

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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In the Matter of:

DOCKET NO. 20180099-TP

COMMISSION APPROVAL OF
FLORIDA TELECOMMUNICATIONS
RELAY, INC.'S 2018-2019
PROPOSED BUDGET.

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PROCEEDINGS: COMMISSION CONFERENCE AGENDA
ITEM NO. 3

COMMISSIONERS
PARTICIPATING: CHAIRMAN ART GRAHAM
COMMISSIONER JULIE I. BROWN
COMMISSIONER DONALD J. POLMANN
COMMISSIONER GARY F. CLARK
COMMISSIONER ANDREW G. FAY

DATE: Tuesday, July 10, 2018

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

REPORTED BY: DEBRA KRICK
Court Reporter and
Notary Public in and for
the State of Florida at Large

PREMIER REPORTING
114 W. 5TH AVENUE
TALLAHASSEE, FLORIDA
(850) 894-0828

1 P R O C E E D I N G S

2 CHAIRMAN GRAHAM: Good morning.

3 COMMISSIONER BROWN: Good morning.

4 CHAIRMAN GRAHAM: Come on, let's try that one
5 more time.

6 Good morning.

7 AUDIENCE: Good morning.

8 CHAIRMAN GRAHAM: I am glad you guys are all
9 here with your smiling faces. I guess maybe there
10 is no bad news for most people out there today.
11 That's a good thing, right?

12 If you would like to join us for the
13 invocation and pledge led by Commissioner Clark, if
14 I could get you to stand, please.

15 (Invocation and Pledge of Allegiance.)

16 CHAIRMAN GRAHAM: Thank you for the
17 invocation, Pastor Clark.

18 Let the record show it is Tuesday,
19 January 10th, and this is our Agenda Conference.
20 We are going to take things a little out of order
21 today. We have Items No. 1, 2, 4, 4A, 5, 6, 7, 8
22 and 9 all on the move staff list. Item 3 we are
23 actually going to take up first. And item No. 4,
24 we will take up after we go through the move staff
25 list.

1 So if we can start off with Item No. 3, staff.

2 MR. WILLIAMS: Good morning, Commissioners.

3 Curtis Williams on behalf of staff.

4 Item 3 addresses Florida Telecommunications
5 Relay, Incorporated 2018-2019 proposed budget and
6 one new appointment to the Telecommunications
7 Access System Act Advisory Committee.

8 In Issue 1, staff recommends that the
9 Commission reduce FTRI's proposed budget expenses
10 by \$19,823 for legal expense, and \$39,469 for
11 insurance expense.

12 Staff also recommends that the Commission
13 allow FTRI to transfer \$203,746 from the reserve
14 account to offset projected expense increases
15 resulting from the new relay contract with Sprint,
16 and \$57,723 in additional expense primarily related
17 to equipment, employee compensation and auditing.

18 Staff also recommends that the surcharge be
19 maintained at 10 cents per access line per month.

20 In Issue 2, staff recommends that the
21 Commission approve the appointment of Commissioner
22 Margaret Brown to the TASA Advisory Committee
23 effective immediately.

24 Staff has an oral modification which has been
25 placed in the docket file. FTRI is here to address

1 the Commission and answer any questions.

2 Thank you.

3 CHAIRMAN GRAHAM: Thank you.

4 FTRI.

5 Cable.

6 MR. McCABE: Good morning, my name is Tom
7 McCabe. I am the Manager of Regulatory Affairs for
8 TDS Telecom which provide local exchange service in
9 Quincy Florida. I am currently the President of
10 the FTRI Board of Directors, and have been a member
11 of the board for 21 years now.

12 We appreciate the opportunity to share some
13 comments regarding staff's recommendation regarding
14 the FTRI budget.

15 Yesterday we met with staff to address some
16 concerns regarding the recommendation in the area
17 of insurance, retirement and legal fees. We are in
18 agreement with the oral recommendation offered by
19 staff with regard to the review of the insurance
20 and retirement; however, I would like to make some
21 comments regarding the remaining recommendation for
22 legal fees.

23 FTRI, a nonprofit entity, is the administrator
24 of TASA, and is responsible for the day-to-day
25 operations of the program. The Commission is

1 charged with the overseeing the relay program.

2 The amount proposed in FTRI's original budget
3 and the services rendered by FTRI's legal counsel
4 are both entirely reasonable and in line with the
5 market rate and services for this type of entity.
6 One particular area of concern with staff's
7 recommendation is the proposed 36,000 cap on
8 attorney's fees which cannot be exceeded without
9 giving the Commission 90 days advance notice.

10 FTRI is operating a business, just like
11 numerous other entities. As any business owner
12 knows, every day is different with the myriad of
13 issues can arise. These issues often arise quickly
14 and do not give us the luxury of having 90 days
15 advance notice.

16 In addition, the implication in this
17 recommendation, it is that the Commission will then
18 have the ability to decide whether or not we
19 actually get to use our attorney and expend those
20 funds.

21 For example, on page 10 of staff
22 recommendation, staff questions why the FTRI
23 counsel serves on the FTRI board as the secretary,
24 suggesting that that role could be performed by
25 someone else.

1 Regardless of whether counsel is taking the
2 minutes, the board would expect to have legal
3 representation at all board meetings. I don't
4 believe I have ever attended a Public Service
5 Commission meeting with staff where the staff was
6 not represented by legal counsel. I don't believe
7 that this is a matter that is squarely with the
8 responsibility of the FTRI, and the FTRI alone, in
9 managerial decisions to be made about the
10 day-to-day operations of the entity.

11 The cap and the notice requirement suggested
12 by staff is unworkable and has a very likely
13 probability of leaving FTRI without legal
14 representation in a time when it is most likely
15 needed. I, and I am sure other board members and
16 FTRI staff would be hesitant to continue to provide
17 services to the entity without legal
18 representation.

