as I'm concerned, are you impaired to be able to take a one, two or three business line customer if you have a switch and you have a co-location? And can you switch them over to your switch?

MR. CROWNE: Yes.

MR. TRINCHESE: And that's what the answer is. It's not the digital divide, it's not T-1. It's that the question is, I have a customer with two lines. You said the majority of your market was one, two or three-line customers?

MR. CROWNE: Yes, I can.

MR. GILLAN: But that's only because the majority of the market is down there.

MR. TRINCHESE: Excuse me? No. One-, two- or three-line customers, year to date Verizon, year to date, January to yesterday, 300,000 hot cuts in the Verizon territory. Of those 300,000 hot cuts, 80 percent of the orders to those 300,000 hot cuts were for three lines or less. So, people are competing on a facility basis with their own switches.

MS. ATWOOD: But now, you said when he said the question is, you said yes, but I thought your position is you're not impaired.

MR. CROWNE: No, he said "can you." And I said, yes you can.

MS. ATWOOD: Oh, I'm sorry. And you said yes. Okay. I misunderstood.

MR. TRINCHESE: 300,000 hot cuts.

MS. ATWOOD: Can I ask you, though, you're saying that the majority of the market is down at three and four, but as I understand your testimony, what you're saying is yeah, that may be what we're doing now, but what we really want to do is we want to ramp up.

MR. SCOTT: No, that's not what I'm saying. I'm saying that we have a distribution of customers that averages five, and if you looked at the account of similar, to kind of the Allegiance covers, a large number of accounts at the lower end -- about two thirds of the lines are below average, about one-third is a little bit higher, distributed across that. And we're providing service to them today. It's not a desire to move up-market, it's the economic fact that to do business in the market, you need to serve across that spectrum to float the whole boat. I mean, you pull this part out, it doesn't work, you pull this part out, it doesn't work, but they work together.

We're providing a service, we're providing service to -- and you see the distribution -- that would be a significant number, five line, six line, seven line. And then, when you get up to eight, nine or 10, it starts to drop off a lot. And at about 10 to 15, there would be some amount. Above 15, very little.

MR. CROWNE: This chart doesn't show it separately, but I can tell you that 31.9 percent of our customers have one or two lines. They're below --

MR. TRINCHESE: And those are on facilities you take and provide your own switching.

MR. CROWNE: Absolutely.

MS. ATWOOD: Can I just ask, because we're running out of time. I need everybody to be able to wrap up, because I want to make sure. I know everyone will get frustrated and probably are already not getting as much time as they wanted, but if we could just have -- and I don't think you guys get to do every single one of your visits, only one of them or two. So, if you could just wrap up kind of where you think the Commission ought to be looking, having the benefit of listening to this in just a couple minutes.

MR. SHAKIN: Sure. I guess what we're seeing is a few things. We put facts on the record showing what kinds of losses we're seeing in the small business market. And then I -- and this discussion -- when I talk about the small business, I'm not defining it based on any particular criteria, other than what's in this debate, which is really the less-than-four-lines that we're trying to move the current limitation to -- the biz-res split -- and slightly above that, that they're trying to move it above. And what we're seeing is that we've got significant customer losses in that we're seeing that where we do offer UNE-P, it's being used for residential service.

They pointed to the difference between what's going on in Texas and New York. Our experience is -- and

I think the Commission has seen some of this too -- is that when 271s are granted, there's actually a spur in local competition, based on the availability of long distance. So, I'm not sure you can point to the data he's pointing to. But what we're seeing is tremendous losses in these customers, and not to the platform. So, there's someone out there who's doing it.

And then, we're seeing a group of companies coming out and saying yeah, it's me, it's me, I'm doing it and it works fine and thank you very much, I don't need the UNE-P for this. And then, we're seeing a group of companies that say, but I do. And the question before the Commission is are those companies that say I do truly impaired under the Act, and the answer has to be no. If there are companies out there succeeding -- and the combination of our own records of what we're losing and the testimony of companies coming in saying, yes, we're doing it and doing it in a way that doesn't involve UNE-P and the fact that it really wasn't available in most places when most of these losses were going on says that, clearly, companies can do it.

And then, the question is does the fact that a company that has a business model that says no, it doesn't work for us, what we really want to do is provide digital service above a certain level and analog service through UNE-P below a certain level. And I believe they said at one point that even if we have a switch there, we wouldn't use it to those customers. Well, that's fine, but that can't be the basis for the Commission decision. The Commission decision has to be are those companies impaired? And the fact that there are multiple companies out there doing it, the fact that there are significant business losses out there says that they can't be impaired and that the Commission really has to move to something that recognizes the realities of the market.

MR. GILLAN: I guess I also say that the Commission has to recognize the realities of the market, but the reality also includes scale and context, not exception and isolated experience. Five years -- almost five years into the Act as passed, and you have competition at a level that's just barely floating around 1 or 2 percent. We have brought to you a variety of entrants who could not exist until UNE-P was available, to show you the types of innovations they have brought to the market and the types of customers they have made better off by their presence. And yes, they have some customers in one to three, but there's this whole other gap that they provide services to, and as a practical matter, they need the ability to serve the entire spectrum to survive.