19 This recommendation also runs contrary to the
20 Commission's precedent of allowing adjustments
21 between budget categories without approval.
22 Overall, this budget category constitutes less than
23 one percent of the 2018-2019 operating revenues,
24 and less than 0.2 percent of the 2018-2019 total
25 revenues. Minute deviations and expenditures of

1 such relatively small amounts clearly should be
2 left to the judgment and discretion of the FTRI,
3 and do not warrant the level of oversight.

4 As former Commissioner Brisé voiced during the
5 2016 agenda hearing regarding FTRI's budget 2017
6 budget, quote: There is just one thing from a
7 philosophical perspective, I would believe that
8 boards are in a place to set budgets. It's their
9 job to set their budget. And part of my concern
10 with option one is that we are, from my
11 perspective, if we pursue option one, we really get
12 into micromanaging of the budget, so I think option
13 two provides us with the greater flexibility and
14 still provides FTRI the flexibility that they might
15 need in order to make decisions down the line in
16 this year.

17 Accordingly, FTRI requests the Commission
18 rejects staff's recommendation with the respect to
19 legal assistance in order to allow FTRI to retain
20 the necessary flexibility to conduct business and
21 operate on a day-to-day basis.

22 Thank you.

23 CHAIRMAN GRAHAM: Thank you, sir.

24 Commissioners. Commissioner Brown.

25 COMMISSIONER BROWN: Thank you, and I

1 appreciate your comments here, and also appreciate
2 you referencing Commissioner Brisé. I remember
3 that conversation we had, and I think we ultimately
4 did go ahead with option two, so thank you for
5 refreshing our memory.

6 And I also agree with former Commissioner
7 Brisé, that we shouldn't be in the business of
8 micromanaging; however, given that FTRI's entire
9 budget consists of money from landline users, I
10 think that we do have a role in making sure that
11 those dollars are spent very prudently.

12 We all know that minutes continue to decline
13 while consumers opt for newer technologies, and we
14 have continuously advised you all to make efforts
15 to cut back. And I was trying to look at the
16 budget -- I did not pull this item by any means. I
17 understand that I think the recommendation that
18 staff gave us was very, very thorough. I really
19 hear your concerns about the lawyer, the legal
20 fees, but I don't really understand where you would
21 be in a position where you would need immediate
22 legal fees for something that doesn't -- that
23 negates that 90-day notice. Can you give us an
24 example where you would need immediate services
25 over that \$36,000 cap?

1 MR. McCABE: Things change all the time. We
2 don't know at what point in time we are going to
3 hit that \$36,000 cap. We may have some personnel
4 issues that come up that require immediate
5 attention to. We may be at -- it may be December
6 and we are at \$25,000, never anticipating that we
7 are going to go over, and the next thing we are
8 involved in a legal case with some employees, or a
9 customer issue. You know, that's -- you know,
10 that's a concern that we have.

11 And then it also becomes a matter of we would
12 then have to come to the Commission to get
13 approval, and you may say, no, we are not going to
14 allow you to be represented. And as a member of a
15 board, I am not getting compensated here, and I am
16 not going to serve on a board in which I don't have
17 legal representation.

18 COMMISSIONER BROWN: I hear you loud and
19 clear. And I think 90 days is a little excessive.
20 Your last budget, though, for that line item was
21 36,000 in this Commission's last approval, right?

22 MR. McCABE: Yes.

23 COMMISSIONER BROWN: And did you -- do you
24 estimate to go over that this fiscal year,
25 2017-2018?

1 MR. McCABE: I believe the recommendation in
2 the budget was, what? 58,000 -- it was based on
3 the actuals for last year.

4 COMMISSIONER BROWN: What does your attorney
5 typically do for FTRI on a day-to-day basis that
6 doesn't require you to have the retainer kind of
7 model? He is not an employee, correct?

8 MR. McCABE: Correct.

9 COMMISSIONER BROWN: So what does he typically
10 do? I also agree with you that I think an attorney
11 should be at the board meetings. Could you
12 elaborate on that role? Would it be more prudent
13 to have an in-house attorney, fiscally?

14 MR. McCABE: I don't -- I am not involved in
15 the day-to-day operations, so I will leave that to
16 James, but --

17 MR. FORSTALL: Thank you. Good morning --

18 MR. McCABE: -- as a board member -- I am
19 sorry, as a board member, I probably would not be
20 one recommending to have in-house counsel. I mean,
21 I can tell you that the board shared your concerns
22 with regard to the budgets, and we do --

23 COMMISSIONER BROWN: That's good to hear.

24 MR. McCABE: I mean, the budget that you
25 received is not the budget that we receive, I can

1 assure you that. And we take our role on the board
2 very seriously. We understand that every penny is
3 somebody else's money, and so with that, I would
4 have probably -- would not be one suggesting that
5 we have in-house counsel, but I am not involved in
6 the day-to-day operations.

7 MR. FORSTALL: Good morning. My name is James
8 Forstall. I am the Executive Director of FTRI.

9 COMMISSIONER BROWN: Good to see you here.

10 MR. FORSTALL: Thank you.

11 We -- normally, whenever we have contract
12 issues with the vendors, or the regional
13 distribution centers, we always have the attorney
14 available to review those, and answer any questions
15 that may be pertaining to that.

16 Recently, and I will say maybe four or five
17 years ago, we did have a particular situation with
18 a particular client that did involve legal
19 assistance, and that particular issue went on for
20 probably 18 months. So that's an example of what
21 could come up that's unexpected, or out of the
22 ordinary.

23 They also review equipment bids that we send
24 out to make sure that we are in compliance with
25 requirements of asking for the appropriate

1 information, things of that nature.

2 COMMISSIONER BROWN: You have a new position,
3 Mr. Forstall, that you are requesting to be
4 included in the budget, along with a three-percent,
5 I guess, raise to that position. Who would be
6 filling that new position's role? What type of
7 duties would be filled by that currently vacant
8 position?

9 MR. FORSTALL: The position is accounts
10 payable, and we did fill the position. That was
11 needed because we -- of course, we have nine
12 full-time staff right now available. We did have
13 120 last year. We reduced it to nine. And at this
14 point, the accounts payable position became
15 available, so we proceeded some time without, and
16 realized that we have to have it in order to
17 function every day, so we did fulfill it.

18 COMMISSIONER BROWN: But you were operating at
19 eight for the majority of the fiscal year, even
20 though you were funded for 10.

21 MR. FORSTALL: No. I am sorry. We were
22 operating at nine positions for the whole year.

23 COMMISSIONER BROWN: Okay.

24 Commissioners, I think that -- I think FTRI
25 has made some good points on the legal aspect. I

1 think 90 days is a little bit excessive.

2 I think the 36,000 that's proposed by the
3 staff recommendation is in accordance with our
4 previous recommendation last year, so I think
5 that's reasonable; however, I think 90 days is
6 excessive, so open to ideas from you all.

7 CHAIRMAN GRAHAM: Thank you, Commissioner
8 Brown.

9 Commissioner Polmann.

10 COMMISSIONER POLMANN: Thank you, Mr.
11 Chairman.

12 There were two points made on the legal; one,
13 if I understood you correctly, one being that
14 dollar amount, and then the other being the review
15 or seeking approval within a 90-day timeframe. I
16 would like to understand which is the more
17 important issue, if there is one that's more
18 important. Commissioner Brown spoke on two of
19 those, so can you give me some more information in
20 terms of the dollars versus the review and approval
21 for additional funds with regard to a 90-day
22 review?

23 MR. McCABE: Well, I think the 36 -- the cap
24 is simply setting up the 90-day review. I mean, in
25 all likelihood, it comes out to be above \$36,000 on

1 an annual basis. I mean, last year, our -- I think
2 the actual fees were \$56,000, in that neighborhood,
3 from what I recall.

4 So I don't -- I think what staff has proposed
5 with regard to what the fees are, it's \$250 an hour
6 per month. After the first 12 months, it goes to
7 225 for each additional hour after that within a
8 given month. It's fairly reasonable, and so I
9 don't really think that there needs to be a cap. I
10 think that what we proposed on it, based on our
11 initial budget, was based on the actual one, and we
12 think that should be approved without the 90 days.
13 We can even do away with the \$36,000 in there and
14 just go to a straight hourly rate.

15 COMMISSIONER POLMANN: I don't have an issue
16 with paying an attorney an hourly rate, whatever,
17 you know, a reasonable hourly rate is. I think if
18 we were to specify an hourly rate, that would be
19 micromanaging. So I think, you know, prudence on
20 an hourly rate would be appropriate for your
21 manager to be in charge of.

22 In terms of, you know, having a minimum flat
23 fee seems to me to be not a reasonable use of
24 money. To say we are going to pay an attorney, you
25 know, I think a flat fee of some dollars per month

1 whether or not there is an assignment, I have an
2 issue with that. So, you know, a dollar per hour,
3 given that you provide an assignment, seems a
4 reasonable approach in that there is a specified
5 hourly amount.

6 Now, whether there is an upset limit, that's a
7 budgeting issue. You set aside a certain amount of
8 money in a budget, and then if you exceed the
9 budget, then that's a separate issue. In terms of
10 coming back for review, again, that -- that's
11 another matter.

12 So I was trying to determine whether coming
13 back for a review was problematic. I agree with
14 Commissioner Brown that 90 days, that seems to me
15 to be extraordinary. I am trying to focus on
16 weather --

17 MR. McCABE: I understand.

18 COMMISSIONER POLMANN: -- the upset limit is a
19 problem, and then we can decide --

20 MR. McCABE: Let me defer to counsel here.

21 MS. BROWN: This is Denay Brown with Messer
22 Caparello.

23 We have discussed, and we are happy to do away
24 with the flat fee per month. I can tell you, as a
25 practical matter looking back over the last 12

1 months, out of the 12 months, there was only one
2 month that they didn't use the number of hours that
3 the \$3,000 provided for.

4 So we are happy to move to an hourly billing
5 system, and move away from the flat fee. I think
6 as a practical matter, on a month-to-month basis,
7 it's not, at the end of the day, really going to
8 result in much of a difference; but on the months
9 they did use the full 12 months, it would result in
10 some cost savings for them, and we are happy to
11 accommodate that.

12 COMMISSIONER POLMANN: Is there a
13 reasonable -- Mr. Chairman.

14 CHAIRMAN GRAHAM: Sure.

15 COMMISSIONER POLMANN: Is there a reasonable
16 timeframe given that there is an upset limit for
17 review to approve additional funding?

18 COMMISSIONER BROWN: Well, I think one of the
19 practical issues is, as Tom mentioned, is just any
20 business that you are operating, you never know
21 what the next day is going to bring. So, you know,
22 if we do a contract dispute or an employment issue,
23 even 30 days is sometimes -- you know, obviously we
24 are going to try and forecast and make sure we are
25 not pushing up on that budget limit, but sometimes

1 you don't know what's going to happen.

2 And I think traditionally, they've had the
3 flexibility to exceed, you know, their budget
4 categories in small amounts, and so the goal would
5 be to be able to retain some of that flexibility.