Now, there are other carriers out there that have a whole bunch of UNE-P orders and that serve only residential, but I don't think that you should pin the future of competition on them maintaining interest in that particular market, without other people coming in and being able to innovate and provide services. UNE-P will get you a lot more competition and it will get you price competition, because, for whatever amount of losses Bell South says they're experiencing, it evidently hasn't been enough to cause them to lower their business rate. And that's -- whatever kind of competition you want to see, I would think you'd want to see it to a level where you actually see pricing responses by the incumbent instead of just chugging along.

We think we've proven to you an impairment. We think we've identified what it is -- the analog. And we think we can even tell you when it's going to start disappearing as new technologies come in and people start this very slow process of replacing a network that was built over the last hundred years. But that process is going to take a long time and it's going to require more than just Allegiance, and it's going to require more than people charging high access rates while this little window IXC (phonetic) still being around to pay them exists, it's going to require a lot of players coming in trying a lot of different things. And this is the way we see it happening.

MR. SCOTT: And I guess I would suggest that we not -- I'm not going to reiterate the points that were made, but I'm going to give a suggestion. We've got kind of an interesting situation, where two companies that serve a lower end of the market are saying the exact opposite thing. And so, I guess I'd kind of cancel us out. But there are a lot of folks here in the industry who do serve the five- to 10-line customer, like McCloud and others, who I think need to weigh in, in this debate. It's represented somewhat by these coalitions, but I'd recommend getting a broader survey of that.

And frankly, I think that information on the record from companies like Time Warner Telecom, who serves 48 lines per account, that's not a relevant discussion of whether, you know, competition is really flourishing. We've kind of got Allegiance and Birch saying the opposite thing here, but there are a ton of folks in this industry who are trying to go after this market who aren't in this room today, and I'd really encourage you to get their point of view. Because I think as they see how difficult it is to grow the business today under the current rules, state by state, and see what the platform is able to do, you see the business strategies shifting as these companies struggle to survive in the public markets and struggle to bring down the financing necessary for there to be competition.

But when I step back from this, I kind of look at what's going on in the world around us, and it's hard to buy into this view that competition is flourishing and going with the current rules, flourishing in a market and ripping large amounts of market share away from the incumbents across the board, that macro trends out there just don't seem to link up to that. And I'd really encourage you to not listen to us all throw out market numbers here, but take a much more diligent view of understanding how many customers are lost, let's make sure that we sync up on the definitions that we're using for small business. But this is a pretty critical decision for a lot of us out here.

MR. BANKS: Yeah. I would just echo that, that a fact-based approach is a good one, and looking at the actual market share loss is a sensible -- and you can take some number, you know, Box (phonetic) have lost 1 or 2 percent, but I think the latest FCC survey said 5 percent. And I think that's true in the gross amount, but all of those lines are in the small business market, and the losses are very much higher there. And I think if you do --

MS. ATWOOD: You two are going to talk offline to --

MR. BANKS: Yeah, but you can -- there are more carriers than just the weak ones that are successful at this. There's Nextel and Entel in our region, so, I think trying to get actual numbers isn't the way to go. Let me just bring in one other thing, which is when we do hot cuts in our region, last month, throughout the region, the average number of lines per order was just over three. So, when people ask us to cut lines, they ask us to cut three lines at a time and serve smaller business customers, as anyone would define it.

MR. CROWNE: You know, I can only speak for Allegiance, obviously. We've been very successful with this boot cut strategy, so, we're not using -- we don't have any secret sauce or anything like that. We have helped define some of the processes, but, none of that's proprietary. My only observation would be more on a personal basis, which is it seems to me we've framed kind of where the debate is, and that you should be able to collect the facts that you need to decide whether or not competition exists. In as much as I don't like the test of the count of switches in a city -- I don't think that's valid -- I think there's other obvious tests and questions and data that you can collect. And I think that data exists. It seems to me a fairly straigthfoward way of getting to the facts.

MS. ATWOOD: Well, that's a positive note, a straightforward way of getting to the facts. This has been really, really helpful, because I think it's helped me understand where the rough points are and what your positions are. I mean, it really has been very helpful. We will no doubt be in touch with you. We are working on this as a fast-track to try to bring this to a close, and so, to the extent that we ask you for additional information after we caucus, I would encourage you to give it to us as quickly as you can. I know we're coming into the holiday time, but it's really important, because we have got to resolve this issue very soon.

So, to the extent that there are things that you can -- after you go back and think of things that would be helpful to us, as well, we'd really appreciate it. Thanks a lot.

(Whereupon, at 4:00 p.m., the hearing in the above-entitled matter was adjourned.)

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REPORTER'S CERTIFICATE

CASE TITLE: VERIZON & SBC v. ASCENT & PACE
LOCAL CIRCUIT SWITCH UNE CARVE-OUT DEBATE

HEARING DATE: November 17, 2000

LOCATION: Washington, D.C.

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