6 I mean, we are obviously not going to
7 completely exceed the budget without considering
8 that, but we don't want to be in a situation where
9 our hands are tied and have a legal issue that
10 needs to be dealt with and they have no
11 representation.

12 And as Tom also mentioned, one concern is if
13 we do come back to the Commission for approval and
14 the decision is that they are not allowed to expend
15 those extra funds, then it leaves them without
16 legal representation, which he has indicated would
17 be quite a barrier for a lot of the board members
18 who are voluntary. They are not necessarily going
19 to want to serve on the board where they have been
20 told they are not allowed to have legal
21 representation.

22 COMMISSIONER POLMANN: Well, I understand
23 that. That would -- certainly, that would be an
24 obstacle for conducting your work. But from my
25 experience, normally if there is a contract issue

1 or there is some kind of dispute, there is
2 necessarily a period for cure, and it's not usually
3 overnight. I mean, there is a reasonable period
4 for someone to seek legal representation. Now,
5 whether that's 10 days, or 30 days, or whatever it
6 is, so I will just leave it there. I don't know if
7 other members have comments.

8 CHAIRMAN GRAHAM: Commissioner Fay.

9 COMMISSIONER FAY: Thank you, Mr. Chairman.
10 I have a few questions. I guess my first
11 question is for Ms. Brown.

12 How long have you been representing FTRI?

13 MS. BROWN: I have recently stepped into the
14 role. Rob Telfer, who was the former counsel
15 within the same firm obviously, was recently
16 appointed to the bench at DOAH within the last
17 month. So he was the former counsel over the last
18 year, and since he has taken up on to the bench, I
19 have taken up the representation.

20 COMMISSIONER FAY: Okay. Do you know how long
21 the firm has represented?

22 MS. BROWN: A while. I think it's over 20
23 years.

24 COMMISSIONER FAY: Okay. And do you know why
25 there was a previous flat fee agreement for 72,000

1 a year?

2 MS. BROWN: That's kind of prior to my time.
3 My understanding is that that was the agreement. I
4 think back at that time there were more services
5 being provided by counsel. I think some of that
6 has gone in-house.

7 James could probably correct me if I am wrong,
8 but I think some of those services have kind of
9 gone in-house, and so we've -- in an attempt to
10 reduce that expenditure, we have reduced our role
11 some. So that's why the amount has been able to
12 come down.

13 COMMISSIONER FAY: Okay. And can you
14 describe, I guess, what a typical billed hour would
15 include for this client?

16 COMMISSIONER BROWN: Sure. We do a lot of
17 different things. We attend the board meetings, so
18 that's one thing. We do contract reviews. So if
19 they are going to enter into an agreement with an
20 advertiser, or anything like that, we review those
21 contracts and consult with them.

22 Employment issues, if there is any personnel
23 things that arise. We have had FCHR complaints in
24 the past. Just your typical personnel issues that
25 arise in any business, so we consult on those.

1 Any disputes that they may have with vendors,
2 or anything like that. I mean, generally we are
3 available if they have any questions that are of a
4 legal nature in any matter to consult with them
5 regarding that.

6 COMMISSIONER FAY: Okay. And then this might
7 be a question for Mr. Forstall, but do you know why
8 your firm in particular has been retained for this
9 long?

10 MS. BROWN: We have had a good working
11 relationship. You know, this relationship was
12 established quite a while back, and we've, you
13 know, provided good services, and it's been
14 cost-effective for them. And, I mean, to my
15 knowledge, there has not been a reason for them
16 to --

17 COMMISSIONER FAY: I was just curious if you
18 go out every year and look at what firms would
19 potentially provide the services and at what rates.

20 MR. McCABE: No, we don't. I can tell you
21 from, based on the -- as a small telephone company
22 that's had to engage in legal services, the rate
23 that FTRI is receiving is very, very good, in my
24 opinion. And the difficulty that you run into when
25 you have to find legal counsel from time to time,

1 and not having somebody that's available whenever
2 needed, is you run into all of these conflicts of
3 interest, and you have a very difficult time
4 finding representation.

5 I have been in this business for 30 years now,
6 and, you know, \$36,000 in annual legal fees, in my
7 mind, is not a lot of money. And I understand the
8 Commission's role in overseeing the budgets, and
9 the fact that consumers pay into the fund, but I
10 think what we have is a very reasonable arrangement
11 with legal, and it's been very effective.

12 COMMISSIONER FAY: And I guess going forward,
13 and I think -- I don't want to be repetitive, but
14 just to be clear, there is two hurdles, in your
15 opinion; one is the actual threshold, and the other
16 is the timeline that the Commission would respond
17 to that situation.

18 Based on the history of what you have handled,
19 is there a specific example of where the 90-day
20 timeframe would prohibit what you have been able to
21 do in the past?

22 MR. McCABE: I can't speak to any of the
23 details, but I will let James or counsel. But
24 every year, we've never been at \$36,000, okay. We
25 have billing records that, you know, they submit

1 hourly billing statements. So we are already
2 looking at, based on our actuals, at \$58,000. So
3 if you cap it at 56, now I have got \$20,000 that I
4 don't know whether this Commission is going to say,
5 we think that's prudent, or we don't think that's
6 prudent. That is the concern that we have.

7 We don't want to find ourselves in a situation
8 in which we are up against -- we've got a board
9 meeting, for example, and we are still waiting to
10 find out whether or not we can have counsel attend
11 a board meeting because it's over \$36,000 because
12 it's still 30 days left before the Commission is
13 going to make a decision.

14 COMMISSIONER FAY: And you wouldn't be able to
15 anticipate that that number is going up is what you
16 are saying?

17 MR. McCABE: Exactly; or it may have reached
18 that point, we had filed something with the
19 Commission and we are still waiting 90 days for a
20 decision.

21 COMMISSIONER FAY: And so I guess in addition
22 to the threshold, the timeline resolution that you
23 are proposing would be what?

24 MR. McCABE: That there be no timeline in
25 which -- that it would be back to the normal way

1 that we've been doing this for 25 years, since the
2 inception of the FTRI. You know, we propos a
3 budget, and it gets approved by the Commission, and
4 we abide by that budget. And we find ourselves in
5 a situation in which we are going to go over, we
6 would notify -- more than 10 percent, we would then
7 come to the Commission and notify the Commission,
8 or move funds within -- I believe that's the
9 process, is that you can move funds into that.

10 We don't -- I mean, I can assure you that if
11 we find ourselves in a situation where the budget
12 is going to be out of whack, this Commission is
13 going to know about it. We are going to let you
14 know. We provide quarterly statements to the
15 Commission. If we find ourselves, and we are going
16 to have a legal situation, we will be letting you
17 know.

18 COMMISSIONER FAY: I guess, as a proposed
19 solution, there is no concern of an hourly rate.
20 Is there a cap that you believe is appropriate, or
21 do you believe no cap is necessary?

22 MR. McCABE: I don't believe that a cap is
23 necessary, but, you know, the budget is the budget,
24 you know. It -- we make -- actuals maybe \$45,000
25 as opposed to the 58 that we are projecting. The

1 projection was based on last year's annual.

2 So with that, if we were going to be exceeding
3 that \$58,000, we would probably come to the
4 Commission if it was beyond 10 percent to let you
5 know that we've had some legal issues that we are
6 going to need to address.

7 COMMISSIONER FAY: Mr. Chairman, can I ask a
8 quick question to staff?

9 So I think this might be for either Curtis or
10 Pamela. But I have heard multiple times they've
11 said that you can move certain money from
12 categories into other categories. Can you explain
13 that as far as --

14 MR. WILLIAMS: Yes.

15 COMMISSIONER FAY: -- if they would be able to
16 move certain allocations into legal to cover costs
17 if they went over?

18 MR. WILLIAMS: Yes. Sure, Commissioner Fay.

19 In terms of the budgeting process, the overall
20 budget, when staff has recommended, and in the past
21 when the Commission has set the budget, we have
22 given FTRI the flexibility to move funds, as Tom
23 mentioned, within categories. You know, we have
24 the equipment category, general administrative
25 expense category. So within a 10-percent range, we

1 do allow them to move funds within the category.

2 And as Tom indicated, if there is a major
3 issue, unforeseen issue during the budget year,
4 FTRI, they do have the flexibility or the option to
5 come back to the Commission to address that issue.

6 COMMISSIONER FAY: And is -- how is that
7 process done? How would they come back before the
8 Commission?

9 MR. WILLIAMS: They would -- I am not sure if
10 it has ever been done. It hasn't been done, but
11 it's available. And they would just notify the
12 Commission that there is an issue that's before
13 them, and they would come back to the Commission to
14 have that issue addressed.

15 COMMISSIONER FAY: Okay.

16 MS. PAGE: Commissioner Fay, if I might, I
17 believe that that would be in the form of a
18 petition or a request to the Commission, and that
19 the Commission would make the decision on the
20 approval for that increase, not staff.

21 COMMISSIONER FAY: I appreciate that.

22 Mr. Chairman, I just have a few comments, but
23 I am happy to wait if there is other questions.

24 CHAIRMAN GRAHAM: Sure.

25 COMMISSIONER FAY: So I think on the initial

1 review for this, I had concerns of the long-term
2 agreement at a certain level with no hourly
3 analysis done up to a certain level. I don't
4 understand why it was like that for a long time,
5 and I presume that that's structurally what a lot
6 of firms were doing, and so it was appropriate
7 going forward.

8 I do think some of your points are very well
9 taken. I think we all appreciate at the end of the
10 day there is the same goal for the entity to
11 operate in the way that it should with the legal
12 services that are needed, but knowing that every
13 dollar counts. Every dollar matters for the
14 services that are provided.

15 And so I think going forward, knowing that
16 this Commission has some strong thoughts about what
17 the allocation of these funds would look like,
18 specifically the hourly rates, I don't have an
19 objection to having that threshold at a higher
20 level to allow you to operate without a concern
21 that you have to come back before the Commission.

22 I think the reason that that recommendation is
23 there -- and I don't want to speak for staff, but I
24 think it's based on the historical structure of the
25 way the agreement was between the parties.

1 I think we have counsel here today saying that
2 they are going to operate in the most efficient way
3 possibly at an hourly rate, and they don't have any
4 objection to that going forward. There is just
5 concerns that from a timeframe you might have an
6 issue where something is brought forward, you are
7 not able to predict it, and then you have the
8 potential to exceed your budget beyond what Curtis
9 and staff has addressed to allow for an allocation
10 to switched over to cover that cost.

11 I personally don't want to put the
12 organization in that position, and so I think we
13 appreciate those points. But without any sort of
14 detailed information for billing at an hourly rate,
15 it's hard for us to know that that's going to be
16 done properly. And so I think with that hourly
17 allocation, it's important for the Commission to
18 receive documentation about those hourly charges
19 and what they entail, which I know your firm does,
20 to allocate what they are billing, so then every
21 year we are able to make an analysis of what an
22 appropriate rate would be, because every year you
23 might come forward with different circumstances,
24 which that number might be less or more.

25 And I think from everything I have heard you

1 say, in Forstall, today, you understand that, and
2 you are going only -- you are going to get the
3 budget, and you are only going to bring forward
4 what you think is absolutely necessary to bring
5 forward. And I think, from my perspective, that's
6 a fair ask, and I don't want the Commission to any
7 way be in the way of the organization moving
8 forward on things that are necessary, specifically
9 a potential lawsuit, or a challenge that would
10 require counsel at a further rate that would exceed
11 what you have.

12 Mr. Chairman, if there are other comments, I
13 would be happy to let everyone weigh in. If not, I
14 am ready to make a motion for the board.

15 CHAIRMAN GRAHAM: We have a few other comments
16 first.

17 COMMISSIONER FAY: Okay.

18 CHAIRMAN GRAHAM: Commissioner Clark.

19 COMMISSIONER CLARK: Unfortunately, everything
20 has now been said, so...

21 CHAIRMAN GRAHAM: Okay, Commissioner Brown.

22 COMMISSIONER CLARK: Hang on. Of course it
23 does my heart good to see attorneys arguing over
24 legal fees. This is always good. I am thinking of
25 about 100 analogies. I am going to keep them to

1 myself.

2 I do have a couple of very quick questions.
3 And thank you, Commissioner Fay. You got to the
4 heart of kind of where I wanted to go in
5 understanding how the budget could be reallocated.

6 But specifically the overage that has occurred
7 in previous years. Right now, they are
8 anticipating running \$49,000 on a \$36,000 budget.
9 Well, that's way more than 10 percent. Had they
10 come to us and requested an allocation to be moved
11 already for this year's budget?

12 MR. WILLIAMS: No.

13 COMMISSIONER CLARK: Okay. I will turn my
14 question to FTRI.

15 Had you -- why have you not come and asked for
16 the overage for this year's budget?

17 MR. FORSTALL: The 10 percent represent of the
18 total category, not the individual line item, just
19 for clarification purposes. So the 10 percent of
20 the category five would be, if I recall correctly,
21 about \$900,000, so it would be \$90,000 that could
22 be moved.

23 COMMISSIONER CLARK: Okay. I am sorry. I was
24 looking -- I thought we were referring to the
25 specific budget allocation for legal expenses.

1 So you are saying that it has to move
2 10 percent among the larger categorical group
3 before. So they could spend \$90,000 above a budget
4 line item in here without having to come back for
5 permission right now, is that correct?

6 MR. FORSTALL: Correct. Yes, that's correct.

7 COMMISSIONER CLARK: I didn't expect that
8 answer. So now I have to think this through a
9 little bit clearer.

10 So why the change? If we have been operating
11 under a system, and it's working -- I think I just
12 answered my own question. It's now -- it's a
13 \$90,000 budget shift, is that why you are proposing
14 the 90 days?

15 MS. PAGE: We are proposing the 90 days,
16 Commissioner, so that we can be sure that FTRI is
17 managing this budget. And we want to make sure
18 that there are no overages without the Commission
19 knowing about that in advance, without the
20 Commission being able to approve that overage.

21 As it stands right now, as just revealed, the
22 Commission is without knowledge of increases. We
23 don't know.

24 COMMISSIONER CLARK: But they still have to
25 stay within their overall budget allocation. And

1 let's just say the approved budget was 5.8 million.
2 They can't spend over 5.8 million, correct? There
3 is no -- there is no procedure or no pre-authorized
4 procedure where they could spend 5.9 million. The
5 funds aren't there, correct? The funds are
6 reverted back to the fund at the end of each year
7 is that correct?

8 MS. PAGE: Correct.

9 COMMISSIONER CLARK: So they don't -- are they
10 allowed to keep a reserve?

11 MR. WILLIAMS: There is a reserve account
12 that's a part of FTRI's entire operation.

13 COMMISSIONER CLARK: Is it with inside the
14 five -- the 2017-18 \$5.851 million budget, is that
15 reserved with inside that number?

16 MR. WILLIAMS: Well, there is an overall
17 reserve amount of more like \$17 million.

18 COMMISSIONER CLARK: But they don't have
19 access to that fund?

20 MR. WILLIAMS: No. No. No, they do not.
21 Correct.

22 COMMISSIONER CLARK: The reserve -- do they
23 have a reserve within the \$5.851 million '17-'18
24 budget fund?

25 MR. WILLIAMS: No. No, they do not,

1 Commissioner.

2 COMMISSIONER CLARK: So they are capped.

3 So we do know, if they do shift within the
4 budget, within their budget categories, they still
5 can't exceed the overall allocation that we've
6 given them?

7 MR. WILLIAMS: Correct.

8 COMMISSIONER CLARK: Okay. That's all I have,
9 Mr. Chairman.

10 MR. McCABE: Commissioner, if I could make one
11 comment. We do provide a quarterly update on the
12 budget to staff.

13 CHAIRMAN GRAHAM: Commissioner Brown.

14 COMMISSIONER BROWN: Thank you.

15 And I just want to point out that the legal
16 fees is just one-twentieth of the overall budget
17 here of the expenses. So while it's very
18 important, and the dollars are very important,
19 there are other categories that we -- that deserve
20 some merit and some attention since this door has
21 been opened here.

22 I think we could solve this issue, though,
23 looking at allowing FTRI to have the flexibility,
24 as it has had in the past, to if it goes over the
25 36,000, then it has the discretion as long as it

1 stays within the 10 percent range; and if it just
2 notifies the Commission so that they are aware that
3 it is going over rather than seeking approval, I
4 think that would solve the issue of everyone's
5 concern here.

6 But I want to touch on Commissioner Fay's
7 question about the -- this is an unusual
8 arrangement that you all have with legal, that you
9 have had over the years, and it seems to have
10 worked for you all, correct?

11 MR. McCABE: Yes.

12 COMMISSIONER BROWN: I think converting to, or
13 switching to an hourly rate would really increase
14 those legal fees, would you agree? Since you have
15 had the historical data of serving this entity.

16 MS. BROWN: Well, I honestly, I don't think it
17 would make that much of a difference, because
18 they've had a flat fee up to the 12 hours, and then
19 it's been hourly after that.

20 Like I said, over the last 12 months, there
21 has only been one month that they didn't exceed the
22 12 hours. So -- I mean, we can switch it to hourly
23 billing, but I think at the end of the day, it's
24 going to be a minute difference, just because most
25 of the months they are ending up getting billed

1 hourly anyway because they are exceeding the
2 12-hour cap.

3 COMMISSIONER BROWN: All right. I don't want
4 to really switch it to something that we don't
5 really know if that's going to work right now. We
6 have the historical data of what has worked.

7 Mr. Forstall, you have got an estimate for the
8 remaining -- and I want to just close this legal
9 circle up real quickly, but you have an estimate of
10 55,000, does that include the attorney serving as
11 the board's Secretary for the board meeting next
12 month?

13 MR. FORSTALL: That is correct.

14 COMMISSIONER BROWN: Okay. And that's still
15 within the 10 percent range, just deviation?

16 MR. FORSTALL: Yes.

17 COMMISSIONER BROWN: Okay. I know that.

18 Commissioners, I think if we go with the staff
19 recommendation on the proposed budget of 36,000, as
20 we've had in the past, and give the FTRI the
21 discretion, as we have in the past, so long as they
22 give us notice of any anticipated overage of the
23 budget -- not approval, notice -- then I think that
24 would accomplish everyone's concerns here, but
25 that's just -- I'm throwing that out there.

1 Before we move on, Mr. Chairman, I will hold
2 off if everyone wants to comments on it.

3 CHAIRMAN GRAHAM: There are some more
4 comments.

5 Commissioner Fay, do you want to continue?

6 COMMISSIONER FAY: Thank you, Mr. Chairman.

7 I am in full agreeance with Commissioner
8 Brown's analysis in going forward in that I think
9 there is accountability here, and that I think, to
10 a certain extent, we are entering the territory of
11 managing at a level that might hinder the
12 organization.

13 I have read the analysis, and staff can
14 correct me, I read the analysis to say that they
15 would provide notice to us when they exceeded that
16 level. I did not read specifically that there was
17 a mandate for approval. And so if presenting that
18 information is consistent with staff's
19 recommendation, then I think that that might be in
20 line with the intent of my recommendation, and
21 Commissioner Brown's.

22 And so if there are other comments, I will --
23 Mr. Chairman, I will let you direct that, but
24 otherwise, I think we are -- the attorneys on this
25 side of the room are inclined to agree with

1 something, which is always a good start, and I
2 think we could probably move forward based on the
3 historical recommendations that have been put in
4 front of us and this staff recommendation.

5 CHAIRMAN GRAHAM: Commissioner Fay, if only it
6 was that simple.

7 Commissioner Polmann.

8 COMMISSIONER POLMANN: Thank you, Mr.
9 Chairman.

10 Not being an attorney on this side of the
11 room, I am happy the attorneys agree, but I don't
12 know what they said, so...

13 Commissioner Brown, you mentioned 10 percent.
14 I don't know what 10 percent of something is
15 because I don't know what the something is you are
16 talking about. I heard from staff that it's
17 10 percent of the category, and Commissioner Clark
18 made reference to that.

19 So 10 percent, in this case, of 900,000 --

20 COMMISSIONER BROWN: General --

21 COMMISSIONER POLMANN: -- it could be given
22 that if there is no other item within that category
23 that's fluctuating, it could be \$90,000 against a
24 \$36,000 legal budget; was that your intent?

25 COMMISSIONER BROWN: Uh-huh, with a general

1 item.

2 COMMISSIONER POLMANN: I don't have an issue
3 with FTRI coming back and seeking approval from
4 this Commission. So are you seeking that we would
5 be noticed -- notified of anything?

6 COMMISSIONER BROWN: Just notify staff if they
7 go over the legal budget.

8 COMMISSIONER POLMANN: The budget that they --

9 COMMISSIONER BROWN: Not seek approval from
10 the Commission.

11 COMMISSIONER POLMANN: The legal -- the legal
12 line item budget that the staff has recommended?

13 COMMISSIONER BROWN: (Commissioner nods head
14 in the affirmative.)

15 COMMISSIONER POLMANN: Thank you for the
16 clarification.

17 CHAIRMAN GRAHAM: Commissioner Brown.

18 COMMISSIONER BROWN: Do you want to -- okay.

19 All right. Just moving on to another category
20 that's a bigger chunk here, really. And I wasn't
21 going to address it, but since you are here, please
22 allow me the indulgence.

23 Mr. Forstall, outreach is half a million
24 dollars, and it has been -- I know a couple years
25 ago you asked for a million. We cut it back a

1 little bit, and we are cutting it back a little bit
2 more. And it looks like you all are converting
3 to -- from traditional outreach to social media.

4 What portion of that -- and I think that's a
5 good thing, too. But what portion -- where are
6 your dollars going here? We don't have a breakdown
7 in the discovery responses, really, of how you are
8 utilizing outreach. And it is a big chunk, and
9 it's a really important part of your program to
10 communicate with the traditional relay folks out
11 there. Can you go over it for us?

12 MR. FORSTALL: Sure.

13 This year, for the first time, we have done
14 some social media campaigns or outreach in the
15 past. But this year, we are focusing heavily on
16 social media, such as Facebook, Twitter, Instagram,
17 the whole packet, with banner ads on websites, et
18 cetera.

19 We are not shifting the entire budget over to
20 social media. We still are doing newspaper ads,
21 because we do feel that is a representable response
22 rate for that. So we have taken that particular
23 media budget and split it. We are going to do half
24 newspaper and half social media. And we are
25 working with a firm called B-H Marketing located in

1 Bradenton, Florida. And they have mapped out a
2 whole plan for the whole year for us in how to go
3 ahead and appropriate the funding for a specific
4 campaign.

5 And we did a pilot program, and early on last
6 year it was pretty successful, but we -- it's going
7 to take time for the social media campaign to
8 really kick in and provide the results we are
9 looking for.

10 COMMISSIONER BROWN: What percentage would you
11 say of the budget is going to be dedicated towards
12 the social media expense?

13 MR. FORSTALL: Out of the outreach budget
14 of --

15 COMMISSIONER BROWN: 546,250.

16 MR. FORSTALL: Yes, 546,000, I am going to say
17 120,000 of that would be for the social media.

18 COMMISSIONER BROWN: Okay. And then the rest
19 would be traditional advertising?

20 MR. FORSTALL: We will be doing newspaper, and
21 also we contract with regional distribution
22 centers. Those are our centers that we work with
23 throughout the state. We have 28 of them.

24 And they go into the field in the community
25 and do face-to-face presentation, or they go to

1 exhibits health fairs. They do exhibiting of the
2 equipment and the services.

3 And we have seen an uptake in that over the
4 last year compared to the year before. So that
5 will always be a mainstay of the outreach program,
6 and that will be continued.

7 COMMISSIONER BROWN: Okay. Moving to another
8 category that last year we -- under your
9 accounting, we talked about -- I think we discussed
10 at the agenda possibly having a compensation
11 analysis. Where are you on that?

12 MR. FORSTALL: We budgeted this year in this
13 year's budget for that to happen, and we anticipate
14 having that done during the next -- during this
15 fiscal year, once the budget is approved.

16 COMMISSIONER BROWN: Was that included in last
17 year's budget?

18 MR. FORSTALL: No, it was not.

19 COMMISSIONER BROWN: No. Have you retained a
20 firm yet?

21 MR. FORSTALL: We have sent out for bids, but
22 we have not retained a firm yet.

23 COMMISSIONER BROWN: And it's a compensation
24 of the overall -- is it for the accounting, or for
25 the employees? Refresh our memories here.

1 MR. FORSTALL: Yeah. It's an employee
2 compensation.

3 COMMISSIONER BROWN: Okay. That is all, Mr.
4 Chairman.

5 CHAIRMAN GRAHAM: Was it that a motion?

6 COMMISSIONER BROWN: Unless Commissioner Fay
7 wants to make one. Do you want to make one?

8 COMMISSIONER FAY: I can try.

9 COMMISSIONER BROWN: I believe in you.

10 COMMISSIONER FAY: So, Mr. Chairman, I have
11 one quick question for staff before that motion
12 just to make sure I get us in the right posture
13 here.

14 The staff recommendation states, as it relates
15 to the legal fees, that notice will be provided,
16 but they cannot exceed that 36,000 retainer without
17 Commission approval, and FTRI is not authorized to
18 transfer funds from other areas in Category 5 to
19 subsidize the overages.

20 My motion would be to accept staff's
21 recommendation with the modification that the last
22 sentence in staff's recommendation there about
23 exceeding the approval and not allowing FTRI to
24 move their budget into other categories would be
25 stricken from the recommendation.

1 CHAIRMAN GRAHAM: Okay.

2 COMMISSIONER FAY: That's my motion.

3 CHAIRMAN GRAHAM: And that includes the oral
4 modification?

5 COMMISSIONER FAY: Yes. Correct.

6 CHAIRMAN GRAHAM: That's been moved and
7 seconded.

8 Any further discussion?

9 COMMISSIONER POLMANN: I am sorry, where are
10 you reading from?

11 COMMISSIONER FAY: Page 10 of the analysis,
12 about halfway down. This paragraph right here.

13 COMMISSIONER POLMANN: Thank you.

14 CHAIRMAN GRAHAM: Commissioner Clark.

15 COMMISSIONER CLARK: Just a, I guess kind of
16 procedural. If we are looking at page 10, in that
17 specific item, that doesn't address a lot of the
18 things I think we are needing to approve today.
19 The conclusion on page 12 may address that a little
20 clearer. Is that -- I may be way off, but I would
21 turn to staff for more --

22 COMMISSIONER FAY: So, Commissioner Clark,
23 just for clarification. It would be motion staff's
24 recommendation which would include that conclusion,
25 the full body of the item with just the

1 modification --

2 COMMISSIONER CLARK: Yeah, you needed approval
3 on the 10 cents per line charge in the budget
4 itself, correct? I think that was correct.

5 COMMISSIONER FAY: Yes.

6 COMMISSIONER CLARK: Yes, Commissioner Fay, I
7 think you are right.

8 COMMISSIONER FAY: Okay.

9 CHAIRMAN GRAHAM: Any further discussion?
10 Seeing none, all in favor say aye.

11 (Chorus of ayes.)

12 CHAIRMAN GRAHAM: Any opposed?

13 (No response.)

14 CHAIRMAN GRAHAM: By your action, you have
15 approved the Fay motion.

16 Thank you very much.

17 MR. WILLIAMS: Excuse me, Chairman Graham.

18 In terms of the motion, I just want to make
19 sure that it included Issue 2 as well. We had the
20 Issue 2, which was procedural on the appointment of
21 Commissioner Michael Brown.

22 COMMISSIONER FAY: Yes, it would include all
23 issues.

24 MR. WILLIAMS: Okay.

25 CHAIRMAN GRAHAM: The only thing that changed

1 was the 90-day notification.

2 MR. WILLIAMS: Thank you.

3 (Agenda item concluded.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF LEON)

I, DEBRA KRICK, Court Reporter, do hereby
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DATED this 18th day of July, 2018.



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